Karpagam Academy of Higher Education
(Deemed University Established Under Section 3 of UGC Act, 1956)
Coimbatore - 641 021.

Semester III

L	T	P	C
6	-	-	4

16CCU303 A **COMPANY LAW**

COURSE OBJECTIVES:

- Company Law gives the fundamental knowledge and exposure of the Company's Act.
- This Course 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

LEARNING OUTCOMES:

- To provide the knowledge of companies act.
- To have a thorough knowledge on formation of company, documents required and Acts pertaining to it.
- In view of the important development that have taken place in the corporate sector, the course is designed to understand the formation, management and other activities of the companies.
- Important regulations pertaining to the issue of shares and the capital raising have come into force.

UNIT I

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

UNIT II

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

UNIT III

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

UNIT IV

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

UNIT V

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

Suggested Readings :

Text Book:

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

Reference Books:

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

Enable | Enlighten | Enrich
(Deemed to be University)
(Under Section 3 of UGC Act 1956)

KARPAGAM ACADEMY OF HIGHER EDUCATION

(Deemed to be University Established Under Section 3 of UGC Act 1956)

Coimbatore – 641 021.

LECTURE PLAN
DEPARTMENT OF COMMERCE

STAFF NAME: SINDHU PRIYA & R. NAVEENA
SUBJECT NAME: COMPANY LAW SUB.CODE:16CCU303A
SEMESTER: III CLASS: II B.COM CA

UNIT I

S. No.	Lecture Duration Period	Topics to be Covered	Support Material/Page No
1	1	Company and Difference Between company, Partnership	W1
2	1	Administration of company law	W1
3	1	NCLT and NCLAT, special court	W1
4	1	Impact of NCLT and NCLAT, special court	W1
5	1	Company - Definition and characteristics	T.P.1
6	1	Kinds of companies ➢ Charter company, statutory company	T.P.3
7	1	Private company and Public Ltd companies	T.P.3
8	1	Foreign Company	T.P.3
9	1	Kinds of companies ➢ One man company, holding company, subsidiary company	T.P.3
10	1	Lifting of corporate veil	R1.P;26
11	1	Formation of company • Minimum Subscription	T.P:66
12	1	Formation of company	T.P:72
13	1	Duties of the Secretary before and after incorporation	T.P:72
14	1	Recapitulation and discussion of important questions	
		Total no. of hours planned for unit-1	**14Hours**

UNIT II

S. No.	Lecture Duration Period	Topics to be Covered	Support Material/Page No
1.	1	Memorandum of association - Meaning and purpose	T.P:111
2.	1	Alteration of Memorandum ➢ change of name, change of registered office	T.P.117
3	1	Contents of Memorandum of association	T.P.117
4	1	Articles of association ➢ Meaning and its importance	T.P:132
5	1	Forms of articles of association	T.P:132
6	1	Contents of articles of association	T.P:132
7	1	Alteration of articles of association	T.P:132
8	1	Distinction Between Memorandum and Articles of Association	135
9	1	Doctrine of constructive notes	T.P:138
10	1	Doctrine of indoor management ➢ Expectations to the doctrine of indoor management	T.P:139
11	1	Prospectus - meaning ➢ Prospectus self	T.P:143
12	1	Red hearing prospectus	T.P:118
13	1	Misstatement in prospectus	W2
14	1	Allotment of shares	T.P:265
15	1	Issue and forfeiture of shares	T.P:270
16	1	Transmission of Share,	T.P.202
17		Issue of bonus share	T.P.204
18	1	Buyback and provision regarding buyback.	W1
19	1	Book Building	W1
20	1	Recapitulation and discussion of important questions	
		Total no. of hours planned for unit-2	**20 Hours**

UNIT – III

S. No.	Lecture Duration Period	Topics to be Covered	Support Material/Page No
1.	1	Directors Women Directors	R4.P:299-230
2	1	Classification of Directors	R4.P:299-230
3	1	Directors ➢ Independent Directors ➢ Small Shareholder's directors.	R4.P:299-230
4	1	Executive directors and non executive directors	R4.P: 232
5	1	Whole time and nominee Directors	R4.P: 232
6	1	Disqualification of Directors	T.P:358
7	1	Directors Identity Number (DIN)	T.P:358
8		Appointment of Directors	T.P:360
9	1	Legal Position of Directors	T.P:348
10	1	Powers and duties of directors	T.P:350
11	1	Removal of Directors	T.P:348
12		Liabilities1 and share qualification of Directors	T.P:348
13	1	Manager ➢ Managing Directors	T.P:330
14	1	Meeting ➢ Types of meeting	T.P:331
15	1	Conduct of meeting	T.P:331
16	1	Committees ➢ Committees of Board of directors	W3
17	1	Audit Committees	W3
18	1	Committees ➢ Nomination and Remuneration Committee	W3
19	1	Corporate Social Responsibility committee.	W3
20	1	Recapitulation and discussion of important questions	
		Total no. of hours planned for unit-3	**20 Hours**

UNIT - IV

S. No.	Lecture Duration Period	Topics to be Covered	Support Material/Page No
1.	1	Dividends	T.P:239
2	1	Types of Dividends	T.P.245
3	1	Interim Dividend	T.P.245
4	1	Declaration of Dividend	T.P.245
5	1	Eligibility and Payment of Dividend	T.P.245
6	1	Dividend Warrant	T.P.245
7	1	Procedure regarding payment of dividend	T.P:248
8	1	Book of Accounts	T.P:401
9	1	Auditor	T.P:406-410
10	1	Appointment of Auditors	T.P:406-410
12	1	Reappointment of Auditor	T.P:406-410
13	1	Removal and Change of Auditors	T.P:406-410
14	1	Rights powers and duties of Auditor	T.P:411
15	1	Audit Report	T.P:411
16	1	Secretarial Audit	T.P:411
17	1	Recapitulation and discussion of important questions	
18	1	Recapitulation and discussion of important questions	
		Total no. of hours planned for unit-4	**18 Hours**

UNIT – V

S.No	Lecture Duration Period	Topics to be Covered	Support Material/Page No
1	1	Winding up meaning ➢ Dissolution and insolvency	R1.P:484
2	1	Procedure for Winding up	T.P:418
3	1	Modes of winding up ➢ By tribunal	T.P:415
4	1	Procedure for compulsory winding up	T.P:415
5	1	Modes of winding up ➢ Voluntary winding up	T.P:416
6	1	Member Voluntary Winding Up Creditors Voluntary Winding Up	T.P:416
7	1	Difference between compulsory and voluntary Winding up	T.P:417
8	1	Insider Trading ➢ Meaning and	W4
9	1	Legal provision of Insider Trading	W4
10	1	Mechanism of Insider Trading	W4
11	1	Whistle Blowing ➢ Concept and Features	W5
12	1	Characteristics of Whistle Blowing	W5
13	1	Whistle Blowing ➢ Mechanism of whistle blowing	W5
14	1	Recapitulation and discussion of important questions	
15	1	**Revision :** Discussion of ESE question papers	
16	1	Discussion of ESE question papers	
17	1	Discussion of ESE question papers	
18	1	Discussion of ESE question papers	
		Total no. of hours planned for unit-5 & Question Paper Discussion	**18 hours**

Text books:

T1: Jain and Narang, Cost and Management Accounting, Ludhiana, KalyaniPublishers

References:

R1 : Khan M.Y. and Jain P.K., Cost and Management Accounting, New Delhi, Tata Mc. Graw-hill Publishing Company Ltd.

R2 : Shashi K.Gupta, R.K.Sharma (2008), Management Accounting, Kalyani Publishers, New Delhi.

Website address:

http://my.safaribooksonline.com/book/accounting/9788131774991/chapter-14dot-budgetary-control/sub14_10_xhtml

Enable | Enlighten | Enrich
(Deemed to be University)
(Under Section 3 of UGC Act 1956)

Karpagam Academy of Higher Education
(Deemed University Established Under Section 3 of UGC Act, 1956)
Coimbatore - 641 021.

UNIT- I

Introduction; Administration of company law (NCLT and NCLAT; special court), Characteristics of a company, lifting of corporate veil, types of companies, formation of companies

COMPANIES ACT

Meaning of Company Law:

Company law is that branch of law which deals exclusively with all aspects relating to companies, such as incorporations of companies allotment of shares and share capital membership in companies management and administration of companies, winding up of companies. etc. Company law in India is that branch of Indian law which regulates companies in India.

Constitution of Board of Company Law Administration.

(1) As soon as may be after the commencement of the Companies (Amendment) Act, 1988, the Central Government shall, by notification in the Official Gazette, constitute a Board to be called the Board of Company Law Administration.

(1A) The Company Law Board shall exercise and discharge such powers and functions as may be conferred on it, by or under this Act or any other law, and shall also exercise and discharge such other powers and functions of the Central Government under this Act or any other law as may be conferred on it by the Central Government, by notification in the Official Gazette under the provisions of this Act or that other law.

(2) The Company Law Board shall consist of such number of members, not exceeding nine, as the Central Government deems fit, to be appointed by that Government by notification in the Official Gazette :

Provided that the Central Government may, by notification in the Official Gazette, continue the appointment of the chairman or any other member of the Company Law Board functioning as such immediately before the commencement of the Companies (Amendment) Act, 1988, as the chairman or any other member of the Company Law Board, after such commencement for such period not exceeding three years as may be specified in the notification.

(2A) The members of the Company Law Board shall possess such qualifications and experience as may be prescribed.

(3) One of the members shall be appointed by the Central Government to be the chairman of the Company Law Board.

(4) No act done by the Company Law Board shall be called in question on the ground only of any defect in the constitution of, or the existence of any vacancy in, the Company Law Board.

(4A) Omitted w.e.f. 31st May,1991.

(4B) The Board may, by order in writing, form one or more Benches from among its members and authorize each such Bench to exercise and discharge such of the Board's powers and functions as may be specified in the order ; and every order made or act done by a Bench in exercise of such powers or discharge of such functions shall be deemed to be the order or act, as the case may be, of the Board.

(4C) Every Bench referred to in sub-section (4B) shall have powers which are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely :

(a) discovery and inspection of documents or other material objects producible as evidence ;

(b) enforcing the attendance of witnesses and requiring the deposit of their expenses ;

(c) compelling the production of documents or other material objects producible as evidence and impounding the same ;

(d) examining witnesses on oath ;

(e) granting adjournments ;

(f) reception of evidence on affidavits.

(4D) Every Bench shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974), and every proceeding before the Bench shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, 1860 (45 of 1860), and for the purpose of section 196 of that Code.

(5) Without prejudice to the provisions of sub-sections (4C) and (4D), the Company Law Board shall in the exercise of its powers and the discharge of its functions under this Act, or any other law be guided by the principles of natural justice and shall act in its discretion.

(6) Subject to the foregoing provisions of this section, the Company Law Board shall have power to regulate its own procedure.

NCLT AND NCLAT ON COMPANY LAW

The Ministry of Corporate Affairs ('**MCA**') on 1st June 2016 notified the constitution of National Company Law Tribunal ('**NCLT**') and National Company Law Appellate Tribunal ('**NCLAT**') in exercise of powers conferred under §408 and §410 of the Companies Act 2013 ('**Companies Act**'). This notification has been in abeyance for almost 14 years since it was first introduced by the Companies (Second Amendment) Act 2002 based on the recommendations of Eradi committee. However, in recent times the Government of India has been emphasising on easing the process of carrying out business in India. Thus, in recent times, various legal reforms have been carried out and the constitution of the NCLT and the NCALT is one more step in this direction.

The newly setup NCLT will, initially, have 11 benches including two benches in the national capital, New Delhi. Retired Supreme Court judge Hon'ble Justice SJ Mukhopadhaya will be the first Chairperson of NCLAT and Retired Justice MM Kumar will be the first President of the NCLT.

IMPACT OF THE CONSTITUTION OF NCLT AND NCLAT ON COMPANY LAW LITIGATION

The constitution of the NCLT is likely to have a fundamental impact as far as company law litigation is concerned. Some of the more important consequences of this development are enumerated below:

a. **Single Window:** The most significant benefit likely to arise from the constitution of the NCLT and the NCLAT is that the tribunals will, effectively, act as a single window for settlement of all company law related disputes. The newly constituted tribunals will replace the existing Company Law Board ('**CLB**'), the Board of Industrial and Financial Reconstruction ('**BIFR**') and its appellate authority. Thus, the unnecessary fragmentation and multiplicity of the proceedings before various courts and tribunals in the same matter will be now be curbed.

   The constitution of the NCLT is in consonance with the recently enacted Insolvency and Bankruptcy code and the liquidation process of companies and corporate debtors will now be considerably simplified.

   Further, in the previous regime most powers were reserved either for the Central Government, the CLB or the High Courts. However, with the formation of the NCLT, the intent is to consolidate these powers and jurisdiction and assign them to a single authority, thereby simplifying the dispute adjudication process as far as companies are concerned.

b. **Class Action Claims:** Shareholders are allowed to file class action suits before the NCLT, against the company for the breach of provisions of the Companies Act. Per this provision, if 100 or more shareholders or depositors find that the company's affairs are

not being managed in its best interests, they may approach the NCLT. In a class action suit, shareholders can collectively sue directors or auditors of the company for their misconduct or unwarranted acts. This remedy will be crucial for the minority shareholders who seek redressal against arbitrary/oppressive decisions of their management. In addition, with the increase of shareholder activism in India such a remedy would be a valuable remedy in the hands of shareholders against their boards.

c. **Greater Field Impact:** Under the old law, the CLB was operating through only 5 benches. However, the NCLT will commence with 11 benches, with the Principal Bench being in New Delhi. This will undoubtedly aid in ensuring a wider reach for adjudicating company law matters in India.

d. **Speedy Disposal of Cases:** The NCLT has been given the powers to regulate its own procedure which will assist them in disposing matters in a simplified manner. Further, the NCLT and the NCLAT are under a mandate to dispose of cases before them as expeditiously as possible. In this context, a time limit of 3 months has been provided to dispose of cases, with an extension of 90 days for sufficient reasons to be recorded by the President or the Chairperson, as the case maybe. This time limit is expected to ensure the speedy disposal of cases by the NCLT and the NCLAT.

e. **Limitations and Unanswered Questions:** The notification does not expressly specify the manner or procedure for transferring pending cases from the CLB and High Courts to the NCLT. It is likely the process of transfer will be commenced and implemented as a gradual process. The objective may be to transfer the matters to the new body in a gradual manner, so as to give the NCLT ample amount of time to structure itself in the company law litigation of the country. However, effective steps will need to be taken to prevent unnecessary confusion amongst litigants.

In addition, provisions relating to the winding up of the companies and those under Chapter XV of the Companies Act have not yet been notified. Therefore, these matters will continue to be governed by the provisions of Companies Act 1956. There is no updated information available in terms of when the provision of Chapter XV are likely to be brought into force.

The NCLAT will act as the appellate forum and all appeals from the orders of the NCLT will be heard by it. Appeals from the NCLAT will be heard by the Supreme Court of India.

COMPANY

- A Company is formed when registered under the Indian Companies Act, 1956.
- A Private Company is formed with a minimum of 2 persons and a public company with 7 persons at least
- A private Company is limited to 50 members excluding its present and past employees. There is no limit to the maximum numbers of members in case of a public company.
- A Company has a separate legal entity distinct from the members who constitute it.
- Properly belongs to the Company and not to the individual members.
- The liability of the shareholders is limited.
- Shares are freely transferable. In a private company the articles restrict the right of members to transfer their shares.
- A Company has a perpetuaI succession. It comes to an end in the event of winding up.
- But the capital of a Joint stock companies is very large, as it is contributed by a large number of Shareholders.
- Audit of account by qualified auditor is compulsory.

PARTNERSHIP:

I. Partnership is created when agreed between the individuals. Registration of partnership firm is optional under the partnership Act.

II. A partnership can be created by two persons.

III. The maximum number of members in a partnership firm is limited to 10 in case of banking business and 20 in case of any other business.

IV. A partnership firm has no legal exisience apart from its members i.e., the partners and the firms are one and the same.

V. Property of the partnership firm belongs to individual partners comprising the firm.

VI. The liability of partnership is unlimited.

VII. The partner cannot transfer his share without the consent of his co-partners.

VIII. Partnership comes to an end when a partner dies or becomes insolvent, unless otherwise provided in the partnership deed.

IX. The capital of a partnership firm is limited, as it is contributed only by a few persons

X. Audit of account is not compulsory.

NATURE AND CHARACTERISTICS OF A COMPANY

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

The most striking characteristics of a company are:

(i) Corporate personality

By incorporation under the Act, the company is vested with a corporate personality quite distinct from individuals who are its members. Being a separate legal entity it bears its own name and acts under a corporate name. It has a 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.

A shareholder cannot be held liable for the acts of the company even if he holds virtually the entire share capital. The shareholders are not the agents of the company and so they cannot bind it by their acts. The company does not hold its property as an agent or trustee for its members and they cannot sue to enforce its rights, nor can they be sued in respect of its liabilities. Thus, „incorporation" is the act of forming a legal corporation as a juristic person. A juristic person is in law also conferred with rights and obligations and is dealt with in accordance with law. In other words, the entity acts like a natural person but only through a designated person, whose acts are processed within the ambit of law [Shiromani Gurdwara Prabandhak Committee v. Shr Sam Nath Dass AIR 2000 SCW 139].

EXAMPLE

The case of Salomon v. Salomon and Co. Ltd., (1897) A.C. 22 The above case has clearly established the principle that once a company has been validly constituted under Companies Act, it becomes a legal person distinct from its members and for this purpose it is immaterial whether any member has a large or small proportion of the shares, and whether he holds those shares beneficially or as a mere trustee. In the case, Salomon had, for some years, carried on a prosperous business as a leather merchant and boot manufacturer. He formed a limited company consisting of himself, his wife, his daughter and his four sons as the shareholders, all of whom subscribed for 1 share each so that the actual cash paid as capital was £ 7. Salomon sold his business (which was perfectly solvent at that time), to the Company for the sum of £ 38,782. The company"s nominal capital was £ 40,000 in £ 1 shares. In part payment of the purchase money for the business sold to the company, debentures of

the amount of £10,000 secured by a floating charge on the company"s assets were issued to Salomon, who also applied for and received an allotment of 20,000 £ 1 fully paid shares. The remaining amount of £8,782 was paid to Salomon in cash. Salomon was the managing director and two of his sons were other directors.

The company soon ran into difficulties and the debentureholders appointed a receiver and the company went into liquidation. The total assets of the company amounted to £6050, its liabilities were £10,000 secured by debentures, £8,000 owning to unsecured trade creditors, who claimed the whole of the company"s assets, viz., £6,050, on the ground that, as the company was a mere „alias" or agent for Salomon, they were entitled to payment of their debts in priority to debentures. They further pleaded that Salomon, as principal beneficiary, was ultimately responsible for the debts incurred by his agent or trustee on his behalf.

(ii) Limited Liability

"The privilege of limited liability for business debts is one of the principal advantages of doing business under the corporate form of organisation." The company, being a separate person, is the owner of its assets and bound by its liabilities. The liability of a member as shareholder, extends to contribution to the assets of the company up to the nominal value of the shares held and not paid by him. Members, even as a whole, are neither the owners of the company"s undertakings, nor liable for its debts. In other words, a shareholder is liable to pay the balance, if any, due on

the shares held by him, when called upon to pay and nothing more, even if the liabilities of the company far exceed its assets. This means that the liability of a member is limited. For example, if A holds shares of the total nominal value of Rs. 1,000 and has already paid Rs. 500/- (or 50% of the 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 a company limited by guarantee, the liability of members is limited to a specified amount mentioned in the memorandum. Buckley, J. in Re. London and Globe Finance Corporation, (1903) 1 Ch.D. 728 at 731, has observed: „The statutes relating to limited liability have probably done more than any legislation of the last fifty years to further the commercial prosperity of the country.

They have, to the advantage of the investor as well as of the public, allowed and encouraged aggregation of small sums into large capitals which have been employed in undertakings of "great public utility largely increasing the wealth of the country". There are, however, some statutory exceptions to the principle of limited liability. As provided by Section 45 of the Companies Act, 1956, the members become personally liable if the membership falls below prescribed minimum and the business is carried on for more than six months thereafter. It is also provided in the Act vide Section 323 that a limited company may, if so authorised by its articles, alter its memorandum by special resolution so as to render the liability of its directors or of any of its director or manager as unlimited. Further, where in the course of winding up it appears that any business of the company has been carried on with intent to defraud creditors, the Court may declare the persons who were knowingly parties to the transaction as personally liable without limitation of liability for all or any of the debts/liabilities of the company.

(iii) Perpetual Succession

An incorporated company never dies except when it is wound up as per law. A company, being a separate legal person is unaffected by death or departure of any member and remains the same entity, despite total change in the membership. A company"s life is determined by the terms of its Memorandum of Association. It may be perpetual or it may continue for a specified time to carry on a task or object as laid down in the Memorandum of Association. Perpetual succession, therefore, means that the membership of a company may keep changing from time to

time, but that does not affect its continuity.

The membership of an incorporated company may change either because one shareholder 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. Thus, perpetual succession denotes the ability of a company to maintain its existence by the constant succession of new individuals who step into the shoes of those who cease to be members of the company. Professor

L.C.B. Gower rightly mentions, "Members may come and go, but the company can go on for ever. During the war all the members of one private company, while in general meeting, were killed by a bomb, but the company survived — not even a hydrogen bomb could have destroyed it".

(iv) Separate Property

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

EXAMPLE

Mrs. Bacha F. Guzdar v. The Commissioner of Income Tax, Bombay, A.I.R. 1955 S.C. 74

The Supreme Court in this case held that, though the income of a tea company is entitled to be exempted from Income-tax up to 60% being partly agricultural, the same income when received by a shareholder in the form of dividend cannot be regarded as agricultural income for the assessment of income-tax. It was also observed by the Supreme Court that a shareholder does not, as is erroneously believed by some people, become the part owner of the company or its property; he is only given certain rights by law, e.g., to receive or to attend or vote at the meetings of the shareholders. The court refused to identify the shareholders with the company and reiterated the distinct personality of the company.

(v) Transferability of Shares

The capital of a company is divided into parts, called shares. The shares are said to be movable property and, subject to certain conditions, freely transferable, so that no shareholder is permanently or necessarily wedded to a company. When the joint stock companies were established, the object was that their shares should be capable of being easily transferred, [In Re. Balia and San Francisco Rly., (1968) L.R. 3 Q.B. 588]. Section 82 of the 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. If the articles do not provide anything for the transfer of shares and the Regulations contained in Table "A" in Schedule I to the Companies Act, 1956, are also expressly excluded, the transfer of shares will be governed by the general law relating to transfer of movable property.

A member may sell his shares in the open market and realise the money invested by him. This provides liquidity to a member (as he can freely sell his shares) and ensures stability to the company (as the member is not withdrawing his money from the company). The Stock Exchanges provide adequate facilities for the sale and purchase of shares. Further, as of now, in most of the listed companies, the shares are also transferable through Electronic mode i.e. through Depository Participants instead of physical transfers.

(vi) 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 rubber stamp does not serve the purpose. A document not bearing common seal of the company is not authentic and has no legal force behind it.

(vii) Capacity to Sue and Be Sued

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

company is entitled to sue for damages in libel or slander as the case may be [Floating Services Ltd. v. MV San Fransceco Dipaloa (2004) 52 SCL 762 (Guj)]. 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 where a defamatory material published about it, affects its business. Where video cassettes were prepared by the workmen 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. [TVS Employees Federation v. TVS and Sons Ltd., (1996) 87 Com Cases 37]. The company is not held liable for contempt committed by its officer. [Lalit Surajmal Kanodia v. Office Tiger Database
Systems India (P) Ltd., (2006) 129 Comp Cas 192 Mad].

(viii) Contractual Rights

A company, being a separate legal entity different from its members, can enter into contracts for the conduct of the business in its own name. A shareholder 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 a 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 shareholder cannot rescind the contract. Similarly, a member of a company cannot sue in respect of torts committed against the company, nor can he be sued for torts committed by the company. [British Thomson-Houston Company v. Sterling Accessories Ltd., (1924) 2 Ch. 33]. Therefore, the company as a legal person can take action to enforce its legal rights or be sued for breach of its legal duties. Its rights and duties are distinct from those of its constituent members.

(ix) Limitation of Action

A company cannot go beyond the power stated in the Memorandum of Association. The Memorandum of Association of the 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 Memorandum of Association. In order to enable it to carry out its actions without such restrictions and limitations in most cases, sufficient powers are granted in the Memorandum of Association. But once the powers have been laid down, it cannot go beyond these powers unless the Memorandum of Association is itself altered prior to doing so.

(x) 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 intimate control over its working and elect their representatives to conduct corporate functioning. In other words, the company is administered and managed by its managerial personnel.

(xi) Voluntary Association for Profit

A company is a voluntary association for profit. It is formed for the accomplishment of some public goals and whatsoever profit is gained is divided among its shareholders or restored for the future expansion of the company. Only a Section 25 company can be formed with no profit motive.

(xii) 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 affairs according to law throughout its life and ultimately is effaced by law. Generally, the existence of a company is terminated by means of winding up. However, to avoid winding up sometimes companies change their form by means of reorganisation, 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".

LIFTING OF OR PIERCING THROUGH THE CORPORATE VEIL

It means the company has a separate legal entity from the persons constituting its members.

Indeed, the theory of corporate entity is still the basic principle on which the whole law of corporations is based. But as the separate personality of the company is a statutory privilege, it must be used for legitimate business purposes only. Where a fraudulent and dishonest use is

made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality. The Court will breakthrough the corporate shell and apply the principle of what is known as "lifting of or piercing through the corporate veil". The Court will look behind the corporate entity and take action as though no entity separate from the members existed and make the members or the controlling persons liable for debts and obligations of the company

The corporate veil is lifted when in defence proceedings, such as for the evasion of tax, an entity relies on its corporate personality as a shield to cover its wrong doings. [BSN (UK) Ltd. v. Janardan Mohandas Rajan Pillai [1996] 86 Comp. Cas.371 (Bom).].

However, the shareholders cannot ask for lifting veil for their purposes. This was upheld in Premlata Bhatia v. Union of India (2004) 58 CL 217 (Delhi) wherein the premises of a shop were allotted on a licence to the individual licence. She set up a wholly owned private company and transferred the premises to that company with the Government consent. She could not remove the illegality by saying that she and her company were virtually the same person.

Statutory Recognition of Lifting of Corporate Veil

The Companies Act, 1956 itself contains some provisions (Sections 45, 147, 212, 247 and 542) which lift the corporate veil to reach the real forces of action. Taxation Laws have also made deep inroads to crack the corporate shell for efficient administration of tax laws. For the purpose of Wealth Tax and Estate Duty Legislation, new statutory formulae have been enacted for shares of private companies which substantially disregard the separate corporate entity and proceed on the basis that the ownership of such corporate property belongs to the shareholders. In terms of Income-tax Law, directors of private companies have been made personally liable for the tax liabilities of such companies. The face of the corporation is examined in order to pay regard to the economic realities behind the legal facade.

Lifting of Corporate Veil under Judicial Interpretation

Ever since the decision in the 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.

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

(c) Where the doctrine conflicts with public policy, courts lifted the corporate veil for protecting the 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 liable to pay the taxes which they would have paid but for the formation of the company.

(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.

(g) Another instance of corporate veil arrived at by the Court arose in Kapila Hingorani v. State of Bihar.

(h) Where it is found that a company has abused its corporate personality for an unjust and inequitable purpose, the court would not hesitate to lift the corporate veil. Further, the corporate veil could be lifted when acts of a corporation are allegedly opposed to justice, convenience and interests of revenue or workman or are against public interest. Thus, in appropriate cases, the Courts disregard the separate corporate personality and look behind the legal person or lift the corporate veil.

Lifting the Corporate Veil of Small Scale Industry

Where small scale industries were given certain exemptions and the company owning an industry was not controlled by any group of persons or companies, it was held that it was permissible to lift the veil of the company to see whether it was the subsidiary of another company and, therefore, not entitled to the proposed exemptions. [Inalsa Ltd. v. Union of India, (1996) 87 Com. Cases. 599 (Delhi).]

Use of Corporate Veil for Hiding Criminal Activities

Where the defendant used the corporate structure as a device or facade to conceal his criminal activities (evasion of customs and excise duties effected through the company), the Court could lift the corporate veil and treat the assets of the company as the realisable property of the shareholder.

For example, in a case, there was a prima facie case that the defendants controlled the two companies, the companies had been used for the fraudulent evasion of excise duty on a large scale, the defendant regarded the companies as carrying on a family business and that they had benefited from companies‟ cash in substantial amounts and further no useful purpose would have been served by involving the companies in the criminal proceedings. In all these circumstances it was therefore appropriate to lift the corporate veil and treat the stock in the companies‟ warehouses and the companies‟ motor vehicles as realisable property held by the defendants. The court said that excise department is not to be criticized for not charging the companies. The more complex commercial activities become, the more vital it is for prosecuting authorities to be selective in whom and what they charge, so that issues can be presented in as clear and short form as possible. In the present case, it seemed that no useful purpose would have been served by introducing into criminal proceedings. [H. and Others (Restraint Order : Realisable Property), Re, (1996) 2 BCLC 500 at 511, 512 (CA).]

KINDS OF COMPANIES

Companies may be classified into different kinds or types from different points of view:

1. **Classification of companies from the point of view of incorporation or registration:** From the point of view of their incorporation, companies can be classified into three types.

they are.

a) **Chartered companies:** If a Company is incorporated under a special charter granted by the monarch it is called a chartered companies and is regulated by that charter. Chartered companies were common in the 17th and 18th centuries. For eg. British East India companies, Bank of England, Chartered Bank of Australia etc. are examples of chartered companies. This form of organization does not exist in India, as there is no monarchy.

b) **Statutory Companies:** A statutory Company is a company which is incorporated under a special or separate act of the legisiature (i.e.., parliament). A statutory company requires special powers and privileges which it does not get under the companies Act. So, it is registered under a special act of the legislature. The powers and activities of a statutory companies are regulated by the special act under which it is established. This method of incorporation is adopted for companies of national importance and public utility companies, such as railway companies, electricity supply companies, etc. The RBI, SBI, LIC, UTI, etc are examples of statutory companies.

c) **Registered Companies:** A company is brought into existence by registration with the registrar of companies under the companies Act of 1956, is called a registered company. The activities of these companies are governed by the comapanies Act. These constitute the most important Joint stock companies.

2. **Classification of Registered Companies on the basis of the liability of members:** From the point of view of the liability of the members, registered companies may be classified into three categories. They are:

a) **Companies Limited by Shares:** Companies limited by share are companies in which the liability of a member is limited to the nominal or face value of the shares held by him. In short, these are the companies in which the liability of a member is limited only to the amount unpaid on the shares held by him. These companies are mostly trading companies. Most of the companies registered under the companies Act are of this type.

b) **Companies Limited by Guarantee:** Companies limited by guarantee are companies in which the liability of each member is limited to a fixed amount which he has guaranteed ie., agreed to contribute to the assets of the company to meet the liabilities of the company in the event of its winding up. The amount guaranteed by each member is mentioned in the Memorandum of Association or Articles of Association of the Company. The members are required to pay the amount guaranteed by them, not during the life of the company but only when the company is wound up and the assets of the company are not sufficient to meet the liabilities of the company. These are mostly non-trading companies formed for the purpose of promoting art, culture, charity , science and education, etc.

c) **Unlimited Companies:** Unlimited companies are companies in which the liability of members is unlimited i.e., members are liable for the debts of the company to an unlimited extent in the event of its winding up. Each member is liable to contribute from his private assets in proportion to his capital, in the company towards the amount required for the payment of the entire or full liabilities of the company. If any of the members is unable to contribute anything from his private assets, then, that addltlonal deficiency is to be shared among the remaining members in proportion to their respective capital in the company.

3. **Classification of companies on the basis of ownership:** On the basis of ownership, companies may be classified into two kinds. They are:
   Government companies
   Non-gnvemment companies

a) **Government contpanies:** A Company in which not less than 51% of the share capital is held by the central government and or by any state government or governments is called a goverment companies. It may be a public company or a private company. Some of the prominent government companies are: Hindustan Machine Tools, Bharat Electronic Limited, Indian Telephone Industries and Hindustan Aeronautics limited.

A Government company may be permitted by the central government to drop the words "

Private Limited" or the word "Limited" from its name. The Central Government can by notification in the official gazette, restrict or modify the application of certain provision of the companies Act in regard to government conlpanies.

b) **Non- Government companies:** A non-government company is a company which is owned and managed by private investors.

4. **Classifications of companies on the basis of nationality:** On the basis of nationality, companies may be classified into two kinds, Theyare.

a) Domestic companies
b) Foreign companies

a) **Domestic companies:** A Domestic company is a company which is inccrporated in India .Today most of the Joint stock companies in India are domestic companies.
b) **Foreign Company:** A foreign Company is a Company which is incorporated in a foreign country, but which has established a place of business in India. Although; foreign Companies are not registered or incorporated in India, some of the provisions of the companies Act, are applicable to them. The companies (Amendment) Act, 1974, has made several sections of the Act applicable to foreign companies in order to bring into the ambit of the provisions applicable to Indian companies.

Under section 592 of the companies Act, every foreign company must file with the registrar of companies within 30days of the establishment of its business in India, the following documents.

- A certified copy of its charter, statute; memorandum and articles or other documents defining its constitution.
- The full address of the registered or principal office of the company.
- List of the directors and secretary of the company with the required particulars
- The name and address of the person authorized to receive any notice or document etc., required to be served on the companies.

- The full address of the office of the company which is to be deemed its principal office of business in India.

Under section 593 of the companies Act, in case there is any alteration in any of the above particulars, the company is required to file a return of such alteration with the registrar of companies within the prescribed time.

5. **Classification of companies on the basis of control:** On the basis of control companies may be classified into

i) Holding companies

ii) Subsidiary companies.

i) Holding Companies and Subsidiary Companies: As per section 4 of the companies Act of 1956," a holding Company is a company which is controlling a subsidiary company". In other words, a holding con-tpany is a company

a) Which holds more than 70% of the nominal value ofihe equity share capitai of another company or
b) Which controls the composition of the board of directors of another Company
c) Which controls more than 50% of the total voting power of another Company
d) Where a Company is a subsidiary of another Company which is a subsidiary of a holding Company, that is, Company C is a subsidiary of Company B , whereas Company B is a subsidiary of holding Company A.

As per section 4 of the companies Act of 1956, " a subsidiary Company is a Company which is controlled by a holding Company". In other words, a Company becomes the subsidiary of another Company if:

a) The other Company holds more than 50% of the nominal value of its equity share capital or

b) The other Company controls the composition of its board of directors or

c) The other Company controls more than 50% of its total voting powers

d) It is a subsidiary of another Company which is subsidiary of the controlling company

Eg. When Company A has a control over company B, company A is known as a holding company and company B which is so controlled is known as a subsidiary company.

6. **Classification of companies on the basis of number of members:** Registered companies with share capital may be divided into two classes from the point of view of the the number of members

i) Private Companies

ii) Public Companies

i) **Private Companies:** Section 3(1) (iii) of the companies Act of 1956 defines a private company as a company which by its articles of association,

a) Restricts the right of its members to transfer shares, if any,

b) Limits the number of its member to fifty, excluding those members who are its present or past employees

c) Prohibits any invitation to the public to subscribe to its shares or debentures

ii) **Public Companies:** Section 3 (I) (iv) of the companies Act of 1956 states that a "Public company is a company which is not a private company". In other words, a public company is a company

a) Which has at least 7 members

b) Which has no maximum limit to the number of members,

c) Which can invite the public to subscribe to its shares or debenture, and which generally does not restrict the right of its members to transfer shares.

7. Other Kinds of Companies:

a) **One Man Companies / Family Companies:** One man company refers to a company in which one man holds practically the hole of or the substancial no. of shares of the companies, and has controlling powers over the company and some dummy members who are mostly his relations or friends, hold one or two shares each. The dummy members are included only to comply with the statutory requirements of the minimum no. of members.

b) Licenced Companies: Association formed not for profit, but for promoting non trading purposes, such as art, science, education, sports, regligion, charity, etc., can obtain a licence from the central layout and get themselves registered as compaines with limited liability under Sec. 25 (U/S 25) of the companies act. They are called companies not for profit or licenced companies.

Eg. Education institutions, cultural association, sports, clubs, charitable association, etc.

COMPANY FORMATION

In the formation of a public limited company having share capital, mainly four stages are involved namely:

1. Promotion
2. Incorporation
3. Capital Subscriptions, and
4. Commencement of business or trading certificate.

In the case of the formation of a private company, only the first two stages are involved, because, a private company can commence its business immediately after securing the certificate of incorporation from the Registrar of companies. But in the case of formation of a public company, having share capital, there is need for the promoters to secure from the Registrar, the certificate to commence business in addition to the certificate o~ incorporation.

1. Promotion of Company

The person or persons who undertake responsibility of bring the company into existence are called' Promoters**.** In other words, the work of promotion is done by a person called "Promoter" or group of persons called "Promoters". Promotion involves discovery of specific business opportunity and subsequent organisation of the factors of production. According to Haney, promotion may be defined as the process of organizing and

planning the finances of a business enterprise under the corporate form in other words, the steps which are taken to persuade a number of persons to come together for the achievement of a common objective through the company form of organisation is called promotion. Promotion may be undertaken either for starting a new business or for expanding the existing concern or for forming a holding company for a merger.

Steps in Company Promotion:

The work of promotion of a company involves four stages namely;

a) Discovery of an idea and Preliminary investigation
b) Detailed investigation
c) Assembling and
d) Financing the promotion

a) **Discovery of an Idea:** The promoter starts out with an idea to start some business either in a new field which has not been commercially exploited or in some existing lines of manufacture or business. He makes a preliminary investigation to find out whether it is worthwhile to make a detailed investigation. He makes a rough estimate of probable revenues and expenditure.

b) **Detailed Investigation:** The promoter need to make a detailed investigation of his idea with the assistance of many experts like engineer, chemist, market analyst, financial expert, management consultant, etc,. On the basis of the reports of these experts, the promoters would be in a position to know the capital requirements, place of location, size of the unit, demand condition in the market, price of product, cost of production, probable return on capital, etc,. A detailed investigation will help the promoter to decide...whether the estimated income will be adequate to take care of the estimated cost of production and compension to the owner for risks and services.

c) **Assembling:** After a detailed investigation, if the promoter is satisfied with the practicability and profitability of the proposed concern, he starts assembling the proposition. 'Assembling' means getting the support and consent of some other persons to act as directors or founders, arranging for patents, a suitable site for the company! .machinery and equipment and making contracts for filling the positions.

d) **Financing the Proposition:** After assembling, the proposition, the promoter prepares a 'prospectus' to present to the public and to under writers to persuade them to, finance the

'proposition'. A prospectus contains complete details of the proposition and also the reports of various experts who have investigated the proposition. The promoter also takes steps to incorporate the company, and to secure the certificate to commence the business. For incorporating the company and also for obtaining the certificate to commence business, -the promoter has to full fill many legal formalities.

2. Incorporation

After taking all the preliminary steps for registration, an application along with the necessary documents, stamp duty, registration and filing fees, has to be made to Registrar for the issue of the 'certificate of incorporation. The Registrar will scrutinize the documents and if satisfied will enter the name of the company in the register .and will issue the company its birth certificate called the Certificate of Incorporation.

Steps and Formalities for Incorporation of a Company

Promoters have to take certain steps for getting the certificate of incorporation from the Registrar of Companies, on hearing from the Registrar about the availability of names for the proposed company; they have to prepare the following documents and file them with Registrar of Companies' of the state in which the registered office of company is to be situated.

A. The Memorandum of Association to which at least seven persons have subscribed, their names and each one of them has taken at least one share. In the case of a private company, then number of persons required to subscribe their names is only two.
B. The Articles of Association similarly signed except where Table' A' attached to the Companies Act 1956, has been adopted as the Company's Articles.
C. The Address of the registered office of the company.
   This is to be delivered in any case within 30 days of incorporation.
D. A, list of directors with their names, addresses and occupations. The return containing the particulars of the directors should be filed within 30 days of their appointment.
E. Consent in writing of the directors to act as directors.
F. An Undertaking by the directors to take and pay for qualification shares, if any,

G. The statutory declaration by an advocate or an attorney or a chartered accountant practicing of India, who is engaged in the formation of an company or by a person named in the articles as a director manager, or secretary of the company.

At the time of filing these documents with the Registrar of Companies, necessary stamp duty, registration fees and filing fees 'are to be paid. The Registrar will examine these documents and if he is satisfied with the documents, he will enter the name of the company in the Registrar and will issue to the company its birth certificate called the "Certificate of Incorporation".

3. Capital Subscription

A private company and a public company not having any share capital can commence business immediately after obtaining the Certificate of Incorporation, but a public company having a share capital can commence business only after obtaining another certificate called the 'Certificate of Commence Business' from the Registrar of companies. Hence, a public company having a share capital has to undergo two additional stages, namely

1. The subscription stage and
2. Commencement of business stage.

In the capital subscription stage, the company has to make arrangements for obtaining the necessary capital of the company. For this purpose, immediately after getting the certificate of incorporation, the company convenes a board meeting to deal with the following business:

1. Appointment or confirmation of the appointment of the secretary if one has already been appointed by the promoters at the promotion stage.
2. Adoption of preliminary contracts.
3. Appointment of bankers, solicitors, legal advisors, brokers, auditors, etc.,
4. Adoption of draft prospectus or statement in lieu of prospectus.
5. Listing shares on the stock exchange.
6. Adoption of underwriting contracts.

Adoption of Preliminary Contracts

Before registering the company, the promoters enter into several contracts on behalf of the proposed company such as contract for the purchasing of properties and assets, or contract for purchasing existing business, if any. As these contracts were entered into by the promoters, when the company was not in existence, they become valid only when they are ratified by the company. Hence, these contracts are ratified in the first board meeting of the company.

Appointment of Bankers

According to the Companies Act, all money received by the company with the application for shares must be deposited in a scheduled bank. Hence, before issuing prospectus, the Board of Directors appoint bankers by passing a resolution to that effect. For opening an account with the bank, the secretary has to make an application to the bank along with a copy of the memorandum of association, certificate of incorporation, a certified copy of the board resolution authorizing the opening of a bank account and specimen signatures of the persons who operate the account.

4. Commencement of Business

A public company cannot commence business without obtaining from the Registrar a certificate called 'certificate to commence business'. To obtain this certificate the following conditions must be fulfilled:

1. .A prospectus or a 'statement ill lieu of prospectus' has to be filed with the Registrar of companies. A statement in lieu of prospectus has to be prepared by those companies, which do not find it necessary to issue a prospectus for the issue of their shares. The statement must include all the information which a prospectus must contain under the law; that is:
2. The number of shares allotted is not less than the minimum subscription mentioned in the prospectus (or a statement in lieu of prospectus).
3. The directors have taken up and paid for their qualification shares. The amount paid on a share by them is not less than the amount paid by other members.

4. The declaration that no money is liable to become refundable to applicants for shares for reason .of failure on the part of the company to apply for, or to obtain permission for, the shares or debentures dealt !n any recognized stock exchange.
5. A declaration by one of the directors or the secretary, or secretary in whole time to the effect that all the conditions regarding the commencement of business have been complied with.
6. An application must be made by the company to the register of companies requesting him to agent the Business Commencement Certificate

Minimum Subscription

The minimum subscription is the minimum amount, which in the opinion of the directors or signatories to the memorandum, is required to commence business. In the case of a public company the registrar will issue the certificate to commence business only when the amount raised by allotting shares, is not less than the amount equivalent to the minimum subscription mentioned in the prospectus.

The amount fixed, as 'minimum subscription' must be sufficient to provide for:

(a) Purchase price of any property bought or to be bought;
(b) Preliminary expenses and commission payable by the company;
(c) The repayment of sums borrowed to provide for the foregoing;
(d) Working capital; and
(e) Any other expenditure.

Certificate of Commence of the Business

The Registrar after receiving the declaration of compliance with the provisions of Section 149 from the secretary or one of the directors along with the required filing fees, will scrutinize the declaration and, if satisfied, will issue a certificate to commence business. From the date of the issue of this certificate, the company is entitled to commence business and also empowered 'to exercise its borrowing powers.

Further the company should get this certificate within one year of its incorporation. All ccntracts entered into between the date of incorporation and the date of commencement of business are provisional and would become binding on the company automatically only after it is entitled to commence business.

Duties of the Secretary before and after incorporation

Duties before incorporation

Before incorporation, the secretary has to assist the promoters in performing preparatory work and in fulfilling many legal formalities. He has to assist the promoters in convening and conducting meetings, .drawing up preliminary contracts and documents required for registration. At this stage, he may also take the help of specialists such as a solicitor and a chartered accountant. The duties to be performed by the secretary before incorporation are as follows:

1. To help the promoter in making a detailed, investigation of the proposed venture.
2. If necessary, on the advice of the promoters to secure the opinion of the experts in different fields on the proposed venture.
3. To help the promoters in drawing up the financial plan for the proposed venture.
4. To attend to all preliminary meetings of the promoters, keep a record of proceeding of their meetings and to help in the discussion
5. To secure the approval of the Registrar for the proposed name of the venture.
6. To help the promoters in the preparation of preliminary contracts
7. To help the promoters in the drafting and finalizing of documents such as memorandum, articles of association etc,.
8. To follow the guidelines issued by SEBI
9. To see that all requirements of the Acts as to incorporation and registration are complied with and that documents such as memorandum, articles, etc., with the required stamp duty, filing fees and registration charges are duly filed with the Registrar.
10. To collect the certificate of incorporation from the Registrar.
11. To send a notice of the registered address of the company to the Registrar within 30 days of the date of registration.

Duties of the Secretary after Incorporation:

1. To make himself thoroughly conversant with the contents of the memorandum and articles of association.
2. To prepare the draft of prospectus or statement in lieu of prospectus.
3. To call the first board meeting and get the draft prospectus, preliminary contract etc,. approved by the board.
4. To see that his own appointment is made and confirmed at the first board meeting
5. To get the necessary resolution passed for the appointment of bankers, legal advisers and other responsible officers of the company.
6. To arrange for the listing of securities of the company
7. To arrange for the opening of a bank account as per the directors of the board.
8. To secure the necessary forms and stationery and to arrange for the preparation of the common seal of the company.
9. To see that the prospectus or statement in lieu of prospectus is filed with the Registrar and to arrange for the issue of the prospectus to the public.
10. To arrange with the bankers to receive the application money from the intending investors
11. To arrange a board meeting as soon as the minimum subscription is reached and to get the necessary resolution passed for allotment of shares.
12. To arrange for the refund of application money to those who have not been allotted shares.
13. To issue letters of allotment/regret to applicants as per the decision of the board.
14. To see that all the legal requirements for commencement of business are complied with.

Enable | Enlighten | Enrich
(Deemed to be University)
(Under Section 3 of UGC Act 1956)

Karpagam Academy of Higher Education
(Deemed University Established Under Section 3 of UGC Act, 1956)
Coimbatore - 641 021.

UNIT -11

Documents - memorandum of association, Articles of association, Doctrine of constructive notice and indoor management, prospectus- shelf and red herring prospectus, Misstatement in prospectus, GDR; Book building, Issue, Allotment and Forfeiture of shares, Transmission of shares, Buyback and provision regarding buyback; issue of bonus shares.

For the incorporation or registration of a company two important documents are required to be prepared and filed with the Registrar of Companies. They are:

1. Memorandum of Association
2. Article of Association

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

MEMORANDUM OF ASSOCIATION

The Memorandum of Association is the basic or most important document for the incorporation or registration of every Joint Stock company. The Memorandum of Association is the life-giving document of the company. In other words, it is the document which brings the company into existence. It is the charter or constitution of the company containing the fundamental conditions upon which the company is incorporated. It is the foundation on which

the structure of the company is built. It contains the objects or purposes of the incorporation of the company and defines or determines the external operations of the company (i.e. company's relationship or dealing with the creditors & other outsides).

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

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

- Name clause
- Situation clause
- Object clause
- Liability clause
- Capital clause
- Association clause

Importance:

The Memorandum of Association is important for a joint stock company for the following reasons:

1. It is necessary for the incorporation of the company.
2. It determines the jurisdiction of the Registrar and the court by stating the registered office of the company.
3. It states the objectives and powers of the company for the information of the public.
4. It binds the company to carry out only those acts included in the object clause.
5. It states the authorized capital of the company and its division into shares of fixed amount.

6. It throws light on the liability of the members of the company.
7. It governs the articles of association.

CONTENTS:

The Memorandum of association of every company must contain the following clauses:

1. Name Clause:

This clause states the name of the company.

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

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

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

2. Situation Clause or Domicile Clause:

1) This clause states the state in which the registered office of the company is to be situated.
2) The name of the State, in which the registered office of the company is to be situated, is stated in the Memorandum.

3) The provision insisting on the mere **'State'** has been made to avoid any unnecessary legal formalities and expenses, if there is a subsequent change in the address of the company.
4) It determines even the nationality of the company, i.e., whether the company is an Indian company or a foreign company.

3. Object clause:

1) Of all the clauses in the memorandum, the object clause is the most important. This clause states the objects or purposes and powers of the company. It should specify in unambiguous languages the objects for which the company is formed. Great care should be taken in drawing up this clause, as the company will not be allowed to do any business, which is not specifically mentioned here.
2) The objects stated in this clause must not be contrary to the provisions of the Companies Act and the general law of the country. The objects stated should be as wide as possible because a company cannot carry out objects which are not included in this clause. Acts done by 'the company which are not included in this clause are 'Ultra Vires' and void [i.e., invalid}. "Ultra" mean "beyond" and "Vires" means "authority or right". Therefore **"Ultra Vires"** means acting **beyond authority**
3) As it is difficult to alter the object clause later, it is necessary that promoters should include in this clause all possible types of business (activities) in which a company may engage in the future.
4) According to the amendment to the Companies Act made in 1965, the object clause of a company formed after the commencement of the Amendment Act, must contain
    i. (a) Main objects of the company and objects incidental or ancillary, to the attainment of these main objects.
       (b) Other objects of the company not included above
    ii. In case the objects are not to remain confined to one state, states whose territories the objects extend.

4. Liability Clause

This clause states that the liability of members is **limited to the face value of the shares** held by them. If a member has already paid some amount on the shares, he can be called upon to pay only the unpaid amount on the shares.

5. Capital Clause

1) The capital clause states the **registered, authorized or nominal capital** of the company (i.e. the minimum capital with which the company is proposed to be registered) and the division of the authorized share capital into shares of fixed amount.
2) In case the capital of the company consists of different classes of shares, then, the division of the total authorized capital into different classes of shares and the face value of shares of each class are also stated in this clause.
3) The rights and privileges attached to the different classes of shares are specified in the Articles of Association.
4) It is better to fix the authorized capital at a sufficiently higher figure so that there would be adequate provision for further issue of shares later on to finance the extension or expansion of the company's business.

6. Association Clause, Subscription Clause or Declaration Clause:

1) This clause contains a declaration by the subscribers to the memorandum that they are desirous of forming themselves into a company in pursuance of the memorandum and agreed to take up and pay for the number of shares in the capital of the company noted against their names. The subscribers should sign their names and state their full addresses and the number of shares taken up by them.
2) The declaration clause should be **signed by at least seven persons** in the case of a public company, and by two persons in the case of private company.
3) Further, the signatures of the subscribes must be witnessed by at least one who should give his signature, name, full address, description and occupation.

ALTERATION OF MEMORANDUM OF ASSOCIATION

The fundamental conditions or compulsory clauses found in the memorandum of association cannot be altered ordinarily as a routine thing. Such a provision is made in order to protect the interests of the creditors and other members of the public who deal with the company as well as the interests of the shareholders of the company. It is because of this provision that the memorandum of association is considered as an unalterable charter of a company.

However, the Companies Act has made provision for the alteration of the memorandum of association in certain cases and to certain extent.

1. Alteration of the Name clause:

The alteration of the name clause can be considered under three heads. They are

a) When a company is registered with a name which is identical with or similar to the name of an existing company by inadvertence (i.e. by mistake) ---ordinary resolution should be passed at Extraordinary General Meeting.

b) When the Central Government directs a company to change its name--- ordinary resolution should be passed at Extraordinary General Meeting.

c) When a company wants to change its name on its own accord --special resolution should be passed at Extraordinary General Meeting.

Procedure to be followed to change the Name clause:

1. The name of a company can be altered by passing a specie' resolution at the Extraordinary General Meeting.
2. Obtaining the approval of the Central Government for the change of name
3. Filing of a copy of the special resolution with the Registrar.
4. Filing of the Central Government's approval for the change with the Registrar.
5. Obtaining the fresh or new certificate of incorporation with the changed name.
6. Filing of the altered copies of Memorandum of Association and Article of Association with the Registrar.
7. Incorporating the change of name in various documents.

Duties of the Secretary:

The procedure to be followed by the secretary to change th~ name clause can be summed up as follows:

a) The secretary has to ascertain from the Registrar of Companies whether the proposed name is undesirable.
b) If the Registrar informs him that the proposed name is undesirable, the secretary has to obtain a written consent from the Central Government for the change of name.
c) The secretary has to arrange a board meeting for the purpose of recommending the changed name to be members and to convene an Extraordinary General Meeting.
d) The Secretary has to get a special resolution passed at the extraordinary general meeting and get copies of the special resolution signed by the chairman of the meeting.
e) The secretary has to file a copy of the special resolution with the Registrar within 30 days of passing of the resolution.
f) On filing of the resolution, the registrar makes the necessary change in the register and issues a fresh certificate of incorporation with the changed name.
g) The secretary has to arrange for the changing at name on all the documents of the company, and for getting the new seal approved by the board, he should also notify all parties dealing with the company, of the change of name.
h) Finally, the secretary has to arrange for the changing of name on all the documents of the Company, and for getting the new seal approved by the board. He should also notify all parties dealing with the Company, of the change of name.

2. Alteration of Domicile clause situation clause or registered office clause.

The alteration or change of the domicile clause is possible only when such a change enable s the company to meet any of the purposes. Such as:

a) To carryon its business more economically or efficiently.
b) To attain its main purpose by new or improved means.
c) To enlarge or change its local area of operations.

d) To carry on some business which under existing circumstances can be conveniently or advantageously combined with present business of the company.
e) To restrict or abandon any of the objects specified under the objects clause of the memorandum of association.
f) To sell or dispose of the whole or any part of undertaking of the company.
g) To amalgamate the company with any other company or body of persons.

To change of the registered office of a company can be considered under three heads:

a) Change of the registered office of a company from one locality to another locality in the same city, town or village.
b) Change of the registered office of a company from one city, town or village to another city, town or village in the same state.
c) Change of the registered office of a company from one state to another state.

a) Change of the registered office of a company from one locality to another locality in the same city, town or village.

Change of the registered office from one locality to another locality in the same city, town or village can be easily effected by a company. For this purpose, the following procedure or steps should be taken:-

- Passing of a resolution at the board meeting.
- Giving of a notice of change of location to the Registrar.
- Giving a public notice.

b) Change of the Registered Office of a company from one city, town or village to another city, town or village in the same state.

A company can change its registered office from one city, town or village to another city, town or village in the same state. For this purpose, the following procedure should be followed:

- Passing of a special resolution at the extraordinary meeting of the shareholders.
- Filing of a copy of the special resolution with the Registrar.
- Giving a notice of change of location to the Registrar.

c) Change of Registered office of a company from one state to another state. A company can also change its registered office from one state to another state. But, for such a change of location, a lengthy procedure has been prescribed by the Companies Act. The procedure to be followed for such a change is as follows:

- Passing a special resolution at the extraordinary general meeting.
- Obtaining the sanction of the Company Law Board for the change.
- Filing of a copy of the special resolution with the Registrar.
- Filing of the copies, of the confirmation order of the Company Law Board with the Registrar of the both the states.
- Filing of the altered copies of memorandum of association and article of association with the Registrars of both the states.
- Obtaining certificates of registration of the transfer (i.e., shifting) from the Registrars of both the States.
- Giving of a notice of the location of the new office to the registrar of the State to which the registered of office is shifted.
- Sending of all the documents of the company by the Registrar of the State from which the registered office is shifted to the Registrar of the other State.

DUTIES OF SECRETARY

a) He must convene a board meeting to decide about the change of location and to fix the date, time, place and agenda of the extraordinary general meeting of the shareholders required to be held for approving the change of location.
b) He must give notice of the extraordinary general meeting to all the members along with the draft special resolution and the explanatory statement giving the reasons for the change.
c) He should make the necessary arrangements for the extraordinary general meeting.

d) At the extraordinary general meeting of the members, he should see that the special resolution is passed, approving the change of location.

e) He should give a copy of the special resolution passed at the extraordinary general meeting along with the explanatory statement to the Registrar of Companies within 30 days of passing the resolution.

f) He should obtain the confirmation or sanction of the Company Law Board for the change of location,

g) He should file copies of the Company Law Board's sanction for the change of location with the Registrars of both the states within 3 months of the receipt of the sanction.

h) He should file the altered copies of the memorandum of association and article of association with the Registrars of both the states within 3 months of the receipt of the company Law Board's sanction.

i) He should obtain the certificates of registration of the transfer (i.e. shifting) from the Registrars of both the states.

j) He should file a notice of the change of location of the new office with the registrar of companies of the state to which the registered office of the company is shifted within 30 days of the shifting.

3. Alteration of the Objects Clause.

A change in the objects clause can be effected by passing a special resolution and with the sanction of the -Central Government. The Central Government has to be satisfied that the alteration is necessary in order:

a) To carry on it s business more economically and more efficiently.

b) To attain its main purpose by new or improved means.

c) To enlarge or change the local area to its operation.

d) To carry on some business which under existing circumstances may conveniently or advantageously be combine with the business of the company,

e) To restrict or abandon any of the objects specified in the memorandum.

f) To sell or dispose of the whole or any part of the undertaking of the company or any of the undertakings of the company; or

g) To amalgamate with any other company or body of persons.

Further, before confirming the alteration, the Central Government must be satisfied with the following requirements:

a) That sufficient notice has been given to carry creditor and every other person whose interest will be affected by the alteration.
b) That with respect to every creditor, who in the opinion of the company law board is entitled to object to the alteration, either his consent to the alteration has been obtained or his debt has been discharge9 or has been determined or has been secured to the satisfaction of the Central Government.

Procedure to be followed to change the objects clause:

The objects clause can be altered by adopting the following procedure

1. Passing of a special resolution at the extraordinary general meeting.
2. Filing of a copy of the special resolution with the registrar.
3. Obtaining the confirmation or sanction of the company law board.
4. Filing of a certified copy of confirmation order of the company law board with the registrar.
5. Filing of the altered copy of the memorandum of the association with the registrar.
6. Obtaining the certificate of registration of the change.

Steps (Secretarial Procedure) to change the objects clause:

The Secretary has to take the following steps to change the objects clause:

1. To arrange a board meeting at which the directors discuss the proposed change and also approve the explanatory statement which will be sent to the members along with the notice. The board also resolves to call an extraordinary meeting to pass a special resolution.
2. To send notice of the extraordinary general meeting with an explanatory statement to all members and also to debenture holders and creditors whose interest may be affected by the proposed change.

3. T o get the special resolution passed and to make a petition to the Central Government for its sanction for the change. At the same time notice of the company's petition should be sent to the Registrar.
4. If any person objects to the alteration, either his consent to the alteration has to be obtained or his debt or claim has to be discharged or secured by adequate provision of security. This arrangement should also be brought to he notice of the Central Government.
5. On receipt of the confirmation order from the Central Government, a copy of the order and a copy of the altered memorandum should be filed with Registrar within three months from the date of the board's order.

The Registrar will register the change and will issue a certificate of registration within a month. The alteration will be effective only on getting a certificate of registration from the Registrar.

4. Alteration of Liability clause:

The liability clause can be altered so as to make the liability of the directors unlimited. However, the liability of the shareholder cannot be made unlimited. The liability clause can be altered by passing a special resolution. A copy of the resolution must be filed with the Registrar within 30 days.

5. Alteration of Subscription Clause

The subscription clause of the memorandum of association cannot be altered.

6. Alteration of Capital

The procedure for alteration of capital and power to make such an alteration is generally provided in the articles of a company. If the power and procedure are not laid down in the articles, the company must first alter the articles suitably by passing a special resolution. If so authorized by the articles, a company may in a general meeting alter its capital for the following purposes:

(a) For increasing the capital.

(b) For the reduction of capital.

In order to increase its share capital, the company has to pass only an ordinary resolution. But to reduce the share capital, there is a need for the company to pass a special resolution and also to obtain the sanction of the court.

1. Increase of Share Capital

A company may increase its share capital in two way, viz.

(a) by the issue of un issued shares, and

(b) by increasing its authorized capital.

Increase of Share Capital by the Issue of Unissued shares (sec.81)

When the issued capital is less than the authorized capital, a company after the expiry of two years from the date of its formation or one year from the first allotment of shares, whichever is earlier, may increase its shares capital by a further issue of unissued shares and make it nearer or equal to the authorized capital. For instance, if the authorized capital of the company is Rs.25 Lakhs and the issued and subscribed capital is Rs.15 lakhs, the company may increase its capital by a further issue of shares to the maxtmum extent of Rs.10 Lakhs, i.e. the amount of the unissued capital.

The provisions with regard to increase of subscribed capital by the issue of unissued shares are as follows:

a. The offer of shares shall be made to the present equity shareholders on a pro-rata basis.
b. The offer for such shares must be made by a notice specifying the number of shares offered and the offer should be open to members for at least 15 days.
c. The members shall also be given the right of renunciation of the offer in favour of any other person.
d. After the expiry of the time limit of 15 days, the board can dispose of the balance of the shares not taken up by the members in the manner most beneficial to the company.

e. Shares may be offered to any member of the public in the open market. However I they have to pass a special resolution or pass an ordinary resolution in the general meeting and also obtain the permission of the Central govt.

2. Increase in the authorized capital:

If the company has already issued the shares for the entire amount of its authorized capital, and if it wants to increase its authorized capital by further issue of shares, it can do so by passing a resolution in the general meeting. First of all a company has to alter the capital clause of the memorandum of association of the company. Usually the articles empower the company to alter its share capital by passing an ordinary resolution. The steps involved for increasing the authorized capital of the company are as follows:-

a) If the articles do not empower the company to increase its authorized capital it must first alter the articles suitably by passing a special resolution in the general meeting.
b) A meeting of the board will be held to consider the plan of the issue, the terms of issue and to fix the date of the extra ordinary general meeting.
c) The register of transfer will be closed for the purpose of preparing the list of members.
d) The secretary will issue notices to the members relating to the general meeting.
e) The company will pass a resolution at the general meeting for increasing the authorized capital.
f) The secretary files with the registrar a notice of increase of capital specifying the amount within 30 days of passing the resolution and pays the necessary fees and capital duties.
g) Necessary changes in the memorandum and articles of association will be effected, and altered copies of these documents will be filed with the Registrar within three months of alteration.
h) To arrange with the company's bankers to receive the letter of acceptance, along with the application money.
i) After the expiry of the time limit for receiving letters of acceptance, and checking the entries and particulars in the provisional allotment sheet.
j) To file a copy of letter of rights with the registrar.

k) To arrange another board meeting to finalize the allotment and to, approve the issue of final allotment.

l) Disposal of the balance of shares not taken up by the existing members by the, directors in the manner, which is beneficial to the company.

m) To issue allotment letters to all the allotees and file a return of allotment with the registrar within 30 days of the final allotment.

n) Finally the secretary will have to make the final entries in the registrar of members and issue the shares certificate to all the allotees.

REDUCTION OF SHARE CAPITAL

It means reduction of issued, subscribed and paid-up capital of company by a special resolution under section 100 of the act. The act provides that the company can reduce its share capital only if:

a) When it is authorized by its articles to do so.

b) By a special resolution passed at the general meeting.

c) By obtaining the permission of creditors.

d) By obtaining the sanction of the court. However a company may feel the necessity of reducing Its share capital under the following circumstances:

- When its capital is more than its requirements.
- When it wants to write down its asset at their real value.
- When it is unable to declare a satisfactory rate of dividend on the paid-up share capital.

Methods of reducing share capital

Following are the methods of reducing share capital:

a) By extinguishing the liability of members for uncalled capital.

b) By canceling any part of the paid-up capital, which is lost or unrepresented by available assets.

c) By repaying of capital, which is in excess of the need of the company.

Duties of the secretary in connection with reduction of share capital

The steps to be taken by the secretary in their connection are as follows:

a) To arrange a broad meeting to consider a plan of reduction and fix the date of extra ordinary general meeting.
b) To send notice of extra ordinary general meeting to all the shareholders along with the explanatory statement.
c) To get a special resolution passed at the extra ordinary general meeting for reduction of capital and to get the minute signed by the chairman of the meeting.
d) To file the copies of the special resolution and minutes with the registrar.
e) To make an application to the court along with the copies of special resolution and minutes for the confirmation order.
f) To take necessary steps for the settlement of the list of objecting creditors and for the satisfaction of their clients.
g) To receive the court order of confirmation for reduction of share capital.
h) To file a copy of the court order describing particulars of reduction with the registrar.
i) To obtain the certificate of registration of the court order.
j) To file altered copies. of memorandum of association and articles of association with the registrar.
k) To take necessary steps to execute the scheme of reduction of the capital.
l) To add the words "and reduced" in the company's name for a certain period.

ARTICLES OF ASSOCIATION

The articles of association constitute the second important document for the incorporation of a joint stock company. The articles of association are a document, which contains the bye-laws or the rules and regulations for the internal management of a company, i.e., for the day-to-day conduct of the business of the company. They govern the relationship between the company and its members and also the relationship between members themselves. However, they have nothing to do with the outsiders.

The preparation of articles by a company limited by shares is not compulsory. In case the articles are not prepared, the company must adopt Table 'A' of the Companies Act, which

contains model rules and regulations. If the company's own articles are silent on any point, the relevant provisions of Table 'A' will apply. It may be noted here that a private company cannot adopt Table 'A' and it should have its own articles. Similarly, an unlimited company and a company limited by guarantee should have its own articles.

Importance of Articles of Association

The articles of association are next in importance to the memorandum of association. While the memorandum of association lays down the objects or purposes for which a company is formed, the articles of association prescribe the rules and regulations for the attainment of the objects contained in the memorandum of association. The articles of association provide the rules and regulations for the internal management or the day-to-day administration of the company and embody the powers of the directors and the officers of the company as well as the rights and duties of the shareholders or members of the company. They also regulate the relationship between the company and its employees, between the company and its members and between the members themselves.

Contents or Provisions:

The Articles contain rules and regulations regarding:

1. Share capital and variation of rights.
2. Exercise of lien by the company.
3. Calls on shares.
4. Transfer, transmission, forfeiture and surrender of shares.
5. Issues of share warrant.
6. Alteration and reduction of capital.
7. Voting powers of members.
8. Borrowing Powers.
9. Proceeding at the board and at the general body meetings.
10. Appointment, powers, duties qualifications! remuneration etc,. of directors
11. Appointment of manager, managing director and secretary .
12. Dividends and reserves.
13. Maintenance of books of accounts and their audit

14. The company's seal.
15. Winding up. ,

Alteration of Articles of Association;-

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

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

1. It should not violate any provision of the Companies Act and general or common law of the country.
2. It must be within the scope of Memorandum of Association of the company.
3. It should not break any existing contact.
4. It must be just and equitable. It must be in the best interests of the company as a whole and should not constitute a fraud on a small minority.
5. It must not impose on any member the obligation to subscribe for more shares or to increase his liability on his existing shares.
6. The alteration must not be inconsistent with the alteration ordered by the court. The court has the power to alter a company's memorandum of association and articles of association in any way it thinks fit. As such, if the court has altered the articles of association of a company, the company cannot make any alteration, which is inconsistent with the court's order without the leave of the court.
7. No alteration should be made so as to enable the company to commit any breach of contract with outsiders.
8. Any alteration requiring the approval of the Central Government can be made only with the approval of the Central Government. The approval of the Central Government is, usually, necessary to alter the following:
    a. Conversion of public company into a private company.

b. Appointment or re-appointment of managing director, whole-time director, director not liable to retire by rotation and manager.
c. Increase in the remuneration of a managing director, whole-time director or manager.

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

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

Duties of Secretary:

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

- To arrange a board meeting to decide on the alterations in the articles and to fix up the day for an extraordinary general meeting for passing a special resolution to effect a change in the Articles.
- To see that the alterations do not violate any provision of Companies Act, the general law or the company' memorandum of association. Further, it should not be a fraud on a small minority and it should be in the general interest of the members and the company.
- To issue notices of the general meeting along with the proposed special resolution and an explanatory statement at least 21 days before the meeting.
- To get the special resolution passed at an Extraordinary Meeting.
- To file a copy of the special resolution along with the explanatory statement with the Registrar within 30 days of passing the resolution.
- He should get the approval of the Central Government wherever the approval of the Central Government is required for the alteration of the Articles.
- To file with the Registrar an altered or revised printed copy of the Articles of Association within three months of the passing the resolution.

Distinction Between Memorandum and Articles of Association:-

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

1. The Memorandum is the charter of the company setting out its constitution. It lays down the conditions of incorporation and defines the limits and powers of the company. Articles on the other hand, contain the bye-laws of the company for the conduct of its internal administration. They define the rights and duties of the directors, members, etc,
2. The Memorandum states the objects for which the company is established, whereas the Articles state the rules or manner of carrying out the business as stated in the Memorandum. They cannot provide anything contrary to the powers and objects set forth in the Memorandum.
3. A company cannot be incorporated without preparation and filing of the Memorandum with the Registrar, whereas the preparation of article is not compulsory. If the articles are not prepared by any company, Table 'A' of the Companies Act is applied.
4. The Memorandum governs the external relations of the company i.e., relations between the company and the public including creditors, buyers, sellers, debtors, etc,: outsiders dealing with the company know what its permitted range of business is. The articles, on the other hand, define the relationship between the members and the management of the company. Their main concern is to provide rules and regulations for the internal working of the company.
5. The Memorandum is a primary and fundamental document. It is the foundation of the company's structure and is responsible for the company's birth. It is .unchallenged on statutory matters. Articles of association are a secondary, subordinate and subsidiary document. They should be read and understood in the light of the memorandum. They complement and supplement the memorandum.
6. The Memorandum lays down the scope or area of the company beyond which the company cannot go. All acts of the company which are beyond its scope are ultra vires or illegal and they cannot be ratified by the company.

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

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

TABLE 'A'

Meaning of Table 'A'

At the end of the Companies Act, in Schedule 1, a set of 99 articles are given as model articles of association for the benefit of public companies limited by shares. These model articles of association are known as Table 'A'.

Items found in Table 'A'

The items found in Table 'A' i.e., the model articles are:

1. Interpretation of certain terms.
2. Share capital and variation of rights
3. Lien on shares.
4. Calls on shares.

5. Transfer of shares,
6. Transmission of shares.
7. Forfeiture of shares.
8. Conversion of shares into stocks.
9. Share warrants.
10. Alteration and reduction of capital.
11. General meetings and proceedings at general meetings.
12. Votes of members.
13. Board of Directors.
14. Proceeding at board meetings.
15. Manager, managing directors and secretary.
16. Company's seal
17. Dividends and reserves.
18. Accounts.
19. Capitalisation of profits.
20. Winding up.
21. Indemnity to officers or agents of the company.

Differences between Table 'A' and Articles of Association:

The main differences between table 'A' and the Articles of Association are as follows:-

1. Regulations or provisions in Table 'A' are model articles. That means they are general. On the other hand, the provisions in the articles of association of each company are specific.
2. Table 'A' can be adopted only by public companies limited by shares. It cannot be adopted by unlimited companies, companies limited by guarantee and private companies limited by shares. Specific articles of association can be had by every type of companies.
3. All the provisions in Table 'A' are legal beyond doubt. But the provisions in the specific articles of association mayor may not be legal beyond doubt.
4. 4. When a company adopts Table 'A' as its articles, it need not file the same with the registrar of companies. It has to just make an endorsement to that effect in its

memorandum of association submitted to the Registrar. On the other hand, when a company has a separate set of articles of its own, it has to file a copy of the same with the Registrar of Companies.

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.

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‖. Section 290 Provides for the Validity of Acts of Directors - Acts done by a person as a director shall 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 Comp Cas 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) : 1 All 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 Comp 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 ― indoor 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 Comp. Cas. 817 (Ker.)].

EXCEPTIONS TO THE DOCTRINE OF INDOOR MANAGEMENT

The above noted _doctrine of indoor management is, however, subject to certain exceptions. In other words, relief on the ground of _indoor management cannot be claimed by an outsider dealing with the company in the following circumstances.

1. Where the outsider had knowledge of irregularity —The rule does not protect any person who has actual or even an implied notice of the lack of authority of the person acting on behalf of the company. Thus, a person knowing fully well that the directors do not have the authority to make the transaction but still enters into it, cannot seek protection under the rule of indoor management. In Howard v. Patent Ivory Co. (38 Ch. D 156), the articles of a company empowered the directors to borrow upto one thousand pounds only. They could, however, exceed the limit of one thousand pounds with the consent of the company in general meeting. Without such consent having been obtained, they borrowed 3,500 pounds from one of the directors who took debentures. The company refused to pay the amount.Held that, the debentures were good to the extent of one thousand pounds only because the director had notice or was deemed to have the notice of the internal irregularity.

2. No knowledge of memorandum and articles — Again, the rule cannot be invoked in favour of a person who did not consult the memorandum and articles and thus did not rely on them. In Rama Corporation v. Proved Tin & General Investment Co. (1952) 1All. ER 554, T was a director in the company. He, purporting to act on behalf of the company, entered into a contract

with the Rama Corporation and took a cheque from the latter. The articles of the company did provide that the directors could delegate their powers to one of them. But Rama Corporation people had never read the articles. Later, it was found that the directors of the company did not delegate their powers to T. The Plaintiff relied on the rule of indoor management. Held, they could not because they even did not know that power could be delegated.

3. Forgery — The rule of indoor management does not extend to transactions involving forgery or to transactions which are otherwise void or illegal abinitio. In the case of forgery it is not that there is absence of free consent but there is no consent at all. The person whose signatures have been forged is not even aware of the transaction, and the question of his consent being free or otherwise does not arise. Consequently, it is not that the title of the person is defective but there is no title at all. Therefore, howsoever clever the forgery might have been the personates acquire no rights at all. Thus, where the secretary of a company forged signatures of two of the directors required under the articles on a share certificate and issued certificate without authority, the applicants were refused registration as members of the company. The certificate was held to be nullity and the holder of the certificate was not allowed to take advantage of the doctrine of indoor management [Rouben v. Great Fingal Consolidated (1906) AC 439]. Forgery, in the case of a company, can take different forms. It may, besides forgery of the signatures of the authorised officials, include the execution of a document towards the personal discharge of an official‘s liability instead of the liability of the company. Thus, a bill of exchange signed by the manager of a company with his own signature under words stating that he signed on behalf of the company, was held to be forgery when the bill was drawn in favour of a payee to whom the manager was personally indebted [Kreditbank Cassel v. Schenkers Ltd. (1927) 1 KB 826]. The bill in this case was held to be forged because it purported to be a different document from what it was in fact; it purported to be issued on behalf of the company in payment of its debt when in fact it was issued in payment of the manager‘s own debt.

4. Negligence — The _doctrine of indoor management‘, in no way, rewards those who behave negligently. Thus, where an officer of a company does something which shall not ordinarily be within his powers, the person dealing with him must make proper enquiries and satisfy himself as to the officer‘s authority. If he fails to make an enquiry, he is estopped from relying on the Rule. In Al Underwood v. Benkof Liverpool (1924) 1 KB 775, a person who was a sole director and principal shareholder of a company paid into his own account cheques drawn in favour of

the company. Held, that, the bank should have made inquiries as to the power of the director. The bank was put upon an enquiry and was accordingly not entitled to rely upon the ostensible authority of director.

Similarly, in B. Anand Behari Lal v. Dinshaw & Co. (Bankers) Ltd. AIR 1942

Oudh 417, an accountant of a company transferred some property of a company in favour of Anand Behari. On an action brought by him for breach of contract, the Court held the transfer to be void. It was observed that the power of transferring immovable property of the company could not be considered within the apparent authority of an accountant.

5. Again, the doctrine of indoor management does not apply where the question is in regard to the very existence of an agency. In Varkey Souriar v. Keraleeya Banking Co. Ltd. (1957) 27 Comp. Cas. 591 (Ker.), the Kerala High Court held that the _doctrine of indoor management' cannot apply where the question is not one as to scope of the power exercised by an apparent agent of a company but is in regard to the very existence of the agency.

6. This Doctrine is also not applicable where a pre-condition is required to be fulfilled before company itself can exercise a particular power. In other words, the act done is not merely ultra vires the directors/officers but ultra vires the company itself — Pacific Coast Coal Mines v. Arbuthnot (1917) AC

607.

In the end, it is worthwhile to mention that section 9 of the Companies Act, 1956 gives overriding force and effect to the provisions of the Act, notwithstanding anything to the contrary contained in the memorandum or articles of a company or in any agreement executed by it or for that matter in any resolution of the company in general meeting or of its board of directors. A provision contained in the memorandum, articles, agreement or resolution to the extent to which it is repugnant to the provisions of the Act, will be regarded as void.

RED-HERRING PROSPECTUS

"Red-herring prospectus" means a prospectus which does not have complete particulars on the price of the securities offered and the quantum of securities offered. The information memorandum and red-herring prospectus carry same obligations as are applicable in the case of prospectus. Every variation between the information memorandum and the red-herring prospectus shall be highlighted by the issuer company and shall be individually intimated to the

persons invited to subscribe to the securities. Section 60B(7) provides that the applicant or proposed subscriber shall exercise his right to withdraw from the application on any intimation of variation within seven days from the date of such intimation and shall indicate such withdrawal in writing to the company and the underwriters.

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

If a company or underwriter or banker to the issue acts contrary to this stipulation i.e. without giving enough information of any variations or the particulars of withdrawing the offer or opportunity for cancelling the post-dated cheques or stock invest, such action shall be void and the applicant shall be entitled to receive a refund or return of his post-dated cheques or stock invests or subscription money or cancellation of application. The applicants are entitled to receive back their original applications and interest at the rate of 15% from date of encashment till payment or realisation.

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

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.

The re-issue of forfeited shares does not constitute appropriation out of unappropriated capital, and therefore is not an allotment within the meaning of Section 75(1) of the Companies Act, 1956 and a company need not file return in e-Form No. 2 in respect of the re-issue of forfeited shares.

295

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.

2. 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. Judicial pronouncement relating to allotment of shares

(A) Allotment made without proper authority will be invalid. Allotment of shares made by an

irregularly constituted Board of directors shall be invalid [Changa Mal v. Provisional Bank (1914) ILR 36 All 412].

(B) It is necessary that the Board should be duly constituted and should pass a valid resolution of allotment at a valid meeting [Homes District Consolidated Gold Mines Re (1888) 39 Ch D 546 (CA)].

(C) An allotment may be valid even if some defect was there in the appointment of directors but which was subsequently discovered.(Section 290 and the Rule in Royal British Bank v. Turquand (1856) 6 E & B 327 : (1843-60) All ER Rep 435)

(D) An allotment by a Board irregularly constituted may be subsequently ratified by a regular Board [Portugese Consolidated Copper Mines, (1889) 42 Ch. D 160 (CA)].

(E) A director who has joined in an allotment to himself will be estopped from alleging the invalidity of the allotment [Yark Tramways Co. v. Willows, (1882) 8 QBD 685 (CA)].

(F) The interval of about 6 months between application and allotment was held unreasonable [Ramsgate Victoria Hotel Company v. Montefione (1866) LR 1 EX 109].

(G) Where an applicant applied for shares on the condition that he will be appointed as branch manager of company but later on the condition was breached, it was held that he is not bound by the allotment of shares [Ramanbhai v. Ghasi Ram (1918) BOM. LR 595].

(H) Grant applied for certain shares in a company, the company dispatched letter of allotment to him which never reached him. It was held that he was liable for the balance amount due on the shares. [Household Fire And Carriage Accident Insurance Co. Ltd. Grant (1879) 4 E.D. 216]

(I) The mere entry of a shareholder‟s name in the company‟s register is insufficient to establish that an allotment was in fact made [Official Liquidator, Bellary Electric Supply Co. v. Kanni Ram Ramwoothmal (1933) 3 Com Cases 45; AIR 1933 Med 320].

(J) There can be no proper allotment of shares unless the applicant has been informed of the allotment [British and American Steam Navigation Co. Re. (1870) LR 10 Eq 659].

(K) A formal allotment is not necessary. It is enough if the applicant is made aware of the allotment. [Universal Banking Corpn. Re. Gunn's Case (1867) 3 Ch App 40].

3. 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 intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchange(s) for permission for the shares or debentures to be dealt with in the regional stock exchange or each of such stock exchanges [Section 73(1)]. If permission is not granted by any one of the stock exchanges named in the prospectus, the consequence by virtue of Section 73(1A) would render the entire allotment void. [Rishyashringa Jewellery Ltd. v. Stock Exchange 1995 6 SCL 227].

(b) 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.

(c) 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]

(d) 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-Comp Cas 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.

(e) 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).

(f) Closing of the Subscription List — SEBI Issue of Capital and Disclosure Requirements Regulations, 2009 (ICDR)] provide that the subscription list must be kept open for atleast 3 working days and not more than 10 working days and in the case of infrastructure company, the maximum period is 21 working days. In case of Rights issue, the SEBI ICDR Regulations provide that the issue shall remain open for atleast 15 days and not more than 30 days.

(g) 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 atleast 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.

3. ALLOTMENT OF SHARES/DEBENTURES TO BE LISTED ON STOCK EXCHANGE

Section 73(1) provides that every company intending to offer shares or debentures to the public for subscription by issue of prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for enlistment of its shares or debentures.

Sub-section 73(1) was inserted by the Companies (Amendment) Act, 1988 making the listing of all public issues compulsory with atleast one recognised stock exchange.

Section 73(1A) provides that where a prospectus states that application under Sub-section (1) has been made for permission for the shares or debentures offered thereby to be dealt in one or more recognised stock exchanges, then the allotment shall be void if the permission has not been granted by the stock exchange or each such stock exchange as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists.

However, where a stock exchange refuses to grant an application or fails to dispose it off within 10 weeks, the company may, under Section 22 of the Securities Contracts (Regulation) Act, 1956 appeal to the Securities Appellate Tribunal against the refusal:

(1) within 15 days from the date of the refusal, or

(2) within 15 days from the date of the expiry of 10 weeks. It can be seen that the obtaining of permission to deal is a condition precedent to allotment once the prospectus has stated that it has been or will be applied for.

Section 73(2) of the Companies Act, 1956 states that where the allotment is void under Section 73(1) because either the application has not been made for listing or the permission has not been granted, the company must repay the application money at once to the applicants, and if

it is not repaid within 8 days after the company becomes liable to repay, the company and every director of company who is an officer in default shall on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest not less than @ 4% but not more than @ 15% p.a.

Section 73(2A) provides that where permission has been granted by the recognised stock exchange or exchanges, and the moneys received from applicants for shares or debentures are in excess of the aggregate of the application moneys relating to the shares or debentures allotted, the company must repay the excess amount forthwith without interest. If such money is not repaid within 8 days, then the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, (from the day the company becomes liable to pay) be, jointly and severally, liable to repay the money with interest at such rate, not less than four percent and not more than fifteen percent as may be prescribed, having regard to length of the period of delay in making the repayment of such money [vide Rule 4D of the Companies (Central Government's) General Rules & Forms, 1956, 15 percent interest has been prescribed]. If default is made in complying with this provision then the company and every officer in default shall be liable to be fined upto Rs. 50,000 and where the repayment is not made within 6 months from the expiry of the 8th day, also with imprisonment upto one year [Section 73(2A) and (2B)].

Section 73(3) states that all moneys received from applicants for shares must be kept in a separate account maintained with a scheduled bank and they shall not be utilised for any purpose other than adjustment against allotment of shares or for repayment to the applicants.

As per Section 73(5), it shall be deemed that the permission has not been granted if the application for permission, for listing of companies shares, has not been disposed of within 10 weeks from the date of the closing of the subscription list. In CIT v. Henkel Spic India Ltd. Comp. Cases 189 (2004) the Madras High Court held that any interest earned on application money deposited with the bankers, pending receipt of permission of listing on a stock exchange cannot be treated as money available to the company. The interest is an amount which accrues on a fund which is itself held in trust, until the allotment is completed and monies are returned to those to whom shares are not allotted. Therefore, only at a point, when the trust terminates, it can be stated that amount has accrued to the company as its income.

Basis of Allotment

Clause 45 of listing agreement requires that the allotment of securities offered to public shall be made within 30 days of closure of public Issue. In case the allotment is not made or refund order not dispatched to investors within 30 days from the date of closure of issue, then the Company shall pay interest @ 15% p.a. as per the listing agreement.

Over Subscription

According to SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009, no allotment shall be made by the issuer in excess of the specified securities offered through the offer document. However, in case of oversubscription, an allotment of not more than ten per cent of the net offer to public may be made for the purpose of making allotment in minimum lots.

Minimum Subscription

Section 69(1) states that no shares shall be offered to the public until the minimum subscription stated in the prospectus has been subscribed and the amount payable on application has been received in cash by the company. In this context, SEBI has prescribed that any company making public or right issue must receive a minimum of 90 percent of the issue including devolvement on underwriters **subscription against the entire issue before making allotment.**

The amount of minimum subscription must be stated in the prospectus. Any amount other than in cash should not be included in the minimum subscription. If the minimum subscription is not raised within 120 days after the issue of the prospectus the money paid by the subscribers must be returned forthwith. If it is not so returned, the directors become liable to repay the money with 6% interest from the end of the 130th day. All money received from the applicants should be kept deposited in a separate account with a scheduled bank until the company obtains the certificate to commence business. In case the company has already obtained the said certificate the amount so received should be kept in a scheduled bank until the entire amount payable on application for shares in respect of minimum subscription has been received by the company.

Letter of Allotment

The company is required to issue letter of allotment to persons who are allotted shares. Such letter is called Letter of Allotment. Such persons are required to surrender this letter of allotment to company for issue of share certificate.

Letter of Renunciation

Under Section 81, when the Public Company, at any time after 2 years from the formation of company or at any time after the expiry of the one year from the allotment of shares in that company made for the first time after its formation whichever is earlier, proposes to increase the subscribed capital of company by allotment of further shares, then the Board of directors are required to offer the shares first to existing shareholders.

Such shareholders are also given an option to renounce the shares in favour of any other person. The letter, through which such shareholders renounce shares in favour of other person is called "Letter of renunciation". If the person to whom offer is made or the person in whose favour offer is renounced does not accept the shares, the Board may dispose of them in such manner as they think fit for the benefit of the company.

4. EFFECT OF IRREGULAR ALLOTMENT

An allotment is irregular if it is made without complying with the conditions precedent to a regular allotment as discussed above, viz, the provisions of Section 69 and 70 of the Act.

Consequences of irregular allotment depend upon the nature of irregularity involved. These may be noted as follows:

1. Failure to deliver a copy of the prospectus to the Registrar before its issue — In case an allotment has been made without delivering to the Registrar of Companies, a copy of the prospectus along with other specified documents either before or on the date of its issue, the company and every person who is knowingly a party to the issue of the prospectus shall be punishable with fine which may extend to Rs. 50,000 [Section 60(5)]. The allotment, however, shall remain valid.

2. Non-compliance with provisions of Section 69 and Section 70 — In the event of non-compliance with the provisions of Section 69 and Section 70 (viz allotment without raising minimum subscription or without either collecting application money or collecting less than 5 percent as application money or failure to deliver a copy of statement in lieu of prospectus at least three days before allotment), the following consequences shall follow (as mentioned in Section 71):

(a) The allotment is rendered voidable at the option of the applicant. The option must however be exercised — (i) within 2 months after the holding of the statutory meeting of the company and not later; or (ii) where the company is not required to hold a statutory meeting, or where the

allotment is made after the holding of the statutory meeting, within 2 months after the date of allotment and not later.

The irregular allotment is voidable even if the company is in the course of being wound up.

(b) Any director who has knowledge of the fact of the irregular allotment of shares shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby. Proceedings to recover any such loss, damages or costs cannot be commenced after the expiration of 2 years from the date of allotment. Rectification by company of irregular allotment An irregular allotment of shares made by the directors in excess of their powers may be subsequently ratified by the shareholders at a general meeting [Bamford v. Bamford, (1969) 39 Com Cases 369]

Lapse of application on undue delay in allotment

An application to take shares lapses if allotment is delayed unreasonably [Ramsgate Victoria Hotel v. Montefiore (1866) LR 1 Ex 109 (C Ex)].

Cases where applicant cannot avoid allotment

We had noted earlier, that an allottee can avoid the allotment within the time frame mentioned in Section 71(1) of the Companies Act, 1956. However, the applicant cannot avoid the allotment if he unequivocally affirms the allotment by endeavouring to sell the shares, [Ex. P. Briggs 1866 LR 1 Eq 483]; (2) by executing a transfer of the shares [Crawley"s case (1969) LR 4 Ch App 322]; (3) by paying calls or receiving dividends, [Scholey v. Central Railway of Venezuela (1868) LR 9 Eq 266]; (4) by attending and voting at a general meeting in person or by proxy, [Sharpley v. Louth Co. (1876) 2 Ch. 663 (CA)].

3.Non-compliance of Section 72 — In case allotment is made in contravention of the provisions of Section 72 (viz, before the beginning of the fifth day from the date of issue of the prospectus), the company and every officer of the company shall be punishable with fine which may extend to Rs. 50,000 [Section 72(3)]. However, allotment in such a case shall be valid.

4.Condition as to listing of shares on a stock exchange is not observed — Where the prospectus of a company states that an application has been made for permission for the shares offered thereby to be dealt in one or more recognised stock exchanges, the allotment shall be void, if either the permission has not been applied for or refused or not granted before the expiry of 10 weeks from the date of the closing of the subscription list [Section 73(1) and (2)].

In a particular case, a company proposed public issue at a premium and it stated in the prospectus that it had applied for listing of the shares in four recognised stock exchanges. Three of the stock exchanges granted permission for listing after the Central Government had issued orders in this regard. The petitioner contended that the allotment made is void under Section 73 of the Companies Act. The court held that the question of public issue being declared void does not arise as three exchanges had granted listing permission [Smt. Urmila Barutha v. Conventry Spring& Engineering Co. Ltd. and Other (1997) 2 CLJ 48 (Cal)]. However, where an appeal against the decision of any recognised stock exchange refusing permission has been preferred with Securities Appellate Tribunal, under Section 22 of the Securities Contracts (Regulation) Act, 1956 such allotment shall not be void until the dismissal of the appeal [Section 73(1A)].
In case of allotment becoming void, the money becomes due to be refunded forthwith and must therefore be repaid.

5. REVOCATION BY APPLICANT/ALLOTTEE

Ordinarily the provisions of Law of Contract apply to applications and allotment of shares. An application is an offer by the applicant and allotment is an acceptance of the offer by the company. An offer can be revoked at any time before there is an acceptance to allot shares by the company subject to the provisions and restrictions of the Companies Act.

6. 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]. Allotment of shares to a charitable Institution by way of donation If there is no payment in monies worth for the shares; the allotment would be ultra vires. In case of allotment for consideration, other than cash, there is a requirement for companies to disclose in the return of allotment the number of shares allotted by it for consideration otherwise than in cash. Allotment of shares by the company as fully paid up shares to charitable trust by way of donation shall not be valid.

7. ALLOTMENT PROCEDURE

Where the company has received from bankers all the share applications, the directors shall proceed with the allotment of shares. If the issue is fully subscribed, then there is no difficulty in allotment of shares. If, however, the issue is oversubscribed, then shares are allotted on the basis of scheme of allotment worked out in consultation with the Stock Exchange(s) where shares are to be listed, by a Board/Committee resolution. The Board also authorises the Secretary, by a resolution, to issue letter of allotment or Allotment Advice-cum-Allotment Money Notice and letters of regret, as the case may be, to all the applicants. The resolution should also provide for the refund of the application money.

When the company"s issue is over-subscribed, the directors allot less shares to all or some applicants than applied for, it is called partial allotment. Allotment of lesser than the number of shares applied for is not binding on the applicant. He may accept or refuse the shares allotted to him, as the allotment of fewer shares is a counter-offer by the company to the applicants. Hence, in order to guard against any

such problem, the application forms provide for such clauses accepting the partial allotment by the applicants.

Return of Allotment

Section 75 of the Companies Act provides that after allotment of shares by any company, a return of allotment in the prescribed e-form 2 even if it is of a single share, must be filed with the Registrar of Companies within thirty days of the allotment of shares.

(a) Where shares are allotted for cash

The return of allotment must state:

(i) The number and nominal amount of the shares allotted.

(ii) The amount paid or payable on each share.

(iii) The class of shares-equity or preference.

(iv) The amount of premium paid/discount.

The company shall in no case show in such return any shares as having been allotted for cash if cash has not actually been received in respect of such allotment [Proviso to Section 75(1)(a)]. As per the Department of Company Affairs (Now, Ministry of Corporate Affairs) allotment of shares by a company to a person in lieu of a genuine debt due to him is in perfect compliance with the provisions of Section 75(1). In this connection, it has been clarified that the act of

handing over cash to the allottee of shares by a company in payment of its debt and the allottee in turn returning the same cash as payment for the shares allotted to him is not necessary for treating the shares as having been allotted for cash. What is required is to ensure that the genuine debt presently payable by a company is liquidated to the extent of the value of shares [Circular 8/32 (75) 77-CL/V dated 13th March 1978].

(b) Where shares (other than bonus shares) are allotted fully or partly paidup otherwise than in cash (e.g. where consideration for allotment of shares is paid by way of property, goods or services), the following are required:

(i) A copy of contract, if any, for allotment of such shares is required to be attached with the e-form.

(ii) The contract of sale or for services or other consideration for which the allotment was made; and

(iii) A return stating the number and nominal amount of the shares so allotted, to the extent to which they are paid-up, and the consideration for which they are allotted.

Where shares are issued as fully or partly paid up in consideration of a property thereafter to be sold to the company or services to be rendered to the company or in consideration of the release of a claim or by way of compromise, the issue is for consideration other than cash.

(c) Where bonus shares have been issued, a return must be filed with the Registrar stating:

(i) The number and nominal amount of such shares comprised in the allotment;

(ii) The names, addresses and occupation of the allottees; and

(iii) A copy of the resolution authorising the issue of such shares is required to be attached with the e-form 2.

(d) Where the shares have been issued at a discount, A copy of the resolution passed by the company authorizing such issue and a copy of the order of the Central Government sanctioning the issue must be filed with the Registrar. If rate of discount exceeds 10% the relevant order of the Central Government must also be filed with the Registrar as an attachment with e-form 2.

It should be ensured that filing of e-form 23 precedes filing of e-form 2, in case e-form 23 is required to be filed in relation to the resolution passed for issue of shares under Section 81(1A) of the Act.

The following items are also required to be attached with e-form 2 along with the earlier stated attachments:

1. List of allottees.

2. Copy of board or members‟ resolution approving the allotment of shares.

3. In case of allotment of shares for consideration otherwise than in cash, attach copy of contract.

4. In case of issue of bonus shares, attach copy of said resolution.

5. In case of issue of shares at discount, attach copy of resolution with copy of order of Central Government (Company Law Board). E-form 2 is required to be digitally signed by managing director or director or manager or company secretary of the company. Further the e-form is required to be precertified by certifying professionals (Chartered Accountant or Cost Accountant or Company Secretary in whole time practice).

Penalty: If default is made in complying with the provisions of Section 75, as stated above, every officer of the company who is in default shall be punishable with fine which may extend to Rs. 5000 for every day during which the default continues.

However, where the default relates to contravention of proviso to clause (a) Subsection (1), viz showing in the return that shares have been allotted for cash, when such is not the case, every promoter and every officer of the company who is guilty of the contravention shall be punishable with fine which may extend to Rs. 50,000 [Section 75(4)].

Judicial Pronouncement about return of Allotment

1. In Sri Gopal Jalan & Co. v. Calcutta Stock Exchange Association Ltd. 1963-(033)-Comp Cas-0862-SC, the Supreme Court held that the exchange was not liable to file any return of the forfeited shares under Section 75(1) of the Companies Act, 1956, when the same were re-issued. The Court observed that when a share is forfeited and re-issued, there is no allotment, in the sense of appropriation of shares out of the authorised and unappropriated capital and approved the observations of Harries C.J. in S.M.

Nandy's case that: "On such forfeiture all that happened was that the right of the particular shareholder disappeared but the shares considered as a unit of issued capital continued to exist and was kept in suspense until another shareholder was found for it".

2. Alote Estate v. R.B. Seth Hiralal Kalyanmal Kasliwal [1970] 40 Comp.In case of inadequacy of consideration, the shares will be treated as not fully paid and the shareholder will be liable to pay for them in full, unless the contract is fraudulent.

3. Harmony and Montage Tin and Copper Mining Company; Spargo's case (1873) 8 Ch. App. 407. Any payment which is presently enforceable against the company such as consideration

payable for property purchased, will constitute payment in cash [].

4. Chokkalingam v. Official Liquidator AIR 1944 Mad. 87. Allotment of shares against promissory notes shall not be valid. Cases where return of allotment is not required to be filled

(a) Issue of debentures

(b) Re-issue of forfeited shares

(c) Shares subscribed by subscribers to memorandum of association

(d) On conversion of debentures or loan into equity by an order of Central Government u/s 81(4).

FORFEITURE OF SHARES

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

1. Articles of Association must authorise the forfeiture of shares. Where power is given in the articles, it must be exercised in accordance with the regulation regarding notice, procedure and manner stated therein; otherwise the forfeiture will be void. The power of forfeiture must be exercised bona fide and in the interest of the company. It should not be collusive or fraudulent If Articles authorise, the forfeiture shall include forfeiture of all dividends declared in respect of the forfeited shares and such dividend is not actually paid before the forfeiture of the shares

2. Resolution for Forfeiture - Article 31 of the Table A provides that if the defaulting shareholder does not pay the amount within the specified time as required by the notice, the directors may pass a resolution forfeiting the shares.

3. Proper Notice - Before the shares of a member are forfeited, a proper notice to that effect must have been served. Regulation 30 of Table A provides that a notice shall name a further day (not less than 14 days from the date of service of the notice) on or before which the payment is to be made. The notice must also mention that in the event of non payment, the shares will be liable to be forfeited.

4. Power of forfeiture must be exercised bona fide and for the benefit of the company - The power to forfeit be exercised bona fide and for the benefit of the company. The power must be used in order to coerce reluctant shareholders into paying their calls. The power of forfeiture cannot be exercised to relieve unwilling shareholders from the liability of making the payment.

Such a shareholder continues to be responsible for the unpaid part of the shares When forfeiture of shares takes place, shareholder ceases to be a member and the forfeited shares become the property of the company. Regulation 33(2) of table A further provides that the liability of a person whose shares have been forfeited ceases if and when the company receives payment in full of all such money in respect of the shares forfeited. If liquidation takes place, the original holder shall remain liable as a past member to pay calls within one year of forfeiture. However, a company cannot recover from him more than the difference between the amount payable and the amount received on forfeited shares.

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

Some Legal Pronouncement about forfeiture of shares

1. Shah J. in Naresh Chandra Sanyal v. Calcutta Stock Exchange Assn. Ltd. AIR 1971 SC 422, As per Regulation 29 of Table A, shares can be forfeited only against non-payment of any call, or instalments of a call. The Articles of a company may, however, lawfully incorporate any other grounds of forfeiture

2. Linkmen Services (P.) Ltd. v. Tapas Sinha (2008) 83 SCL 143 (CAL), a company amended its articles of association for the purpose of (i) forfeiting the shares of any defaulting member and (ii) expelling member who desert the company by not doing business with it. The respondents challenged the above amendments on the grounds of oppression. The CLB held that the articles of company could not empower to forfeit the shares on account of dues other than unpaid calls. The appellant company appealed to the High Court. Allowing the appeal the Court held that forfeiture on grounds as mentioned in the articles of company is not alien to corporate jurisprudence as the CLB found in the impugned judgment. It is a power that the articles can confer.

3. Hope v. International Finance Society (1876) 4 Ch. D 598. Where the articles authorise the directors to forfeit the shares of a shareholder, who commences an action against the company or the directors, by making a payment of the full market value of his shares, it was held that such a clause was invalid as it was against the rights of a shareholder.

4. Re Exparto Trading Co. [1879] 12 Ch. D 191 Where two directors were allotted qualification shares, without any payment, and these shares were forfeited by a Board resolution passed at the request of those two directors, the forfeiture was held to be invalid and the directors were held

liable to pay the nominal value of the shares.

5 .Public Passenger Services Ltd. v. M.A. Khader 1966 1 Comp. LJ1: A proper notice is a condition precedent to the forfeiture, and even the slightest defect in the notice will invalidate the forfeiture.

6. Johnson v. Lyttle's Iron Agency 1877 Ch D 687. The notice should mention that the payment of interest should be made from the date of the. call.

7. Sparks v. Liverpool Water Works Co., 1807 13 Ves 428. Accidental non receipt of notice of forfeiture by the defaulter is not a ground for relief against forfeiture regularly effected.

8. Sha Mulchand & Co. v. Jawahar Mills Ltd. 1953 23 Comp. Cas 1 (SC).Even a slight irregularity in effecting a forfeiture would be fatal and render the forfeiture null and void. The aggrieved shareholder may bring an action for setting aside the forfeiture as well as for damages. Mere waiver or acquiescence would not deprive him of his rights against an invalid forfeiture of his shares.

9. Sha Mulchand & Co. v. Jawahar Mills (supra). After shares have been forfeited, no further notice intimating forfeiture is required

Forfeiture of fully paid shares

The clauses of Table A on forfeiture do not make specific provision for forfeiture of fully paid up shares. On the other hand in Shyam Chand v. Calcutta Stock Exchange Assn. [1945] 2 I.L.R. Cal 313 fully paid up shares could be forfeited in cases like expulsion of members where the articles authorise.

In any case, right of recovery of call money expires three years after the date of allotment.

Re-issue of Forfeited Shares

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

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

If the shares are re-issued at a price more than the face value, the excess of the proceeds of sale is not payable to the former owner, if the articles provide otherwise (Calcutta Stock

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

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

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

Surrender of shares

A company cannot accept a surrender of its shares "as every surrender of shares, whether fully paid-up or not involves a reduction of capital which is unlawful...forfeiture is a statutory exception and is the only exception". [Bellerby v. Rowland and Marwood's S.S. Co. Ltd., (1902) 2 Ch 14]. But a surrender may be dealt with in the manner indicated in Re Castiglione's Willtrusts, Hunter v. Mackenzie, (1958) 1 All ER 480 viz., directing that the shares be held in the name of a nominee as trustee for the company. However, a surrender can be accepted in circumstances absolutely parallel to the requirements of a forfeiture, the only difference being that instead of going to the length of the formalities of a forfeiture, the company accepts in good faith in its own interest the shares which the shareholder is voluntarily surrendering. The other advantage to the company is that the shareholder becomes estopped from questioning the validity. [Collector of Moradabad v. Equity Insurance Co. Ltd., AIR 1948 Oudh 197].

TRANSMISSION OF SHARES

Transmission of shares has not been defined by the companies act. _Transmission by operation of law' is not a transfer. It refers to those cases where a person acquires an interest in property by operation of any provision of law, such as by right of inheritance or succession or by reason of the insolvency or lunacy of the shareholder or by purchase in a Court-sale Thus, transmission of shares takes place when the registered shareholder dies or is adjudicated as an insolvent, or if the shareholder is a company, it goes into liquidation. Because a deceased person cannot own anything, the ownership of all his property passes, after his death, to those who legally represent him. Similarly, when a person is declared insolvent, all his property vests in the Official Assignee or Official Receiver. Upon the death of a sole registered shareholder, so far as the company is concerned, the legal representatives of the deceased shareholder are the only persons having title to the shares unless shareholder had appointed a nominee, in which case he would be entitled to the exclusion of all others. Section 108(1) of the Companies Act, 1956 states that the transfer of shares must be effected by a proper instrument of transfer and that a provision in the articles of an automatic transfer of shares of a deceased shareholder is illegal and void. Such transfer does not amount to transmission which takes place by operation of law. The second proviso to Section 108(1) of the Act provides that nothing in the sub-section shall prejudice the powers of the company to register as shareholder any person to whom the right to any shares has been transmitted by operation of law. It follows that, for such transmission, instrument of transfer is not required, and, merely an application addressed to the company by the legal representative is sufficient.

Articles of companies generally provide for formalities to be observed for transmission of shares. In the absence of such provision in the articles of the company, Regulations 25 to 28 of Table A of Schedule I to the Act will govern the procedure for transmission. According to these regulations, the legal representatives are entitled to the shares held by deceased member and the company must accept the evidence of succession e.g., a succession certificate or letter of administrations or probate or any other evidence properly required by the Board of directors. He is, however, not a member of the company by reason only of being the legal owner of the shares. But he may apply to be registered as a member. On the contrary, instead of being registered himself as a member, he may make such transfer of the shares as the deceased could have made.

The Board of directors also have the same right to decline registration as they would have had in the case of transfer of shares before death. But if the company unduly refuses to accept a transmission, the same remedies are available to the legal representative as in the case of a transfer namely, an appeal to the tribunal under Section 111.

Enable | Enlighten | Enrich
(Deemed to be University)
(Under Section 3 of UGC Act 1956)

Karpagam Academy of Higher Education
(Deemed University Established Under Section 3 of UGC Act, 1956)
Coimbatore - 641 021.

UNIT III

Management – Classification of directors, women directors, independent directors, small shareholders directors, Disqualification, DIN; Appointment; legal position, powers and duties; removal of directors; key managerial personnel, managing directors, managers, meeting of shareholders and board; types of meeting, conduct of meeting, committees of board of directors, Audit committee, Nomination and remuneration Committee, Corporate Social responsibilities.

COMPANY DIRECTORS

A company is an artificial person created by law and as such it is not possible for it to deal with other parties. It must act only through some human agency. The shareholders, who are the owners of the company, are scattered over a very wide area and hence, it is not possible for them to take active part in the day-to-day management of the company.

The owners or the shareholders of the company elect from amongst themselves some persons good in management as their representatives to manage to day-to-day affairs of the company. The persons or representatives elected by the shareholders to manage or direct the day-to-day affairs of the company are individually known as "directors", and are collectively called the "Board of Directors" or the "Board".

The Board of Directors entrust the day-to-day management of the company to a chief executive, who may be a managing director or manager, and delegate to him the necessary powers. The managing director or manager is the chief executive of the company. He exercises the powers given to him under the articles and carries out the duties entrusted to him by the Board of Directors.

It is true that the managing director or manager looks after the day-to-day management of the company. But he cannot attend to the work of management single handed. So he takes the assistance of several executives or professional managers. He has a secretary to help him in the day-to-day management of the company. He has several department heads, such as Production

Manager, Purchase Manager, Sales Manager, Financial Manager, and Personnel Manager, etc. to look after the affairs of their respective departments. He uses the services of an auditor to report on the financial affairs of the company. He may also use the services of solicitors on legal matters.

Thus, the agencies which control & manage the affairs of the company are: -

a) Directors
b) Managing Director or Manager
c) Secretary
d) Auditor
e) Legal Advisor

DIRECTORS:

Definition:

Section 2(13) of. the companies Act, defines a director as ."any person occupying the position of director, by whatever name called", As per the above definition, if one performs the functions of a director, he would be considered as a director from the point of law. It is immaterial by what name his is called. Thus, a director may be defined as a person having control over the direction, conduct, management and superintendence of the affairs of the company. The directors of a company who are collectively know as the board of directors or simply a board, frame the general policy of the company, direct its affairs, appoint the officers of the company and ensure that they carry out their duties properly. As per Section 253 of the Act, a director of a company can only be a person and not an association or body corporate.

TYPES OF DIRECTORS

(a) Executive Director

Executive director or ED is a common post in many organizations, but the Companies Act does not define the phrase. Executive directors perform operational and strategic business functions such as managing peoples looking after assets hiring and firing entering into contracts Executive directors are usually employed by the company and paid a salary, so are protected by employment law.

(i) 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: [Provided that the power to do administrative acts of a routine nature when so authorized by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to dire registration of transfer of any share, shall not be deemed to be included within substantial powers of management. Provided further that a managing director of a company shall exercise his powers subject to the superintendence, control and direction of its Board of directors;]

(ii) Whole time Director

According to Explanation to Section 269(1), a ―Whole-time Director‖ includes a director in the whole-time employment of the company‖. Thus, a whole-time director‖ means a director who devotes all his time and attention to the management of the company. Where a director is appointed to act as Technical Director, Legal Director, Work Director and Sales Director on full time basis he is a whole-time director of the company. A whole-time director is also a managerial person [See Section 268(1)].

(b) Non-executive Director

Non-executive directors do not get involved in the day-to-day running of the business. Non-executive Director may or may not be an independent director.

(c) Nominee Directors

Nominee directors are appointed by financial institutions or banks, which extend term loans and/or working capital assistance or any other type of financial assistance to companies. Nominee directors are a powerful tool of project supervision, monitoring and control, particularly following the issue of Government guidelines enjoining financial institutions to nominate directors on the boards of companies enjoying substantial assistance.

(d) Independent Directors

In Clause 49 of the listing agreement, the term ―Independent Directors‖ has been defined as under:_Independent director' shall mean non-executive director of the company who

(a) apart from receiving director's remuneration, does not have any material pecuniary relationships or transactions with the company, its promoters, its directors, its senior management or its holding company, its subsidiaries and associates which may affect independence of the director;

(b) is not related to promoters or persons occupying management positions at the board level or at one level below the board;

(c) has not been an executive of the company in the immediately preceding three financial years;

(d) is not a partner or an executive or was not partner or an executive during the preceding three years, of any of the following:

(i) the statutory audit firm or the internal audit firm that is associated with the company, and

(ii) the legal firm(s) and consulting firms(s) that have a material association with the company.

(e) is not a material supplier, service provider or customer or a lessor or lessee of the company, which may affect independence of the director.

(f) is not a substantial shareholder of the company i.e. owning two percent or more of the block of voting shares.

(g) Is not less than 21 years of age. For the purposes of above definition of independent directors:

(a) Associate shall mean a company, which is an ―associate‖ as defined in Accounting Standard (AS) 23, ―Accounting for Investments in Associates in Consolidated Financial Statements‖, issued by the institute of Chartered Accountants of India.

(b) "Senior management" shall mean personnel of the company who are members of its core management team excluding Board of Directors. Normally, this would comprise all members of management one level the executive directors, including all functional heads.

(c) "Relative" shall mean ―relative‖ as defined in section 2(41) and section 6 read with Schedule IA of the Companies Act, 1956. As per clause 49 of the Listing Agreement which deals with good Corporate

Governance Practices, every company, to which this clause applicables shall have an optimum combination of executive and non-executive directors with not less than fifty percent of the Board of directors comprise of non-executive directors. The number of independent directors would depend whether the Chairman is executive or non-executive. In case of a non-executive

Chairman, at least one-third of Board should comprise of independent directors and in case of an executive Chairman, at least half of Board should comprise of independent directors. Further where the nonexecutive Chairman is a promoter of the company or is related to any promoter or person occupying management positions and the Board level or at one level below the Board, at least one-half of the Board of the company shall consist of independent director.

Further, all pecuniary relationship or transactions of the non-executive directors vis-à-vis the company should be disclosed in the Annual Report.

(e) Interested Directors

―Interested Director‖ means any director whose presence cannot, by reason of Section 300, count for the purpose of forming a quorum at a meeting of the Board, at the time of the discussion or vote on any matter.

(f) Government Directors

The Central Government has the power to appoint directors under Section 408 of the Act. The detailed provisions in this regard have been discussed later in this study lesson.

LEGAL POSITION OF DIRECTORS

It is very difficult to define the position of directors. Section 2(13) of the Companies Act, 1956 defines a director as _director includes any person occupying the position of director, by whatever name called‘. Section 252 of the Act makes it obligatory on every public company to have at least three directors and on every other company to have at least two directors.

The true position of company directors is that of agent and apart from the provisions of the various corporate laws, which bind them, confer certain rights upon, impose certain obligations on them and make them liable for defaults for violations thereof. Their real relationship with the company is governed by the arrangement of agency as governed by the Contract Act.

This position was established long back in Ferguson v. Wilson (1966) L.R. 2 Ch., wherein it was held that wherever an agent is liable those directors would be liable; where the liability would attach to the principal and principal only, the liability is the liability of the company‖. In the aforesaid case, F applied for, and by resolution of the Board was allotted certain shares in a railway company. However, the company was unable to place F on the register of members as the holder of shares in the company. F sued W, a director of the company,

claiming inter alia that W should transfer some of his own shares to F and pay damages. Held F's claim failed on the ground that the directors of a company acting in the normal course of their duties are agents for their company and incur no personal liability.

In Re. Desiraju Venkata Krishna Sharma, AIR 1955 A.P. 26, it was held that directors being agents of the company, there could be no personal liability or obligation on them to pay the taxes payable by the company.

Section 179 of the Income Tax Act, 1961, imposes personal liability for tax arrears upon every director of a private company who cannot prove that the default was not due to his neglect, misfeasance or breach of duty. Personal liability of the directors might arise where they contract in their own name or fail to exclude personal liability, they will also be personally liable if they contract on behalf of the company without using the word ―Limited‖ or the words ―Private Limited‖ as part of the name. It is in the interest of the directors to make clear, while signing on behalf of the company that they are signing as agents.

It is important to remember that it is the Board of directors as a collective body that is the agent of the company and so if the Board acts as agent that binds the company, a single director will have no authority to bind the company, unless such powers are, specifically delegated to him by the Board of directors. If the directors exceed their powers, that is to say, if the contract made by them is ultra vires their powers, themselves, then such contract, if made with a member of the company is only voidable; and if made with an outsider who had no notice of the want of authority, binds the company but the company may claim damages for breach of implied warranty or authority [Elkington and Co. v. Hunder (1892) 2 Ch. 452]. The company may, however, ratify an act, ultra vires the directors, by a resolution at a general meeting.

To some extent, directors are also trustees for the properties of the company and of the rights which are conferred on them by law and conventions. ―A trustee is person who is the owner of the property, deals with it as principal, as owner and a master, subject only to an equitable obligation to account to some person to whom he stands in relation of trustee‖ [Smith v. Anderson (1880) 15 Ch. D. 247]. Directors stand in fiduciary position towards the company in regard to the powers conferred on them by the Companies Act and by the articles of the company and also with regard to the funds of the company, which are under their control.

In Re. Land Allotment Co (1894) 1Ch. 616 Lord Lindley observed: ―Although directors are not properly speaking trustees, yet they have always been considered and treated as trustees of money which comes to their hands or which is actually under their control; and ever since joint stock companies were invented directors have been held liable to make good, moneys which they have misapplied upon the same footing as if they were trustees.‖

Barring directors in the whole-time employment of the company, like the managing director, executive director, technical director, etc., directors are not in the employment of the company and they are not entitled to any remuneration beyond what is allowed to them by the Act, i.e. fee for attending meetings of the Board and its committees. They are also not required to hold any shares in the companies on whose Board they are appointed where the articles of the company do not provide for any share qualifications for their directors.

Section 314 of the Companies Act permits a director to hold an employment in the company, or what is called an office or place of profit in the company, in addition to his usual directorship. In such an event the director shall enjoy all the rights, privileges and benefits which are available to other employees of the company. But his rights as a director being separate from those of an employee, he will not be entitled to claim priority for his fees as a director under Section 530 of the Act in the event of winding up of the company.

As regards the position of directors as trustees, the directors are persons selected to manage the affairs of the company for the benefit of the shareholders. It is an office of trust which if they undertake, it is their duty to perform fully and entirely. A resolution by the shareholders that shares or any other property of the company shall be at the disposal of the director, binds them and they must deal with it within the scope of the functions delegated to them and in the manner that suited to benefit the shareholders. The trusteeship of directors extends not merely to the property of the company, but also to the moneys of the company, trade secrets and other items of intellectual property, the existence or particulars of which may be within the personal knowledge of the directors [Baket v. Citibbons, (1972) WCR 693]. It, must, however, be noted that directors are not trustees for the company in the strict legal sense as they manage the property of the company which is not vested in them. Whereas the property of a trust is vested in its trustees and they manage the same.

To sum up, directors are trustees of the moneys of the company, but not of the debts due to the company. They are trustees also in respect of powers of the company that are conferred upon them, e.g. powers of: (a) issuing and allotting shares, (b) approving transfers of shares; (c) making calls on shares; and (d) forfeiting shares for non-payment of calls. They must exercise these powers solely for the benefit of the company. Since, however, they are not trustees for the company in the legal sense as afore said, the rules of law which apply in case of such trustees do not in all respects apply to them. They may, accordingly, avail themselves of the provisions of the Limitation Act or the Companies Act, as the case may be, for escaping any liability that may be sought to be enforced against them. However, it must be remembered that directors are trustees for the company and not for the individual shareholders.

APPOINTMENT QF DIRECTOR: -

The directors of the company may be appointed in the following ways:

1) By the promoters of the company
2) By the subscribers to the memorandum of association of the company
3) By the shareholders in a general meeting.
4) By the board of directors
5) By the Central Government
6) By the Principle of proportional representation
7) By third parties

1) **By the promoters of the Company: -**

At the time of company formation, the promoters generally name the first directors of company. The promoters select prominent persons to act as the first directors, and mention their names in the articles of the company.

2) By the Subscribers to the Memorandum: -

Sometimes the articles of the company confer a right on the subscribers to the memorandum, to appoint the directors of the company. The subscribers to the memorandum shall be deemed to be the first directors of the company until the directors are appointed at the next general meeting.

3) By the Shareholder in a General Meeting: -

The first directors are appointed by the promoters or by the subscribers to the memorandum. The subsequent directors are elected by the shareholders at the general meeting.

4) By the Board of Directors: -

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

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

b) **In a casual Vacancy (Sec. 262):** -In case, the office of the director appointed by the shareholders has fallen vacant before his term of office expires, the vacancy may be filled up by the board of directors, provided the articles of the company permit such a procedure. A casual vacancy may arise due to reasons such as death, resignation, disqualification, or failure of an elected director to accept the office or due to any other reason.

c) **As An Alternate Directors (Sec. 313):** -The board of directors can appoint the alternative director. This alternative director has to act for the original director during his absence for a period of more than three months. The alternate director can continue as director only for the period for which the original was eligible. Further, on the return of the original director, the alternate director must vacate the office of directorship.

5) By the Central Government (Sec. 408)

The Central Government may appoint the Board of directors when the Company Law Board decides that it is necessary to safeguard the interests of the company or its share holders or the public if: -

a) not less than 100 members of the company apply to the Company Law Board to make such an appointment, or

b) members holding not less than one-tenth of the total voting power make an application to the Company Law Board for making such an appointment, or

c) on its own initiative.

They are appointed for a maximum period of three years. They are not required to hold qualification shares and are not liable to retire by rotation, but they may be removed by the Central Government at any time and other persons may be appointed by it in their place.

6) By Third Parties: -

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

7) By Proportional Representation:-

Normally directors are appointed on the basis of election in the Annual general meeting. But section 265 of the Act allows a public company or a private company which is the subsidiary of a public company to provide in its articles for the appointment of not less than two-thirds of the total number of directors by the principle of proportional representation. If the company decides to appoint directors under this method, the directors must be appointed for a period of three years at a time.

SHARE QUALIFICA TION OF DIRECTOR:

The Act does not prescribe any share qualification for directors. However 66 of table 'A' provides that the qualification of a director shall be holding of one share of the company. The articles of every company usually require that a person elected as a director must have a specified number of shares to be eligible for appointment as director. Such qualification is called share qualification. The prospectus of the company must state the number of qualification shares to be held by a director according to its articles.

Where the share qualification is fixed by the articles, Section 270 of the Act provides that:-

a) It must be disclosed in the prospectus
b) Qualification share must be acquired by the person ejected as a director within two months of his appointment unless he already holds the required number of shares
c) Nominal value of qualification share should not exceed Rs.5,000/-
d) Only the share included in the share certificate in his name are counted as qualification share

If a director fails to acquire qualification shares within two months after his appointment, he vacates office automatically soon after the prescribed period of two months from the date of his appointment. If he acts as director after the expiry of two months without qualification shares, he is liable to fine of up to Rs.500/- for everyday during which he continues as a director. The above provisions is respect of the share qualification of a person to be elected as director do not apply to a private company.

DISQUALIFICATION OF A DIRECTOR:

As per Section 274 of the Act, the following persons are not eligible for being appointed as directors of any company.

a) A person found by the court to be of unsound mind.
b) An undischarged insolvent
c) A person who has applied to be adjudged an insolvent
d) A person who has been convicted of an offence involving moral turpitude an sentenced to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence.
e) A person who has failed to pay calls for six months from the date when the calls fell due.
f) A person who has been disqualified by an order of the court to act as director of a company on the ground of fraud or misfeasance in connection with another company.

DIRECTOR IDENTIFICATION NUMBER (DIN)

The concept of a Director Identification Number (DIN) has been introduced for the first time with the insertion of Sections 266A to 266G of Companies (Amendment) Act, 2006. As such, all the existing and intending Directors have to obtain DIN within the prescribed time-frame as notified.

Director Identification Number (DIN) is an unique Identification Number allotted to an individual who is an existing director of a company or intends to be appointed as director of a company pursuant to section 266A & 266B of the Companies Act, 1956

Step by step Process

Step by step process to be followed by the applicant is as under:

As per the revised procedure for DIN Allotment, any person intending to apply for DIN shall have to make an application in eForm DIN 1 and should follow the procedure as provided in Director Identification Number Rules, 2006

Documents required to be attached with DIN 1

High resolution photograph of the applicant

PAN is mandatory now. So copy of pan is mandatory for identity, name, father‘s name and date of birth. Proof of father‘s name is not required in the case of foreign nationals

Copy of passport is mandatory as an id proof in the case of foreign nationals.

Present Address proof which should not be older than 2 months

Annexure – 1 as per the format given on the website www.mca.gov.in i.e. verification of applicant in case of Form DIN – 1.

For DIN1 eForm, only electronic payment of the fees shall be allowed (I.e. Netbanking/Credit Card). No challan payment will be accepted under revised procedure of DIN allotment.

In case, DIN 1 gets certified by the professional (i.e. CA(in whole time practice)/ CS(in whole time practice)/ CWA (in whole time practice)/secretary (who is member of ICSI) in whole time employment of the existing company in which applicant is to be associated), the DIN will be approved by the system immediately online (in case it is not potential duplicate).

On approval of DIN, intimate your DIN to all the company (ies) (within a period of 30 days from the date of approval) in which you are a Director, in form DIN-2. After the Director has intimated the DIN allotted to the company(ies). The Company(ies) is/are then required to intimate the DINs of its directors to the ROC in Form DIN-3 within a period of seven days of receiving form DIN-2.(Filing of DIN-3 is applicable only in cases, where the date of appointment of director(s) in such company(ies), is prior to September 1 , 2007)

If there is any change in the particulars submitted in form DIN-1, applicant can submit e-form DIN-4 online. The e-Form DIN-4 is required to be digitally signed by a Chartered Accountant or

a Company Secretary or a Cost Accountant in whole- time practice or Secretary (who is member of ICSI) in whole time employment of the existing company.

POWERS OF DIRECTORS ,

The powers of the board are subject to the provisions of the Companies Act and the memorandum and articles of association of the company. It is only the board which can exercise powers conferred on it but not as a director of a company, in his individual capacity.

The board of director has the power to control the work of officers of the company such as the managing director, manager, secretary etc., and the shareholders cannot interfere in the management of the company. The directors have the powers to manage the affairs of the company and they also have a right to recommend the payment of dividend.

The board must not commit any act which is against the provisions of the companies act, memorandum and articles of association or powers given to the board by the shareholders.

Powers, which can be Exercised by the Board:

The directors have specific powers which can be exercised by them only by a resolution at a board meeting. They are: -

1. The powers to make calls, to issue debentures, to forfeit shares, to borrow other wise than on debentures, to invest funds of the company, to make loans, etc.
2. The power to appoint a secretary I a manager etc
3. The power to fill up a causal vacancy in the office of directors subject to regulations in the articles
4. The power to fill up a causal vacancy in the office of an auditor
5. The power to appoint the managing director of the company if he is already the managing director of another company
6. The power to appoint alternate directors if so authorized by the articles
7. The power to enter into a contract on behalf of the company with other parties
8. The power to make a contribution to the National Defence fund without any limit

DUTIES OF DIRECTORS: -

The duties of directors may be classified in to two broad categories. They are statutory duties

- Genera! Duties
- Statutory Duties:

Statutory duties of directors refer to all those duties which the directors are required to perform under the Companies Act. Some of the statutory duties of the directors of a company are as follows: -

1. To detem1ine the amount of minimum subscription
2. To see that all money received from applications for shares is deposited in a scheduled bank until it is returned to the applicants under Section 69 or until the Certificate to commence business is obtained
3. To prepare a statutory report and file a copy of it with the register
4. To forward a copy of the statutory report to every member of the company at least 21 days before the date on which the statutory meeting is held
5. To call an extraordinary general meeting of the company on the requisition of the specified number of members
6. To approve the balance sheet and profit and loss account before they are submitted to the auditors for their report.
7. To prepare and place at the annual general meeting an annual report of the of the company along with the balance sheet and profit and loss account
8. To pay dividends only out of divisible profit of the company
9. To exercise only such powers for which they are empowered by the company, by the memorandum and articles of association.
10. To manage the affairs of the company efficiently
11. To purchase and pay for qualification shares within the specified time

12. To see that the board meetings are held at least once in every three months and four times in a calendar year.

13. To disclose to .the company their interest, if any, in any contract entered into by the company

General Duties:-

The general duties of the directors refer to their duties under the general law. The general duties of the director of a company are:-

a) They must manage the affairs of the company efficiently.
b) They must act in good faith and in the interest of the company,
c) They must discharge their duties with reasonable care, skill and diligence.
d) They must use the company's property for the benefit of the company and not for their personal benefit.
e) They must not be negligent in the discharge of their duties.
f) They must attend all board meetings.

LIABILITIES OF DIRECTORS:

The liabilities of the directors of a company may be considered under the followings heads:

1. Liability to outsiders
2. Liability to the company
3. Liability to the shareholders
4. Criminal Liability

1) Liability to Outsiders:

The directors may incur personal liability to third parties in consequence of contracts made on company's behalf: -

a) If they enter Into a contract which is ultra vires the company
b) If they enter into a contract which is although within the powers of the company, is outside the scope of their own authority as defined in the articles
c) If they fail to sign a negotiable instrument without mentioning the company's name
d) If they act in their own name

e) If they have issued a prospectus which does not contain the particulars required by the Act

f) If they have made any mis-statement n the prospectus

g) If they are guilty of committing a fraud

h) If they have made irregular allotment in contravention of the provision of the Act

i) If their liability has been made unlimited in pursuance, of Section 322 and 323

j) If the court orders that the directors are personally liable for all the or any of the debts or liabilities of the company for fraudulent trading on the part of the company

2) Liability to Company:

The directors are liable to the company in the following circumstances.

a) If they are negligent in the performance of their duties

b) If they commit an act which is ultra vires their powers or why they pay dividend out of the capital

c) If they commit any illegal act

d) If they commit any breach of trust or misfeasance

3) Liability to Shareholders:

The position of directors in respect of the property of the company is that of a trustee. If they commit any breach of trust and if as result of that, the company suffers loss, they have to make good that loss. Further, if the directors are negligent and fail to use reasonable care and skill and because of this, the shareholders suffer a loss, they have a right to claim damages from the directors.

4) Criminal Liability:

Directors may also incur criminal liability under the companies Act. For example, directors may be awarded two years imprisonment and a fine of Rs.5,000/- for the filing of prospectus containing, false statement. Similarly, criminal proceeding against directors may be instituted for fraudulently obtaining credit for the company, for acting as a director after removal by court,

for failure to supply information to auditor of the company, for improper issue of shares, for failure to lay the balance sheet before: the annual general meeting, for concealing the name of creditors and so on.

ACTUAL POSITION OF DIRECTORS:

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

Directors as Agents

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

As agents, they must act in the interest of the company ad must not abuse their position. The directors, as agents, are also liable to be indemnified for negligent actions falling within the scope of their authority.

Directors as trustees:

Directors have been described as trustees of their company. As trustees of the company, the directors must take reasonable care to protect the assets of the company. They must act in good faith and cannot make any secret profit for themselves out of the transactions of the company: The directors should never misapply the funds of the company and commit and breach of its by-laws. For any breach of by-laws, the directors, are liable for breach of trust. For example if the directors misapply the funds of the company, in paying dividends out of the capital, they are required to refund the amount to the company along with interest. The directors

must act with the utmost good faith in matters such as allotment of shares and debentures, transfer and transmission of shares and debentures, calls and forfeiture of shares, employing funds of the company.

Directors as Managing Partners:

As the directors are entrusted with the management of the affairs of the company by the shareholders, they are described as the managing partners of the company. They frame the general policy of the company, and also direct and manage its affairs. They also authorized to appoint the company's officers and advise the shareholders regarding the distribution of profits.

VACATION OF OFFICE BY DIRECTOR

Under Section 283 of the Act, the director of a company shall vacate his office under the following circumstances.

1. When he fails to acquire qualification shares within two months of his appointment or ceases to hold qualification shares
2. When he is found to be unsound mind by a competent court
3. When he is declared insolvent by a court
4. When he applies to the court to be adjudged insolvent
5. When he is convicted and sentenced to imprisonment for not less than six months
6. When he fails to pay calls for a period of six months from the date when it fell due unless he is exempted by the central government
7. When he absents himself from three consecutive meetings of the board 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
8. When he accepts a loan from the company either as an individual or as a partner of a firm or as a director of a private company without the approval of the Central Government
9. When he does not disclose the nature of his interest in any contract at the board meeting
10. When he is disqualified by the court

11. When he is removed by the court before the expiry of his period of office

12. When the period for which he was appointed has expired

13. When he holds an office of profit in the company

If a director continues to act as director of the company even after knowing of his disqualification for any of the reasons stated above he is punishable with a fine of up to Rs.500 for each day on which he acts as a directors. These provisions are applicable to public as well as private companies.

RETIREMENT OF DIRECTORS

Unless the articles of the company provide otherwise, in the case of public company and its subsidiary, two-thirds of the directors must retire by rotation at the annual general meeting. The remaining one-third of the total number of directors can act as non-retiring directors. The retiring directors, however, are eligible for re-election unless the articles provide otherwise. In any case, only one-third of the retiring directors shall retire from office at every general meeting of shareholders. For example, if the company has nine directors, at least two-thirds of them, i.e., six directors are liable to retire by rotation (out of this six, two in every year) and the remaining one-third i.e. there directors are non-retiring directors who holds office either for the whole or for such periods as mentioned in the articles.

If the company decides not to fill up the vacancy, caused by the retiring director it must pass a resolution to that effect in the same meeting. If, However, no decision regarding the filling up of the vacancy is taken, even at the adjourned meeting, the retiring director shall be deemed to have been reappointed at the adjourned meeting unless:

a) Resolution for re-appointing him at the above meeting has been put forward and lost

b) The retiring director has expressed his inability to continue as a director

c) He is disqualified for reappointment

RESIGNATION BY A DIRECTOR

A director may resign his office .at any time in the manner provided by the articles of the company, he may resign at any time by giving a written notice to the company, and the resignation will be effective from the date of the notice to the company, irrespective of the fact whether the company has accepted his resignation or not. A resignation once submitted cannot be withdrawn except with the consent of the company;

REMOVAL OF DIRECTORS

A director may be removed before the expiry of his term of appointment by

a) Shareholder
b) The Central Government
c) The Court

Removal by Shareholders

Section 284 of the Act provides for the removal of directors by the company before the expiry of their term of office. The procedure laid down is: -

1. A special notice of 14 days is required to be given to the company to move an ordinary resolution to remove the director and to appoint another director in his place
2. On receipt of notice, the company must inform all the members of the proposed resolution. It must also send a copy of the notice to the director proposed to be removed
3. If the director concerned wishes to make a representation he may send it to the company and the company in turn sends copies of the representation to the members, together within the notice of a meeting
4. If the representation is not received by the company within a reasonable time, the representation may be read out at the at the meeting. Further, the director concerned can speak at the meeting against his removal
5. At the meeting, two ordinary resolutions will have to be passed one resolution for the removal of the director and another resolution for the filling up the vacancy. The new director will hold office till the date his predecessor would have held it.

Removal by the Central Government

Under Section 388 of the Act, the Central Government may order the removal of a director if an adverse finding has been made by the Company Law Board against him, after making an enquiry into cases such as fraud, misfeasance, persistent negligence, default in carrying out his obligations or managing the business in such a way as to cause damage to the business or defraud its creditors or prejudice public interest.

Removal by the Company Law Board:

The Company Law Board on receiving application for prevention of oppression of mismanagement may enquire into the matter and on enquiry, if it finds that relief ought to be granted, it may by an order, remove the director in question.

MANAGING DIRECTOR:

The Directors of the company do not attend the office of the company every day and hence they appoint a person amongst the directors for the purpose of carrying out their policy decision taken at the board meeting. This person is called a managing director or whole time director as he is entrusted with substantial powers of management of the company.

The companies Act Defines a managing director Sec.267 as "a director who by virtue of an agreement with the company or of a resolution passed by the company in the general meeting or by the board of directors, or by virtue of its memorandum or articles of association, is entrusted with substantial powers of management which would not otherwise be exercisable by him, and includes director occupying the position of Managing Director by whatever name called".

Appointment of Managing Director: -

A managing director may be appointed: -

a) By an agreement with the company, or

b) By a resolution of company in a general meeting or

c) By the board of directors, or

d) Under a memorandum, or

e) Under the articles of the company

Restrictions on Managing Director's Appointment and Re-appointment:

1. The approval of the Central Government is required for the appointment or re- appointment of a managing director
2. The sanction of the Central Government is required for any change in the managing director's agreement in the provisions of the memorandum or articles relating to his appointment or re-appointment
3. A person cannot be appointed as a managing director for a term exceeding five years at a time
4. A person cannot be appointed as a managing director of more than two public companies at a time
5. The rule regarding the retirement of directors by rotation is not applicable to the managing directors. Therefore, he may be called a non-retiring director so long as he acting as a managing director
6. No person can be appointed as a managing director who is an undischarged insolvent or who suspends or has at any time suspended payment to his creditors, or has at any time been convicted by a court of an offence involving moral turpitude.
7. The managing director works in two capacities, one as a director and another as a manager of the company. The duties assigned to him should be such as to involve the exercise of substantial powers of management.
8. The managing director enters into an agreement with the company. The agreement provides his terms and conditions of service, powers, duties, etc.
9. As a managing director is also one of the directors of the company other provisions of the Act relating to directors will also be applicable to the managing director.
10. If a company has a managing director, it cannot have a manager.
11. Appointment should be as per the conditions laid down in schedule XIII which has been introduced by the Amendment Act of 1988

Distinction between a Director and Managing Director:

The main points of distinction between a director and managing director are as follows:

1. The directors take responsibility for framing the policy of the company whereas the managing director takes responsibility for implementing it.
2. The directors do not take part in the day-to-day affairs of management of the company, whereas the managing director actually takes part in the daily management of the company.
3. The directors are appointed by the shareholders of the company at the general meeting, whereas the managing director's is appointed by the directors at the board meeting.
4. The maximum number of companies for which a person can act as director at a time is 15, whereas the maximum number in the case of a managing director is only two.
5. For all companies, public and private, the appointment of directors is compulsory, whereas the appointment of a managing director is not compulsory.
6. The directors are appointed for a period not exceeding three years at a time while the managing director is appointed for a period not exceeding five years at a time
7. The directors are subject to retirement by rotation whereas the managing director is exempted from this provision.
8. The directors are considered as agents of the shareholders of the company, whereas, the managing director is considered as an agent of the board of directors
9. The directors do not hold any office of profit but only receive honorarium for attending meeting, but the managing director holds a regular office of profit and receives a regular salary.
10. Directors do not enter into any agreement with the company regarding their powers, duties etc., whereas the managing director enters into an agreement with the company which provides for the terms and conditions of service, his powers, duties etc.
11. The directors cannot exercise their powers individually but only collectively i.e., through the board meeting. But the managing director when entrusted with special powers of management by the board can act individual

Distinction between a whole-time Director and Managing Director:

According to the explanation given in the Amendment Act 1974, Whole-time director includes "a director in the whole time employment of the company". For example, if a director is appointed as "controller of finance accounts' of the company, he becomes a whole- time director. Thus, the Act itself makes a distinction between a managing director and a whole- time director. They differ from each other in the following respects:

1. A managing director is entrusted with substantial powers of management whereas a whole-time director is just an employee of the company and does not enjoy substantial powers of management.
2. The appointment of a managing director does not require the consent of the shareholders whereas the appointment of a whole time director requires the sanction of shareholders by means of a special resolution.
3. A company cannot appoint a managing director and manager simultaneously, but it can appoint a whole time director along with a managing director or a manager.
4. A managing director can act as such in two-companies, at the same time, but a whole- time director cannot act as a whole-time director in more than one company
5. A managing director can be appointed for a maximum period of five years at a time, whereas there is no such restriction in the case of whole-time director.

MANAGER

Definition:

Section 2(24) of the Act States that manager means "an individual, who subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole of the affairs of the company includes a director or any other person occupying the position of a manager by whatever name called whether under a contract of service or not".

A manager can only be an individual and not a firm or a body corporate. To be deemed the manager of a company, the individual must be in charge of the whole business of the company

E.g., general manager. A mere head of a department or a branch manager would not be a manager. A director or any other person occupying the position of a manager is also called manager even though he may be called by any name. Thus, a person who is not a director may also be appointed as a manager. A person can be the manager of only one company at a time.

A manager is appointed in the same manner as a managing director. He may be appointed for a period of not more than five years at a time, he is deemed to have vacated his office after the expiry of the period. He may be delegated certain powers of management by the board and he works under its superintendence, control and direction.

Distinction between a Manager and a Managing Director:

Though there are certain points of similarity between the manager and the managing director (viz., both must be individuals, both are appointed for a period of five years at a time and both cannot act for more than two companies at a time), there are certain points of distinction between the two. They are:

1. A manager may be a director or may not be a director of the company but a managing director must be a director of the company.
2. A manager is entrusted with management of the whole or a substantial part of the affairs of the company, while a managing director has substantial powers of management and need not necessarily be in charge of the entire management
3. A manager functions under the control and direction of the board, while a managing director functions under the control and supervision of the board
4. A manager is appointed by the board of directors, while a managing director is appointed by the company is general meeting or by the board of directors or by the articles of the company.
5. A manager is only an employee of the company and cannot be a member of the board whereas, .a managing director is a member of the board and can participate in board meetings.

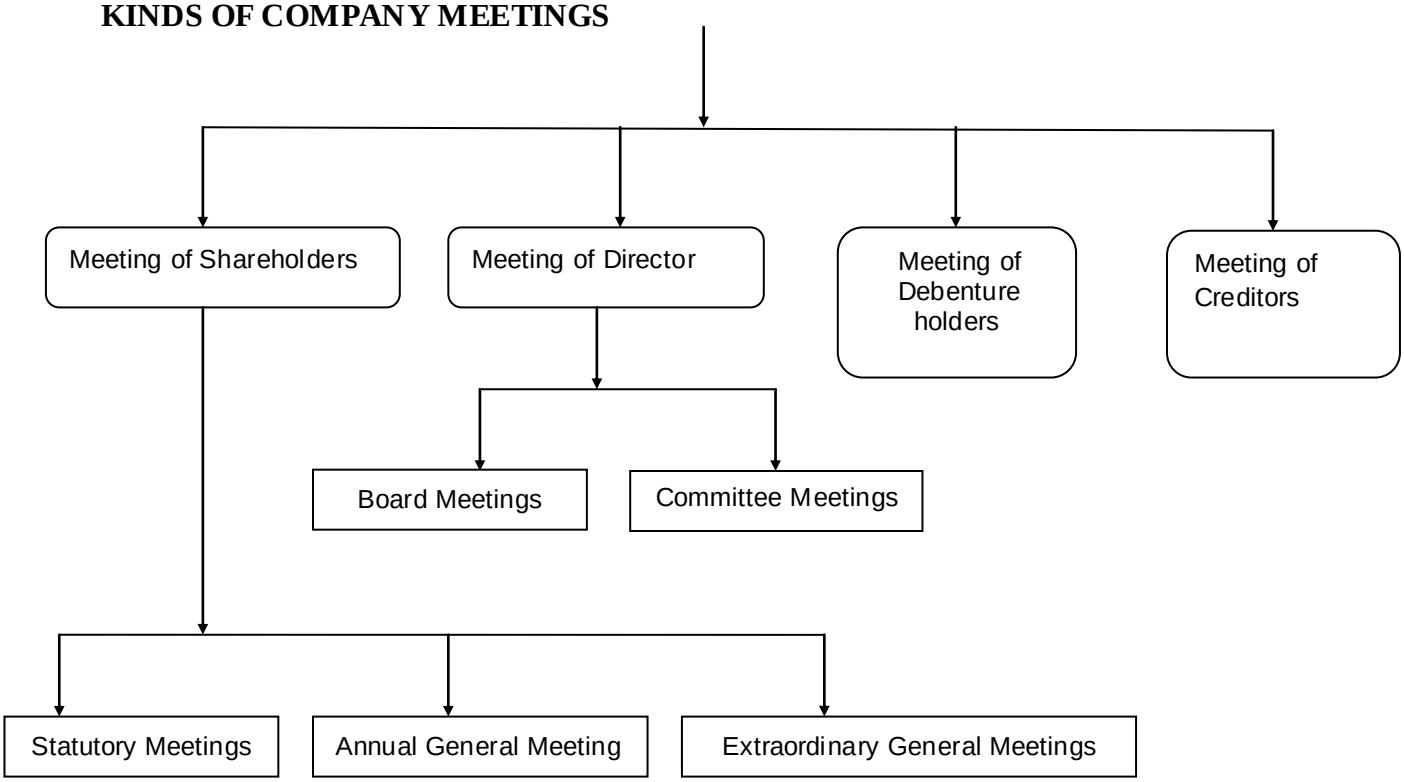
6. The remuneration of manager must not exceed 5% of the net profits while the remuneration of a managing director must not exceed 5% of the net profits if there is one managing director or where there is another such director, 10% altogether

COMPANY MEETINGS

MEETINGS

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

KINDS OF COMPANY MEETINGS



KINDS OF COMPANY MEETINGS

I. Meeting of Shareholders

- Statutory Meeting
- Annual General Meeting
- Extraordinary General Meeting

II. Board of Directors Meeting

- Board Meetings
- Committee Meetings

III. Meeting of Debenture holders

IV. Meeting of Creditors

I. Share holder Meeting

Statutory Meeting

The first meeting of the shareholders of a public limited company which is mandatory as per the Companies Act is known as Statutory Meeting. This type of business is conducted only once in the life time of the company. Every public limited company either limited by guarantee or shares must compulsorily convene the statutory meeting within six months from the date the company was entitled to commence the business. The Meeting was informed by the chairman that the Statutory meeting of the company under Section 165 of the Companies Act, 1956 has to be convened. The Draft of the statutory report as placed before the meeting was passed. In this connection the following resolutions were passed. "RESOLVED FURTHER that the Statutory meeting of the shareholders of the company be convened on .....th day of ..... 2010 at ..... at the registered office of the company at 4:30 hours." "RESOLVED FURTHER that Mr. ....., director be and is hereby authorized to issue notice calling the statutory meeting of the shareholders of the company and circulate the statutory report along with the notice of the meeting to all the shareholders of the company and deliver a certified copy of the statutory report to the Registrar forthwith after sending copies thereof to the shareholders of the company for registration." Wait for other members reply.

]Annual General Meeting

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

Extraordinary General Meeting

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

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

Statutory Meeting

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

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

report called Statutory report is to be prepared and circulated to members atleast 21days before the date of the meeting.

Procedure for conducting Statutory meeting and preparing statutory report of company

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

(2) The Board of directors shall, at least twenty-one days before the day on which the meeting is held, forward a report (in this Act referred to as " the statutory report ") to every member of the company :

Provided that if the statutory report is forwarded later than is required above, it shall, notwithstanding that fact, be deemed to have been duly forwarded if it is so agreed to by all the members entitled to attend and vote at the meeting.

(3) The statutory report shall be certified as correct by, not less than two directors of the company one of whom shall be a managing director, where there is one. After the statutory report has been certified as aforesaid, the auditors of the company shall, in so far as the report relates to the shares allotted by the company, the cash received in respect of such shares and the receipts and payments of the company certify it as correct.

(4) The Board shall cause a copy of the statutory report certified as is required by section 165 to be delivered to the Registrar for registration forthwith, after copies thereof have been sent to the members of the company.

(5) The Board shall cause a list showing the names, addresses and occupations of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the statutory meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(6) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not; but no resolution may be passed of which notice has not been given in accordance with the provisions of this Act.

(7) The meeting may adjourn from time to time, and at any adjourned meeting, any resolution of which notice has been given in accordance with the provisions of this Act, whether before or

after the former meeting, may be passed ; and the adjourned meeting shall have the same powers as an original meeting.

(8) If default is made in complying with the provisions of the act, every director or other officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees.

Notice of the Meeting

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

Statutory Report

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

Contents of Statutory Report

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

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

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

(d) The names, addresses and occupations of the directors of the company and of its auditors ; and also, if there be any, of its manager, and secretary ; and the changes, if any, which have occurred in such names, addresses and occupations since the date of the incorporation of the company

(e) The particulars of any contract which, or the modification or the proposed modification of which, is to be submitted to the meeting for its approval, together in the latter case with the particulars of the modification or proposed modification

(f) The extent, if any, to which each underwriting contract, if any, has not been carried out, and the reasons thereof

(g) The arrears, if any, due on calls from every director and from the manager

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

Procedure at the Statutory Meeting

At the commencement of the meeting, the chairman will ask the secretary to read the notice of the meting. The Board should then place before the meeting a list showing the names, addresses and occupation of the members of the company and the number of shares held by them respectively. The list must remain open and accessible to any member during the continuance of the meeting [Sec. 165 (6)]. After the notice has been read, the chairman takes up the items of business according to the Agenda. He will request the members to take the Statutory Report, already circulated, as read. Thereafter he will address the meeting explaining the progress made by the company since its incorporation, the present position and the future prospects. After this he will invite discussions and questions pertaining to the Statutory Report and other related matters. After discussion of members he chairman proposes that the Statutory Report be approved. If there are any modifications in respect of any contracts, he will also propose that the modifications of contracts proposed in the Report be approved. Decisions about matters, of which previous notice has been given, are then taken by passing requisite resolutions. It may be noted that a matter for which no previous notice has been given can be discussed by the members but a resolution in respect of that cannot be passed.

If the members so consent, the statutory meeting may be adjourned. The chairman has no power to adjourn the Statutory meeting except with the consent of the meeting makes specific provisions regarding adjournment of statutory meeting. The sub – section provides that the

meeting may e adjourned from time to time and at any adjourned meeting, any resolution of which notice has been given in accordance with the provisions of this Act, before and after the former meeting, may be passed; and the adjourned meeting shall have the same powers as an original meeting.

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

Annual General Meeting

Meaning

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

Statutory Requirements :

- Must be held by every type of company, public or private, limited by shares or by guarantee, with or without share capital or unlimited company, once a year. Every company must in each year hold an annual general meeting. Not more than 15 months must elapse between two annual general meetings. However, a company may hold its first annual general meeting within 18 months from the date of its incorporation. In such a case, it need not hold any annual general meeting in the year of its incorporation as well as in the following year only.
- In the case there is any difficulty in holding any annual general meeting (except the first annual meeting), the Registrar may, for any special reasons shown, grant an extension of time for holding the meeting by a period not exceeding 3 months provided the application for the purpose is made before the due date of the annual general meeting. However, generally delay in the completion of the audit of the

annual accounts of the company is not treated as "special reason" for granting extension of time for holding its annual general meeting. Generally, in such circumstances, an AGM is convened and held at the proper time . all matters other than the accounts are discussed. All other resolutions are passed and the meeting is adjourned to a later date for discussing the final accounts of the company. However, the adjourned meeting must be held before the last day of holding the AGM.

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

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

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

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

Business to be transacted at Annual General Meeting:

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

The following matters constitute ordinary business at an AGM :-

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

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

meeting, the notice must also state that the document would be available for inspection at the Registered Office of the company during the specified dates and timings.

Boards Report or the Director's Report

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

(a) The state of company's affairs

(b) The amount, if any, which the Board proposes to carry to any reserves in the Balance Sheet

(c) The amount, if any, which the Board recommends should be paid by way of dividend

(d) Material changes and commitments, if any, affecting the financial position of the company which have been occurred between the end of the financial year of the company to which the Balance Sheet relates and the date of the report

(e) The conservation of energy, technology, absorption, foreign exchange earnings and outgo, in such manner as may be prescribed.

Extraordinary General Meeting

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

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

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

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

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

Authority to call Extraordinary General Meeting

1. **By the Directors**

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

2. **By the Directors on requisition**

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

3. **By the requisitionist themselves**

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

4. **By the Company Law Board**

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

Explanatory Statement

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

before it is actually issued.

BOARD OF DIRECTORS MEETING

Meaning

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

Definition

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

FREQUENCY OF BOARD MEETINGS

Meetings of the Board

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

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

Meetings of Committees

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

NOTICE OF THE MEETING

1. Notice in writing of every Meeting should be given to every Director by hand or by post or by facsimile or by e-mail or by any other electronic mode. Where a Director specifies a particular mode, the Notice should be given to him by such mode.
2. The Notice should specify the day, date, time and full address of the venue of the Meeting.

A Meeting may be held at any time, on any day, including a public holiday, and at any place.

3. The Notice of a Meeting should be given even when Meetings are held on pre-determined dates or at pre-determined intervals.

4. Unless the Articles prescribe a longer notice period, Notice should be given at least fifteen days before the date of the Meeting. Notice need not be given of an adjourned Meeting other than a Meeting that has been adjourned "sine die". However, Notice of the reconvened adjourned Meeting should be given to those Directors who did not attend the Meeting which had been adjourned.

5. No business should be transacted at a Meeting if Notice in accordance with this Standard has not been given.

6. The Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda should be given at least seven days before the date of the Meeting.

7. Each item of business should be supported by a note setting out the details of the proposal and, where approval by means of a Resolution is required, the draft of such Resolution should be set out in the note.

8. The Notice, Agenda and Notes on Agenda may be given at shorter periods of time than those respectively stated above, if the majority of members of the Board or of the Committee, as the case may be, agree. The proposal to hold the Meeting at a shorter notice should be stated in the Notice and the fact that consent thereto was obtained should be recorded in the Minutes.

Notice, Agenda and Notes on Agenda should be given to all Directors or to all members of the Committee, as the case may be, at the address provided by them, whether in India or abroad, and should also be given to the Original Director, even when the Notice, Agenda and Notes on Agenda have been given to the Alternate Director.

9. Any supplementary item not originally included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of the majority of the

Directors present in the Meeting. However, no supplementary item which is of significance or is in the nature of Unpublished price sensitive information should be taken up by the Board without prior written Notice.

The items of business to be transacted should be arranged in order of those items that are of a routine or general nature or which merely require to be noted by the Directors, and those items which require discussions and specific approval.

Besides the items of business that are required by the Act or any other applicable law to be

considered at a Meeting of the Board and all material items having a significant bearing on the operations of the company, there are certain items which, if applicable, should also be placed before the Board. An illustrative list of such items is given at **Annexure 'A'**.

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

Agenda of Board Meetings

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

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

1. To appoint the Chairman of the Meeting.
2. To note the Certificate of Incorporation of the company, issued by the Registrar of Companies.
3. To take note of the Memorandum and Articles of Association of the company, as registered.
4. To note the situation of the Registered Office of the company.
5. To confirm/note the appointment of the first Directors of the company.
6. To read and record the notices of disclosure of interest given by the Directors.
7. To consider the appointment of Additional Directors.
8. To consider the appointment of the Chairman of the Board.
9. To fix the financial year of the company.
10. To consider the appointment of the first Auditors.
11. To adopt the Common Seal of the company.

12. To appoint Bankers and to open bank accounts of the company.
13. To authorise printing of share certificates.
14. To authorise the issue of share certificates to the subscribers to the Memorandum and Articles of Association of the company.
15. To approve preliminary expenses and preliminary contracts.
16. To consider the appointment of the Managing Director/Whole time Director/Manager and Company Secretary, if applicable and other senior officers.

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

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

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

Quorum of Board Meetings

1. Quorum should be present throughout the Meeting. No business should be transacted when the Quorum is not so present. The Quorum for a Meeting of the Board should be one-third of the total strength of the Board (any fraction contained in that one-third being rounded off as one), or two Directors, whichever is higher. Where the requirements for the Quorum, as provided in the Articles, are stricter, the Quorum should conform to such requirements.

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

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

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

Attendance at Meetings

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

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

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

Validity of Act of Directors

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

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

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

Sec. 290 contains a very important provision regarding the validity of acts of directors. The Section provides that acts of a director shall be valid notwithstanding that it may afterwards be discovered that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision in the Act or in the articles of the company, but the acts done by such a director after his appointment has been shown to the company to be invalid or to have terminated shall not have any validity.

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

Committee of the Board

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

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

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

Proceedings of Board

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

Regn. 73 (1) The Board of directors may meet for the despatch of business, adjourn and

otherwise regulate its meeting, as it thinks fit.

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

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

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

Regn. 75

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

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

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

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

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

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

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

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

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

Company Meetings:When the members of a company gather at a certain time and place to discuss business affairs it is called company meetings. A company is an association of several persons. Decisions are made according to the view of the majority. Various matters have to be discussed and decided upon. These discussions take place at the various meetings which take place between members and between the directors. Needless to say, the importance of meetings cannot be under-emphasized in case of companies. The Companies Act, 1956 contains several provisions regarding meetings. These provisions have to be understood and followed. For a meeting, there must be at least 2 persons attending the meeting. One member cannot constitute a company meeting even if he holds proxies for other members.

D. Class Meeting:

Class meetings are meetings which are held by holders of a particular class of shares, e.g., preference shareholders. Such meetings are normally called when it is proposed to vary the rights of that particular class of shares. At such meetings, these members dicuss the pros and cons of the proposal and vote accordingly. (See provisions on variations of shareholder's rights). Class meetings are held to pass resolution which will bind only the members of the class concerned, and only members of that class can attend and vote.

Unless the articles of the company or a contract binding on the persons concerned otherwise provides, all provisions pertaining to calling of a general meeting and its conduct apply to class meetings in like manner as they apply with respect to general meetings of the company.

Meeting of Debenture holders:

A company issuing debentures may provide for the holding of meetings of the debentureholders. At such meetings, generally nmmatters pertaining to the variation in terms of security or to alteration of their rights are discussed. All matters connected with the holding, conduct and proceedings of the meetings of the debentureholders are normally specified in the Debenture Trust Deed. The decisions at the meeting made by the prescribed majority are valid and lawful and binding upon the minority.

B. Meeting of Creditors:

Sometimes, a company, either as a running concern or in the event of winding up, has to make certain arrangements with its creditors. Meetings of creditors may be called for this purpose. Eg U/s 393, a company may enter into arrangements with creditors with the sanction of the Court for reconstruction or any arrangement with its creditors. The court, on application, may order the holding of a creditors' s meeting. If the scheme of arrangement is agreed to by majority in number of holding debts to value of the three-fourth of the total value of the debts, the court may sanction the scheme. A certified copy of the court's order is then filed with the Registrar and it is binding on all the creditors and the company only after it is filed with Registrar.

Similarly, in case of winding up of a company, a meeting of creditors and of contributories is held to ascertain the total amount due by the company and also to appoint a liquidator to wind up the affairs of the company.

Kinds of Resolutions

Resolutions mean decisions taken at a meeting. A motion, with or without amendments is put to vote at a meeting. Once the motion is passed, it becomes a resolution. A valid resolution can be passed at a properly convened meeting with the required quorum. There are broadly three types of resolutions :-

1. **Ordinary Resolutions:** An ordinary resolution is one which can be passed by a simple majority. I.e. if the votes (including the casting vote, if any, of the chairman), at a general meeting cast by members entitled to vote in its favour are more than votes cast against it. Voting may be by way of a show of hands or by a poll provided 21 days notice has been given for the meeting.
2. **Special resolution:** A special resolution is one in regard to which is passed by a 75 % majority only i.e. the number of votes cast in favour of the resolution is at least three times the number of votes cast against it, either by a show of hands or on a poll in person or by proxy. The intention to propose a resolution as a special resolution must be specifically mentioned in the notice of the general meeting.

Special resolutions are needed to decide on important matters of the company. Examples where special resolutions are required are :-

a. To alter the domicile clause of the memorandum from one State to another or to alter the objects clause of the memorandum.
b. To alter / change the name of the company with the approval of the central government
c. To alter the articles of association
d. To change the name of the company by omitting "Limited" or "Private Limited". The Central Government may allow a company with charitable objects to do so by special resolution under section 25 of the Companies Act, 1956.

3. **Resolution requiring Special Notice:** There are certain matters specified in the Companies Act, 1956 which may be discussed at a general meeting only if a special notice is given regarding the proposal to discuss these matters at a meeting. A special notice enables the members to be prepared on the matter to be discussed and gives them time to indicate their views on the resolution. In case special notice of resolution is required by the Companies Act, 1956 or by the articles of a company, the intention to propose such a resolution must be notified to the company at least 14 days before the meeting. The company must within 7 days before the meeting give the notice of the proposed resolution to its members. Notice of the resolution is required to be given in the same way in which notice of a meeting is given, or if that is not practicable, the company may give notice by advertisement in a newspaper having an appropriate circulation or in any other manner allowed by the articles, not less 7 days before the meeting.

The following matters requiring Special Notice before they are discussed before tha meeting :-

a. To appoint at an annual general meeting appointing an auditor a person other than a retiring auditor.

b. To resolve at an annual general meeting that a retiring auditor shall not be reappointed.
c. To remove a director before the expiry of his period of office.
d. To appoint another director in place of removed director.
e. Where the articles of a company provide for the giving of a special notice for a resolution, in respect of any specified matter or matters.

Please note that a resolution requiring special notice may be passed either as an ordinary resolution (Simple majority) or as a special resolution (75 % majority).

Circulation of Members Resolution:

Generally, the Board of Directors prepare the agenda of the meeting to be sent to all members of the meeting. A member, by himself has very little say in deciding the agenda. However, there are provisions in the Companies Act which enable members to introduce motions at a meeting and give prior notice of their intention to do so to all other members of the company. If members having one twentieth of the total voting rights of all members having the right to vote on a resolution or if 100 members having the right to vote and holding paid-up capital of Rs1,00,000 or more, require the company to do so, the company must :-Give to the members entitled to receive notice of the next annual general meeting, notice of any resolution which may be properly moved and is intended to be moved at that meeting; and

1. Circulate to members entitled to have notice of any general meeting sent to them, any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution, or any business to be dealt with at that meeting.

The expenses for this purpose must be borne by the requisitionists and must be tendered to the company. The requisition, signed by all the requisitionists, must be deposited at the registered office of the company at least 6 weeks before the meeting in the case of resolution and not less than 2 weeks before the meeting in case of any other requisition together with a reasonable sum to meet the expenses. However, where a copy of the requisition requiring notice of resolution has

been deposited at the registered office of the company and an annual general meeting is called for a date six weeks or less after the requisition is deposited, the copy though not deposited within the prescribed time is deemed to have been properly deposited.

The company is required to serve the notice of resolution and/or the statement to the members as far as possible in the manner and so far as practicable at the same time as the notice of the meeting ; otherwise as soon as practicable thereafter.

However, a company need not circulate a statement if the Court, on the application either of the company or any other aggrieved person, is satisfied that the rights so conferred are being abused to secure needless publicity or for defamatory purposes. Secondly a banking company need not circulate such statement, if in the opinion of its Board of directors, the circulation will injure the interest of the company.

Registration of Resolutions and Agreements:

A copy of each of the following resolutions along with the explantory statement in case of a special business and agreements must, within 30 days after the passing or making thereof, be printed or typewritten and duly certified under the signature of an officer of the company and filed with the Registrar of Companies who shall record the same :-

1. All special resolutions
2. All resolutions which have been unanimously agreed to by all the members but which, if not so agreed, would not have been effective unless passed as special resolutions
3. All resolutions of the board of directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director
4. All resolutions or agreements which have been agreed to by all members of any class of members but which, if not so agreed, would not have been effective unless passed by a particular majority or in a particular manner and all resolutions or agreements which effectively bind all members of any class of shareholders though not agreed to by all of those members

5. All resolutions passed by a company conferring power upon its directors to sell or dispose of the whole or any part of the company's undertaking; or to borrow money beyond the limit of the paid-up share capital and free reserves of the company; or to contribute to charities beyond Rs50000 or 5 per cent of the average net profits
6. All resolutions approving the appointment of sole selling agents of the company
7. All copies of the terms and conditions of appointment of a sole selling agent or sole buying or purchasing agent
8. Resolutions for voluntary winding up of a company

AUDIT COMMITTEE

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

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

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

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

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

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

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

Composition of the Audit Committee

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

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

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

Meetings of the Committee

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

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

Functions of the Committee

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

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

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

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

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

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

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

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

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

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

1. oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible;

2. recommendation for appointment, remuneration and terms of appointment of auditors of the company;

3. approval of payment to statutory auditors for any other services rendered by the statutory auditors;

4. reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to:

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

(b) changes, if any, in accounting policies and practices and reasons for the same

(c) major accounting entries involving estimates based on the exercise of judgment by management

(d) significant adjustments made in the financial statements arising out of audit findings

(e) compliance with listing and other legal requirements relating to financial statements

(f) disclosure of any related party transactions

(g) qualifications in the draft audit report

5. reviewing, with the management, the quarterly financial statements before submission to the board for approval;

6. reviewing, with the management, the statement of uses / application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document / prospectus / notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and making appropriate recommendations to the Board to take up steps in this matter;

7. review and monitor the auditor's independence and performance, and effectiveness of audit process;

8. approval or any subsequent modification of transactions of the company with related parties;

9. scrutiny of inter-corporate loans and investments;

10. valuation of undertakings or assets of the company, wherever it is necessary;

11. evaluation of internal financial controls and risk management systems;

12. reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems;

13. reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit;

14. discussion with internal auditors of any significant findings and follow up there on;

15. reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board;

16. discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern;

17. to look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non-payment of declared dividends) and creditors;

18. to review the functioning of the Whistle Blower mechanism;

19. approval of appointment of CFO (i.e., the whole-time Finance Director or any other person heading the finance function or discharging that function) after assessing the qualifications, experience and background, etc. of the candidate;

20. carrying out any other function as is mentioned in the terms of reference of the Audit Committee.

Powers of the Audit Committee

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

1. The Audit Committee has the power to call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.

2. The Audit Committee has authority to investigate into any matter in relation to the items specified in terms of reference or referred to it by the Board and for this purpose the Committee has power to obtain professional advice from external sources. The Committee for this purpose shall have full access to information contained in the records of the company.

3. The auditors of a company and the key managerial personnel have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.

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

(i) investigate any activity within its terms of reference;

(ii) seek information from any employee;

(iii) obtain outside legal or other professional advice;

(iv) secure attendance of outsiders with relevant expertise, if it considers necessary.

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

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

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

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

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

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

NOMINATION AND REMUNERATION COMMITTEE

Applicability

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

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

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

(iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

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

Composition

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

The Chairperson of the Committee or, in his absence, any other member of the committee authorised by him in this behalf is required to attend the general meetings of the company. In contrast to this, the revised clause 49 provides that the Chairman of the Nomination and Remuneration Committee could be present at the Annual General Meeting, to answer the shareholders' queries. However, it would be up to the Chairman to decide who should answer the queries.

Functions:

Sub- sections (2), (3) and (4) of section 178 deal specifically with the functions of the Committee.

The Nomination and Remuneration Committee shall:

1. identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal. Further it has been attached with a wider responsibility of carrying out evaluation of every director's performance.

2. formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees. While formulating the policy, the Committee shall consider the following:

(a) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;

(b) relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and

(c) remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals.

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

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

The role of the Committee constituted by a listed company includes:

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

2. formulation of criteria for evaluation of Independent Directors and the Board;

3. devising a policy on Board diversity;

4. identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the Board their

appointment and removal. The company shall disclose the remuneration policy and the evaluation criteria in its Annual Report.

CORPORATE SOCIAL RESPONSIBILITY COMMITTEE

Applicability

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

(a) net worth of rupees five hundred crore or more, or;

(b) turnover of rupees one thousand crore or more or;

(c) a net profit of rupees five crore or more during any financial year to constitute a Corporate Social Responsibility (CSR) Committee of the Board.

Any financial year has been clarified as to imply any of the three preceding financial years.

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

Clarification

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

(i) any profit arising from any overseas branch or branches of the company whether operated as a separate company or otherwise; and

(ii) any dividend received from other in companies in India, which are covered under and complying with the provisions of section 135 of the Act.

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

(a) constitute a CSR Committee; and

(b) comply with the provisions contained in section 135, till such time it meets the criteria specified in sub section (1) of section 135

Composition

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

2014, however, relax this requirement as below:

1. an unlisted public company or a private company covered under sub-section (1) of section 135 which is not required to appoint an independent director, shall have its CSR Committee without such director.

2. a private company having only two directors on its Board shall constitute its CSR Committee with two such directors:

3. with respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of subsection

(1) of section 380 of the Act ,i.e. the person resident in India authorized to accept on behalf of the company, service of process and any notices or other documents and another person shall be nominated by the foreign company. The composition of the Corporate Social Responsibility Committee is required to be disclosed in the Board's report prepared under the Act.

Functions

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

(a) formulating and recommending to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;

(b) recommending the amount of expenditure to be incurred on the CSR activities.

(c) monitoring the Corporate Social Responsibility Policy of the company from time to time.

(d) Further the rules provide that the CSR Committee shall institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.

Important Aspects in relation to CSR Policy and CSR Committee

The Board of Directors of the company shall, after taking into account the recommendations of CSR Committee, approve the CSR Policy for the company and disclose contents of such policy in its report and the same shall be displayed on the company's website, if any.

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

(a) a list of CSR projects or programs which a company plans to undertake falling within the purview of the Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedules for the same; and

(b) Monitoring process of such projects or programs. It is to be noted that the CSR activities does not include the activities undertaken in pursuance of normal course of business of a company. The

Board of Directors shall ensure that activities included by a company in its CSR Policy are related to the activities included in

Schedule VII of the Act.

The CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company.

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

Board shall, in its report, specify the reasons for not spending the amount.

Enable | Enlighten | Enrich
(Deemed to be University)
(Under Section 3 of UGC Act 1956)

Karpagam Academy of Higher Education
(Deemed University Established Under Section 3 of UGC Act, 1956)
Coimbatore - 641 021.

UNIT – IV

Dividends, Accounts and Audits – Provision relating to payment of Dividend, Provision relating to book of accounts, provision relating to audit, Auditors Appointment, ion of Auditors, Auditors Report, Secretarial Audit.

DEFINITION AND MEANING OF DIVIDEND

Dividend is the return on the share capital subscribed for and paid to a company by its shareholders. The term dividend has been defined under Section 2(14A) of the Companies Act, 1956 (the Act) as "dividend includes any interim dividend." The dictionary meaning of the term „dividend" is sum payable as interest on loan or as profit of a company to the creditors of an insolvent"s estate or an individual"s share of it. In commercial term, however, dividend is the share of the company"s profit distributed among the members.

Types of Dividend

Final Dividend

Final dividend is recommended by the Board of directors in its report to the shareholders, as per the requirements of Section 217 of the Companies Act, which is attached to the balance sheet for the relevant financial year. It is declared by the shareholders at the annual general meeting. Usually articles of association of companies provide that the shareholders cannot increase the rate or amount of dividend than the one recommended by the Board. The shareholders may, however, declare the payment of dividend on equity shares at a rate lower than the one recommended by the directors in their report.

It is the discretion of the Board of directors to recommend or not to recommend the declaration of final dividend, which has to be exercised in good faith in the interest of the company. The shareholders have no power to declare final dividend in the absence of a recommendation of the

Board of directors in this regard.

Interim Dividend

Section 2(14A) defines 'Dividend' to include interim dividend. The Companies (Amendment) Act, 2000 has amended Section 205 to make provisions for interim dividend. The Board of directors may declare interim dividend. The interim dividend is paid between two annual general meetings of the company.

A company can normally estimate its profits for the current financial year on a fairly reasonable basis and in that event it can allocate to the reserves the prescribed percentage of profits on the basis of its estimated profits. As a measure of precaution, the company may allocate to the reserves a higher amount than the actual amount based on the prescribed percentage of its estimated profits.

Further, it should also provide for depreciation in full. It should transfer to the reserves an amount based on estimated profits after the end of the financial years and before the finalisation of the amounts for the financial year and thereafter decide to pay an interim dividend to its shareholders.

Prior to the coming into force of the Companies (Amendment) Act, 2000, the Act did not contain specific provisions for payment of interim dividend. However, if the articles of association of company authorised payment of interim dividend as per regulation 86 of the Table A of Schedule I, then the Board of directors of such company could declare an interim dividend where its profits warranted such payment. A mere resolution for declaration of an interim dividend did not create any liability and could be rescinded at any time before actual payment. This was so even if the cash to cover the proposed dividend had been placed into a separate account. The distinction between interim and final dividend was that, unlike interim dividend, a final dividend once declared by the company in general meeting was a debt and created an enforceable obligation. [Punjab National Bank v. Union of India (1986) 59
Comp Cases 35 (Del.)] With the enactment of the Companies (Amendment) Act, 2000, this position has changed. Interim dividend stands on the same footing as that of the final dividend.
Both interim and final dividend when declared become debt and are payable within 30 days of declaration.

Dividend on Preference Shares

A Preference share carries a preferential right as to dividend in accordance with the term of issue and the articles of association, subject to the availability of distributable profits. The preferential right to a dividend could either be a fixed amount or an amount calculated at a fixed rate. It may be cumulative or noncumulative. Preference shares can carry dividend of a fixed amount, before anydividend is paid on the equity shares. If there are two or more classes of preference shares, the shareholders of the class which has priority are similarly entitled to their preferential dividend before any dividend is paid in respect of the other class. But these rights in respect of dividends are subject to three conditions. Firstly, preference shares are part of the company‟s share capital, consequently, preference dividends can be paid only if the company has earned sufficient profits. Secondly, a dividend becomes payable to the shareholders only when it is declared in the manner laid down in the Act and by the company‟s articles. Thirdly, there should have been a formal declaration. Preference shareholders are not entitled to treat the preference dividend as a debt and sue for its payment in the first instance. However, if the articles specify that the company‟s profit shall be applied, by way of payment of the preference dividend, the preference shareholder can sue for it even though it has not been declared [Evling v. Israel & Oppenheimer Ltd. (1918) 1 Ch. 101].

Dividend on Equity Shares

Dividend on equity shares are to be paid in accordance with the rights of the respective classes of shares. Equity shareholders are entitled to be paid dividend on their shares only after all dividends on preference shares have been paid to date. Although the equity shareholder stands second in preference to preference shareholders, he enjoys a privilege of a higher dividend as the preference dividend is fixed and cannot be increased, however, large the company‟s profits may be, unless the preference shares carry the right to participate in surplus profits. Therefore, except in the above mentioned situation, the whole of the residual profits of the company after paying the preference dividend may be paid out as dividend to the equity shareholders either immediately or in later years.

Dividend cannot be paid out of the assets of the company, and generally, can be declared only out of the profit available for the purpose.

DECLARATION OF DIVIDEND

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. Cas. 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. Cas. 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 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 authorised 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 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.

WHO IS ELIGIBLE TO RECEIVE DIVIDEND

Under Section 206 of the Act a dividend in respect of a share has to be paid to the registered shareholder of the share or to his order or to his bankers. For this purpose, usually companies close the register of members under Section 154 of the Act or fix a record date, of which 7 days notice should be given by publication of advertisement in two newspapers—one in English and the other in the language of the region in which the registered office of the company is situated. The purpose of such notice is to give an opportunity to those who hold blank transfer deeds to lodge them with the company duly completed. Dividend is paid to those whose names appear on the record date or the last day of the closure of register of members, as the case may be. The dividend is payable to the shareholder whose name appears in the register of members on the appropriate date even though prior to that date he has sold the shares and the transfer deed in respect thereof has not been lodged with the company [Chunilal Khushaldas Patel v. H K Adhyaru (1956) 26 Comp. Cas 168 (S.C)].

Recently, it was held in the case of Commissioner of Income-Tax v. Aatur

Holdings P. Ltd. [(2008) 146 Comp Cas 152 (Bom)], that merely because a person may have purchased or been in receipt of shares, in the absence of the shares being registered in his name in the books of account of the company, such a person is not entitled to receive the dividend. The dividend has to be paid by the company in the name of the registered shareholders and it is the registered shareholders alone who claim dividend under section 27 of the Securities Contracts (Regulation) Act, 1956.

Section 206A was inserted by the Companies (Amendment) Act, 1988 w.e.f. 15.6.1988 providing for right to dividend, rights shares and bonus shares to be held in abeyance pending registration of transfer of shares. It provides that in case instrument of transfer of shares is pending registration with the company, the dividends in relation to such shares should be transferred to the special bank account opened by the company under Section 205A unless the company is authorised by the registered shareholders in writing to pay such dividend to the transferee specified in the instrument of transfer. In S V Nagarajan v. Lakshmi Vilas Bank Ltd.

and another (1997) 26 CLA 308 (CLB) it was held that when a company returns a transfer deed on the ground of non-tally of the transferor"s signature on the deed with the one in its own records, before the date of issue/allotment of bonus/rights shares, there will be no application for registration pending with it on that date and it cannot be faulted for its failure to comply with Section 206A of the Act.

WHEN DIVIDEND IS PAYABLE

Under Section 207 of the Companies Act, 1956, dividend has to be distributed within 30 days of the declaration. Posting of dividend warrants within 30 days will be deemed to be payment irrespective of the fact whether the warrant has been encashed or not under regulation 91 of Table A of Schedule I to the Act. In the case of joint holders the warrant has to be sent to the registered address of the first named joint holder or to such person and to such address as the joint holders may in writing direct.

However, as per proviso to the Section 207 in the following circumstances dividend need not be paid within 30 days viz.:

(i) Where dividend could not be paid by reason of the operation of any law e.g. in the case of non-residents, dividend need not be paid within 30 days if permission for remittance where required has not been received therefor from the Reserve Bank of India within 30 days;

(ii) Where a shareholder has given directions to the company regarding the payment of dividend and these directions cannot be complied with;

(iii) Where there is a dispute regarding the right to receive dividend;

(iv) Where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or

(v) Where, for any other reason, the failure to pay the dividend or to post the warrant was not due to any default on the part of the company.

The foregoing provisions shall equally apply to payment of interim dividend.

Under Section 205(3) dividend has to be paid in cash. Dividend can be distributed in cash or by issue of a cheque or warrant. In Krebs Biochemicals Ltd. & Ors. v. ROC [(2003) 57 CLA 75 (AP)], the company transferred dividend to a special dividend account and also Post dividend warrants to the shareholders within the stipulated 42 days (now 30 days) from the date of the declaration of dividend. The Registrar of companies carried out an inspection of the company on 29.09.1997 and concluded that the company had failed to transfer the unpaid dividend to the

special account within the time stipulated under Section 205A(1) of the Act. The ROC initiated prosecution proceedings against the company and its directors and filed a complaint on 15.4.1998. The company and its directors challenged the prosecution before the High Court contending that it had deposited the entire dividend amount in a separate dividend account and dispatched the dividend warrants within stipulated time and that the complaint of ROC was barred by limitation also (which is 6 months as per Section 468(2) of Cr.P.C.). Allowing the appeal of the company, the Court stated that once the limitation period begins, it cannot be stopped. The averments made in the complaint do not constitute an offence under Section 205A (8) of the Act and is barred by limitation.

Appointment of Auditors

Sections 138 to 148 of the Companies Act deal with accounts, audit and auditors. These provisions will have far reaching implications for the audit profession. In this article some important provisions contained in the companies act, 2013 are discussed.

Definition of auditor

An auditor is an independent professional person qualified to perform an audit. In accounting, an auditor is someone who is responsible for evaluating the validity and reliability of a company or organization's financial statements. The term is sometimes synonymous with "comptroller".

Appointment of auditor

As per section 139, it is a prime requirement that every company shall at the first annual general meeting appoint an auditor who can either be an individual or a firm. Appointment includes reappointment.

The manner and procedure of selection of auditors by the members of the company will be such as may be prescribed. It is a mandatory condition that before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him stating that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor.

Tenure

As per the provisions of Companies Act, 2013, a company can appoint an individual as an auditor for more than one term of five consecutive years and an audit firm as an auditor for more than two terms of five consecutive years.

Government Company

In a Government company, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

Eligibility, Qualifications and Disqualifications of auditors

A person will be qualified to be appointed as an auditor of a company only if he is a chartered accountant. Where a firm is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorized to act and sign on behalf of the firm. A person will be disqualified if he is falling under the following:

- an officer or employee of the company;
- a person whose relative is a director or is in the employment of the company's a director or key managerial personnel;
- a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;

Removal and Change of Auditor

i. Special resolution: The auditor appointed may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.

ii. Resignation: The auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form with the company and the Registrar, and in case of Government company with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation. In case of non compliance he shall be punishable with fine ranging between INR 50,000 to 5 lakh.

iii. Tribunal: The Tribunal either suo motu or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner in relation to the company or its directors or officers, it may, by order, direct the company to change its auditors. In the case of such an application by the Central Government for change of Auditors, the Tribunal can, within

15 days, pass an order that the auditor shall not function as such and the Central Government will be able to appoint another auditor.

Consequences

- The auditor who is removed by the Tribunal cannot be appointed as an auditor of that company for 5 years.
- Punishment with imprisonment for a minimum term of six months which may extent to 10 years and shall also be liable to pay a minimum fine of an amount involved in the fraud which may extend to 3 times the said amount.
- If the fraud involves public interest the minimum period of imprisonment will be 3 years.

Powers and duties of auditors and auditing standards

Powers

1. **Right to access:** Every auditor of a company shall have right to access at all time to book of accounts and vouchers of the company. The Auditor shall be entitled to require from officers of the company such information and explanation as he may consider necessary for performance of his duties. There is an inclusive list of matter for which auditor shall seek information and explanation. This list helps auditor to take special care on serious issues. The list includes issues related to:

(a) Proper security for Loan and advances,
(b) Transaction by book entries
(c) Sale of assets in securities in loss
(d) Loan and advances made shown as deposits,
(e) Personal expenses charged to revenue account
(f) Case received for share allotted for cash

The auditor of holding company also has same rights.

2. **Auditor to sign audit reports:** The auditor of the company shall sign the auditor's report or sign or certify any other document of the company and financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

3. **Auditor in general meeting:** It is a prime requirement under section 146, that the company must send all notices and communication to the auditor, relating to any general meeting, and he shall attend the meeting either through himself or through his representative, who shall also be an auditor. Such auditor must be given reasonable opportunity to speak at the meeting on any part of the business which concerns him as the auditor. As per section 101, notice of general meeting must be given before 21 days either in writing or through electronic mode to the auditor in such manner as may be prescribed. Every notice of a meeting shall specify the place, date, day and the hour of the meeting and shall contain a statement of the business to be transacted at such meeting.
4. **Right to remuneration:** The remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein. It must include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.
5. **Consent of auditor:** As per section 26, the company must mention in their prospectus the name, address and consent of the auditors of the company.

Duties

1 **Make report:** The auditor shall make a report to the members of the company on accounts examined by him on every financial statements.

The auditor report shall also state:

- Whether he has sought and obtained all the necessary information and explanations,
- Whether proper books of account have been kept,
- Whether company's balance sheet and profit and loss account are in agreement with books of accounts and returns,

2. **Audit report of Government Company:** The auditor of the government company will be appointed by the Comptroller and Auditor-General of India and such auditor shall act according to the directions given by them. He must submit a report to them which should include the action taken by him and impact on accounts and financial statement of the company.

The Comptroller and Audit – General of India shall within sixty days of receipt of the report have right to (a) conduct a supplementary audit and (b) comment upon or supplement such audit report.

The Comptroller and Audit – General of India may cause test audit to be conducted of the accounts of such company.

3. **Liable to pay damages:** As per section 245, the depository and members of the company have right to file an application before the tribunal if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company. They also have right to claim damages or compensation from the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct.
4. **Branch Audit :** Where a company has a branch office, the accounts of that office shall be audited either by the auditor appointed for the company, or by any other person qualified for appointment as an auditor of the company. The branch auditor shall prepare a report on the accounts of the branch examined by him and send it to the auditor of the company who shall deal with it in his report in such manner as he considers necessary.
5. **Auditing Standards :** Every auditor shall comply with the auditing standards. The Central Government shall notify these standards in consultation with National Financial reporting Authority. The government may also notify that auditors' report shall include a statement on such matters as notified.
6. **Fraud Reporting :** If an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed.

7.Winding up: As per section 305, at the time of voluntary winding up of a company it is a mandatory requirement that auditor should attach the copy of the audits of the company prepared by him

Appointment of First Auditors: The introduction of new Companies Act, 2013, has made many changes relating to the provisions of the Appointment of Statutory Auditors.

- As per the Section 139 of the Companies Act, 2013, every company shall, at the first annual general meeting appoints an individual or firm as an auditor who shall old the office from the conclusion of that meeting till the conclusion of next Annual General Meeting.
- Before the appointment shall be made, a written consent of the auditor to such appointment, and a certificate from him or that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor.
- The Company on the other hand has to inform the Auditor of his appointment and also file necessary forms with the Registrar of Companies (Form ADT-1) within 15 days of the meeting in which the auditor is appointed.
- The Act also speaks out that all listed company or a unlisted public company having its paid up capital of Rupees Ten Crores or more or all private limited company having its paid up capital or Rupees twenty crore or more shall appoint, an individual as auditor for more than one term of five consecutive years and an audit firm as an auditor for more than two terms of five consecutive years.
- As per section 139(6) the first auditor of the company shall be appointed by the Board within 30 days of Incorporation. In case of Board's failure, an EGM shall be called within 90 days to appoint the first auditor. The law is silent regarding from when this time limit of 90 days be reckoned, it is better to take a stricter view and interpret that the 90 days limit starts from Incorporation rather than expiry of 30 days.
- The appointment of first auditor is governed through section 139(6) which starts with a non-obstinate clause [not withstanding anything contained in sub-section (1)] and it is sub-section (1) which requires obtaining consent & certificate from auditor and filing of form ADT-1 with ROC.

- Since section 139(6) does not speak anything contrary to section 139(1) as far as obtaining of consent, certificate and filing of form is concerned therefore in can be interpreted that ADT-1 should be filed with ROC for first auditor also.

REAPPOINTMENT OF AUDITOR: After completion of tenure of 5 consecutive years the auditor may be re-appointed by complying with the provisions of section 139(9) which states that subject to the provisions of sub-section (1) & the rules made thereunder, a retiring auditor may be re-appointed at an annual general meeting, if-

- He is not disqualified for re-appointment.
- He has not given the company a notice in writing of his unwillingness to be re-appointed.
- A special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.
- As per 2nd, 3rd & 4th proviso to section 139(1) consent, certificate and filing of form is required for appointment. Since as per explanation to section 139(1) appointment includes re-appointment therefore the documentation & filing of form is also required at the time of re-appointment but Ratification does not require filing of ADT-1 but it will be a better practice if certificate of disqualification is obtained even in case of ratification.
- As per section 139(2) no listed company or companies as prescribed shall appoint or re-appoint :-
- An individual as auditor for more than one term of 5 consecutive years; and
- An audit firm as auditor for more than two terms of 5 consecutive years.
- The period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of five consecutive years or ten consecutive years, as the case may be.
- Firm having a common partner to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

- The incoming auditor or audit firm shall not be eligible if such auditor or audit firm is associated with the outgoing auditor or audit firm under the same network of audit firms.
- If a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.
- As per section 139(8) any casual vacancy, shall be filled by the Board within 30 days. If the vacancy has arisen due to resignation of auditor then such appointment shall also be approved by the company at a general meeting convened within 3 months of the recommendation of the Board.
- Instances of casual vacancy:
    1. Death
    2. Resignation
    3. Disqualification – If an existing auditor gets disqualified under Section 141 then he shall inform the company and the situation will be treated as casual vacancy.
- Failure of ratification at AGM – If the ratification resolution fails at the AGM of company then this also tantamount to casual vacancy.

REMOVAL AND RESIGNATION OF AUDITOR: The auditor appointed under section 139 may be removed from his office before the expiry of his term only by special resolution of the company, after obtaining previous approval of the Central Government.

Removal by Special Resolution and previous approval of the Central Government: [Sec 140(1)]:

Sub-Section (1) provides that the removal of an Auditor before the expiry of his term requires-

1. The previous approval of Central Government (CG). Form of Application will be made in form-ADT-2. Form ADT-2 and shall be accompanied with fees as provided for this purpose under the Companies (Registration offices and Fees) Rules, 2014. [Rule 7(1) of the Companies (Audit and Auditor) Rules, 2014 (Attached in form GNL-2).

2. The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a SPECIAL RESOLUTION of the company, before taking any action, the auditor concerned shall be given a Reasonable Opportunity Of Being Heard.
3. The application to Government shall be filed within 30 days from the date of resolution of the Board along with fees;
4. The company need to hold General Meeting (EGM) within 60 (Sixty) days of the approval of Central government.

Resignation of Auditors: Compliance by Auditor After Resignation : The auditor who has RESIGNED FROM the company shall file within a period of 30 days from the date of resignation. Auditor resigning from the company shall file within 30 days from the date of resignation, a statement in Form ADT-3 with the registrar.

- In case of other than Government Company, the auditor shall within 30 days from the date of resignation, file such statement to the company and the registrar.
- In case of Government Company or government controlled company, the auditor appointment under sub-section (5) of section 139, shall within 30 days from the resignation, file such statement to the company and the Registrar and also file the statement with the Comptroller and Auditor General of India (CAG).

The form and content of the statement to be filed by the retiring auditor shall be prescribed by way of rules. The onus to file such statement containing relevant facts and reasons for resignation is on the resigning auditor and any contravention of sub section (2) is punishable with monetary fine which could be minimum Rs. 50,000 and Maximum Rs. 5 lakh.

Oppression and mismanagement

Foss v Harbottle

Foss v Harbottle (1843) 67 ER 189 is a leading English precedent in corporate law. In any action in which a wrong is alleged to have been done to a company, the proper claimant is the company itself. This is known as "the rule in Foss v Harbottle", and the several important exceptions that have been developed are often described as "exceptions to the rule in Foss v

Harbottle". Amongst these is the 'derivative action', which allows a minority shareholder to bring a claim on behalf of the company. This applies in situations of 'wrongdoer control' and is, in reality, the only true exception to the rule. The rule in Foss v Harbottle is best seen as the starting point for minority shareholder remedies.

Facts:Richard Foss and Edward Starkie Turton were two minority shareholders in the "Victoria Park Company". The company had been set up in September 1835 to buy 180 acres (0.73 km^2) of land near Manchester and, according to the report,"enclosing and planting the same in an ornamental and park-like manner, and erecting houses thereon with attached gardens and pleasure-grounds, and selling, letting or otherwise disposing thereof".

The claimants alleged that property of the company had been misapplied and wasted and various mortgages were given improperly over the company's property. They asked that the guilty parties be held accountable to the company and that a receiver be appointed.

The defendants were the five company directors and the solicitors and architect and also H Rotton, E Lloyd, T Peet, J Biggs and S Brooks, the several assignees of Byrom, Adshead and Westhead, who had become bankrupts.

Judgment:The court dismissed the claim and held that when a company is wronged by its directors it is only the company that has standing to sue. In effect the court established two rules. Firstly, the "proper plaintiff rule" is that a wrong done to the company may be vindicated by the company alone. Secondly, the "majority rule principle" states that if the alleged wrong can be confirmed or ratified by a simple majority of members in a general meeting, then the court will not interfere,legal term.

Developments:The rule was later extended to cover cases where what is complained of is some internal irregularity in the operation of the company. However, the internal irregularity must be capable of being confirmed/sanctioned by the majority.

The rule in Foss v Harbottle has another important implication. A shareholder cannot generally bring a claim to recover any reflective loss - a diminution in the value of his or her shares in circumstances where the diminution arises because the company has suffered an actionable loss. The proper course is for the company to bring the action and recoup the loss with

the consequence that the value of the shares will be restored.

Because Foss v Harbottle leaves the minority in an unprotected position, exceptions have arisen and statutory provisions have come into being which provide some protection for the minority.

Exceptions to the rule

There are certain exceptions to the rule in Foss v. Harbottle, where litigation will be allowed. The following exceptions protect basic minority rights, which are necessary to protect regardless of the majority's vote.

1. Ultra vires and illegality

The directors of a company, or a shareholding majority may not use their control of the company to paper over actions which would be ultra vires the company, or illegal.

2. Actions requiring a special majority

If some special voting procedure would be necessary under the company's constitution or under the Companies Act, it would defeat both if that could be sidestepped by ordinary resolutions of a simple majority, and no redress for aggrieved minorities to be allowed.

3. Invasion of individual rights

4. "Frauds on the minority"

BOOKS OF ACCOUNTS

The shareholders provide capital to the company for running the business. They are in a way, the owners of the company. But, all of them cannot take part in managing the affairs of the company as their number is usually much more. But they have every right to know as to how their money has been dealt with by the directors in a particular period. This is why perhaps compulsory disclosure through annual information to the shareholders by the directors about the working and financial position of the company enables them to exercise a more intelligent and purposeful control over the affairs of the company. For preparation of annual accounts the maintenance of proper books of account is a must. Section 128 of the Companies Act, 2013 contains the provisions for books of account etc. to be kept by company. Maintenance of books

of account would mean records maintained by the company to record the specified financial transaction. It has been specifically provided that every company shall keep proper books of account. This section specifies the main features of proper books of account as under –

(i) The company must keep the books of account with respect to items specified in clauses (i) to (iv) of sub-section 2(13) of the Companies Act, 2013 hereinafter referred as Act, which defines "books of account".

(ii) The books of account must show all money received and expended, sales and purchases of goods and the assets and liabilities of the company.

(iii) The books of account must be kept on accrual basis and according to the double entry system of accounting.

(iv) The books of account must give a true and fair view of the state of the affairs of the company or its branches."books of account" as defined in Section 2(13) includes records maintained in respect of—

(i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;

(ii) all sales and purchases of goods and services by the company;

(iii) the assets and liabilities of the company; and

(iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section.

BOOKS OF ACCOUNTS: The Companies Act, 2013 lays down that every company incorporated under this Act must maintain and keep at its registered office certain books, registers and copies of certain returns, documents etc. and to give certain notices, file certain returns, forms, reports, documents etc. with the Registrar of Companies within certain specified time limits and with the prescribed filing fees. These books are known as Statutory Books. Some of the statutory registers are required to be kept open by the company for inspection by directors, members, creditors of the company and by other persons. The company is also required to allow extracts to be taken from certain documents, registers, returns etc. and furnish copies of certain documents on demand by a member or by any other person on payment of specified fees. Every company incorporated under the Act is required to keep at its registered office, inter alia, the following statutory books and registers –

• Register of securities bought back. (Section 68 and Rule 17(12) of companies (Share Capital and Debenture)

• Register of deposits.

• Register of charges.

• Register of members

• Index of members.

• Register of debenture holders

• Index of debenture holders.

• Register and index of beneficial owners.

• "Foreign register" containing the names and particulars of the members, debenture holders, other security holders or beneficial owners residing outside India.

• Register of Renewed and Duplicate Share Certificates.

• Register of sweat equity shares

• Annual Return

• Register of Postal Ballot

- Books containing minutes of general meeting and of Board and of committees of Directors.

• Books of accounts.

• Register of Directors/ Key Managerial Personnel.

• Register of investments in securities not held in company's name.

• Register of loans, guarantees given and security provided or making acquisition of securities

• Register of contracts with companies/firms in which directors are interested.

Books of Account in Respect of Branch Office

The branches of the company, if any, in India or outside India shall also keep the books of account in the same manner as specified in subsection (1), for the transaction effected at the branch office. Further the branch offices are required to send the proper summarized return at quarterly intervals to the company at its registered office and kept open to directors for inspection.

Accrual basis and Double-entry system of accounting

According to Section 128(1), books of account are required to be kept on accrual basis and in accordance with the double entry system of accounting. Accrual basis of accounting is an accounting assumption or an accounting concept followed in preparation of the financial

statements. Accrual concept is one of the four principles or accounting concepts, which involves recording income and expenses as they accrue, as distinct from when they are received or paid. The main feature of the accrual concept is that the accounting period covers only the revenue and expense transactions of that period and ignores the timing of actual cash receipts and payments. In this method, revenues and expenses are identified with specific period of time, such as a month or a year, and are recorded as 'incurred' along with acquired assets, without regard to the date of actual receipt or payment of cash in any form. Double entry book-keeping is a method of recording any transactions of a business in a set of accounts, in which every transaction has a dual aspect of debt a nd credit and therefore, needs to be recorded in at least two accounts. For example, when a person (debtor) pays cash to a business for goods he has purchased, the cash held by the business is increased and the amount due from the debtor is decreased by the same amount; similarly, when a purchase is made on credit, the purchase account is debited and the amount owed to creditor is increased by the same amount. This double aspect enables effective control of business because all the books of accounts must balance. Thus, double entry book-keeping is a method in which every transaction is recorded in a business in such a manner that it involves one or more debit entries and one or more credit entries. The debit entries / amount must equal the credit entries/amount for each transaction recorded.

Inspection by directors

As provided in Section 128(3), any director can inspect the books of accounts and other books and papers of the company during business hours. The expression "Books and Papers" has been defined in section 2(12) which includes accounts, deeds, vouchers, writings and documents. The company is, therefore, required to make available the aforesaid books and papers for inspection by any directors. Such inspection may be done by any type of director- nominee, independent, promoter or whole time. The proviso to sub-section 3 provides that a director of the Company can inspect the books of accounts of the subsidiary, only on authorisation by way of the resolution of Board of Directors. Where any other financial information maintained outside the country is required by a director, the director shall furnish a request to the company setting out the full details of the financial information sought and the period for which such information is sought (Rule 4(2)). The said information shall be provided to director within 15 days of receipt of request (Rule 4(3)). The right to inspect books of accounts and other books and papers under this section has been provided to the directors only.

Period for which books to be preserved

The books of accounts, together with vouchers relevant to any entry in such books, are required to be preserved in good order by the company for a period of not less than eight years immediately preceding the relevant financial year. In case of a company incorporated less than eight years before the financial year, the books of accounts for the entire period preceding the financial year together with the vouchers shall be so preserved. The provisions of Income Tax Act shall also be complied with in this regard. As per proviso to sub-section 5, where an investigation has been ordered in respect of a company under Chapter XIV of the Act related to inspection, inquiry or investigation, the Central Government may direct that the books of account may be kept for such period longer than 8 years, as it may deem fit and give directions to that effect.

Persons responsible to maintain books

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

(i) Managing Director,

(ii) Whole-Time Director, in charge of finance

(iii) Chief Financial Officer

(iv) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

Penalty

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

Investigation:

Grounds for Investigation: Generally, investigation will be ordered by the central government under the following circumstances:

1.When the business of the company is carried out with the intention to defraud the creditors, members or any other persons.

2.When it is found that the persons involved in the formation or management of the company are

guilty of fraud, misfeasance (irreugular act) and other misconduct towards the company or towards any of its members.

3.When the members of the company have not been given all the information relating to the state of affairs of the company because o lack of prudence in the management of capital.

Parties to apply for investigation to the central government:

i)By the Company Law Board: It can make an application to the central government to carry out investigation when it receives representation from 200 members or members holding $1/10^{th}$ of the total voting roghts in case of company having share capital and atleast by $1/5^{th}$ of the total members in case of company having no share capital.

In this case, the application must be supported by the fact that thereis good reasons for requiring investigation.

ii)By the registrar of companies: He could apply for investigation when

a)When information required is not furnished to him

b)In case the document forwarded to him does not contain the full information relating to the company.

c)It is found that the business of the company is being carried out to defraud its creditors or persons dealing with it.

iii)By the company: it can pass special resolution to file a petition to central government to order for investigation.

iv)By the court: It may in the course of legal proceedings may order for investigation into the affairs of the company.

v)By the Company Law Board: It can order for investigation if it found that –

a)the affairs of the company is being conducted to defraud the creditors, members anf other persons.

b)that the formation of the company was intended to carry out fraudulent or unlawful business

c)that the persons connected with the company or management of the company have been found guilty of fraud.

d)the company has failed to disclose full information regarding the conduct of the company to its shareholders. Hence, it is important for the central government that it is under the statutory obligation to order investigation.

Types of company investigation

The following are the different types of investigation:

1) Investigation into the affairs of the company:

In case of company with share capital, When an application is made by 200 members or members holding $1/10^{th}$ of the total voting rights and in case of company without share capital, an application is made by $1/5^{th}$ of the members to the company law board representing the fact that the affairs of the company i.e., the day to day administration of the company is carried out in fraudulent manner, investigation may be ordered by the company law board t investigate into the affairs of the company. It may order the applicant to deposit an amount not less than Rs.1000 to meet the cost of investigation. The company law board amy give the parties to the management, reasonable opportunity to explain their position.

2) Investigation of Ownership: This type of investigation is carried out when the real owners of the company are not revealed or the shares are in the name of the trustees. Same case may also be found in case of debenture holders also. This is the way that the company's shares are cornered by the unscrupulous persons. It si only for finding out the real owners of the company, an investigation is ordered to find out the real owners of the company and to find out the relation between the shareholders and the managerial personnel of the company.

According to section 247, investigation is undertaken by the orders of the central government to determine the true persons who are controlling the company or having financial interest in the success or failure of the company and to identify the persons responsible for controlling or materially influencing the policy of company.

A person is said to have interest in the company when he has right to acquire or dispose the share or debenture or any interest in the company and those person whose permission is necessary to exercise control or materially influence the policy of the company.

3) Investigation of ownership of shares and debentures: It may happen that shares may be held by a person as beamy for the sake of the directors. In such cases it may be necessary to find out the true owners of these shares and debentures. The Company Law Board, on a complaint made to it or on reference by the central government, may order to find out the relevant facts or any shares issued or to be issued. In such cases, order can be issued to impose te following restrictions for a period not exceeding three years in the manner mentioned below:

a) that no shares could be transferred. If there is a transfer, the said transfer shall be void.

b) that the shares proposed to be issued should not be issued. If issued the issue is void.

c) that no voting right shall be exercised in respect of the said shares.

d) that no further issue of right shares should be done. If so it would be considered as void.

e) that no payment shall be made on these shares. Even if money is due on them except on liquidation of the company.

Appointment of inspectors for investigation and tier powers:

Inspectors are appointed by the central government for investigation into the affairs of the company or to probe into the ownership of the company or to examine the real persons who are said to be the owners of the shares of the company. The inspectors so appointed have the following powers:

1) To examine the subsidiary and branches of the holding company and the personnel of the subsidiary units including the managing director of the subsidiary.

2) He can call upon the officers of the company to produce books of accounts, other documents and registers in their custody. He can also get the help of the clerk or steno for te investigation.

3) With previous permission of the central government, he can require any body corporate to furnish such information as he may consider necessary.

4) He examine on oath any of the officers and other employees and agents of the company.

5) In the course of investigation, he can retain any books or documents for the purpose of detailed investigation. He may even with the permission of the magistrate seize such books documents etc.

6) He shall make a final report or interim report as the case may be to the central government.

POWERS OF THE CENTRAL GOVERNMENT

1) The central government shall forward a copy of such report to the company concerned to get an explanation in the form of reply statement at its discretion.

2) if the central government found that any person or persons is or are guilty of offence, it can take steps to prosecute them. All others are obliged to help the government to bring the culprit to the court.

3) Under section 243, the central government may order for winding up of the company.

4) If the central government is satisfied that there is fraud or misappropriation and misconduct has taken place in connection with the promotion or formation or management of the company, it may take legal proceedings not only for the wrong acts but also for the recovery of properties.

5) The expenses for investigation is met by central government. But if fraud is proved, then the person liable for such fraud must bare the expenses.

6) The report of the inspector may be forwarded for further action to the company law board.

Enable | Enlighten | Enrich
(Deemed to be University)
(Under Section 3 of UGC Act 1956)

Karpagam Academy of Higher Education
(Deemed University Established Under Section 3 of UGC Act, 1956)
Coimbatore - 641 021.

UNIT – V

Winding up - Concept and modes of winding up. Insider-Trading , Whistle – Blowing – insider trading; meaning and legal provision, whistle blowing; concept and mechanism.

WINDING UP OF COMPANIES

Winding up of company is the process whereby its life is ended and its property administered for the benefit oft its creditors. An administrator, called liquidator, is pays its debts and finally distributes any surplus among the members in accordance with their rights.

In other words, winding up or liquidation of a company is a legal process by which the business of a company is closed, i.e., the assets of the company are realized, its creditors are paid off, an the surplus, if any, is distributed among the members in accordance with their rights as provided in the articles of a company.

Reasons for the winding: up of a company

When a company is wound up, it does not necessary mean that it has become insolvent. Even a solvent company may be wound up, if the members of the company decide to do so. For instance, a solvent company may be wound up for the purpose of reconstruction and amalgamation. Therefore, winding up of a company are:

1. If the main objects of the company for which it was formed have been accomplished.
2. If the company is unable to carry out its main objects
3. If the company has to dispose of its business or undertaking to another company or concern.
4. If the company has become insolvent (i.e., if the company is unable to pay its creditors in full)

MODES OF TYPES OF WINDING UP:

The companies Act provides for three types of winding up. They are:

1. Compulsory winding up or winding up by an order of the court.
2. Voluntary winding up.

Voluntary Winding up may be sub -divided into:

1. Member's Voluntary winding up (i.e., winding up on the initiative and under the supervision of members)
2. Creditor's Voluntary winding up (i.e., winding up on the initiative and under the supervision of the creditors of the company).
3. Winding up under the supervision of the court.

COMPULSORY WINDING UP OR WINDING UP BY THE COURT

Compulsory winding up of a company is brought about by an order of the court.

1. If the company, of its own accord, passes a special resolution that it should be wound up by the court, and presents a petition to the court for the winding up.
2. If the company makes a default in filling the statutory report with the registrar of companies or in holding the statutory meeting within the pre-scribe time
3. If the company does not commence business within one year from the date of its incorporation or suspends its business for a whole year
4. If the number of members falls below seven in the case of a public company, and below two in the case of a private company.
5. If the company is unable to pay its debts
6. If the court is of the opinion that it is just and equitable that the company be wound up.

PROCEDURE FOR COMPULSORY WINDING UP

First Step: Making an application or petition to the court for compulsory winding up.

Second Step: Hearing and disposing of the petition

Third Step: Appointment of the official liquidator and communication of the winding u order to the liquidator and the registrar of companies

Fourth Step: Liquidation proceeding by the official liquidator

Fifth Step: Dissolution of the company

Contributes

Contributes refer to person who are liable to contribute to the assets of the company in the event of winding up Contributories include not only the holders pertly-paid shares, who are liable to contribute the unpaid amount on their shares, but also the holders of fully paid shares who are entitled to a share in the surplus, if any.

Duties of the Official Liquidator:

The principal duties of the official liquidation are

1. He should conduct the liquidation proceedings.
2. He should take into his custody the books, documents and the assets of the company.
3. He must also submit further report to the court stating matters relating to the formation of the company, fraud or any other matter which should be brought to the notice of the court.
4. He must maintain proper books of accounts relating to the company. He must also maintain the minutes of proceedings of the meetings held.
5. He should keep all the funds of the company in the **'Public Accounts of India'** in the reserve bank of India. (He must not keep the funds of the company in his private account).
6. He should see that a printed copy of the audited accounts or a summary there of is sent to every creditor and contributory.
7. He is required summon meeting soft creditors and contributories as directed by the order of the court of the court of the purpose of constituting a **"committee of inspection"**
8. He should realize the assets and distribute the proceeds among the creditors of the creditors or contributories, according to their rights.
9. In the administration of the assets of the company, he must carry out the directions of the creditors or contributories or the committee of inspection by resolution.

10. He should submit accounts to the committee of inspection for the purpose of inspection.
11. He must obey the court's order for disposing of the company's books.

Secretary's Duties in Connection with Compulsory Winding up:

The important duties of the secretary in regard to the compulsory winding up of a company are;

1. He must assist the directors in preparing the petition for the compulsory winding up to be submitted to the court, when the company itself is the petitioner for compulsory winding up.
2. He should file with the registrar of companies a certified copy of the winding up order passed by the court within 30 days of the passing of the court order.
3. He must submit to the official liquidator a statement of affairs of the company, containing the particulars regarding the assets and liabilities of the company, the names and addresses of the creditors, etc. with in 21 days of the date of the winding up order.
4. He should furnish any other information regarding the company which the official liquidator requires fro time to time.
5. He should ensure that the words **"the company is under liquidation"** are mentioned on every letter, document, etc. Issued by the company after the winding up order has been passed.

VOLUNTARY WINDING UP

Meaning of voluntary winding up

Voluntary winding up refers to the winding up of a company either by its members or by its creditors without the interference of the court. In voluntary winding, the share holders and the creditors of a company settle their affairs themselves without going to the court, though they may apply to the court for directors or orders, if and when necessary.

Difference between compulsory winding up and voluntary winding up:

The main differences between compulsory winding up and voluntary winding up are:

1. Compulsory winding up of a company is brought about by an order of the court, whereas voluntary winding up is brought about either by the members or by the creditors of the company without the intervention of the court.
2. Compulsory winding up is of only one type. But voluntary winding up is of two types, viz., (a) members voluntary winding up and (b) creditors voluntary winding up.
3. In the case of compulsory winding up, the liquidator is appointed by the court. On the other hand, In the case of voluntary winding up, the liquidator is appointed wither by the members or by both the members and the creditors.
4. Voluntary winding up is more convenient than compulsory winding up.

Circumstances under which a company is wound up voluntarily:

A company is wound up voluntarily in the following circumstances:

1. When the period, fixed of the duration of the company by its articles expires and the company passes an ordinary resolution for winding up voluntarily.
2. When the event, on the occurrence or happening of which the company is to be dissolved as per its articles occurs and the company passes an ordinary resolution for winding up voluntarily
3. When the company passes a special resolution for voluntary winding up at any time

Modes or Types of Voluntary Winding up:

There are two types of voluntary winding up. They are:

1. Members voluntary winding up
2. Creditors voluntary winding up

MEMBERS VOLUNTARY WINDING UP

Meaning of members voluntary winding up

A members voluntary winding up refers to a voluntary winding up which takes place at the instance an under the control and supervision of the members of the company, and in which a declaration of the solvency of the company has been made by the board and the same has been filed with the registrar of companies.

Secretarial Duties / Procedure for members voluntary winding up

The following procedure is, generally voluntary followed in the case of member winding up.

First Step: Making and filing of a declaration of solvency of the company

Second Step: Passing of the resolution at an extraordinary general meeting, publication of the same in the official gazette and local newspapers and filing a copy of the same with the registrar of companies.

Third Step: Appointment of liquidator or liquidators

Fourth Step: Commencement of liquidation proceedings by the liquidator

Fifth Step: Calling of the general meeting of the member's by the liquidator at the end of each year and presentation of his report and statement on winding up

Sixth Step: Calling of the final meeting of the members and presentation of detailed final accounts of the winding up proceedings by the liquidator

Seventh Step: Filling of the certified copies of final accounts of the winding up of the company with the registrar of companies and also with the official liquidator

Eighth Step: Making of a thorough scrutiny of the books of account of the company by the official liquidator

Ninth Step: Dissolution of the company

Tenth Step: Calling of the creditors meeting in case of insolvency

Creditors Voluntary Winding up:

The Voluntary Winding up in which the declaration of the solvency of the company is not made by the directions and so is controlled and supervised by the creditors of the company is known as creditors Voluntary Winding up. In short, the winding up which takes place at the instance and under the control and supervision of the creditors is called Creditors Winding up.

Circumstances under which the Creditors Voluntary Winding up takes place:

A Creditors Voluntary Winding u takes place when a company is unable to pay its liabilities in full [i.e., when a company is insolvent] and still wants to undergo voluntary winding up. In this case, creditors voluntary winding up is reslated. So as to protect the into of the creditors.

Procedure for Creditor's Voluntary Winding up:

The following procedure is generally, followed in the case of creditors voluntary winding up.

First Step: Convening the meeting of the members and the meeting of the creditors

Second Step: Presentation of statement of affairs before the creditors meeting

Third Step: Passing of resolution for the voluntary winding up and appointment of liquidators

Fourth Step: Filing of the copy of the resolution for voluntary registrar of winding up with. The companies

Fifth Step: Appointment of the committee of inspection by the creditors

Sixth Step: Fixation of the remuneration of the liquidator

Seventh Step: Cessation of the powers of the board of directors and the commencement of the liquidation proceedings by the liquidator

Eighth Step: Calling of the meeting of the members and the creditors the liquidator at the end of each year and presentation of his report and statement on winding up.

Ninth Step: Calling of the final meeting of the members and the creditors and the presentation of the final accounts of the winding up proceedings by the liquidator

Tenth Step: Filing of the certified final account of the winding up with the registrar of companies by the liquidator

Eleventh Step: Dissolution of the company

Secretarial Duties in connection with Creditors Voluntary Winding up:

1. He should convince a meeting of the BOD to fix the date of the general meeting of the members and a meeting of the creditors where a resolution is required to be passed for the voluntary winding up of the company.
2. He should prepare and get the approval of the board for the draft resolution for winding up to be placed at the general meeting of the members.
3. He should see that the notice of thebe meeting of the members and the meeting of the creditors are published in the official Gazette and also in local newspapers.
4. He should help the director in preparing the Statement of Affairs of the company and the list of the creditors to be placed before the creditors meeting.
5. He should see that the director is nominated to preside over the creditors meeting

6. He should ensure that the statement of affairs and the list of creditors are placed before the creditors meeting
7. He should see that the resolution necessary for the voluntary winding up is passed at the members meeting as well as at the creditors meeting.
8. He should see that a copy of the resolution passed for winding up in the creditors meeting is filled with the registrar of company.
9. In case a special resolution has been passed for the winding up at the members meeting, the secretary should see that the special resolution is filled with the registrar of company within 30 days of the passing of special resolution.
10. He should ensure that the liquidator is appointed and has remuneration is fixed by the creditors at their meeting.
11. He should see that every letter, invoice, order, etc., issued by the company during the period of winding up contains a statement that the company is under liquidation.
12. He should see that all books, papers and documents as well as movable and immovable property.

INSIDER TRADING

Insider Trading as a term is subject to many definitions and it includes both legal and prohibited activities. Insider Trading happens on a daily basis, legally, when corporate management and Board of Directors buy or sell or deal with stocks of their own companies within confines of the company policies and regulations governing the trading. In other words, Insider Trading is buying, selling or dealing with a security while breaching the company policies or regulations, thus breaching the trust and confidence of a company while possessing material or non-public information about the securities.

Definitions:

The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations 1992, does not directly define the term Insider Trading. But it defines the term "Insider", "Connected Person" and "Price Sensitive Information".

Insider Trading is the trading of securities of a company by an Insider using company's non-public, price-sensitive information while causing losses to the company or profit to oneself.

Insider: According to the Regulations, "Insider" means any person who is or was connected to the company or is deemed to have been connected with the company and who reasonably is expected to have access, connection to unpublished price sensitive information in relation to that company.

Connected Person:

The Regulation defines that a "connected person" means any person who-

(i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 of a company, or is deemed to be the director of the company by virtue of sub-clause (10) of section 307 of the Act.

(ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company, whether temporary or permanent and who may reasonably be expected to have an access to unpublished, price sensitive information in relation to that company.

Price Sensitive Information means any information, which relates directly or indirectly to a company and which if published, is likely to materially affect the price of securities of the company.

Following are some examples of Price Sensitive Information:

1. Financial results of the company.
2. Intended declaration of Dividends.
3. Issue of shares by way of public rights, bonus, etc.
4. Any major expansion plans or execution of new projects
5. Amalgamation, mergers and takeovers.
6. Disposal of the whole/substantial of the undertaking.

In the United States vs Carpenter, 1986, the Supreme Court cited that the usage of Inside Information received by virtue of confidential relationship must not be used or disclosed and by doing so, the individual gets charged for Insider Trading.

In 1997, O'Hagans Case, the court recognised that a company's information is it's property: " A Company's confidential information qualifies as property to which the company has a right of exclusive use. The undisclosed misappropriation of such information in violation of fiduciary duty constitutes fraud akin to embezzlement- the fraudulent appropriation to one's own use of money or goods entrusted to one's care by another."

In 2007, representatives Brian Baird and Louise Slaughter introduced a bill "Stop Trading on Congressional Knowledge Act or STOCK Act".

Insider Trading in India:

1. In 1948, First concrete attempt to regulate Insider Trading was the constitution of Thomas Committee. It helped restricting Insider trading by Securities Exchange Act, 1934.

2. In 1956, Sec 307 & 308 were introduced in the Companies Act, 1956. This change made it mandatory to have disclosures by directors and officers.

3. 1979, the Sachar Committee recognized the need for amendment of the Companies Act, 1956 as employees having company's information can misuse them and manipulate stock prices.

4. 1986, Patel committee recommended that the Securities contracts (Regulations) Act, 1956 be amended to make exchanges reduce Insider Trading.

5. 1989, Abid Hussain Committee recommended that the Insider Trading Activities be Penalized by civil and criminal proceedings and also suggested that SEBI formulate the regulations and governing codes to prevent unfair dealings.

6. 1992, India has prohibited the fraudulent practice of Insider

Trading through "Security and Exchange Board of India (Insider Trading) Regulations Act, 1992. Here, a person convicted of Insider Trading is punishable under Section 24 and Section 15G of the SEBI Act, 1992.

7. 2002, the Regulations were drastically amended and renamed as "SEBI (Prohibition of Insider Trading) Regulations, 1992.

Why to Control Insider Trading?

- To protect general investors. The manipulation of market by using Insider trading generally causes great losses to a company, thus leading to loss for investors or great profit only for the Insiders and no investor. It steals away the possibility of earning profit from an investor.
- To protect the interest and reputation of the company. Once a company faces a problem of Insider Trading, investors tend to lose confidence in the company and stop investing in the company and also selling all the stocks of the company.

- To maintain confidence in the stock exchange operations. With SEBI also regulating all the tradings, if any Insider gets a chance to get past the laws, it decreases the investors' confidence in the stock exchange operations itself.
- Indian Financial Market is still very low in the domestic investment rate. To have a healthy economy, a proper financial system is a must and for that, confidence in the market is of utmost importance.

Rationale behind Prohibiting Insider Trading:

Securities market deals with the allocation of capital in an economy. This function enables market efficiency, where market's price reflects the risk and future returns accurately. Insider trading appears biased to investors as insiders have additional price sensitive information before them and can use it to make profits while the late reception of information makes investors suffer loss or not gain the deserved profits. If a market is integrated and free of illegal trading, it may lead to healthy growth of the market and such markets can inspire the confidence of the Investors.

Insider trading leads to loss of confidence of Investors on the market which can lead to a halt in market dealings thus causing a situation similar to the Great Economic Depression of the United States. Besides, a company's information is its property and no one but the company must profit from it.

Significant Penalties:

- SEBI may impose a penalty of not more than Rs. 25 Crores or three times the amount of profit made out of Insider Trading; whichever is higher.
- SEBI may initiate criminal prosecution; or
- SEBI may issue order declaring transactions in Securities based on unpublished price sensitive information; or
- SEBI may issue orders prohibiting an insider or refraining an insider from dealing in the securities of the company.

MEANING AND DEFINITION OF WHISTLE BLOWING

US Academicians Miceli and Near (1984)5 defines Whistle blowing as "the disclosure by organizational members (former or current) of illegal, immoral, or illegitimate practices under the control of their employees, to persons or organizations that may be able to effect action".

Australian academic Jubb (1999)6 defines, "whistle blowing is a deliberate nonobligatory act of disclosure, which gets onto public record and is made by a person who has or had privileged access to data or information of an organization, about nontrivial illegality or other wrongdoing whether actual, suspected or anticipated which implicates and is under the control of that organization, to an external entity having potential to rectify the wrongdoing".

CHARACTERISTICS/ FEATURES OF WHISTLE BLOWING

a) Whistle-blowing is not the same as complaint:

Complaining is not same as blowing the whistle. In most instance complaints involve personal subject matter of the complainant than with others or public interest. Whereas the whistle blowing is concerned with subject matter affecting public interest. Complaints from service users, relatives or representatives would not be classed as whistle blowing. These would need to be raised using the service's complaints procedure. Employees those who have complaints regarding pay, hours and general grievances would need to raise their complaints using their organizations grievance procedure**.**

b) It is not a witness of a crime:

Witness of crime is not considered as whistle blowing. The general criminal and civil proceedings and lawsuits include witness of a crime for investigation purpose. But, whistle blower is not mere witness, but much more than witneser. Whistle blower may be witness or may not be witness of crime, but having enough information about that crime.

c) It is non-public information:

Information about a company that is not known by the public is known as non-public information. Therefore the matter involved in whistle blowing is considered as nonpublic information.

d) Substantial importance:

The matter of whistle blowing must have substantial importance. The substantial importance is concerned with having or involved worth material facts and figures, the costs of damage/ loss to the public. There cannot be simple matter involved in whistle blowing which causes no harm to public and less or no loss to anyone**.**

e) Desired changes:

The whistle blower is expecting to stop some activity which causes harm and loss to public and society. Therefore there are some desired changes involved by doing so.

f) Voluntary way:

Whistle blowing is purely a voluntary act of a person and also a group. There is no external force to make an act of whistle blowing, rather its internal force to do so.

g) Moral protest:

Moral19 issues are concerned with the principles or rules of right conduct or the distinction between right and wrong; ethical. The moral protest is fighting against the immoral/ unethical issues. Therefore whistle blowing is considered as moral protest.

h) Public interest disclosure:

A *public interest disclosure20* is made when a person discloses to proper authority information that tends to show past, present or proposed future improper conduct by a *public* body in the exercise of its functions. Definitions of improper conduct: An offence against State law; histle blowing is public interest disclosure.

Karpagam Academy of Higher Education

II B.COM CA -THIRD SEMESTER

COMPANY LAW - [15CCU303A]

UNIT 1

		OPTION1	OPTION2	OPTION3	OPTION4	ANSWER
1	The term company is defined under which sec of the Act?	Sec 3 (1)	Sec 4 (2)	Sec 2 (4)	Sec 1 (3)	**Sec 3 (1)**
2	Property of the company belongs to	Company	Share holders	Members	Promoters	**Company**
3	Which company shares can be freely transferable	Private Company	Public Company	Both (a) & (b)	holding company	**Private Company**
4	Minimum number of members in case of public company	1	2	5	7	**7**
5	Minimum number of members in case of private company is	1	2	3	2	**2**
6	Maximum no. of members in case of private company is	50	100	150	200	**50**
7	Maximum no .of members in case of public company is	10	unlimited	50	100	**unlimited**
8	How many months did the company can continue its business u/s 45 _____	1	2	5	6	**6**
9	Minimum subscription should be received with in _____days	120	125	130	135	**120**
10	If minimum subscription is not received application money should be refunded with in _____days	20	25	30	10	**10**
11	Liability of a member in case of a private company is	Limited	Unlimited	Both (a) & (b)	limited gurantee	**Unlimited**
12	Maximum no. of persons in case of partnership banking business _____	10	20	30	5	**10**
13	Minimum paid up share capital in case of a private company is _____	1 Lakh	2 Lakhs	3 Lakhs	4 Lakhs	**1 Lakh**
14	Minimum paid up share capital in case of a public company is _____	1 Lakh	3 Lakhs	5 Lakhs	7 Lakhs	**5 Lakhs**
15	Minimum no. of Directors in case of a public company is _____	1	2	3	4	**3**
16	Minimum no. of Directors in case of private company is _____	1	2	3	4	**2**
17	Age limit of Directors in case of public company is _____	65	70	75	80	**65**
18	Age limit of Directors in case of private company is _____	65	70	75	No limit	**No limit**
19	The company's nationality is decided by its	Shareholders	Registered office	Place at books of accounts are kept	investor	**Registered office**
20	The liability of members if company is limited by guarantee	Unpaid value of shares	Guarantee amount	Unlimited liability	limited liability	**Guarantee amount**
21	The liability of members if company is limited by shares	Unpaid value of shares	Guarantee amount	Unlimited liability	limited liability	**Unpaid value of shares**
22	If the company failed to refund application money with in 130 days from the date of issue of prospectus on non-receipt of minimum subscription who will be personally liable.	Company	Directors	Shareholders	secretary	**Directors**
23	Transfer of shares in the company is	Restricted	Freely transferable	Prohibited	not transfred	**Freely transferable**
24	Transfer of shares in the partnership firm is	Restricted	Freely transferable	Prohibited	not transfred	**Restricted**
25	Generally Company liability is	Limited	Unlimited	Situation does not arise	restricted	**Limited**
26	Generally partnership firm liability is	Limited	Unlimited	Situation does not arise	restricted	**Unlimited**
27	Partners are -------- of the firm	Owners	Employers	Agents	manager	**Agents**
28	XYZ private company had reduced to a single member and continued business more than 6 months. The company's liability will be.	Limited	Unlimited	Guarantee amount	Situation does not arise.	**Unlimited**
29	In the case of partnership firm. Audit is	Compulsory	Optional	restricted	not restricted	**Optional**
30	In the case of Company. Audit is	Compulsory	Optional	restricted	not restricted	**Compulsory**
31	Generally rights and obligations of the company are regulated in	AOA	M.O.A	Partnership deed.	limited	**M.O.A**

32	Generally rights and obligations of the Partnership firm are regulated in	AOA	M.O.A	Partnership deed.	unlimited	**Partnership deed.**
33	X is a director who has experience of 20 years on this basis X co. and taken him as a director. Can the X Co. say that the director X experience is company's experience	Yes	No	Situation does not arise.	restricted	**Yes**
34	A company is named as govt. company if it is holds _____% of paid up share capital	more than 30	more than 40	more than 50	more than 100	**more than 50**
35	Which companies are exempted to add "Ltd" or "Pvt Ltd" at the end of their name	Private	Govt	Defunct	Association not for profits	**Association not for profits**
36	If the companies does not increase their paid up capital by 1/5 lakhs with in 2 years such companies are known as _____	Private	Public	Defunct	Govt Company	**Defunct**
37	Under which sec. a private company can voluntarily converted into public company _____	34	44	54	64	**44**
38	Under which sec. a private company can automatically converted into a public company _____	34	43	53	35	**43**
39	Central Government permission is required in case of _____ conversion _____	Private to public	Public to private	Both (a) & (b)	holding company	**Public to private**
40	With in how many days prospectus or statement in lieu of prospectus should file with ROC	30	40	20	50	**30**
41	_____% of shares should be held by a company in another company so as to become subsidiary	more than 50	more than 40	more than 30	more than 20	**more than 50**
42	Liability under _____sec. may be imposed only if it is proved that the companies business has been carried on with a view to defraud the creditors	540	541	542	543	**542**
43	In case of Non –Profit making Companies notice of general meeting should be given with in _____days	14	15	21	22	**14**
44	In case of companies other than Non –Profit making Companies notice of G.M. should be given with in _____days	14	15	21	22	**21**
45	According to which sec. name of the company should end with "Ltd" or "Pvt Ltd"	10	11	12	13	**13**
46	The companies which are formed under special charter granted by the king or queen of England are called	Statutory companies	Registered companies	Chartered companies	holding company	**Chartered companies**
47	The companies which are formed under special Act. Those companies are called as	Chartered companies	Statutory companies	Registered companies	holding company	**Statutory companies**
48	The companies which are formed under companies Act. 1956. They will be called as	Chartered companies	Statutory companies	Registered companies	holding company	**Registered companies**
49	Invitation to public offering shares or debentures in case of private company	Prohibited	Restricted	Acceptable	not mandatory	**Prohibited**
50	Accepting of deposits from public in case of private company is	Prohibited	Restricted	Acceptable	not mandatory	**Prohibited**
51	Maximum paid up capital in case of public company.	50 Lakhs	100 Lakhs	125 Lakhs	5lakhs	**5lakhs**
52	Y Pvt.Co. is subsidiary of X Co. which is a public Company? Mention Y is a	Private Co	Public Co.	Government Co.	holding company	**Public Co.**
53	Transfer of shares in the case of public company is	Prohibited	Restricted	Freely transferable	Illegal	**Freely transferable**
54	XYZ Co, is having 15% share capital held by X Company and 50% held by Central Government and 10% held by State Government and 25% held by other people then that company will be	Government Company	Private Company	Public Company	holding company	**Government Company**
55	XYZ Co, is having 10% share capital held by another Public Company and 35% held by Central Government and 55% held by people then that Company is	Government Company	Private Company	Public Company	charter company	**Government Company**

56	Which of the following companies must file a statement in lieu of prospectus?	A private limited compa	A cooperative society	C. A company that has iss	A public company that ha	**A public company that has not issued**
57	A foreign company means a company incorporated _____India and having a place of business_____ India .	A outside, outside	in, in .	. in , outside .	outside, in	**outside, in**
58	A/an _____may become a director of a company	partnership firm	. person of unsound r	individual .	body corporate .	**individual .**
59	How many directors of a public company, unless the articles provide otherwise, must be appointed by the company in general meeting	All the directors	One half of the direct	Two-thirds of the director	Three-fourths of the direct	**Two-thirds of the directors**
60	. The _____constitute the top administrative organ of the company. .	A general manager	shareholders.	board of directors .	advisory panel .	**board of directors .**

a prospectus .

Karpagam Academy of Higher Education

II B.COM CA -THIRD SEMESTER

COMPANY LAW - [15CCU303A]

UNIT II

		OPTION1	OPTION2	OPTION3	OPTION4	ANSWER
1	The _____defines the scope of a companys activities	prospectus	statutory declaration	memorandum of association	articles of association	**memorandum of association**
2	Private company can start its business immediately after the issue of	Certificate of commencement of Business	Certificate of Incorporation	Both (a) & (b)	business licence	**Certificate of Incorporation**
3	Public company Should start business only after getting certificate of	Incorporation	Commencement of business	Both (a) & (b)	business licence	**Commencement of business**
4	The doctrine of indoor management is an _____to the doctrine of constructive notice	Exception	Extension	Alternative	alteration	**Extension**
5	The doctrine of _____ does not apply to acts void ab initio.	Ultra virus	Intra virus	constructive notice	Indoor management	**Indoor management**
6	In how many days did the company have its registered office after incorporation	10	20	30	40	**30**
7	Address of the registered office is situated in	MOA	AOA	Prospectus	company profile	**AOA**
8	Ultra vires means	Beyond the power	with in the power	Both (a) & (b)	act	**Beyond the power**
9	Ultra vires loans granted by the company are	Void	Voidable	Valid	contengent	**Void**
10	_____ conceives the idea of the business	Promoters	Directors	Auditors	secretary	**Promoters**
11	_____stands in the fiduciary position of the company	Directors	Promoters	Auditors	secretary	**Promoters**
12	Contracts made after incorporation but before the grant of Certificate of commencement of	Provisional contracts	Pre-incorporation contracts	Preliminary contracts	Both (b) & (c)	**Preliminary contracts**
13	A company can change its name at its own discretion by passing _____	Ordinary resolution	Special resolution	Boards resolution	board meeting	**Special resolution**
14	Any change in the address of the registered office must be communicated to the registrar with in	15 days	30 days	1 Month	12 months	**1 Month**
15	An act ultra virus the directors can be rectified if it is not ultra vires	the articles	the memorandum	Company Act	special resolution	**Company Act**
16	The lending of funds ultra vires, the company has no rights	under the company's Act	contract Act	under equity	the memorandum	**under the company's Act**
17	If a new company get registered with a name which resembles the name of existing company then it should apply to whom?	NCLT	SEBI	ROC	AOA	**NCLT**
18	Companies are now allotted a _____ in addition to their name	PAN	SIN	PIN	CIN	**CIN**
19	In how many days did the company have its registered office after incorporation	10	20	30	40	**30**
20	Under which sec. if company fails to commence its main object the court may order winding up	403 (f)	413 (f)	423 (f)	433 (f)	**433 (f)**
21	In case of forgeries acts done in the name of the company are	Valid	Void	Void ab initio	contengent	**Void ab initio**
22	Signature of memorandum and articles should be done by _____ number of persons in case of public company	7	5	4	8	**7**
23	Signature of memorandum and articles should be done by _____number of persons in case of private company	3	4	2	10	**2**
24	MOA should be in form _____ in case of company limited by shares	Table A	Table B	Table C	Table D	**Table B**
25	MOA should be in form _____ in case of company limited by guarantee not having share capital	Table A	Table B	Table C	Table D	**Table C**
26	MOA should be in form _____ in case of a unlimited liability	Table A	Table B	Table E	Table F	**Table E**
27	the MOA there are 6 classes. We can alter all clauses expect one clause. What is that clause?	Objects clause	Name clause	capital clause	Liability clause	**Association clause**
28	If any body wants to file a case against the company they should file at what place _____	Company	Registered Office	Books of accounts	BOD	**Registered Office**
29	A company must have a registered office from the day on which it commences business or ____ day after its incorporatio which ever is earlier	20	10	15	30	**30**
30	Which of the following need not have MOA	Public company	Private company	Government company	Statutory Corporation.	**Statutory Corporation.**

31	Address of the registered office is situated in	MOA	AOA	Prospectus	certificate of incorporation	**AOA**
32	A company can change its name by passing	Ordinary resolution	Special resolution	Either by special resolution or by ordinary resolution	Court	**Either by special resolution or by ordinary resolution**
33	For changing name of a company Central Govt. permission must be taken	Yes	No	no inquiries are made	compulsory	**Yes**
34	If the name of the company is identical with or similar to an existing company then which resolution should be passed to change name	Ordinary resolution	Special Resolution	Court	board meeting	**Ordinary resolution**
35	Alteration of articles must be done only by passing	Special resolution	Ordinary resolution	Court	board meeting	**Special resolution**
36	The granting of the certificate of incorporation renders the illegal objects include in the memorandum	Legal	Void	Voidable	enforceble	**Void**
37	Change in objects clauses can be effected	For any reason	For special reason only	to comply with C.G order	Annual General Meeting	**For special reason only**
38	The capital clause of a company can be changed with the permission of _____	Company law board	Registrar	Court	board meeting	**Court**
39	Separate legal entity means_____.	limited liability	. not separate from its members.	Separate from its members.	common seal.	**Separate from its members.**
40	What is known as a charter of a Company?	Memorandum of Association	Bye laws	Articles of Association	Prospectus.	**Memorandum of Association**
41	. The name of a company can be changed by_____.	an ordinary resolution	. a special resolution	. the approval of the union government	a special resolution and with the approval of the central government	**a special resolution and with the approval of the central government**
42	Mark out the type of alteration that is permitted in the articles of association	that may not be in the companys interest	that is contrary to the provisions of the companies act.	that increases a members liability without his written consent .	that is consistent with the memorandum of association	**that is consistent with the memorandum of association**
43	_____ companies must have their own Articles.	Government companies	Unlimited companies.	Companies limited by shares.	Registered companies.	**Unlimited companies.**
44	Which of the following companies must file a statement in lieu of prospectus?	A private limited company	A cooperative society	A company that has issued a prospectus	A public company that has not issued a prospectus .	**A public company that has not issued a prospectus .**
45	Any person dealing with a company is deemed to have knowledge of its_____.	memorandum of association	articles of association .	both memorandum of association & articles of association	prospectus.	**both memorandum of association & articles of association**
46	The rules and regulations for the internal management of a company are contained in its___.	prospectus	annual report	memorandum of association	articles of association .	**articles of association .**
47	The articles of association establish the relationship between_____.	the company and its members	the company and outsiders.	the company and its members and members inter	. the company and other companies .	**the company and its members and members inter .**
48	. Mark out the document that need not be prepared and registered with the registrar of companies in public limited companies.	statutory declaration	memorandum of association .	articles of association	directors undertakings to take up and pay for qualification shares.	**articles of association .**
49	Which of the following documents may be changed with retrospective effect?	Memorandum of association	prospectus .	Articles of association	Statement in lieu of prospectus	**Articles of association .**
50	The objects clause of the memorandum of association can be altered by a/an_____.	ordinary resolution	special resolution	special resolution and confirmation by Registrar of companies	special resolution and confirmation by the company Law Board	**special resolution and confirmation by the company Law Board**
51	. If the articles of association do not authorize a change in capital then to alter the companys capital _____.	table A may be adopted	the articles may be ignored as they are not legally binding	the articles should be altered	permission is to be got from the registrar of companies.	**table A may be adopted .**
52	The articles of association can be altered by_____.	a resolution of the board of directors	an ordinary resolution in general meeting .	a special resolution in general meeting	obtaining permission from the company law board .	**a special resolution in general meeting**
53	. With regard to the internal proceedings of a company, any outsider dealing with the company is entitled to assume that_____.	everything has been done regularly	nothing has been done regularly .	he must enquire into the regularity	he need not to enquire regularly.	**everything has been done regularly**

54	. The principle that so far as the companys internal working is concerned , strangers dealing with the company are entitled to assume that everything has been regularly done has been laid down in the_____.	doctrine of indoor management	principle of constructive notice.	principle of management by exception	management by objectives.	**doctrine of indoor management .**
55	The directors of a company had issued a bond to kiran. The directors were authorized to issue such a bond, provided a resolution was passed to that effect. No such resolution had, however, been passed in this case. Kiran could still recover the amount of the bond owing to the operation of the _____.	principle of constructive notice	doctrine of indoor management	principle of management by exception	certificate of notice.	**doctrine of indoor management**
56	. The _____constitute the top administrative organ of the company. .	general manager	shareholders.	board of directors	advisory panel .	**board of directors .**
57	The doctrine of constructive notice implies that _____.	every person dealing with the company is deemed to have notice of the documents field	with the registrar of companies	regularity of proceedings need be enquired into a notice of a weeks period is to be given for every exchange of correspondence	indoor management	**every person dealing with the company is deemed to have notice of the documents field**
58	If the articles of association do not authorize a change in capital then to alter the companys capital _____.	table A may be adopted	the articles may be ignored as they are not legally binding	the articles should be altered	permission is to be got from the registrar of companies.	**he articles should be altered .**
59	An exception to the doctrine of constructive notice is_____.	the doctrine of ultra vires	the doctrine of indoor management .	lifting the corporate veil	the doctrine of ultra vires in Articles of Association.	**the doctrine of indoor management .**
60	. Protection can be claimed under the doctrine of constructive notice if _____.	the act is voidable	no inquiries are made	no inquiries are made	resolution	**no inquiries are made**

Karpagam Academy of Higher Education
(Deemed University Established Under Section 3 of UGC Act, 1956)
Coimbatore - 641 021.

II B.COM CA -THIRD SEMESTER
COMPANY LAW - [15CCU303A]
UNIT III

		OPTION1	OPTION2	OPTION3	OPTION4	ANSWER
1	which company can not issue prospectus	public company	private company	holding company	subsidiry company	**private company**
2	Prospectus is required to be issued when _____ are made	right issue	sweat equity	bonds	debentures	**right issue**
3	When there is a untrue statement in a prospectus who can sue	Subscribed in primary market	Subscribed in secondary market	Rights issue	Sweat equity issue	**Subscribed in primary market**
4	Definition of prospectus was given under which sec.	2 (30)	2 (32)	2 (34)	2 (36)	**2 (36)**
5	Which of the following are not required to issue prospectus?	holding company	bounus	Sweat equity issue	public company	**Sweat equity issue**
6	_____ are the prospectus issued instead of full prospectus	Abridged	Statement in lieu	Red herring	Shelf	**Abridged**
7	Which one of the following has a right to claim compensation for any loss due to mis-statement in prospectus	Purchasing shares in Primary Market	Secondary Market	Subscribers to memo.	through intermediars	**Purchasing shares in Primary Market**
8	_____ years of imprisonment will be imposed in case of issue of prospectus with untr	1	2	3	4	**2**
9	_____ includes an engineer, valuationer, accountant	Expert	Promoter	Auditor	Director	**Expert**
10	What is the liability of an expert for mis-statement _____	Fine – 50,000	Imprison – 2 years	Both (a) & (b)	fine 10,000	**Fine – 50,000**
11	What is the liability not delivering that can be imposed for statement in lieu of prospectus	Fine – 10,000	Imprisonment – 2 years	None of the above	Both (a) & (b)	**Fine – 10,000**
12	_____ are the prospectus issued by the issuing house	Deemed prospectus	Shelf prospectus issued by t	Red herring	certificate of incorporati	**Deemed prospectus**
13	_____ prospectus were issued in case securities were issued in stages	Deemed	Shelf	Red herring	certificate of incorporation	**Shelf**
14	_____are required to file prior to making second and subsequent issue of securities in case shelf prospectus are filed:	Information memorandum	Information articles	Form 13	certificate of incorporati	**Information memorandum**
15	Information memorandum + shelf prospectus together constitutes _____	Memorandum	Articles	Prospectus	certificate of incorporation	**Prospectus**
16	Validity period of information memorandum is _____	1 year	2 years	3 years	4 years	**1 year**
17	_____ prospectus were issued in order to test the market before finalizing issue	Deemed	Shelf	Red herring	both a &b	**Red herring**
18	If there is any variation in case of R.H.P _____ days should be given for withdrawal of application	1	3	5	7	**7**
19	In case of red-herring prospectus the refund is made with an interest @_____	12	13	15	16	**15**
20	When there is a untrue statement in the prospectus. The shareholder who subscribed in _____ market can sue the company	secondary	primary market	both a & b	money market	**secondary**
21	When there is any untrue statement in the prospectus. The shareholder who was A ____	subscriber	intermediar	promisor	owner	**subscriber**
22	Because of Misrepresentation in prospectus an expert will be _____liable.	civil	criminally	both a & b	public	**criminally**
23	What is punishment for directors, promoters and other persons for Misrepresentation in prospectus	50,000	2 years imprisonment	Both of the above	10000	**Both of the above**
24	When a private company is converted into public company. In which form it should be	Schedule III	Schedule IV	Schedule VI	Schedule I	**Schedule IV**
25	A prospectus is to be issued within _____days of registration.	30	60	90	120	**90**
26	.A company shall not proceed to allot shares until the beginning of the _____day fro	second	third .	Afifth.	seventh.	**second .**
27	All monies received with the application of shares are to be deposited_____.	with the controller of capital issues	in the companys bank accou	in a special account opened in a	with the registrar of com	**in a special account opened in a sc**
28	A letter of provide must be demanded in the transmission of shares when a person____	is declared insolvent	misbehaves .	. becomes of unsound mind	. has died .	**has died .**
29	A public company, having a share capital, is required to send the return of allotment to t	15	30	45	60	**30**
30	The Return of document is to be filed with the Registrar in the case of _____.	allotment of debentures	reissue of forfeited shares	issue of shares	all of the above	**issue of shares**

31	.Since a company is regarded as an entity separate from its members, _____.	the property of the company is the pr	the debts of the company ar	the shareholders can enter into	the shareholders have ins	**he shareholders can enter into con**
32	.A Person ceases to be a companys members when _____.	he loses his share certificate	he becomes insolvent	his share certificate is converte	his shares are forfeited fo	**his shares are forfeited for nonpa**
33	.Which of the following are characteristics of a company ?	It has unlimited liability	It exists only in contemplati	It has not a perpetual successio	It comes to an end on the	**It exists only in contemplation of l**
34	.Since a company is regarded as an entity separate from its members, _____.	the property of the company is the p	the debts of the company ar	the shareholders can enter into	the shareholders have ins	**the shareholders can enter into co**
35	.The Reserve Bank of India is an example of a _____.	registered company	statutory company .	chartered company .	unlimited company .	**statutory company .**
36	A shareholder purchased in the open market shares of a company whose prospectus con	can rescind the contract only but can	can claim damages only but	has no remedy against the com	has remedy against the d	**has no remedy against the compar**
37	A statement in lieu of prospectus is required to be issued _____.	by all companies which issue shares	by public companies when s	by private companies as they do	by all companies	**by public companies when shares**
38	The underwriting commission paid or agreed to be paid must not exceed _____.	2 percent of the issue price of the sha	2.5 percent of the issue price	5 percent of the issue price of t	10 percent of the issue pr	**5 percent of the issue price of the**
39	When the shares are transferred to X from Y. Y will be a _____ of the company	Member	Shareholder	Partner	stake holder	**Shareholder**
40	Which of the given below members are not shareholders	Death of members	Insolvent	Share warrant holders	All of the above	**All of the above**
41	Which of the following is a right of the members of a company _____	Right to have share	Right Appoint Auditor	Right Appoint Director	All the above	**All of the above**
42	Which of the following is not a member of a company?	Partnership firm	Foreigner	Government	HUF	**Partnership firm**
43	A company can become a members of another company if it is so authorized by _____	MOA	AOA	Both (a) & (b)	certificate of incorporation	**MOA**
44	Which of the following is not true _____	Every member is a contributory	Every contributory is a member.	Both (a) & (b)	no members	**Every contributory is a member.**
45	Interest out of capital can be paid only if it is sanctioned by____	MOA	AOA	NCLT	C.G	**AOA**
46	Forfeiture can be made only if it is authorized by _____	AOA	MOA	ROC	C.G	**MOA**
47	shelf prospectus issued by	Financial Institution	private company	Public Company	Holding Company	**Financial Institution**
48	an information of memorandum shall be issued to the public along with _____	Deemed prospectus	Shelf prospectus	prospectus	memorandum	**Shelf prospectus**
49	when an update of information memorandum is filled every time offer of _____ is m	paid up capital	securities	share warrents	debentures	**securities**
50	liability of misstatements in a prospectus	civil	criminal	public	both a &b	**both a &b**
51	Acompany having a share capital, which does not issues a prospectus, can allot shares or deber	3 days	5 days	8 days	1 month	**3 days**
52	A company issuing a prospectus to the public must do it with in_____	90 days after the date of registration	30 days after the registration	60 days after the date of publica	60 days after the registra	**90 days after the date of registrati**
53	a satement in liue of prospectus is required to be issued by	all companies which issues shares an	public company when share	private company	Holding Company	**public company when share is issu**
54	the underwriting commision paid to be paid must no exceed	2 percent	2.5 percent	5 percent	10 percent	**5 percent**
55	red herring prospectus the refund interest --------	10	15	20	25	**15**
56	Which of the following documents may be changed with retrospective effect?	Memorandum of association	prospectus .	Articles of association	Statement in lieu of pros	**Articles of association .**
57	prospectus means	invite offers from public	inviting capital	value of company	notice	**invite offers from public**
58	misrepresentation in the prospectus must be of fact	not of law	not of rules	not of standard	either no rules and no lav	**not of law**
59	A shareholder purchased in the open market shares of a company whose prospectus con	can rescind the contract only but can	can claim damages only but	has no remedy against the com	has remedy against the d	**has no remedy against the compar**
60	Which of the following companies must file a statement in lieu of prospectus?	A private limited company	A cooperative society	A company that has issued a pr	A public company that h	**A public company that has not iss**

Karpagam Academy of Higher Education
(Deemed University Established Under Section 3 of UGC Act, 1956)
Coimbatore - 641 021.

II B.COM CA -THIRD SEMESTER

COMPANY LAW - [15CCU303A]

UNIT 4

		OPTION1	OPTION2	OPTION3	OPTION4	ANSWER
1	A company must inform the registrar about redemption of preference shares with in	21 days	15 days	30 days	25 days	**30 days**
2	Share premium amount is treated as the _____capital of a company	issued	Reserve	Subscribe	paid up	**Reserve**
3	A company can create 'reserve capital' by passing _____	an ordinary resolution	a special resolution	a board resolution	Annual General Meeting	**a special resolution**
4	The capital which is part of the uncalled capital of the company which can be called up only in the event of its winding up it is called	Issued capital	Nominal capital	Authorised Capital	Reserve capital	**Reserve capital**
5	XYZ Co. is a holding of XZ Pvt. Company. XZ Co. issued deferred shares. The issue is valid or void	Valid	Void	Situation does not arise	enforceble	**Void**
6	What is the maximum period for redemption in case of preference shares issued by the	10 years	15 years	20 years	12 years	**20 years**
7	Capital redemption reserve must be used for issue of	Fully paid bonus shares	Fully paid equity shares	Preference shares	upaid capital	**Fully paid bonus shares**
8	Part of the issued capital taken by public is called _____	Subscribed	Called – up capital	Un called capital	Paid up capital	**Subscribed**
9	Part of authorized capital which is offered by the company for subscription	subscribed	Issued	Un called	called up	**Issued**
10	Stamp duty on registration of the company is payable based on _____ capital.	Nominal	Authorized	Both (a) & (b)	paid up	**Both (a) & (b)**
11	Deferred shares are also known as _____ shares	Founders	Equity	Preference	debenture holders	**Founders**
12	_____ Preference shares carry the right to cumulate the dividends	Converted	Cumulative	Non-converted	redemption	**Cumulative**
13	Paying back of capital is called	Redemption	Conversion	Participation	termination	**Redemption**
14	Premium amount on the securities are transferred to _____account	Securities premium	Reserve fund	Capital Reserve	None	**None**
15	Maximum rate of discount that can be allowed on issue of shares	5%	10%	15%	20%	**10%**
16	To issue the shares at discount company at least how many years should complete how many years ___	1	2	3	4	**1**
17	____are the shares issued by the company to it employees or directors for consideration other than cash	Bonus	Sweat	Right	ESOP	**Sweat**
18	Cumulative preference share holders have voting right if dividend are in arrears for yea	1	2	3	4	**2**
19	_____ form is to be find in case of variation rights of share holders	23	19	18	20	**19**
20	_____ is an aggregate of fully paid share that have been legally consolidated.	Share	Stock	Both (a) & (b)	bond	**Stock**
21	_____have fixed denomination	Share	Stock	Both (a) & (b)	bond	**Share**
22	_____resolution should be passed by the company to offer shares to outsiders	Special resolution	Ordinary resolution	C.G	Both or b)	**Special resolution**
23	Company must pass _____ for reducing its share capital	OR	S.R	C.G permission	Both or b)	**S.R**
24	Court order the company to add _____ after reducing its share capital	And reduced	Ltd	Both (a) & (b)	pvt Ltd	**And reduced**
25	For reducing its share capital it should give notice to whom?	Debtors	Creditors	Both (a) & (b)	shareholders	**Creditors**
26	Reduction & diminution is done under which sec.	100 & 94	94 & 100	100 & 96	96 & 100	**100 & 94**
27	Which of the following can be used for buy back of shares	Free reserves	Securities premium	Proceeds of fresh issue of shares	All of the above	**All of the above**
28	Buy back by board resolution can only be upto _____	15	10	25	20	**10**
29	Buy back should be less than or equal to _____% of total paid up capital	25	30	35	40	**25**

30	In case of buy back debt equity ratio should be _____	1:02	2:01	3:01	1:03	**2:01**
31	Every buy back shall be completed with in _____month from the date of passing the	6	8	10	12	**12**
32	The company must deliver share certificate within _____ if the shares allotted b	2 months	3 months	4 months	8 months	**3 months**
33	The company must deliver share certificate within _____ if the shares applied f	3 months	2 months	5 months	8 months	**2 months**
34	Share warrants can be issued with the prior approval of the _____	Company law board	Dept of company affairs	Registrar	None	**Registrar**
35	Stamp duty to be paid at the time of issue of share certificate is.	Nominal	High	Very high	low	**Nominal**
36	Stamp duty to be paid at the time of issue of share warrant.	Nominal	High	Very high	low	**Very high**
37	_____ specifies the time limit with in which share certificate is to be delivered	sec 110	sec 111	sec 112	sec 113	**sec 113**
38	_____ is a document showing title	Share certificate	Share warrant	Both (a) & (b)	Dividend warrant	**Both (& (b)**
39	Extension of time limit is possible only in which of the following?	Shares	Debentures	Both (a) & (b)	Dividend	**Debentures**
40	In case of extension of time limit for issue of debenture certificate should be given by _	NCLT	ROC	DCA	both b and c	**NCLT**
41	The period of extension granted by NCLT for issue of debenture certificate is _____	5	7	9	11	**9**
42	Which of the following can issue the share warrant	Public	Private	Both (a) & (b)	statutory company	**Public**
43	Voting Rights are available to share warrant holders.	Yes		No		**No**
44	Duplicate certificate obtained if original certificate lost in case of.	Share Certificate	Share warrant	Dividend warrant	both b and c	**Share Certificate**
45	Name of the member is struck off from the register in case of _____	Issue of share certificate	Share warrant	Forfeiture	both b and c	**Share warrant**
46	_____Days be given for payment of call money from the date of service of notice	14	13	12	11	**14**
47	_____ arises in respect of debt due on shares as well as on other transactions	Forfeiture	Lien	Both (a) & (b)	bailee	**Lien**
48	Return of partly paid shares by the shareholders to the company is _____	Surrender	Forfeiture	Lien	bailee	**Surrender**
49	No consideration shall be paid by the company in exchange of _____ shares	Lien	Forfeited	Surrender	bailee	**Surrender**
50	Transfer deed should in form No.	6 B	5 B	7 B	8 B	**7 B**
51	_____ is voluntary passage of the rights and duties of member from a share holde	Transfer	Transmission	Both (a) & (b)	Blank transfer	**Transfer**
52	The person who transfer his rights and duties is called _____	Transferee	Transferor	Promisor	Promisee	**Transferor**
53	The person to whom the rights and duties are endorsed is called _____	Transferee	Transferor	Endorser	Endorsee	**Transferee**
54	_____ is an instrument of transfer signed by the transferor in which the name & date are not filled.	Forged transfer	Blank transfer	Both (a) & (b)	no transfer	
55	_____ is issued in acknowledgement of any indebtedness	Debenture certificate	Share certificate	Share warrant	both b and c	**Debenture certificate**
56	Own funds are called _____	Debenture capital	Share capital	Loan capital	authorised capital	**Share capital**
57	Incase of allotment Debenture Certificate is to be issued with in_____months	1	2	3	4	**3**
58	Debenture holders are _____	Owners	Creditors	Debtors	Both (a) & (b)	**Creditors**
59	Return paid on shares is _____	Interest	Dividend	Commission	Both (a) & (b)	**Dividend**
60	Debentures payable to a holder of certificate is called _____	Bearer	Unregistered	Secured	Both (a) & (b)	**Bearer**

Karpagam Academy of Higher Education

II B.COM CA -THIRD SEMESTER

COMPANY LAW - [15CCU303A]

UNIT 5

		OPTION1	OPTION2	OPTION3	OPTION4	ANSWER
1	Charge includes _____	Loans	Mortgage	Security	Hire	**Mortgage**
2	Commencement of winding up of a company does not affect the nature of_____	A fixed charge	A floating charge	Both (a) & (b)	b) Specific	**Both a & b)**
3	Which of the following authorities is empowered to extent time for registration of char	CG	Company law board	Court	NCLT	**NCLT**
4	_____ is a charge when it is made specifically to cover assets	Fixed	Specific	Floating	Both (a) & (b)	**Specific**
5	_____ is a charge created on a class of assets related to ordinary course of busines	Fixed	Specific	Floating	b) Specific	**Floating**
6	Which of the following charge is not registered with the ROC _____	Charge on immovable property	Charge on uncalled share capital	Charge on called made but not paid	Charge on call made but paid	**Charge on immovable property**
7	Unsecured debentures does not require any registration because it is not secured by __	Fixed	Floating charge	Both (a) & (b)	Charge on uncalled share capital	**Both (& (b)**
8	Incase of any default is made in filing the particulars related to charge then penalty is u	5 to 10	10 to 15	15 to 20	20 to 25	**5 to 10**
9	_____ Sec. contains the provision relating to modification of a charge	130	135	140	145	**135**
10	Any charge is satisfied in full then which form is to be file with ROC_____	17	18	19	20	**17**
11	A charge requiring registration shall be filed with the registrar with in _____	21 days	30 days	45 days	40 days	**30 days**
12	When a charge become void., the money secured there under becomes repayable with in _____months	1	2	10	immediately	**immediately**
13	What is the time limit for conducting statutory meeting?	1 to 5 months	1 to 6 months	1 to 9 months	1 to 12 months	**1 to 6 months**
14	Notice of statutory meeting should be given with a period not less than	21 clear days	14 clear days	7 clear days	30 clear days	**21 clear days**
15	Notice of statutory meeting should be attested by at least.	3 directors	2 directors	3 directors	4 directors	**2 directors**
16	The time gap between two AGM's shall not exceed.	15 months	18 months	16 months	10months	**15 months**
17	First AGM must be held within _____ from the incorporation of the company	15 months	18 months	12 months	10months	**18 months**
18	XYZ co, incorporated on 1st Jan 2005. The AGM should be held on 1st July 2006. ROC extended that time to 1st Sep.2006.Is the AGM valid.	Valid	Invalid	Situation does not arise	enforceble	**Invalid**
19	Every AGM must be held with _____ from the date of the Balance Sheet.	4 months	6 months	9 months	10months	**9 months**
20	First AGM must be held with in _____ from the date of the balance sheet	6months	9months	5months	10months	**9months**
21	AGM should be held at	Company	Registered office	Corporate office	other places	**Registered office**
22	Failure to convene AGM u/s 166 penalty will be	50,000+250 per every day	75,000+250 per every day	1,00,000+250 per every day	25,000+250 per every day	**50,000+250 per every day**
23	Length of notice in the case of AGM is 21 clear days. Articles provided 25 clear days for length of notice. Is the AGM valid	Valid	Invalid	void	enforceble	**Valid**
24	Length of notice in the case of AGM is 21 clear days. Articles provided that 15 clear days for length of notice. Is the AGM valid	Valid	Invalid	void	enforceble	**Invalid**
25	A shareholder appointed a proxy. The proxy must be a member of the company. Do you agree with this statement.	Agree	Disagree	not applicable	both a & b	**Disagree**
26	All special business can only be transected by passing a special resolution. Do you agree with this statement	Agree	Disagree	not applicable	both a & b	**Disagree**
27	In case of Public Company the quorum should be	5 members	7 members	2 members	8 members	**5 members**
28	In case of private company the quorum should be	2 members	3 members	4 members	8 members	**2 members**
29	Quorum should be present at the	Commencement of meeting	Middle of the meeting	d) End of the meeting	Any time during meeting.	**Commencement of meeting**
30	_____ meeting given an opportunity to the member to know discuss on promotion & formation of the company.	General	EGM	Statutory	quartely	**Statutory**
31	_____ report is send by the directors to its members.	Statutory	Audit	Annual	quartely	**Annual**
32	In the given below who are not required to hold Statutory General Meeting	Private company	Government Company	Public company	Both (a) & (b)	**Both (& (b)**
33	In case of Statutory General Meeting receipts & payments are prepared up to _____ days before the date of report	3	5	7	9	**7**
34	Who should certify that company allotted the shares and cash received in respect there	Auditor	Director	Share holder	Members	**Auditor**
35	In the given below who are required to hold A.G.M _____	Public company	Private company	Government company	holding company	**Public company**
36	The time period for conduction of AGM is extended by ROC for how many months	1	2	3	4	**3**
37	Which of the following company can held the AGM on public holiday_____	Public company	Private company	Govt company	Association not for profi	**Association not for pr**
38	_____ may grant exemption to any class of companies with regard to the time & pla	CG	ROC	NCLT	D.C.A	**C.G**
39	In case of failure to convene the AGM fine is upto Rs._____	25,000	50,000	75,000	80,000	**50,000**

40	In case of continuing default to convene the AGM fine isRs._____ for every day	250	300	350	400	**250**
41	The resolution passed at AGM are _____	Valid	Void	Voidable	Void ab-initio	**Valid**
42	Every business transacted at an EGM is a _____ business	Ordinary	Special	Both (a) & (b)	void	**special**
43	M.M. Obtained, the incorporation on Jan 1, 1993 and C.C.B on June 1, 1993. The earliest date on which it can hold the statutory meeting is_____	01-Feb-93	01-Mar-93	01-Jul-93	01-Aug-93	**August 1, 1993**
44	Majority rule is not applicable when	The act done is illegal	The act done is ultra vires th	The act done constitutes a fraud	mistakes	**The act done is illega**
45	A cost auditor makes his report to:	Members of company	Directors of company	Registrar	C. G.	**Directors of company**
46	A company not declare dividend at.	Statutory meeting	Annual general meeting	Extra ordinary G.M	quoram	**Statutory meeting**
47	If as a person is present in more than 1 capacity his presence will be counted as _____	1	2	3	4	**2**
48	In the absence of a quorum the proceedings of the meeting will be _____	Valid	Void	Voidable	enforceable	**Void**
49	If quorum is not present with in _____ time the meeting is stand dissolved.	½ Hr	1 Hr.	1 ½ Hr	2 Hr.	**½ Hr.**
50	In case of class or debenture holders quorum constitutes _____ members.	1	2	3	4	**1**
51	_____ Order to call a EGM even though 1 member present in person or by proxy.	ROC	C.G	NCLT	D.C.A	**C.G**
52	_____ can vote at the meeting even though not a member.	shareholder	President	Governor	both a & b	**All the above**
53	Voting right can't be exercised in case of _____	Calls in advance	Calls in arrears	Both (a) & (b)	no voting rights	**Calls in arrears**
54	Casting vote can be cast by whom only in case of equality of votes	Chairman	Director	Auditor	Manager	**Chairman**
55	The Chairman on his own motion _____also order a poll	Must	Should	May	not required	**May**
56	Poll is conducted by Chairman with in _____ hrs from the demand.	24	48	72	36	**48**
57	Proxy need not be a _____ of the company	Shareholders b) Members		Both (a) & (b)	creditord	**Both and b)**
58	Depositing of proxy with the company should be made with in how many hours	24	48	36	72	**48**
59	If the notice contain a special business then an _____ statement shall be enclosed:	Explanatory	Enquiry	Both (a) & (b)	minuts	**Explanatory**
60	_____ is the official recording of the proceedings of a meeting	Quorum	Minutes	Both (a) & (b)	records	**Minutes**