Semester V

**Elective I**

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|---|---|---|
| 15BAU506A | COMPANY LAW AND SECRETARIAL PRACTICE | 5 - - 5 |

**Course Objective:**

- Company Law and Secretarial Practice represents the fundamental knowledge and exposure of creation of company, company meeting and rights and duties of company secretary.
- This paper presents the formation of companies, writing of minutes and agenda, appointment and removal of directors.

**Course Outcome:**

- To enhance students' knowledge on formation of company, Documents required for company meetings.
- To impart students' knowledge in the area of secretarial practice.

**UNIT I :** Companies Act 1956 Vs Companies Act 2013 – Formation of Companies – Promotion – Meaning – Promoters – Functions – Duties of Promoters – Incorporation – Meaning – Certification of Incorporation – Memorandum of Association – Meaning – Purpose – Alteration of Memorandum – Doctrine of Ultravires – Articles of Association – Meaning – Forms – Contents – Alternation of Article.

**UNIT II :** Directors – Qualification and Disqualification of Directors – Appointment of Directors – Removal of Directors –Directors remuneration – Powers of Directors – Duties of Directors –Liabilities of Directors.

**UNIT III:** Company Meetings – Kinds – Board of Directors Meeting – Statutory Meeting – Annual General Meeting – Extra Ordinary General Meeting – Drafting of Correspondence – Relating to the Meetings – Notices – Agenda – Chairman Speech – Writing of Minutes.

**UNIT IV:** Company Secretary – Meaning – Definition – Types – position – Qualities – Qualifications – Appointment and Dismissal – Power – Rights – Duties – Liabilities of a Company Secretary – Role of a Company Secretary.

**UNIT V :** Accounts of Companies – Audit and Auditors' – Prevention of Oppression and Mismanagement – Wingding up – Official Liquidators – National Company Law Tribunal.

**TEXT BOOKS:**

1.M.C.Shukla and S.S.Gulshan, (2011), *Principles of Company Law*, S. Chand & Co. New Delhi.

**REFERENCES :**

1.N.D.Kapoor, (2010), *Elements of Company Law*, Sultan Chand & Sons, New Delhi.
2.M.C.Kuchhal, (2012), *Secretarial Practice*, Vikas Publications, New Delhi.
3.Avtar Singh, (2014), *Introduction to Company Law*, Eastern Book Company, New Delhi.
4.N.D.Kapoor, (2017), *Company Law & Secretarial Practice,* Sultan Chand & Sons, New Delhi.

**KARPAGAM ACADEMY OF HIGHER EDUCATION**

**DEPARTMENT OF MANAGEMENT - LECTURE PLAN**

**COMPANY LAW AND SECRETARIAL PRACTICE (15BAU506A)**

**UNIT – I – (15 Hours)**

| S. No | Lecture Duration (Hrs) | Topics to be covered | Support Materials |
|---|---|---|---|
| 1 | 1 | Syllabus Discussion | - |
| 2 | 1 | Companies Act 1956 Vs Companies Act 2013 | T1 1-6 |
| 3 | 1 | Formation of Companies | T1 21-40 |
| 4 | 1 | Promotion – Meaning | T2 33-37 |
| 5 | 1 | Promoters – Functions – Duties | T2 68-70 |
| 6 | 1 | Incorporating – Meaning | T1 63-74 |
| 7 | 1 | Certificate of Incorporation | T1 63-74 |
| 8 | 1 | Certificate of Commencement of Business | T1 65 |
| 9 | 1 | Memorandum of Association – Meaning, Functions | T1 76-77 |
| 10 | 1 | Memorandum of Association – Purpose | T1 78-80 |
| 11 | 1 | Alteration of Memorandum – Doctrine of Ultravires | T1 83-85 |
| 12 | 1 | Articles of Association – Meaning, Functions | T1 83-85 |
| 13 | 1 | Articles of Association – Forms | T1 89-92 |
| 14 | 1 | Contents – Alteration of Articles | T1 92-101 |
| 15 | 1 | Recapitulation and Discussion on important questions | - |
| Total No. of Hours planned for **Unit I** | | | **15** |

## Text Books:

T1 = Company Law & Secretarial Practice – N.D. Kapoor, Reprint 2011

T2 = Company Law & Secretarial Practice – M. J. Mathew, II Revised Edition 1995

## References:

R1 = Secretarial Practice – M. C. Kuchhal ($16^{th}$ Edition)

R2 = Students Guide to Company Law – A. K. Manunmdar & Kapoor (2012)

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**DEPARTMENT OF MANAGEMENT - LECTURE PLAN**

**COMPANY LAW AND SECRETARIAL PRACTICE (15BAU506A)**

## UNIT – II – (15 Hours)

| S. No | Lecture Duration (Hrs) | Topics to be covered | Support Materials |
|---|---|---|---|
| 1 | 1 | Directors | T1 346, 353 |
| 2 | 1 | Role of Directors in promoting a company | T1 348 |
| 3 | 1 | Directors Qualification | T1 357, 358 |
| 4 | 1 | Directors Disqualifications | T1 357 |
| 5 | 1 | Directors Appointment | T1 348, 346 |
| 6 | 1 | Directors Appointment – Various means of appointment | T1 346 |
| 7 | 1 | Directors Removal | T1 360 |
| 8 | 1 | Mode of Removal of Directors | T1 360 |
| 9 | 1 | Directors Remuneration | T1 361 |
| 10 | 1 | Power of Directors | T1 361 |
| 11 | 1 | Duties of Directors | T1 353 |
| 12 | 1 | Duties of Directors | T1 374 |
| 13 | 1 | Liabilities of Directors | R1 289 |
| 14 | 1 | Liabilities of Directors - Contd. | R1 308 |
| 15 | 1 | Recapitulation and Discussion on important questions | - |
| Total no. of Hours planned for **Unit II** | | | **15** |

### Text Books:

T1

### Reference Books

R1 & R2

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**DEPARTMENT OF MANAGEMENT - LECTURE PLAN**

**COMPANY LAW AND SECRETARIAL PRACTICE (15BAU506A)**

## UNIT – III – (15 Hours)

| S. No | Lecture Duration (Hrs) | Topics to be covered | Support Materials |
|---|---|---|---|
| 1 | 1 | Company Meetings | T1 283, 284, 291, 296 |
| 2 | 1 | Need and Importance of Meetings | T1 283 |
| 3 | 1 | Kinds of Meetings | T1 283, 284 |
| 4 | 1 | Kinds of Meetings – Contd., | T1 291, 296 |
| 5 | 1 | Board of Directors Meeting | T1 371 |
| 6 | 1 | Board of Directors - Statutory Meeting | T1 284 |
| 7 | 1 | Board of Directors - Statutory Meeting – Contd., | T1 284 |
| 8 | 1 | Annual General Meeting | T1 291 |
| 9 | 1 | Annual General Meeting – Contd., | T1 291 |
| 10 | 1 | Extra Ordinary General Meeting | T1 296 |
| 11 | 1 | Extra Ordinary General Meeting – Contd., | T1 296 |
| 12 | 1 | Drafting of Correspondence relating to the meetings | T1 326, 332 |
| 13 | 1 | Notice – Agenda | T1 337, 332 |
| 14 | 1 | Writing of Minutes - Chairman's' Speech | R1 424 - 434 |
| 15 | 1 | Recapitulation and Discussion on important questions | - |
| Total no. of Hours planned for **Unit III** | | | **15** |

**Text Books: T1**

**Reference Books** : R1, R3 – Manual of Secretarial Practice – Tandon. B. N (Reprint)
R4 – Company Law & Secretarial Practice – N.D.Kapoor (2017)

**KARPAGAM ACADEMY OF HIGHER EDUCATION**

**DEPARTMENT OF MANAGEMENT - LECTURE PLAN**

**COMPANY LAW AND SECRETARIAL PRACTICE (15BAU506A)**

## UNIT – IV – (15 Hours)

| S. No | Lecture Duration (Hrs) | Topics to be covered | Support Materials |
|---|---|---|---|
| 1 | 1 | Company Secretary | T1 43 |
| 2 | | Company Secretary – Role in promotion of company | T1 43 |
| 3 | 1 | Company Secretary - Meaning, Definition | T1 43 |
| 4 | | Qualities of Company Secretary | T1 50 – 53 |
| 5 | 1 | Types of Company Secretary | T1 43, 47 |
| 6 | | Positions | T1 50 – 53 |
| 7 | 1 | Qualities | T1 48 |
| 8 | | Duties | T1 49 |
| 9 | 1 | Rights | T1 50 |
| 10 | | Powers | T1 50 |
| 11 | 1 | Qualification & Appointment | T1 50 – 53 |
| 12 | | Removal | T1 49 |
| 13 | 1 | Liabilities of Company Secretary | T1 61, 72 |
| 14 | 1 | Role of Company Secretary | T1 72,123,205, 217,238,250 |
| 15 | 1 | Recapitulation and Discussion on important questions | - |
| | 1 | Recapitulation and Discussion on important questions | - |
| Total no. of Hours planned for **Unit IV** | | | **15** |

### Text Books:

T2

### Reference Books R2 & R4

**KARPAGAM ACADEMY OF HIGHER EDUCATION**

**DEPARTMENT OF MANAGEMENT - LECTURE PLAN**

**COMPANY LAW AND SECRETARIAL PRACTICE (15BAU506A)**

## UNIT – V – (15 Hours)

| S. No | Lecture Duration (Hrs) | Topics to be covered | Support Materials |
|---|---|---|---|
| 1 | 1 | Introduction – Meaning of Accounts of Companies | T1 400, 402, 403 |
| 2 | 1 | Need of Companies in Maintenance of Accounts | T1 403 |
| 3 | 1 | Audit and Auditors | T1 406, 410, 411 |
| 4 | 1 | Role of Auditor in preparing Accounts | T1 406, 411 |
| 5 | 1 | Prevention of Oppression and Mismanagement | R1 521 to 536 |
| 6 | 1 | Prevention of Oppression and Mismanagement – Contd., | R1 521 to 536 |
| 7 | 1 | Winding Up | T1 415, 418, |
| 8 | 1 | Winding Up - types of winding up | T1 418, 419 |
| 9 | 1 | Official Liquidators | T1 420, 422, 423 |
| 10 | 1 | Procedures to be followed by Official Liquidators | T1 422, 423 |
| 11 | 1 | Need for National Company Law Tribunal | R4 820 |
| 12 | 1 | Recapitulation and Discussion on important questions | - |
| Total No. of hours planned for Unit – V | | | |
| 13 | 1 | Revision of Previous Year Question Paper | - |
| 14 | 1 | Revision of Previous Year Question Paper | - |
| 15 | 1 | Revision of Previous Year Question Paper | - |
| Total no. of Hours planned for **Unit V** and Discussion of Previous ESE question papers | | | **15** |

## Text Books:

T1

## Reference Books R1, R3, & R4

R4 = Elements of Mercantile Law, N.D.Kapoor (2017), Sultan Chand & Sons.

**UNIT I**

Companies Act 1956 Vs Companies Act 2013 – Formation of Companies – Promotion – Meaning – Promoters – Functions – Duties of Promoters – Incorporation – Meaning – Certification of Incorporation – Memorandum of Association – Meaning – Purpose – Alteration of Memorandum – Doctrine of Ultravires – Articles of Association – Meaning – Forms – Contents – Alternation of Article.

The following types of Business entitles are available in India:
Private Limited Company, Public Limited Company, Unlimited Company, Partnership, Sole Proprietorship. In addition to the above legal entities, the following types of entities are available for foreign investors/foreign companies doing business in India: Liaison Office, Representative Office, Project Office, Branch Office, Wholly owned Subsidiary Company, Joint Venture Company.

A limited company has following advantages members' (the directors and shareholders) financial liability is limited to the amount of money they have paid for shares. The management structure is clearly defined, which makes it easy to appoint, retire or remove directors. If extra capital is needed, it can be raised by selling more shares privately. It is simple to admit more members. The death, bankruptcy or withdrawal of capital by one member does not affect the company's ability to trade. The disposal of the whole or part of the business is easily arranged and the status is said to be high.

A limited company has following disadvantages are Requirement to register the company with the registrar of companies and provide annual returns and audited statement of accounts. All details of the company are available for public inspection so there can be no secrecy. There are penalties for failing to make returns. Can be more expensive to set up. May need professional help to form. As a director, you are treated as an employee and must pay tax. The advantages of limited liability status are increasingly being undermined by banks, finance house, landlords and suppliers who require personal guarantees from the directors before they will do business.

Process of formation of a company | How to form a Company?
The process of formation of a company can be discussed and divided in following four stages: 1) Promotion, 2) Incorporation or Registration, 3) Capital Subscription, 4) Commencement of Business. Of these stages only two are necessary for the formation of a private company and of a public company not having any share capital. They may commence business immediately after they have received a certificate of incorporation. But a public company having a share capital has to pass through all the above mentioned four stages before it can commence business or exercising any borrowing powers.

1. Promotion: Before a company can be formed, there must be some persons who intend to form a company and who take the necessary steps to carry that intention into operation. Such persons are called promoters. The promoter is a person "who The promotion is the first stage in the formation of the company. Promotion may be defined as "the discovery of business opportunities and the subsequent organization of funds, property and managerial ability into a business concern for the purpose of making profits there from."

2. Incorporation of a Company: Any seven or more persons or where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their name to a memorandum of associations and otherwise complying with the requirement of this Act in respect of registration, form an incorporated company, with or without limited liability. a. Documents to be filed for registration: After ascertaining the availability of name, the promoter should prepare the following documents and file with the registrar of companies:

I. Memorandum of Association: The memorandum of association is the charter of the company. This includes its objectives, its name, the address of its registered office, the capital which the company is authorized by law, the nature of members as well as the names, addresses and agreement of people who agree to form a company.

II. Articles of Association: The other important document is the articles of association which contains the rules and regulations relating to the internal management of the company. However, it is not necessary for a public company limited by shares to file the Articles of Association. If such public company does not file Articles of Association, it is deemed to have adopted "Table A" of schedule I of the Act.

III. Copy of proposed agreement: If a company purposes to enter into an agreement with any individual for appointment as a Managing Director, or a whole-time director or manager, a copy of such an agreement should also be filed with the Registrar of companies.

IV. Consent of Directors: According to Section 266, in the case of a public limited company having share capital, a person cannot be appointed as a Director by the Articles of Association unless, he has, before the registration of the articles, either himself or through his agent, signed and filed, with the registrar his consent in writing to act as Director.

3. Certificate of Commencement of Business: A private company can commence business immediately after incorporation. However, in the case of companies other than the private company and a company having no share capital, further requirement is to be compiled with, namely, obtaining 'a certificate of commencement of business' before it can commence its business.

## Promotion – Meaning – Promoters – Functions – Duties of Promoters

Who is a Promoter in a Company?

A successful promoter is a creator of wealth and an economic prophet. The person who is concerned with the promotion of business enterprise is known as the Promoter. He conceives the idea of starting a business and takes all the measures required for bringing the enterprise into existence. For example, Dhirubhai Ambani is the promoter of Reliance Industries.

The promoters find out the ways to collect money, investigate business ideas arranges for finance, assembles resources and establishes a going concern. The company law has not given any legal status to promoters. He stands in a fiduciary position.

Types of Promoters

Promoters are different types such as professional promoters, occasional promoters, promoter companies, financial promoters, entrepreneurs, lawyers and engineers.

Meaning of Promotion:

The dictionary meaning of the word 'promotion' is 'to help bring into being'. The term promotion of a company, therefore, means to help bringing a company into existence. A company is defined in the Companies Act, 1956 as "company means a company formed and registered under this Act or an existing company……" (Sec. 3(l)(i).

The term promotion nor the term promoter has been defined in the Companies Act. In fact, the word promotion is more a commercial term than a legal one. For the promotion of a company a few persons, called promoters, desirous of forming into a company to achieve some purpose, whether with the intention of making profit or not, have to undergo several steps. Such steps can be grouped into two parts:

Commercial and Legal. Once the commercial steps are over the legal steps begin. At the latter stage assistance of a person, conversant with Company Law becomes necessary. Obviously the Company Secretary is that person, Any lawyer or a Chartered Accountant may serve the purpose but he, unless he is a qualified Company Secretary (i.e. who is a member of the Institute of Company Secretaries of India), cannot be appointed as Secretary to the Company if its Paid-up Capital is Rs. 25 lakhs or more.
The Commercial Steps consist of the following:
(1) Discovery of an Idea:
At first the promoters will find out what shall be the purpose of forming the company. Such an idea can be formulated out of experience of their own or of others. The purpose must be meaningful having a practical basis otherwise all the efforts will be futile.
(2) Investigation:
They have to make enquiries in the market about the potentiality of the proposed business. Various facts, data and information shall have to be collected and the market has to be studied.
(3) Planning:
After proper deliberation and computation of the facts, information, etc., a plan for the proposed business has to be prepared with details. Opinions of management consultants may be sought and a Project Report may be obtained. In advanced industrial countries there are professional promoters who do the promotional job.
(4) Financing:
Finance is necessary from the early stage till formation of the company is complete. The initial money comes from the promoters themselves and also from underwriters, if any, to be reimbursed by the company out of its capital. Expenses relate to legal obligations, stationery, conveyance and communication with the Government, the financial institutions (if any), the share brokers, etc.
Promotion of a Company - Registration of a Company - Certificate of Incorporation - Commencement of the Business.

1. Promotion of a Company:
A business enterprise does not come into existence on its own. It comes into existence as a result of the efforts of an individual or group of people or an institution. That is, it has to be promoted by some person or persons. The process of business promotion begins with the conceiving of an idea and ends when that idea is translated into action i.e., the establishment of the business enterprise and commencement of its business. The promoters find out the ways to collect money, investigate business ideas arranges for finance, assembles resources and establishes a going concern. The company law has not given any legal status to promoters. He stands in a fiduciary position. It is registration that brings a company into existence. A company is properly formed only when it is duly registered under the Companies Act. In order to get the company registered, the important documents required to be filed with the Registrar of Companies are as follows. 1. Memorandum of Association: It is to be signed by a minimum of 7 persons for a public company and by 2 in case of a pvt company. It must be properly stamped. 2. Articles of Association: This document is signed by all those persons who have signed the Memorandum of Association.

**Incorporation – Meaning – Certificate of Incorporation**

The Certificate of Incorporation is the main document which states your limited company is in existence. It includes your company name and number. In the UK, a certificate of incorporation is usually a simple certificate issued by the relevant government registry as confirmation of the due incorporation and valid existence of the company. A legal document stating the name and purpose of a proposed corporation, the names of its incorporators, its stock structure.
3. Certificate of Incorporation : On the registration of Memorandum of Association, Articles of Association and other documents, the Registrar will issue a certificate known as the 'Certificate of

Incorporation'. The issue of certificate is the evidence of the fact that the company is incorporated and the requirements of the Companies Act have been complied with.

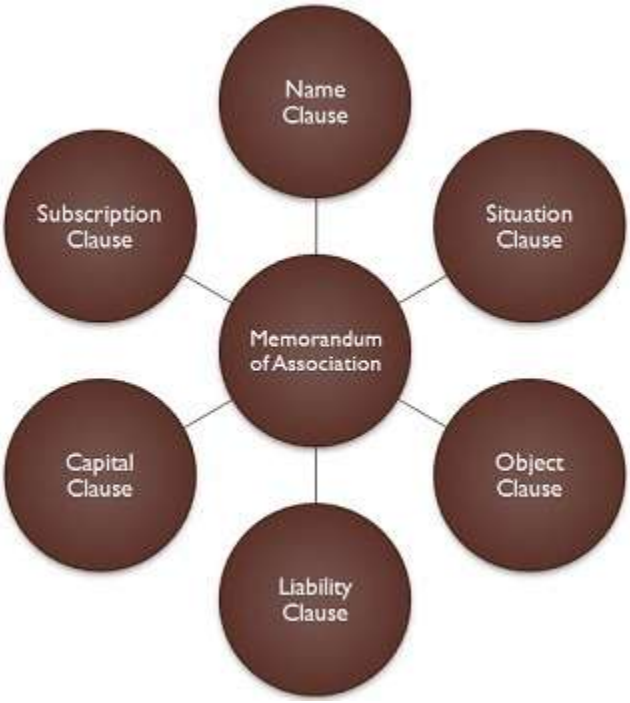
4. Certificate of Commencement of Business : As soon as a private company gets the certification of incorporation, it can can commence its business. A public company can commence its business only after getting the 'certificate of commencement of business'. After the company gets the certificate of incorporation, a public company issues a prospectus for inviting the public to subscribe to its share capital. It fixes the minimum subscription. Then it is required to sell the minimum number of shares mentioned in the prospectus. After completing the sale of the required number of shares, a certificate is sent to the Registrar along with a letter from the bank stating that all the money is received. The Registrar then scrutinizes the documents. If he is satisfied he issues a certificate known as 'Certificate of Commencement of Business'. This is the conclusive evidence for the Commencement of Business.

**Memorandum of Association – Meaning – Purpose**

A Memorandum of Association (MOA) is a legal document prepared in the formation and registration process of a limited liability company to define its relationship with shareholders. The MOA is accessible to the public and describes the company's name, physical address of registered office, names of shareholders and the distribution of shares. The MOA and the Articles of Association serve as the constitution of the company. The MOA is not applied in the U.S. but is a legal requirement for limited liability companies in European countries including the United Kingdom, France and Netherlands, as well as some Commonwealth nations.

Definition of Memorandum of Association : Memorandum of Association (MOA) is the supreme public document which contains all those information that are required for the company at the time of incorporation. It can also be said that a company cannot be incorporated without memorandum. At the time of registration of the company, it needs to be registered with the ROC (Registrar of Companies). It contains the objects, powers, and scope of the company, beyond which a company is not allowed to work, i.e. it limits the range of activities of the company.

Any person who deals with the company like shareholders, creditors, investors, etc. is presumed to have read the company, i.e. they must know the company's objects and its area of operations. The Memorandum is also known as the charter of the company. There are six conditions of the Memorandum:




Clauses of Memorandum of Association

**Name Clause –** Any company cannot register with a name which CG may think unfit and also with a name that too nearly resembles with the name of any other company. **Situation Clause –** Every company must specify the name of the state in which the registered office of the company is located. **Object Clause –** Main objects and auxiliary objects of the company. **Liability Clause –** Details regarding the liabilities of the members of the company. **Capital Clause –** The total capital of the company. **Subscription Clause –** Details of subscribers, shares taken by them, witness, etc.

The memorandum of association and articles of association are the two charter documents, for setting up of the company and its operations thereon. '**Memorandum of Association**' abbreviated as MOA, is the root document of the company, which contains all the basic details about the company. On the other hand, '**Articles of Association**' shortly known as AOA, is a document containing all the rules and regulations designed by the company.

Memorandum of Association is the most important document of a company. It states the objects for which the company is formed. It contains the rights, privileges and powers of the company. Hence it is called a charter of the company. It is treated as the constitution of the company. It determines the relationship between the company and the outsiders. The whole business of the company is built up according to Memorandum of Association. A company cannot undertake any business or activity not stated in the Memorandum. It can exercise only those powers which are clearly stated in the Memorandum. Thus, a Memorandum of Association is a document which sets out the constitution of the company. It clearly displays the company's relationship with outside world. It also defines the scope of its activities. MoA enables the shareholders, creditors and people who has dealing with the company in one form or another to know the range of activities.

**Contents of Memorandum of Association :** According to the Companies Act, the Memorandum of Association of a company must contain the following clauses:

**1. Name Clause of Memorandum of Association :** The name of the company should be stated in this clause. A company is free to select any name it likes. But the name should not be identical or similar to that of a company already registered. It should not also use words like King, Queen, Emperor, Government Bodies and names of World Bodies like U.N.O., W.H.O., World Bank etc. If it is a Public

Limited Company, the name of the company should end with the word 'Limited' and if it is a Private Limited Company, the name should end with the words 'Private Limited'.

**2. Situation Clause of Memorandum of Association :** In this clause, the name of the State where the Company's registered office is located should be mentioned. Registered office means a place where the common seal, statutory books etc., of the company are kept. The company should intimate the location of registered office to the registrar within thirty days from the date of incorporation or commencement of business. The registered office of a company can be shifted from one place to another within the town with a simple intimation to the Registrar. But in some situation, the company may want to shift its registered office to another town within the state. Under such circumstance, a special resolution should be passed. Whereas, to shift the registered office to other state, Memorandum should be altered accordingly.

**3. Objects Clause of Memorandum of Association :** This clause specifies the objects for which the company is formed. It is difficult to alter the objects clause later on. Hence, it is necessary that the promoters should draft this clause carefully. This clause mentions all possible types of business in which a company may engage in future. The objects clause must contain the important objectives of the company and the other objectives not included above.

**4. Liability Clause of Memorandum of Association :** This clause states the liability of the members of the company. The liability may be limited by shares or by guarantee. This clause may be omitted in case of unlimited liability.

**5. Capital Clause of Memorandum of Association :** This clause mentions the maximum amount of capital that can be raised by the company. The division of capital into shares is also mentioned in this clause. The company cannot secure more capital than mentioned in this clause. If some special rights and privileges are conferred on any type of shareholders mention may also be made in this clause.

**6. Subscription Clause of Memorandum of Association :** It contains the names and addresses of the first subscribers. The subscribers to the Memorandum must take at least one share. The minimum number of members is two in case of a private company and seven in case of a public company. Thus the Memorandum of Association of the company is the most important document. It is the foundation of the company.

| BASIS FOR COMPARISON | MEMORANDUM OF ASSOCIATION | ARTICLES OF ASSOCIATION |
|---|---|---|
| Meaning | Memorandum of Association is a document that contains all the fundamental information which are required for the incorporation of the company. | Articles of Association is a document containing all the rules and regulations that governs the company. |
| Defined in | Section 2 (56) | Section 2 (5) |
| Type of Information contained | Powers and objects of the company. | Rules of the company. |
| Status | It is subordinate to the Companies Act. | It is subordinate to the memorandum. |
| Retrospective Effect | The memorandum of association of the company cannot be amended retrospectively. | The articles of association can be amended retrospectively. |

| BASIS FOR COMPARISON | MEMORANDUM OF ASSOCIATION | ARTICLES OF ASSOCIATION |
|---|---|---|
| Major contents | A memorandum must contain six clauses. | The articles can be drafted as per the choice of the company. |
| Obligatory | Yes, for all companies. | A public company limited by shares can adopt Table A in place of articles. |
| Compulsory filing at the time of Registration | Required | Not required at all. |
| Alteration | Alteration can be done, after passing Special Resolution (SR) in Annual General Meeting (AGM) and previous approval of Central Government (CG) or Company Law Board (CLB) is required. | Alteration can be done in the Articles by passing Special Resolution (SR) at Annual General Meeting (AGM) |
| Relation | Defines the relation between company and outsider. | Regulates the relationship between company and its members and also between the members inter se. |
| Acts done beyond the scope | Absolutely void | Can be ratified by shareholders. |

**Articles of Association – Meaning – Forms – Contents**

Articles of Association is a document which prescribes the rules and bye-laws for the general management of the company and for the attainment of its object as given in the memorandum of association of the company. It is a document of paramount significance in the life of a company as it contains the regulations for the internal administration of the company's affairs. The articles of association are a subsidiary to the memorandum of association of the company. They define the rights, duties, powers of the management of a company as between themselves and the company at large. Further, they also prescribe the mode and form in which changes in the internal regulation of a company may be made from time to time. The articles of association of a company must always be in consonance with the memorandum of that company and being subordinate to the memorandum; they cannot extend the objects of a company as specified in the memorandum of the company.

In the case of Naresh Chandra Sanyal v. Calcutta Stock Exchange Association Ltd, the Supreme Court provided that the articles of association of a company also establish a contract between the company and its members as well as between the members. This contract governs the ordinary rights and obligations incidental to the membership in the company. Articles of association are like the partnership deed in a partnership. They particularly provide for matters such as the making of calls, forfeiture of shares, directors qualifications, the procedure for transfer and transmission of shares and debentures, powers, duties and appointment of auditors. The following companies must have their own articles of association are Unlimited Companies, Companies limited by guarantee and Private companies limited by shares

Contents of Articles of Association : Section 5(1) and section 5(2) of the Companies Act, 2013 provide for the contents of the articles of association. The articles must contain the regulations for the management of the company along with the matters prescribed by the Central Government. Further, the articles of association must also contain the following:
Share capital including sub-division, rights of various shareholders, the relationship of these rights, payment of commission, share certificates. Lien of shares: Lien of shares means to retain possession of shares in case the member is unable to pay his debt to the company. Calls on shares: Calls on shares include the whole or part remaining unpaid on each share which has to be paid by the shareholders on the company's demand. Transfer of shares: The articles of association include the procedure for the transfer of shares by the shareholder to the transferee. Transmission of shares: Transmission includes devolution of title by death, succession, marriage, insolvency, etc. It is not voluntary but is in fact brought about by operation of law. Forfeiture of shares: The articles of association provide for the forfeiture of shares if the purchase requirements such as paying any allotment or call money, are not met with. Surrender of shares: Surrender of shares is when the shareholders voluntary return the shares they own to the company. Conversion of shares in stock: In consonance with the articles of association, the company can convert the shares into stock by an ordinary resolution in a general meeting. Share warrant: A share warrant is a bearer document relating to the title of shares and cannot be issued by private companies; only public limited companies can issue a share warrant. Alteration of capital: Increase, decrease or rearrangement of capital must be done as the articles of association provide. General meetings and proceedings: All the provisions relating to the general meetings and the manner in which they are to be conducted are to be contained in the articles of association. Voting rights of members, voting by poll, proxies: The members right to vote on certain company matters and the manner in which voting can be done is provided in the articles of association. Directors, their appointment, remuneration, qualifications, powers and proceedings of the boards of directors meetings. Dividends and reserves: The articles of association of a company also provide for the distribution of dividend to the shareholders. Accounts and Audits: The auditing of a company shall be done subject to the provisions of the articles of association of the company. Borrowing powers: Every company has powers to However, this must be done according to the articles of association of the company. Winding up: Provisions relating to the winding up of the company finds mention in articles of association of the company and must be done accordingly.

The articles of association may contain entrenchment provisions. However, this concept of entrenchment was not present in the Companies Act, 1956. The word entrench means to establish an attitude, habit, or belief so firmly that change is very difficult or unlikely. Thus, an entrenchment clause is the one which makes certain amendments either impossible or difficult. The company has the discretion to include entrenchment provisions in its articles of association. Such provision may relate to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with. An entrenchment provision can be made at the time of incorporation of the company or after the incorporation of the company by way of an amendment to the articles of association of the company. The format for the articles of association of a company must be in the manner prescribed by the form provided in Schedule I of the Companies Act, 2013. Usually, the articles of association of a public limited company are prepared by taking good professional advice and are very carefully prepared from the beginning. It is only the private limited companies which have to keep a check on the following while drafting the articles of association:

1. The Companies Act, 2013 provides for the model articles for a company under section. Thus, it is to be remembered that even though there is the use of the words such as 'preparation of articles' while getting a company incorporated, it only means an adoption of the model articles as provided by the act with a few modifications as the promoters may insist.

2. As much as possible, the promoters must refrain from any additions, changes, alterations or deletions in the model articles provided by the act. This is mainly because, Schedule I of the Companies Act, 2013, from table – to the table – , provides for the forms for articles of different type of companies. Thus, more or less the model articles contain the required contents for a particular company. Additions or alterations must only be done if it is necessary to have a new regulation in the articles of association, or if a new regulation is a must for promoting the company.
3. The additions, changes or alterations which are made to the model articles, must be done with careful scrutiny of the provisions of the Companies Act, 2013.

**ALTERATION OF MEMORANDUM OF ASSOCIATION**

One of the first steps in the formation of a company is to prepare a document called the memorandum of association (hereinafter referred to as MoA). The MoA of the company contains the fundamental conditions upon which alone the company has been incorporated. [1] Every registered company should have a MoA which is the company's charter. In general the MoA regulates the company's external affairs while the articles of association regulate its internal structure.

The precondition for the registration of the company involves one or more person signing and delivering to the Companies House or the Registrar of Companies (RoC) a memorandum of association stating the intention of the subscriber or subscribers to form a company with a particular name stating where its registered office is located and stating the objects the company is formed to pursue. The memorandum must state that the company is to be a limited company if that is so and must state that it is to be a public company if that is so. The memorandum of association is also called the charter of the company as it is the company's principle document. Like explained before, no company can register without a memorandum of association as it defines the right and objects of the company.

According to section 2(28) of the Companies Act, "Memorandum means Memorandum of Association as originally framed or as altered from time to time in pursuance of any companies law or of this Act." Evidently the definition is not comprehensive and does not convey the full importance of the document. However it is notable that the act provides for the admission of an altered version of the original memorandum the Memorandum of Association of the company. In this project the researcher will explicate the importance of Memorandum of Association and elucidate the process and procedure involved in the alteration of Memorandum of Association of a company.

CHAPTER 1- SUBJECT MATTER OF MEMORANDUM

According to Palmer, the Memorandum of Association is a document of great importance in relation to the proposed company. It contains the objects for which the company is formed and therefore identifies the possible scope of its operations beyond which its actions cannot go. It defines as well as confines the powers of the company. If anything is done beyond these powers that will be ultra vires the company and be void. In the celebrated case of Ashbury Railway Carriage and Iron Co. Ltd. v. Richie [5] Lord Carins Observed that the Memorandum of Association of a company defines the limitation on the powers of the company… it contains in it both that which is affirmative and that which negative. It states affirmatively the ambit and extent of vitality and power which by law are given to the corporation and it states, if it is necessary to state, negatively that nothing shall be done beyond that ambit.

Constituents Of Memorandum Of Association

Name Clause: Since a company is an artificial person it can be identified only by its name, which is thus of considerable importance. The promoters are free to choose any name for the company but the same is subject to certain limitations. If a company is limited by shares is to be a private company, the last word of its name must be "limited" or "private limited" If the name chosen according to the opinion of the Central Government is undesirable or it is identical or resembles too nearly, to the name by which a company in existence has been previously registered, it may deem to be undesirable. Registered Office Clause: The Memorandum of Association registered with the RoC must state the geographical location of the company. Every registered company must have a registered office which establishes its domicile and

is also the address at which the company's statutory books must normally be kept and to which notices and other communications can be sent. The notice of the exact situation of the company has to be submitted to the RoC within 30 days of incorporation.

Objects Clause: The Memorandum of Association of a company should state the objects of the company. The RoC can deny registration to a company which whose objects are unlawful. It is the intention of the legislature that the Memorandum of Association of a company must state the objects for which it is incorporated, and the company is accordingly incorporated only for the purpose of pursuing those objects. Pursuing any other object is said to be ultra vires the company. Accordingly there can be two objects as far as a company is concerned namely. Main objects of the company which is to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of the main objects.

Capital Clause: A company can be limited by shares only if it has a share capital and a company limited by shares must state in its memorandum the total amount of share capital it is to have and the way it is divided into shares. The clause lays down the limit beyond which the company cannot issue shares without altering the memorandum as provided by section 94 of the Companies Act. The association or subscription Clause: At the end of ever Memorandum of Association there is an association clause or subscription clause.

CHAPTER 2- ALTERATION OF MEMORANDUM

As a matter of course Memorandum of Association is not alterable. In fact the words of the Memorandum cannot be changed that easily. It is said that "Memorandum of Association is an unalterable document alterable only in accordance with the provisions of the law" Alteration Of Memorandum Of Association Under The Common Law. Under the Common Law the Joint Stock Companies Act 1856, which introduced the Memorandum of Association into company law, made no provisions for the alteration of a memorandum. Companies Act 1862 permitted a company to change its name and its authorized share capital, but forbade any other alteration. Subsequent acts have extended the range of alteration that may be made. The CA Act 1985 S.2 (7) provides: A company may not alter conditions contained in the memorandum except in the case in the mode and to that extend, for which express provision is made by this Act.

The court has in Scott v. Scott Ltd. held that even if inadvertently the memorandum of a company does not correctly express the wishes of its subscribers, the court doesn't to have power to rectify the mistake after the company has been registered. Alteration Of Memorandum Of Association Under Indian Law Several restrictions have been imposed as far as the alteration of Memorandum of Association is concerned. The quantum of such restrictions can be seen under S.16 of the Companies Act. Alteration Of Name Clause. Alteration of the name of a company can be effected by two methods. By special Resolutions and Permission of the government: The Law regarding the change of name of a company is laid down under section 21 of CA. The section provides that the name of a company may be changed at any time by passing a special resolution at a general meeting of the company and with the written approval of the central government. However no such approval is required if the change of name involves addition or deletion of the word "private"

By rectification of omission in name: If by oversight or mistake a company is registered with a name which is the same or similar to the name of an existing company, the company may change its name by passing an ordinary resolution and getting a written permission from the Central government. In such a case the central government within a period of one year of the first registration or registration under a changed name can direct the company to change its name. In such a situation, the company must alter its name by passing an ordinary resolution within three months from the date of such direction. After the alteration of name of the company, the registrar should write the new name in the place of old name. Accordingly the certificate of newly incorporated company should be issued. If and when the certificate of newly incorporated company is received, then only the company's name is recognized. With the change of the name of the company the power and responsibilities are not changed. Because of this change of the name legal affairs of the company are not affected. Besides it does not affect the company's

existence. But after the new name is registered the legal affairs cannot be continued with the old name. The legal effect of change in name clause can be illustrated by the decision of the Calcutta High Court in the case of Malhati Tea Syndicate v. Revenue Officer [12] wherein a company changed its name from Malhati Tea Syndicate Ltd. to Malhati Tea and Industries Ltd. It filed a writ petition in its former name. Declaring the petition to be invalid the court said that nothing in the Act authorized the company to commence legal proceedings in its former name at a time when it had acquired its new name which has been put on the register of joint stock companies.

Alteration Of Registered Office Clause

A company may change the situation of its registered office for the smooth running of its business and the realization of its objects. Such change in the situation can be: (a) from one place to another in the same city or town (b) from one town to another in the same state and (c) from one state to another. Shifting from one place to another in the same city or town: If the registered office of the company is to be shifted from one place to another in the same city or town, the board of directors must pass a resolution to that effect and give the name address of its registered office to the RoC within 30 days after the date of the change of address. Shifting from one town to another in the same state: IF the company wants to shift its registered office from one town to another in the state, it shall pass a special resolution to that effect at its general meeting and send the notification to the registrar within 30 days. It shall give the new address of its registered office to the registrar. Shifting from one state to another: This kind of shifting is a much more complicated affair, as it involves alteration of the memorandum itself. The alteration of the memorandum for this purpose is subject to the provisions of Section 17 which requires, in the first place, a special resolution of the company and in the second, confirmation by the Company Law Board can confirm the alteration only if the shifting of the registered office from one state to another is necessary for any of the purpose detailed in section 17. When this condition is fulfilled, the second stage is reached namely to consider the objections of a person or class of person whose interest will in the opinion of CLB be affected the alteration. The Supreme Court in Mackinnon v. Mackenzie & Co [16] refused to sustain the contention of the state and allowed the transfer of the company to another state. The court said there is no statutory right of the state as a state to intervene in an application made under section 17 for alteration of the place of the registered office of a company. To hold that the possibility of the loss of revenue is not only relevant but of persuasive force in regard to change is to rob the company of the statutory power conferred on it by section 17. The question of loss of revenue to one state would have to be considered in the total conspectus of revenue for the Republic Of India and no parochial considerations should be allowed to turn the scale in regard to change of registered office.

Alteration Of Object Clause : Plainly speaking, it is very difficult to alter the objects clause because the law has laid down strict limitations on such alteration. Section 17 of the CA defines the limitations and any alteration must necessarily be within these limitations. The limits imposed upon the power of alteration are of two kinds, namely substantive and procedural. The former defines the physical limits of alteration and the latter the procedure by which it can be effected. The alteration of object clause involves. Special Resolution: In the first place , the company has to call a general meeting of its members and pass a special resolution and file a certified copy of the resolution with the central government. Ratification by the central government: After this, the application for proposed alteration is filed with the central government. The application shall be scrutinized by the government before confirming the alteration. Registration of alteration: A certified copy of the order of the central government shall be filed by the company with the RoC along with the printed copy of the altered memorandum within three months from the date of the order. The registrar shall register the same and certify the registration under his hand within one month of the date of filing such documents.

**Doctrine Of Ultra Vires**

It is the function of the Memorandum of Association to delimit and identify the objects in such plain and unambiguous manner as that the reader can identify the field of industry within which the corporate activities are to be confined. And it is the function of the courts to see that the company does not movie in

a director away from the field. That is where the doctrine of ultra vires comes into play in relation to joint stock companies.

The doctrine has been affirmed by the Supreme Court in India in the case of Lakshmanaswami Mudaliar v. Life Insurance Corporation of India [20] wherein the court held that the directors of a company were authorized to make payment towards any charitable or any benevolent object or for any general public, general useful object. The payment made towards the same was held by the court as ultra vires. The court said that the directors could not spend the company's money on any charitable institutions or any general object they choose. They could spend for the promotion of only such charitable objects as would be useful for the attainment of the company's own objects.

CONCLUSION

Alteration of Memorandum of Association is an important exercise through which the company brings about the required flexibility which is pertinent to its existence and survival as an entity. It is a precondition before the company can initiate any drastic change in its 'shape or structure'. As what is now clear from the discussion above it is clear that any act of the company has to be within the limits set by the Memorandum of Association. A seemingly innocuous act like the change of situation requires the prior mandate of the Board of directors or the permission of the government or in certain cases both along with a special resolution. Such approval has to be accommodated within the Memorandum of Association before the company can actually bring about the change.

It however has to be remembered that aside from the sanction of the government or the board of directors or the appropriate authority concerned there is an array or of other statutory limitations involved in the alteration of the memorandum. This has been particularly true in the case of alteration of the object clause. Due to the nature of intricacies involved a host of statutory limitations have been instituted to prevent wanton changes in the objectives of the company. The discussion above has made it abundantly clear the intricacies, complications and limitations in the alteration of Memorandum of Association. The alteration of object clause is beset with even more intricate procedures. Like explained above, the Doctrine of Ultra Vires plays an important role in the alteration of the object clause. In the case of alteration of objects a copy of the resolution should be filed with the RoC within one month from the date of resolution. In the case of inter state shifting of the registered office a certificate copy of the boards' order and a printed copy of the alternated memorandum may be filed with the registrar within three months of the board's order. Within one month the registrar will certify the registration. Alteration takes place when it is so registered. If an application for registration is not made within the above time the whole proceedings of the alteration of the company will lapse. A company desiring to change its name may do so in accordance with the provisions of Section 13 read with Section 4 of the Act by passing Special Resolution and the name approved by the Ministry of Corporate Affairs (MCA) on prescribed application. The power of the Central Government under Section 13(2) to approve change in name has been delegated to Registrar of Companies (ROC).

However, if the change required is the addition thereto or deletion there-from, of the word "Private", consequent upon conversion of a public company into a private company or vice versa, no such approval of central Government is required.

⇒ ALTERATION OF AUTHORIZED CAPITAL

A Company seeking to issue shares by way of Private Placement or Rights Issue or by any other prescribed methods, has to check the Authorized Capital, as the issue cannot exceed the amount of Authorized Capital. Thus in the view of the above, a Company may alter its Authorized Capital i.e. Capital Clause by virtue of Section 13 read with Section 61 by passing an Ordinary Resolution. The Capital Clause will be altered by prescribed process as per the applicable rules and payment of relevant stamp duty as may be applicable and levied by concerned state in which the registered office of the Company is situated.

⇒ CHANGE IN OBJECTS

A company may change its objects as enshrined in its MOA in accordance with the provisions of Section 13 of the Act. Accordingly, any alteration of MOA with respect to the objects of the company is permitted through Special Resolution. However, Section 13 (8) restricts the change in object of a company which has raised money from public through prospectus and still has any unutilised amount out of the money so raised unless a special resolution is passed by the company and the details of such resolution shall be published in one vernacular language and one English language newspaper in circulation at the place of registered office of the company as well as on the website of the company indicating the justification for such change in the object.

⇒SHIFT IN REGISTERED OFFICE

As per Section 12 of the Act, every company shall have a registered office at all times, to which all communications and notices may be addressed. Every company within 30 days of its incorporation or any change in the address of its registered office shall furnish a verification of its registered office in INC-22 prescribed under Companies (Incorporation) Rules, 2014.

A company is permitted to change its registered office from its existing location to another location-

Within the local limits of the same city, town or village (e.g. Bandra, Mumbai to Andheri, Mumbai)

Outside the local limits of the same city, town or village but within same state under jurisdiction of same ROC (e.g. Bandra, Mumbai to Kalyan) under jurisdiction of another ROC within same state (e.g. Mumbai to Pune) One State to another State. (e.g. Mumbai to Delhi) Note: As per Section 13 (11) any alteration of MOA, in the case of Company Limited by Guarantee or Company not having share capital, purporting to give any person a right to participate in the divisible profits of the Company otherwise than as member shall be void.

## ALTERATION OF ARTICLES OF ASSOCIATION

The articles of association of a company are its by-laws or rules and regulations which govern the management of its internal affairs and the conduct of its business. They are framed with the object of carrying out the aims and objects as set out in the Memorandum of Association. According to Section 2(2) of the Companies Act, 1956 â€˜articlesâ€™ means the articles of association of a company as originally framed or as altered from time to time in pursuance of any previous companies laws or of the present Act, i.e. the Act of 1956. It regulate the internal management of the company

### Meaning of Alteration of Articles of Association

Sec. 31 of the Companies Act, 1956, provides that a company may by passing a special resolution; alter regulations contained in its Articles any time subject to â€“

**a)** The provisions of the Companies Act and

**b)** Conditions contained in the Memorandum of Association [Section 31(1)].

A copy of every special resolution altering the Articles shall be filed in Form no 23, with the Registrar within 30 days its passing and attached to every copy of the Articles issued thereafter. The fundamental right of a company to alter its articles is subject to the following limitations:

### Conditions that must be satisfied for Alteration of Articles of Association

a) The alteration must not exceed the powers given by the Memorandum of Association of the company or conflict with the provisions thereof.

b) It must not be inconsistent with any provisions of Companies Act or any other statute.

c) It must not be illegal or against public policies

d) The alteration must be bona fide for the benefit of the company as a whole.

e) It should not be a fraud on minority, or inflict a hardship on minority without any corresponding benefits to the company as a whole.

f) The alternation must not be inconsistent with an order of the court. Any subsequent alteration thereof inconsistent with such an order can be made by the company only with the leave of the court.
g) The alteration cannot have retrospective effect. It can operate only from the date of amendment.
h) If a public company is converted into a private company, then the approval of the Central Government is necessary. Printed copies of altered articles should be filed with the Registrar within one month of the date of Central Governmentâ€™s approval [Section 31 (2A)].
i) An alteration that has the effect of increasing the liability of a member to contribute to the company is not binding on a present member unless he has agreed thereto in writing.
j) A reserve liability once created cannot be undone but may be cancelled on a reduction of capital.
k) An assumption by the Board of Directors of a company of any power to expel a member by amending its Articles is illegal or void.

**Procedure of Alteration of Articles of Association**

Take the necessary decision by convening a Board Meeting to change all or any of the existing Articles of Association and fix up the day, time, place and agenda for a general meeting for passing special resolution to effect the change. Issue notices for the General Meeting proposing the Special resolution and explaining inter alia, in the explanatory Statement the implication and reasons of the changes being proposed. If the shares of the company are enlisted with any recognised Stock Exchange, then forward copies of all notices sent to the shareholders with respect to change in the Articles of Association to the Stock Exchange. Hold the General Meeting and pass the special resolution. File with the stock exchange with which your company is enlisted six copies of such amendments as soon as the company adopts it in General Meeting. Out of the six copies, one copy must be a certified true copy. Forward promptly to the Stock Exchange with which your company is enlisted three copies of the notice and a copy of the proceedings of the General Meeting. File the Special resolution with the concerned Registrar of companies with explanatory statement in **Form No.23** within thirty days of its passing after payment of the requisite filing fee. If the Articles of Association have been completely or substantially changed, file a new printed copy of the Articles after paying the requisite fee.
Effect the changes in all copies of the articles of association.

**How Does A Company Amend Its Articles Of Association?**

Section 31 of the Companies Act states that the amendment or repeal of any provision in the articles will requires a special resolution of members. A company is free to incorporate under different articles of association, or to amend its articles of association at any time by a special resolution of its shareholders, provided that they meet the requirements and restrictions of the Companies Acts. Such requirements tend to be more onerous for public companies than for private ones. In business or commercial law, special resolution is a resolution passed by the shareholders of a company by a greater majority than is required to pass an ordinary resolution. The precise figures vary in different countries, but commonly an extraordinary resolution must be affirmed by not less than 75% of members' casting votes, whereas an ordinary resolution only requires a bare majority. Subject to the provisions of this Act and to the conditions contained in its memorandum, by special resolution, a company may alter its articles. However, it must provided that no alteration made in the article under this sub-section which has the effect of converting a public company into a private company, shall have effect unless such alteration has been approved by the Central Government. [1] For example, in a small company, the members may agree that amendments to the articles require the written consent of all of the members. If such a requirement were included, any purported amendment to the articles by special resolution would not take effect unless that additional requirement was satisfied. Any alteration so made shall, subject to the provisions of this Act, be as valid as if originally contained in the articles and be subject in like manner to alteration by

special resolution. [2] Where a company has passed a resolution to amend or repeal its articles, that resolution will take effect on the day it is passed or on a later date specified in the resolution.
Where any alteration such as is referred to in the proviso to sub-section (1) has been approved by the Central Government, a printed copy of the articles as altered shall be filed by the company with the Registrar within one month of the date of receipt of the order of approval. The power of altering articles under this section shall, in the case of any company formed and registered under Act No. 19 of 1857 and Act No. 7 of 1860 or either of them, extend of altering any provisions in Table B annexed to Act 19 of 1857, and shall also, in the case of an unlimited company formed and registered under the said Acts or either of them, extend to altering any regulations relating to the amount of capital or its distribution into shares, although that those regulations are contained in the memorandum. A private company is also prohibited from altering its articles if the alteration is inconsistent with the requirements of section 12 of the Companies Act. The provision relating to restriction on the right to transfer shares may be altered through some form of the restriction must remain. In Kwality Textiles (Malaysia) Sdn Bhd Vs Arunachalam & Ors (1990) MSCLC 90,575; [1990] 3 MLJ 361, the court held that there must be some restrictions on the right to transfer shares of a private company although the company cannot totally restrict the right of a shareholder to transfer his shares. An example of a restriction on the right to transfer shares includes a pre-emptive right clause. Another example is a provision requiring the transferor to obtain directors' approval for the transfer. The alteration of company's articles is also subject to some limitation on the members' voting power. The member must vote in the best interests of the company as a whole. Although a member may exercise his votes freely, it must not result in the oppression of other members or be tainted with male fide. There are majority shareholders altering the articles due to the prejudice of minority. To prevent this to happen, therefore alteration of company's articles had subjected some limitation on member's voting power. The court will not going to interfere the freedom of voting of the shareholders, unless unreasonable decision is made. Articles can be amended by special resolution section 21(1) but, in a new development, certain provisions can be entrenched and can only be amended or repealed subject to more stringent condition. Amendments must not: Conflict with Companies Act example Directors removable only by special resolution. Be illegal. Deprive members of statutory protection (variation of class rights). Force members to take/subscribe for more shares or increase liability to contribute without written consent. Be an abuse of majority power. Registered companies have the statutory right to alter their articles at any time by special resolution and cannot contractually restrict themselves from exercising this statutory right. This was decided in Punt v Symons Co Ltd [1903] 2 Ch 506 where the company's articles contained provisions restricting the appointment of directors to Mr. Symons (the company's founder) and after his death provided that the power was limited to his executors. The company entered into a contractual agreement that it would not alter articles to remove this restriction. The court held that the restriction was illegal. Where a company does enter into such an agreement and then alters its articles on breach of the agreement, the injured party cannot prevent the alteration from being made by way of injunction, but can sue for breach of the contract: Southern Foundries (1926) Ltd v Shirlaw [1940]; British Murac Syndicate Ltd v Alperton Rubber Co Ltd [1916] 2 Ch 186.

**TEXT BOOKS:**

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1.N.D.Kapoor, (2010), Elements of Company Law, Sultan Chand & Sons, New Delhi.
2.M.C.Kuchhal, (2008), Secretarial Practice, Vikas Publications, New Delhi.
3.Avtar Singh, (2014), Introduction to Company Law, Eastern Book Company, New Delhi.
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# Unit – 1- Multiple Choice Questions – Part – A Each question carry one mark

| SN | Questions | Option - A | Option - B | Option - C | Option - D | Answer |
|---|---|---|---|---|---|---|
| 1 | Internal rules and regulation are shown in | Memorandum of Association | Prospectus | Certificate of Origin | Articles | Articles |
| 2 | Articles of a company is controlled by | Memorandum of Association | Ownership | Prospectus | Government | Memorandum of Association |
| 3 | Articles of Association is to be treated as | Private Document | Public Document | Government Document | Court Record | Public Document |
| 4 | Contents of Articles of Association shall not include | Underwriting Commission | Accounts | Association Clause | Audit | Association Clause |
| 5 | Forms of Articles of Association shall not include | Table Z | Table A | Table B | Table C | Table Z |
| 6 | Contents of Articles of Association shall include | Name Clause | Capitalisation of Profits | Table Z | Alterations | Capitalisation of Profits |
| 7 | Restrict to transfer, limits the number, Prohibit for invitation of shares shall not be | Public Company | Limited Company | Private Company | Unlimited Company | Private Company |
| 8 | Lien, Class, Transmission, Conversion and Underwriting are the contents of | Memorandum | Prospectus | Companies Act 2016 | Articles | Articles |
| 9 | U/S 26, companies shall not have own articles | A O P | Unlimited | Limited by Guarantee | Private Company | A O P |
| 10 | Companies Act applies to the whole of India except u/s 370 | New Delhi | J & K | Mahe | Goa | J & K |
| 11 | No body, no soul, no conscience shall be a | A O P | Foreign Companies | Company | Partnership | Company |
| 12 | If Perpetual succession and common seal is found it shall be a | Sole Trader | Partnership | A O P | Company | Company |
| 13 | Transferability of shares are allowed in the case of | Company | A O P | Partnership | Sole Trader | Company |
| 14 | Common Seal, Transferability of Shares, Perpetual succession, Limited Liability are the | Merits | Mission | Vision | Characteristics | Characteristics |
| 15 | Companies Act was passed in the year | 1956 | 1949 | 1961 | 1969 | 1956 |
| 16 | Companies Act is defined under section of | 4(1) | 3(1) | 5(1) | 6(1) | 3(1) |
| 17 | Company possess powers and limitation by way of | Prospectus | Table A | Memorandum | Certificate | Memorandum |
| 18 | Concept of Doctrine of Indoor Management explains | Other parties | Outside parties dealing with | Members | Shareholders | Outside parties dealing with |

## Unit – 1- Multiple Choice Questions – Part – A Each question carry one mark

| | | | | | | |
|---|---|---|---|---|---|---|
| | | | companies | | | companies |
| 19 | Winding Up is a term connected with | Sole Trader | Partnership | Company | Joint Venture | Company |
| 20 | Chartered, Special Act of Parliament, Foreign, Registered Companies called | Incorporation | Liability | Ownership | Control | Incorporation |
| 21 | Private, Public, Government, Holding Companies are formed on the basis of | Incorporation | Ownership | Defunct | Limited | Ownership |
| 22 | Companies based on liability are classified as | Three Types | Four Types | Two Types | Five Types | Two Types |
| 23 | Share Holding by a Government Company shall be not less than | 79% | 49% | 100% | 51% | 51% |
| 24 | Government Company is defined under section | 617 | 356 | 370 | 51 | 617 |
| 25 | Defunct Company is a company which | Carries | Does not | Strike | Lay off | Does not |
| 26 | Private Company shall not become a Public Company | by default | By Violation | Operation of Law | By Choice | By Violation |
| 27 | Can a license of a company shall be revoked by | S E B I | C L B | Central Govt. | State Govt. | Central Govt. |
| 28 | Company incorporated outside India but has a place of business in India is a | Government Company | Holding Company | Subsidiary Company | Foreign Company | Foreign Company |
| 29 | A public company cannot commence its business unless it receives | Certificate of Incorporation | Registration Certificate | Certificate of Origin | Certificate of Commencement of Business | Certificate of Commencement of Business |
| 30 | Charter of any Indian Company shall be | Memorandum of Association | Articles of Association | Prospectus | Liquidator | Memorandum of Association |
| 31 | Name, Registered Office, Capital, Liability Clause belongs to | Prospectus | Memorandum | Articles | Legal Company | Memorandum |
| 32 | Place or the State in which the company is located is in | Object Clause | Liability Clause | Registered Office Clause | Name Clause | Registered Office Clause |
| 33 | Statutory restrictions an Judicial restrictions shall not bind | Memorandum of Association | Articles of Association | Prospectus | Alteration to Memorandum | Alteration to Memorandum |
| 34 | Memorandum and Articles shall become public document if they are | Registered | Unregistered | Submitted to CLB | Submitted to Court | Registered |
| 35 | Limited by Shares, Guarantee, Unlimited is connected with | Characteristics | Features | Factors | Merits | Characteristics |
| 36 | Acquiring by purchasing the majority of shares speaks about | Advantages | Control | Management | Membership | Control |

# Unit – 1- Multiple Choice Questions – Part – A Each question carry one mark

| | | | | | | |
|---|---|---|---|---|---|---|
| 37 | Memorandum, Articles, Agreement (if any), List of Directors, Undertaking, Declaration are the stage of | Incorporation | Commencement | Winding Up | Formation of Company | Formation of Company |
| 38 | Consequences of registration shall not contain | Re-Registration | Distinct Legal Entity | Acquires Perpetual Succession | Property is not to shareholder | Re-Registration |
| 39 | Memorandum of Association is a | Basic | Statutory | Mandatory | Fundamental | Fundamental |
| 40 | Under Section 15, a memorandum of association shall be | Printed & Signed | Printed | Signed | Serially Numbered | Printed & Signed |
| 41 | Forms of Memorandum shall contain in the Section | Sec 15 | Sec 14 | Sec 13 | Sec 17 | Sec 14 |
| 42 | Memorandum shall not contain | Public Document | Private Document | Association | Secret Document | Association |
| 43 | Registered name of a company shall be | Identical | Prohibited | Restricted | with limited at last | with limited at last |
| 44 | Object Clause shall not contain | Secondary Objects | Mani Objects | Other Objects | Incidental Object | Secondary Objects |
| 45 | Liability of the shareholder shall be stated in | Office Clause | Liability Clause | Capital Clause | No Clause | Liability Clause |
| 46 | Memorandum of Association shall be signed at least by | 5 + 1 | 6 + 2 | 7 + 2 | 8 + 2 | 7 + 2 |
| 47 | Special resolution and a approval from the central government is necessary for changing | Capital Clause | Association Clause | Liability Clause | Name Clause | Name Clause |
| 48 | Minimum time taken to approve the name change shall be | 12 months | 15 months | 18 months | 06 months | 12 months |
| 49 | What type of resolution to be passed when registered office is charged | Ordinary | Special | Extraordinary | No Resolution Required | Special |
| 50 | Within 3 months of the change shall be communicated to the Registrar in the case of | Name Clause | Capital Clause | Registered Office Clause | Liability Clause | Registered Office Clause |
| 51 | Secretarial Work in relation to change of Registered Clause shall not include | Convene Meeting of Directors | File with Registrar | Give Public Notice | Inform District Authority | Inform District Authority |
| 52 | Change in Capital Clause shall not include | Merger | Reduction | Increase | Reorganisation | Merger |
| 53 | Change in liability limited by shares and Guarantee | Permitted | Not Permitted | Permitted with approval | Permitted by Court | Not Permitted |
| 54 | Alteration of object clause of a company shall not be | Amalgamate with other company | Attain main purpose | Winding Up | carry business economically | Winding Up |
| 55 | Ashbury Rail. Carriage & Iron Co., Ltd v. Riche | Doctrine of Indoor | Doctrine of | Doctrine of | Doctrine of Ultra Vires | Doctrine of Ultra |

## Unit – 1- Multiple Choice Questions – Part – A Each question carry one mark

| | | | | | | |
|---|---|---|---|---|---|---|
| | is connected with | Management | oppression | Constructive Notice | | Vires |
| 56 | A person who originates a scheme of a company is called | Director | Secretary | Promoter | Accountant | Promoter |
| 57 | Prospectus shall be issued by | Foreign Company | Pubic Company | Public Company | Government Companies | Public Company |
| 58 | A business which is promoting art, charity, research, religion, commerce for useful purpose is a | Sole Trader | Partnership | Joint Venture | Company | Company |
| 59 | Promoter shall not have the character of | First Person | Acquire Share | Conceive the Idea | Arrange share & loan | Acquire Share |
| 60 | Identity the wrong way of paying for a promoter | Commission on shares sold | Take shares from company | Honorarium | Lump Sum payment | Honorarium |

UNIT II

Directors – Qualification and Disqualification of Directors – Appointment of Directors – Removal of Directors –Directors remuneration – Powers of Directors – Duties of Directors –Liabilities of Directors.

## DIRECTORS

An appointed or elected member of the board of directors of a company who, with other directors, has the responsibility for determining and implementing the company's policy. A company director does not have to be a stockholder (shareholder) or an employee of the firm, and may only hold the office of director (see qualifications for directors). Directors act on the basis of resolutions made at directors' meetings, and derive their powers from the corporate legislation and from the company's articles of association. As the company's agents, they can bind the company with valid contracts entered into with third-parties such as buyers, lenders, and suppliers (see powers of directors). Directors are the trustees for the firm and not for individual stockholders, but they may be sued by the stockholders as personally liable for the consequences of the acts that are fraudulent or beyond their vested powers. Also, whether appointed validly or not, they are individually and collectively liable for the acts and/or negligence of the firm. (see liabilities of directors). Unlike stockholders, directors cannot vote by proxy and, unlike employees, cannot absolve themselves of their responsibility for the delegated duties (see duties of directors).

## THE BOARD (SECTION 149):

The Board shall consist of individuals not of other persons like firms, LLP, companies, gods or other legal persons. A public company shall have minimum three directors and private company two. While newly introduced one man company shall have minimum one director. All companies may have maximum fifteen directors. However, a company may appoint more than fifteen directors after passing a special resolution. Some prescribed class of companies shall have at least one woman director. (What about gender neutral humans?) Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty – two days in previous calendar year. This means all Indian and foreign nationals may be a director in Indian company if any one of the director among them in that particular company stayed in previous calendar year in India for more than one hundred and eighty – two days. Every listed company shall have at least one-third of total number of directors as Independent directors. The central government may prescribe minimum number of independent directors in other class or classes of public companies.

## APPOINTMENT OF DIRECTORS (SECTION 152):

If different person are not named as first director in articles of the company, individual subscribers shall be deemed to be first directors. Every director shall be appointed in general meeting as a general rule.

Director identification number (DIN) shall be a precondition for appointment as director. Every person proposed to be appointed shall furnish a declaration that he is not disqualified to become a director under this Act. However, consent to act as director may be given after appointment but before any act as director. A person appointed as director shall not act as director unless he gives his consent to hold office of director and such consent has been filed with the registrar within thirty days of his appointment. This means appointment as director and his taking charge of office of director shall now be a different thing. Director shall take charge into office only after giving his consent and filing his consent with registrar. It means an appointed director will take charge after filing his consent with registrar. This will effectively also bar a director from receiving salary from date of appointment. His salary should logically be effective from the date of his taking charge into office of director. Separate motion should move for the appointment of each director as per section 162. A motion for approving a person for appointment or for nomination a person for appointment shall also be treated as motion for appointment. Retirement by

rotation (Sub 6 of section 152) Articles of a company may provide that all directors of the company shall be retiring by rotation. Even where articles of a company do not provide this, not less than two – thirds of total number of directors of a public company shall be liable to be retired by rotation and be appointed by company in general meeting. This sub – section put a condition in an earlier statement of this section made in sub – section (2) where a general rule was enacted that every director shall be appointed in general meeting. Here, this sub – section effectively clarify that in public company some directors, whose number shall not be more than one – thirds of total number of directors may be appointed otherwise that appointment in general meeting. However, clause (b) of this sub – section further clarifies that number and manner of appointment of these directors shall be prescribed in Articles of the company. This number of two – thirds shall be a number nearest to two – thirds, where it is a fraction of a number. The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot. For the purpose of this sub – section, total number of directors shall not include independent directors.

**RIGHT OF PERSONS TO STAND FOR DIRECTORSHIP (SECTION 160):**

A person other than retiring director is eligible for appointment to the office of a director at any general meeting, if he himself or some member intending to propose him as a director has not less than fourteen days before the annual general meeting left a notice in writing under his signature proposing his candidature as director with a deposit of Rs one lakh. This deposit shall be refunded to him or the member if he gets elected as director or gets more than twenty five percent of total valid votes cast either on show of hand or on poll on such resolution. The company shall inform its members of such candidature in prescribed manner.

**OPTION TO ADOPT PRINCIPLE OF PROPORTIONATE REPRESENTATION (SECTION 163)**

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

**DISQUALIFICATION OF DIRECTORS (SECTION 164)**

This section bracketed disqualification in three different classes; primary disqualifications, disqualification due to corporate in actions, and additional disqualifications. Primary disqualifications (Sub – section 2 of section 164): A person shall not be eligible for appointment as a director of a company, if — (a) he is of unsound mind and stands so declared by a competent court; (b) he is an un-discharged insolvent; (c) he has applied to be adjudicated as an insolvent and his application is pending; (d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence. If a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company; (e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force; (f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call; (g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or (h) he has not been allotted a director identification number. The disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall not take effect— (i) for thirty days from the date of conviction or order of disqualification; (ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed off; or (iii) where any further appeal or petition is preferred against order or sentence

within seven days, until such further appeal or petition is disposed off. Disqualification due to corporate inaction (Sub – section 2 of section 164): No person who is or has been a director of a company which—
(a) has not filed financial statements or annual returns for any continuous period of three financial years;
(b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so. A private company has power to provide any additional disqualification.

## NUMBER OF DIRECTORSHIPS (SECTION 165)

No person shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time. This section further limit, maximum number of public companies in which a person can be appointed as a director to ten. If a person accepts an appointment as a director in contravention, he shall be punishable with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees for every day after the first during which the contravention continues.

## ELIGIBILITY CRITERIA FOR APPOINTMENT OF DIRECTOR

An independent director is a person having many years of experience and acts as a guide for the company. The role they play in a company broadly includes improving corporate credibility and governance standards, function as watchdog, play a vital role in risk management and an active role in various committees set up by a company to ensure good governance. Independent Director means non-executive Director who, apart from receiving directors remuneration, does not have any material/ pecuniary relationship or transaction with the company, its promoters, its directors, its senior management or its holding company, its subsidiaries and associates, which in judgment of the Board may affect independence of judgment of the Director. The Companies 2013 specifically gives the definition of the Independent Director as under Section 149(6) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,— (a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience; (b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company; (ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company; (c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year; (d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year; (e) who, neither himself nor any of his relatives — (i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed; (ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of— (A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten percent or more of the gross turnover of such firm; (iii) holds together with his relatives two per cent. or more of the total voting power of the company; or (iv)is a Chief Executive or director, by whatever name called, of any nonprofit organization that receives twenty-five per cent or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the company.

## DIRECTOR QUALIFICATION CRITERIA AND INDEPENDENCE STANDARDS

The Nomination Committee shall evaluate each director candidate under the Director Qualification Criteria set forth herein. Director Qualification - General Criteria The Board has not established specific minimum age, education, years of business experience or specific types of skills for Board members, but, in general, expects qualified directors to have ample experience and a proven record of professional success, leadership and the highest level of personal and professional ethics, integrity and values. In its evaluation, the Committee shall consider the Board size and composition of the Board to ensure that the Board will maintain a Good number of directors who qualify as "independent" pursuant to applicable Law and rules. While considering the appointment of a Director nominated by Shareholders, the Committee and the Board should ensure that the candidate is in the whole time employment of the organization/ institution represented by him. However such criteria will not apply to the RBI Nominee. It should also be ensured that the proposed director candidate has atleast two years of residual service in their respective organization. The Committee shall also consider whether each director candidate and each director possesses the following: The highest level of personal and professional ethics, reputation, integrity and¬ values; An appreciation of the Company's mission and purpose, and loyalty to the¬ interests of the Company and its shareholders; The ability to exercise objectivity and independence in making informed¬ business decisions; The willingness and commitment to devote the extensive time¬ necessary to fulfill his/her duties; The ability to communicate effectively and collaborate with other Board¬ members to contribute effectively to the diversity of perspectives that enhances Board and Committee deliberations, including a willingness to listen and respect the views of others; and The skills, knowledge and expertise relevant to the Company's business, with¬ extensive experience at a senior leadership level in a comparable company or organization, including, but not limited to relevant experience in international operations, public service, finance, accounting, strategic planning, technology and marketing.

**Director's Disqualifications** A person shall not be eligible for appointment as a director of a company, if — (a) he is of unsound mind and stands so declared by a competent court; (b) he is an undischarged insolvent; (c) he has applied to be adjudicated as an insolvent and his application is pending; 37 (d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence: Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company; (e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force; (f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call; (g) he has been convicted of the offence dealing with related party transactions at any time during the last preceding five years; or (h) he has not been allotted the Director Identification Number No person who is or has been a director of a company which— (a) has not filed financial statements or annual returns for any continuous period of three financial years; or (b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so. The Committee shall also consider its policies with respect to retirement age, change in employment status, as well as all other relevant facts and circumstances in making its recommendations to the Board. Formal appointment of Independent Directors The appointment of independent directors shall be formalized through a letter of appointment, which shall set out: (a) the term of appointment; (b) the expectation of the Board from the appointed director; the Board-level Committee in which the director is expected to serve and its tasks; (c) the fiduciary duties that come with such an appointment along with accompanying liabilities; (d) provision for Directors and Officers (D and O) insurance, if any; (e) the Code of Business Ethics that the company expects its directors and employees to follow; (f) the list of

actions that a director should not do while functioning as such in the company; and (g) the remuneration, mentioning periodic fees, reimbursement of expenses for participation in the Boards and other meetings and profit related commission, if any.

(a) the term of appointment; (b) the expectation of the Board from the appointed director; the Board-level Committee in which the director is expected to serve and its tasks; (c) the fiduciary duties that come with such an appointment along with accompanying liabilities; (d) provision for Directors and Officers (D and O) insurance, if any; (e) the Code of Business Ethics that the company expects its directors and employees to follow; (f) the list of actions that a director should not do while functioning as such in the company; and (g) the remuneration, mentioning periodic fees, reimbursement of expenses for participation in the Boards and other meetings and profit related commission, if any.

The executive management of a company is responsible for the day to day management of a company. The companies Act, 2013 has used the term key management personnel to define the executive management. The key management personnel are the point of first contact between the company and its stakeholders. While the Board of Directors are responsible for providing the oversight, it is the key management personnel who are responsible for not just laying down the strategies as well as its implementation. Chapter XIII of the Companies Act, 2013 read with Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 deal with the legal and procedural aspects of appointment of Key Managerial Personnel including Managing Director, Whole-time Director or Manager, managerial remuneration, secretarial audit etc. Key Managerial Personnel The Companies Act, 2013 has for the first time recognized the concept of Key Managerial Personnel. As per section 2(51) "key managerial personnel", in relation to a company, means— (i) the Chief Executive Officer or the managing director or the manager; (ii) the company secretary; (iii) the whole-time director; (iv) the Chief Financial Officer; and (v) such other officer as may be prescribed. Managing Director Section 2(54) of the Companies Act, 2013, defines 'managing director'. It stipulates that a "managing director" means a director
who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called. The explanation to section 2(54) excludes administrative acts of a routine nature when so authorised 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 direct registration of transfer of any share, from the substantial powers of management. Whole Time Director Section 2 (94) of the Companies Act, 2013 defines "whole-time director" as a director in the whole-time employment of the company. Manager Section 2(53) of the Companies Act, 2013 defines "manager" as 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 a company, and 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. Chief Executive Officer & Chief Financial Officer Section 2(18)/(19) of the Companies Act, 2013 defined "Chief Executive Officer"/ "Chief Financial Officer" as an officer of a company, who has been designated as such by it; Company Secretary Section 2(24) of the Companies Act, 2013 defines "company secretary" or "secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act; Appointment of Managing Director, Whole-Time Director or Manager Section 196 of the Companies Act, 2013 provides that no company shall appoint or employ at the same time a Managing Director and a Manager. Further, a company shall not appoint or reappoint any person Appointment and Remuneration of Key Managerial Personnel 3 as its Managing

Director, Whole Time Director or manager for a term exceeding five years at a time and no reappointment shall be made earlier than one year before the expiry of his term. Section 196(4) of the Companies Act, 2013 provides that subject to the provisions of section 197 and Schedule V, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in Schedule V. Approval of the Central Government is not necessary if the appointment is made in accordance with the conditions specified in Schedule V to the Act. Therefore, the appointment of a managing director or whole-time director or manager and the terms and conditions of such appointment and remuneration payable thereon must be first approved by the Board of directors at a meeting and then by an ordinary resolution passed at a general meeting of the company. A notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any. A return in the prescribed form viz. MR.1 is required to be filed with Registrar within 60 days from the date of such appointment. Section 196(5) provides that subject to the provisions of this Act, where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid. Appointment with the Approval of Central Government In case the provisions of Schedule V of the Companies Act, 2013 are not fulfilled by company, an application seeking approval to the appointment of a managing director (Whole-time director or manager) shall be made to the Central Government, in e-Form No. MR.2. As per section 200, the Central Government or a company may, while according its approval under section 196, to any appointment of a managing director, whole-time director or manager, the Central Government or the company shall have regard to— (a) the financial position of the company; 4 Appointment and Remuneration of Key Managerial Personnel (b) the remuneration or commission drawn by the individual concerned in any other capacity; (c) the remuneration or commission drawn by him from any other company; (d) professional qualifications and experience of the individual concerned; (e) such other matters as may be prescribed. As per Rule 6 for the purposes of item (e) of section 200, the Central Government or the company shall have regard to the following matters while granting approval to the appointment of managing director under section 196: (1) Financial and operating performance of the company during the three preceding financial years. (2) Relationship between remuneration and performance. (3) The principle of proportionality of remuneration within the company, ideally by a rating methodology which compares the remuneration of directors to that of other executive directors on the board and employees or executives of the company. (4) Whether remuneration policy for directors differs from remuneration policy for other employees and if so, an explanation for the difference. (5) The securities held by the director, including options and details of the shares pledged as at the end of the preceding financial year.

## DISQUALIFICATIONS

Section 196(3) of the Act makes a specific prohibitory provision with regard to the appointment of managing director, whole time director or manager. The section lays down that no company shall appoint or continue the employment of any person as its managing director, whole time director or manager who— (a) is below the age of twenty-one years or has attained the age of seventy years: Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice Appointment and Remuneration of Key Managerial Personnel 5 for such motion shall indicate the justification for appointing such person; (b) is an undischarged insolvent or has at anytime been adjudged as an insolvent; (c) has at any time suspended payment to his creditors, or makes, or has at any time made, a composition with them; or (d) has at any time been, convicted by a court of an offence and sentenced for a period of more than six months. Apart from this, Part I of Schedule V contains five conditions which must be satisfied by a

person to be eligible for appointment as managing director, whole-time director or manager without the approval of the Central Government. These conditions are as below: (a) he had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the following Acts, namely:- (i) the Indian Stamp Act, 1899, (ii) the Central Excise Act, 1944, (iii) the Industries (Development and Regulation) Act, 1951, (iv) the Prevention of Food Adulteration Act, 1954 , (v) the Essential Commodities Act, 1955, (vi) the Companies Act, 2013, (vii) the Securities Contracts (Regulation) Act, 1956, (viii) the Wealth-tax Act, 1957, (ix) the Income-tax Act, 1961, (x) the Customs Act, 1962, (xi) the Competition Act, 2002, (xii) the Foreign Exchange Management Act, 1999, (xiii) the Sick Industrial Companies (Special Provisions) Act, 1985, (xiv) the Securities and Exchange Board of India Act, 1992, (xv) the Foreign Trade (Development and Regulation) Act, 1992; (xvi) the Prevention of Money Laundering Act, 2002; 6 Appointment and Remuneration of Key Managerial Personnel (b) he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974; Provided that where the Central Government has given its approval to the appointment of a person convicted or detained under sub-paragraph (a) or sub-paragraph (b), as the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval; (c) he has completed the age of 21 years and has not attained the age of 70 years: Provided that where he has attained the age of 70 years; and where his appointment is approved by a special resolution passed by the company in general meeting, no further approval of the Central Government shall be necessary for such appointment; (d) where he is a managerial person in more than one company, he draws remuneration from one or more companies subject to the ceiling provided in section V of Part II; (e) he is resident in India. Explanation : For the purpose of above, resident in India includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person and who has come to stay in India: (i) for taking up employment in India, or (ii) for carrying on a business or vocation in India. But this condition shall not be applicable to the companies in Special Economic Zones, as may be notified by Department of Commerce from time to time. However, a person, being a non-resident in India, shall enter India only after obtaining a proper Employment Visa from the concerned Indian mission abroad. For this purpose, such person shall be required to furnish, alongwith the visa application form, profile of the company, the principal employer and the terms and conditions of such person's appointment.

## REAPPOINTMENT OF MANAGING DIRECTOR

Under sections 196 and 203 of the Companies Act, 2013, appointment includes reappointment. Reappointment of a managing Appointment and Remuneration of Key Managerial Personnel 7 director of a company must be taken for consideration before the expiry of his term of office. If the reappointment of the managing director is approved and if it is not in accordance with the conditions specified in Schedule V then the approval of the Central Government must be obtained for such reappointment. Rest of the provisions for reappointment of a managing director are same as in the case of appointment of a managing director.

## MANAGERIAL REMUNERATION

Just as profits drive business, incentives drive the managers of business. Not surprisingly then, in a fiercely competitive corporate environment, managerial remuneration is an important piece in the management puzzle. While it is important to incentivize the workforce performing the challenging role of managing companies, it is equally important not to go overboard with the perks and the pay. In India, to keep a check on unnecessary profit squandering by companies and, at the same time, to ensure adequate and reasonable compensation to managerial personnel, the law intervenes to do the balancing act. Remuneration to Managerial Personnel Section 197 of the Companies Act, 2013 prescribed the maximum ceiling for payment of managerial remuneration by a public company to its managing director whole-time director and manager which shall not exceed 11% of the net profit of the company in that financial year computed in accordance with section 198 except that the remuneration of the directors shall not be

deducted from the gross profits. Further, the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding 11% of the net profits of the company, subject to the provisions of Schedule V. The net profits for the purposes of this section shall be computed in the manner referred to in section 198. 10 Appointment and Remuneration of Key Managerial Personnel The remuneration payble to any one managing director or wholetime director or manager shall not exceed 5% of the net profits of the company and if there are more than one such director remuneration shall not exceed 10% of the net profits to all such directors and manager taken together. Except with the approval of the company in general meeting, the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,— — 1% of the net profits of the company, if there is a managing or whole-time director or manager; — 3% of the net profits in any other case. The percentages aforesaid shall be exclusive of any fees payable to directors for attending the meeting of the board/committees or for such other purposes as decided by the board. Remunertion by a Company having no Profit or Inadequate Profit If, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including managing or whole time director or manager, any remuneration exclusive of any fees payable to directors except in accordance with the provisions of Schedule V and if it is not able to comply with Schedule V, with the previous approval of the Central Government. In cases, where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports to increase or has the effect of increasing the amount thereof, shall not have any effect unless such increase is in accordance with the conditions specified in that Schedule and if such conditions are not being complied, the approval of the Central Government had been obtained. Remuneration to Directors in other Capacity [Section 197(4)] The remuneration payable to the directors including managing or whole-time director or manager shall be inclusive of the remuneration payable for the services rendered by him in any other capacity except the following: (a) the services rendered are of a professional nature; and (b) in the opinion of the Nomination and Remuneration Appointment and Remuneration of Key Managerial Personnel 11 Committee (if applicable) or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession. Sitting Fees to Directors for Attending the Meetings [Section 197(5)] A director may receive remuneration by way of fee for attending the Board/Committee meetings or for any other purpose as may be decided by the Board. Provided that the amount of such fees shall not exceed the amount as may be prescribed. The Central Government through rules prescribed that the amount of sitting fees payable to a director for attending meetings of the Board or committees thereof may be such as may be decided by the Board of directors or the Remuneration Committee thereof which shall not exceed the sum of rupees 1 lakh per meeting of the Board or committee thereof. The Board may decide different sitting fee payable to independent and non-independent directors other than whole-time directors. Monthly Remuneration to Director or Manager A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other. [Section 197 (6)] An independent director shall not be entitled to any stock option and may receive remuneration by way of fees, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members. [Section 197 (7)] Any director who is in receipt of any commission from the company and who is a managing or whole-time director of the company shall not be disqualified from receiving any remuneration or commission from any holding company or subsidiary company of such company subject to its disclosure by the company in the Board's report. [Section 197 (14)] Remuneration Drawn in Excess of Prescribed LimitRemuneration Drawn in Excess of Prescribed Limit If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company. [Section 197(9)] 12 Appointment and Remuneration of Key Managerial Personnel The company shall not waive the recovery of any sum refundable to it under sub-section 9 mentioned above, unless permitted by the Central

Government. [Section 197 (10)] Insurance Premium as Part of Remuneration Where any insurance is taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel. However, if such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration. [Section 197(13)] Disclosure of Remuneration in Board Report [(Section 197 (14)] Every listed company shall disclose in the Board's report, the ratio of the remuneration of each director to the median employee's remuneration and such other details as may be prescribed. The central government through rules prescribed the following disclosure by a listed company in its Board's report: (i) the ratio of the remuneration of each director to the median remuneration of the employees of the company for the financial year; (ii) percentage increase in remuneration of each director and CEO in the financial year; (iii) percentage increase in the median remuneration of employees in the financial year; (iv) number of permanent employees on the rolls of company; (v) explanation on the relationship between average increase in remuneration and company performance; (vi) comparison of the remuneration of the Key Managerial Personnel against the performance of the company; (vii) variations in the market capitalisation of the company, price earnings ratio as at the closing date of the current financial Appointment and Remuneration of Key Managerial Personnel 13 year and previous financial year and percentage increase over decrease in the market quotations of the shares of the company in comparison to the rate at which the company came out with the last public offer in case of listed companies, and in case of unlisted companies, the variations in the net worth of the company as at the close of the current financial year and previous financial year; (viii) average percentile increase already made in the salaries of employees other than the managerial personnel in the last financial year and its comparison with the percentile increase in the managerial remuneration and justification thereof and point out if there are any exceptional circumstances for increase in the managerial remuneration; (ix) comparison of the each remuneration of the Key Managerial Personnel against the performance of the company; (x) the key parameters for any variable component of remuneration availed by the directors; (xi) the ratio of the remuneration of the highest paid director to that of the employees who are not directors but receive remuneration in excess of the highest paid director during the year; (ix) affirmation that the remuneration is as per the remuneration policy of the company. The board's report shall include a statement showing the name of every employee of the company who- (i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than sixty lakh rupees; (ii) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than five lakh rupees per month; (iii) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two percent of the equity shares of the company. 14 Appointment and Remuneration of Key Managerial Personnel The above statement shall also indicate - (i) Designation of the employee; (ii) Remuneration received; (iii) Nature of employment, whether contractual or otherwise; (iv) Qualifications and experience of the employee; (v) Date of commencement of employment; (vi) The age of such employee; (vii) The last employment held by such employee before joining the company; (viii) The percentage of equity shares held by the employee in the company within the meaning of sub-clause (iii) of sub-rule (2) above; and (ix) Whether any such employee is a relative of any director or manager of the company and if so, name of such director. The particulars of employees posted and working in a country outside India, not being directors or their relatives, drawing more than 60 lakh rupees per financial year or 5 lakh rupees per month, as the case may be, shall not be included in the above statement of the Board's report but such particulars shall be filed with the Registrar of Companies while filing the financial statement and Board Reports and such

particulars shall be made available to any shareholder on a specific request made by him during the course of annual general meeting wherein financial statements for the relevant financial year are proposed to be adopted by shareholders.
Managerial Remuneration under Schedule V (Part II) Section I : Remuneration by Companies having Profits A company having profits in a financial year may pay remuneration to its managerial persons in accordance with Section 197. Section II : Remuneration by Companies having no profits or inadequate profits without Central Governement approval Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it, may, without Central Government approval, pay Appointment and Remuneration of Key Managerial Personnel 15 remuneration to the managerial person not exceeding the higher of the limits under (A) and (B) below: (A): Where the effective capital is Limit of yearly remuneration payable shall not exceed (Rs) Negative or less than 5 Crore 30 Lakhs 5 Crore and above but less 42 Lakhs than 100 Crore 100 Crore and above but 60 Lakhs less than 250 Crore 250 Crore and above 60 Lakhs plus 0.01% of the effective capital in excess of Rs. 250 Crore If a special resolution is passed by the shareholders, the above limits shall be doubled. Expalanation:- It is hereby clarified that for a period less than oneyear, the limits shall be pro-rated. (B) In the case of managerial person who was not a shareholder, employee or a Director of the company at any time during the two years prior to his appointment as managerial person- 2.5% of the current relevant profit. If a special resolution is passed by the shareholders, this limit shall be doubled. The Schedule V (Part II) also prescribes certain conditions and additional disclosures to be made in the explanatory statement to the notice of the general meeting, where remuneration is required to be paid in accordance with Schedule V. Remuration in Special Circumstances (Section III) Section III of Schedule V provides special circumstances under which companies having no profit or inadequate profit can pay remuneration to its managerial personnel in excess of amout provided in Section II of Schedule V above, without Central Government's approval. Calculation of Net Profit for the purpose of Managerial Remuneration (Section 198) Section 198 of the Companies Act, 2013 lays down the manner of 16 Appointment and Remuneration of Key Managerial Personnel calculations of net profits of a company any financial year for purposes of Section 197. Sub- Section (2) specifies the sums for which credit shall be given and sub-section (3) specifies the sums for which credit shall not be given while calcutating the net profit. Similarly, sub-section (4)/(5) specifies the sums which shall be deducted/not deducted while calculating the net profit. Recovery of Managerial Remuneration in certain cases (Section 199) This is a new provision introduced in the new Act. It provides for recovery of remuneration including stock options received by the specified Managerial Personnel, where the benefits given to them are found to be in excess of what is reflected in the restated financial statements. It states that without prejudice to any liability incurred under the provisions of this Act or any other law for the time being in force, where a company is required to re-state its financial statements due to fraud or non-compliance with any requirement under this Act and the rules made there under, the company shall recover from any past or present managing director or whole-time director or manager or Chief Executive Officer (by whatever name called) who, during the period for which the financial statements are required to be re-stated, received the remuneration (including stock option) in excess of what would have been payable to him as per restatement of financial statements. Central G Central Government or Company to Fix Remuneration Limit (Section 200) In respect of cases where the company has inadequate or no profits, the Central Government or a company may fix the remuneration within the limits specified in the Act. While doing so, the Central Government or the company shall have regard to— (a) the financial position of the company; (b) the remuneration or commission drawn by the individual concerned in any other capacity; (c) the remuneration or commission drawn by him from any other company; (d) professional qualifications and experience of the individual concerned; (e) such other matters as may be prescribed. Appointment and Remuneration of Key Managerial Personnel 17 As per Rule 13.4 for the purpose of item (e) of section 200, the Central Government or the company shall have regard to the following matters while granting approval: (1) Financial and operating performance of the company during the three

preceding financial years. (2) Relationship between remuneration and performance. (3) The principle of proportionality of remuneration within the company, ideally by a rating methodology which compares the remuneration of directors to that of other executive directors on the board and employees or executives of the company. (4) Whether remuneration policy for directors differs from remuneration policy for other employees and if so, an explanation for the difference. (5) The securities held by the director, including options and details of the shares pledged as at the end of the preceding financial year. Compensation for Loss of Office of Managing or Wholetime Director or Manager (Section 202) No change has been made in this Section. It is a reproduction of the Section 318 of the Companies Act, 1956. Section 202 provides that a company may make payment to a managing or whole-time director or manager, but not to any other director, by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement. However, No payment shall be made in the following cases:— (a) where the director resigns from his office as a result of the reconstruction/amalgamation of the company and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company/of resulting company from the amalgamation; (b) where the director resigns from his office otherwise than on the reconstruction/ amalgamation of the company; (c) where the office of the director is vacated due to disqualification; (d) where the company is being wound up due to the negligence or default of the director; 18 Appointment and Remuneration of Key Managerial Personnel (e) where the director has been guilty of fraud or breach of trust or gross negligence or mismanagement of the conduct of the affairs of the company or any subsidiary company or holding company; and (f) where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office. Any payment made to a managing or whole-time director or manager shall not exceed the remuneration which he would have earned if he had been in office for the remainder of his term or for three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which he ceased to hold office, or where he held the office for a lesser period than three years, during such period. (Sub-section 3) Provided that no such payment shall be made to the director in the event of the commencement of the winding up of the company, whether before or at any time within twelve months after, the date on which he ceased to hold office, if the assets of the company on the winding up, after deducting the expenses thereof, are not sufficient to repay to the shareholders the share capital, including the premiums, if any, contributed by them. However, Section 202 not prohibit the payment to a managing or whole-time director, or manager, of any remuneration for services rendered by him to the company in any other capacity. (Sub-section 4)
Application to Central Government Section 201 of the Companies Act, 2013 provides that before any application is made by a company to the Central Government under any of the sections aforesaid, there shall be issued a general notice to the members indicating the nature of the application proposed to be made and such notice shall be published at least once in a newspaper in the principal language of the district in which the registered office of the company is situate and at least once in English in an English newspaper circulating in that district. The copies of the notices, together with a certificate by the company as to the due publication thereof, shall be attached to the application. The Central Government prescribed that every application made to the Central Government under the provisions of Chapter XIII shall be made in Form No. 13.2. Appointment and Remuneration of Key Managerial Personnel 19 It further prescribed that the companies other than listed companies and subsidiary of a listed company may without Central Government approval pay remuneration to its managerial person in the event of no profit or inadequate profit beyond ceiling prescribed in section II, part II of Schedule V subject to complying with the following conditions:- (i) Payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under subsection (1) of section 178 also by the Nomination and Remuneration Committee, if any and while doing so record in writing clear reason and justification for payment of remuneration beyond the said limit; (ii) the company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such

managerial person; (iii) Prior approval of shareholders by way of a special resolution at a general meeting of the company for payment of remuneration for a period not exceeding three years; (iv) A statement along-with a notice calling the general meeting referred to clause (iii) of sub-rule (2) above, shall contain the information as per sub clause (iv) of second proviso to clause (B) of section II of part-II of Schedule V of the Act including reasons and justification for payment of remuneration beyond the said limit. Conclusion The new Act has considerably liberalised the provisions concerning Managerial Remuneration, subject to adequate disclosures to the shareholders. The necessity of approaching Central Government for approval has been substantially dispensed with. A synopsis of the modifications made is given below: 1. Now, no approval of the Central Government is required for making payment of salary to Non Executive Directors by way of monthly payment provided it is within the limits provided. 2. The re-appointment of a managerial person cannot be made earlier than one year before the expiry of their term instead of two years as per the existing provision of section 317 of the 1956 Act. 20 Appointment and Remuneration of Key Managerial Personnel 3. Any Director who is in receipt of any commission from the company and who is a Managing Director or Whole-time Director of the Company can also receive any remuneration or commission from any Holding Company or Subsidiary Company of such Company subject to its disclosure by the Company in the Board's Report. This is a departure from the provision in the Companies Act, 1956. Further the directors however cannot accept remuneration or commission from any other Company including Associate Companies. 4. Independent Directors may be paid different Sitting Fees compared to other directors. Independent Directors cannot receive stock options. They may receive remuneration only by way of sitting fees, or reimbursement of expenses for participation in the Board and other meetings or profit related commission as approved by the members of the company. 5. Every Listed Company will have to disclose in the Board's report the ratio of the remuneration of each Director to the median employee's remuneration and such other details as prescribed by the Central Government through the Rules. In view of the widespread debate in the country and abroad on the subject of excessive managerial pay, the purpose of bringing this provision appears to disclose to the shareholders the extent of pay comparison among employees and directors. 6. Premium paid on any insurance policy taken by a Company on behalf of its Managing Director, Whole-Time Director, Manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the Company, shall not be treated as part of the remuneration payable to them unless such personnel is proved to be guilty. 7. For remuneration payable to any Director in any other capacity, if such services are of professional nature, no approval of the Central Government is required, when the Nomination and Remuneration Committee or Board of Directors is of the opinion, that the person possesses the necessary qualification for practice of profession. 8. In case of Nil or inadequate profit, the conditions under which the Company can pay remuneration to managerial person has been changed. Appointment and Remuneration of Key Managerial Personnel

**TEXT BOOKS:**

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

**REFERENCES :**

1.N.D.Kapoor, (2010), Elements of Company Law, Sultan Chand & Sons, New Delhi.
2.M.C.Kuchhal, (2008), Secretarial Practice, Vikas Publications, New Delhi.
3.Avtar Singh, (2014), Introduction to Company Law, Eastern Book Company, New Delhi.
4.N.D.Kapoor, (2017), Mercantile Law, Sultan Chand & Sons, New Delhi.

# Unit – 2 - Multiple Choice Questions – Part - A Each question carry one mark

| SN | Questions | Option - A | Option - B | Option - C | Option - D | Answer |
|---|---|---|---|---|---|---|
| 1 | Public company shall have at least | 3 Director | 2 Director | 4 Director | 5 Director | 3 Director |
| 2 | Private company shall have at least | 3 Director | 2 Director | 4 Director | 5 Director | 2 Director |
| 3 | Secretary, Accountant, Dept. Managers, Auditors, Solicitor shall be under the control of | Chairman | Shareholders | Board of Directors | Bankers | Board of Directors |
| 4 | Increase beyond the maximum permitted by the Articles shall be approved by | C L B | M C A | Court | Central Government | Central Government |
| 5 | Person who has a overall direction, conduct, management, superintendence of the affairs of a company is called as | Director | Chairman | Manager | Secretary | Director |
| 6 | Who of these can become a Director of company | Body corporate | Individual | Association | Firm | Individual |
| 7 | First Director of the company shall not be appointed by way of | Prescribed in the manner | Named in the Articles | Promoter | Subscriber of M O A | Promoter |
| 8 | Every annual general meeting state the ratio of directors to be retired | 1/3 by rotation | 25% of total | 50% by rotation | 2/3 by rotation | 2/3 by rotation |
| 9 | New Director shall be appointed by depositing | Rs.500 Refundable | Rs. 500 Non Refundable | Rs. 500 | No Money Required | Rs.500 Refundable |
| 10 | No Directors shall be appointed by directors in the case of | Casual Vacancy | On his Discretion | Alternate Director | By third parties | On his Discretion |
| 11 | The position of a Director shall not be that of | Agent | Servant | Commission Agent | Officer | Commission Agent |
| 12 | One should poses a certain number of shares to become a | Secretary | Accountant | Chairman | Director | Director |
| 13 | The nominal value of the qualification shares shall not be more than | Rs. 5,000 | Above Rs.5000 | Less than Rs.5000 | Rs. 10,000 | Rs. 5,000 |
| 14 | Share qualification of directors shall be under sections | 270 | 270 & 272 | 272 | 274 | 270 & 272 |
| 15 | Unsound mind, undischarged insolvent, convicted by court cannot become | Secretary | Manager | Director | Auditor | Director |
| 16 | A person cannot hold office for more than | 2 Companies | 5 Companies | 10 Companies | 15 Companies | 15 Companies |
| 17 | Being absent for three consecutively one will lose the position of | Director | Chairman | Secretary | Auditor | Director |
| 18 | Statutory Vacation of office by a Director shall not include | adjudged unsound mind | adjudged insolvent | convicted by law | Not a Director | Not a Director |

# Unit – 2 - Multiple Choice Questions – Part - A Each question carry one mark

| | | | | | | |
|---|---|---|---|---|---|---|
| 19 | Removal of Directors shall not be based on the recommendation of | Central Government | M C A | C L B | Court | M C A |
| 20 | Managerial Remuneration shall not include | Chairman | Managing trustees | Executives | Ex Officio Members | Executives |
| 21 | The overall managerial remuneration shall not exceed | 5% of GP | 5% of NP | 11% of GP | 11% of NP | 11% of NP |
| 22 | One of the following shall not be a part of profit for the purpose of calculating net profits | Expenses | Bounties | Subsidies | Premium on Shares | Expenses |
| 23 | Size of compensation shall not be more than the | Loss incurred | Remuneration | Net Profit | Insurance Cover | Remuneration |
| 24 | Fixation of Remuneration by central government shall not be | Based on the financial position | Based on Public Policy towards disparity in income | Annual Reports of the Company | Commission drawn by individual | Annual Reports of the Company |
| 25 | Section 291 of the companies act specifies | Specific Power | Exercised in Meetings | Powers through C L B | General Powers | General Powers |
| 26 | Powers of the directors shall not be exercised through | Memorandum | Prospectus | Promoter | Table A | Memorandum |
| 27 | Duties of a director shall not incorporate | Fiduciary Duties | Financial Autonomy | Duties of Care & Skill | Duties of Diligence | Financial Autonomy |
| 28 | Consequence of default of section 299 shall not incorporate | Punishment with fine Rs5000 | Cessation of Office of Director | Punishment | Fine of Rs.5000 for every day | Punishment |
| 29 | As in Section 301 the register shall not contain | Date & Contract | Names of the Parties | Principles terms & conditions | Punishment thereof | Punishment thereof |
| 30 | Disabilities of a director shall not include | Sound Mind | Relieving of Liability | Undischarged Insolvent | More than 15 Companies | Sound Mind |
| 31 | When the number of directors are more than 12 in number the company has to obtain permission from | Court | Central Government | C L B | M C A | Central Government |
| 32 | Once Director is appointed, from the date of appointment one has to file Form No.29 with the Registrar within | 15 days | 45 days | 30 days | 60 days | 30 days |
| 33 | Whether a director shall appoint another director, if so under section of the companies act provides for | Yes, u/s260 | Yes, u/s262 | Yes, u/s313 | Yes, u/s260,262,313 | Yes, u/s260,262,313 |
| 34 | Restrictions of appointment of directors shall contain in the section | 266 of Companies Act | 258 of Companies Act | 259 of Companies Act | 270 of Companies Act | 266 of Companies Act |
| 35 | Article 66 of Table A specifically lays down the share qualification of a | Secretary | Director | Board of Directors | Auditor | Director |

| | | | | | | |
|---|---|---|---|---|---|---|
| 36 | Director may not be disqualified from service | unsound mind | undischarged insolvent | acquired shares | convicted by law | acquired shares |
| 37 | While calculating the number of directorship the companies are excluded | Unlimited Company | Non Profit Companies | Neither a subsidiary not holding company | Limited by Shares | Limited by Shares |
| 38 | Various duties, powers and liabilities are laid down in | Articles of the company | Memorandum of Company | Prospectus of the company | Laid down by the Court of Law | Articles of the company |
| 39 | Based on the prescribed limits the maximum and minimum limits of the director is shown by way of | Memorandum | Articles | C L B | M C A | Articles |
| 40 | In order to increase or decrease the number of director a company shall pass | Special Resolution | Approval from Central Government | Ordinary Resolution | Based on the C L B | Ordinary Resolution |
| 41 | Whether a vacancy of director position shall filled by retired directors | u/s 254 | u/s 253 | u/s 255 | Yes, u/s Sec 256 (2) | Yes, u/s Sec 256 (2) |
| 42 | Vendors, Debenture holders, Bankers, Other Financial Institutions shall be appointed as director based on the section | 255 | 256 | 257 | 258 | 255 |
| 43 | When director is appointed by Central Government the number will be determined by | Court of Law | Central Government | C L B | M C A | Central Government |
| 44 | If Director is appointed by Central Government the period shall be | 2 years at a time | 6 years at a time | 3 years at a time | Based on the C L B | 3 years at a time |
| 45 | Retirement by Rotation a rule shall not apply for directors appointed by | C L B | M C A | Court | Central Government | Central Government |
| 46 | Director when appointed by the central government, they are not liable to | Take & pay for qualification shares | Take for qualification shares | Pay for qualification shares | Noted in the Articles | Take & pay for qualification shares |
| 47 | Whether periodical reports shall be called by central government | Can not call for | Yes, u/s 408 | u/s 408 request be made | only based on the situation | Yes, u/s 408 |
| 48 | One of the essential qualification to be a director shall be | Acquire Shares | Only Qualification Shares | Holding at least 1 Share | Not necessary to purchase shares | Holding at least 1 Share |
| 49 | Not less than the given period a director should obtain the required number of shares | Two Months | After Two months | Not before second month | Within Two Months | Within Two Months |
| 50 | Disqualifications of a director shall be relaxed by Central Government when | Non Payment & Disqualify for moral | Non Payment of Call money | Disqualification for moral | Can not disqualify | Non Payment & Disqualify for |

| | | | | | | |
|---|---|---|---|---|---|---|
| | | turpitude | | turpitude | | moral turpitude |
| 51 | Restrictions of appointing maximum number of directors shall not apply for a company | without share capital | private company | operating under as non-profit | as said in all options | as said in all options |
| 52 | When a director is declared disqualified by a court u/s 203 he shall be | Disqualified | Can not be removed | Can be disqualified | Obey the order of the court | Disqualified |
| 53 | In the case of complaints of mis-management or fraudulent a director shall removed from office by | Debenture Holder | Shareholders | Bankers | Court | Shareholders |
| 54 | When a director is removed from office, in whose place a new director is so appointed will hold office for | Full period of new director | As prescribed by the article | Remaining period of the remove director | As in Memorandum | Remaining period of the remove director |
| 55 | When director is removed by C L B he is eligible after | Five years | Three years | after the period of punishment | when make an appeal before the court | Five years |
| 56 | The Powers of the Board of Directors shall be vested with | From Articles of Association | Exercised by Resolution | Approved by Memorandum | By the court of Law | Exercised by Resolution |
| 57 | Duty of Good faith, reasonable care, no delegation of powers, work in the capacity as agents etc shall be | Under the provision of the Act | Statutory Duties | General Duties | Other Duties | General Duties |
| 58 | When the director has acted honestly and reasonably in order to protect the interest of the company he may be | Civil Liability | Criminal Liability | Imprisonment | Relieved from Criminal Liability | Relieved from Criminal Liability |
| 59 | Managing Director shall be one of the | Director | Manager | Secretary | Chairman | Director |
| 60 | Managing Director shall be terminated from service provided such appointment lies with | State Government | Central Government | C L B | M C A | Central Government |

UNIT III

Company Meetings – Kinds – Board of Directors Meeting – Statutory Meeting – Annual General Meeting – Extra Ordinary General Meeting – Drafting of Correspondence – Relating to the Meetings – Notices – Agenda – Chairman Speech – Writing of Minutes.

## Company Meetings - Kinds – BOD Meetings – Statutory- AGM – EOGM

A company is considered as a legal entity separate from its members in the eyes of law. All the affairs of the company are practically carried out by the board of directors. The board of directors of a company carries out these affairs within the limitations of their powers, as invoked by the articles of association of the company. The directors also exercise certain powers of their own with the consent of other members of the company. The consent of the other members is ensured at the general meetings held by the company. Any mistakes committed by the board are rectified by the shareholders (who are also considered as owners of the company) at the meetings of the company. The shareholders' meetings are conducted for the shareholders to give their verdict on the decisions and steps taken by the board of directors. Meetings are a crucial part of the management of a company as mentioned in the Companies Act, 1956. Meetings enable the shareholders to know the ongoing proceedings of the company and allow the shareholders to deliberate on certain issues. There are various types of meetings held by a company. Various criteria must be fulfilled for the calling, convening and conduct of the meetings.

### STATUTORY MEETING

A statutory meeting is held once during the life of a company. Generally, it is held just after a company is incorporated. Every public company, limited either by shares or by guarantee, must positively hold a statutory meeting as soon as the company is incorporated.

- A statutory meeting should be held between a minimum period of one month and a maximum period of six months after the commencement of business of the company.
- A meeting before a period of one month cannot be considered as a statutory meeting of the company.
- The notice for a statutory meeting should mention that a statutory meeting is going to be held on a specific date.
- Private companies and government companies are not bound to hold any statutory meetings.
- Only public limited companies are bound to hold statutory meetings within the specified period of time.

**Procedure of the Statutory Meeting**

The board of directors must forward a statutory report to every member of the company. This report must be sent at least 21 days before the meeting. Members attending the meeting may discuss topics regarding the formation of the company or topics related to the statutory report.

- No resolutions can be taken in the statutory meeting of the company.
- The main objective of the statutory meeting is to make the members familiar with the matters regarding the promotion and formation of the company.
- The shareholders receive particulars related to shares taken up, moneys received, contracts entered into, preliminary expenses incurred, etc.
- The shareholders also get a chance to discuss business ideas and methods and the future prospects of the company.
- An adjourned meeting is called if the statutory meeting does not meet a conclusion.
- According to section 433 of the Companies Act, 1956, a company may be subjected to winding up if it fails to submit a statutory report or fails to conduct a statutory meeting within the aforementioned period.
- However, the court may order the company to submit the statutory report and to conduct the statutory meeting and impose a fine on the persons responsible for the default instead of directly winding up the company.

**Adjournment of Statutory Meeting**

According to section 165(8) of the Companies Act, a statutory meeting may be adjourned from time to time. Any resolution on which notice has been given according to the provision of the Companies Act may be passed whether the resolution was taken up before or after the last meeting.

- The adjourning meeting has the same power as the original statutory meeting.
- The power to adjourn depends on the decision of the meeting.
- The meeting cannot be adjourned by the chairman without the consent of the members of the meeting.
- The chairman is expected to adjourn the meeting if the members wish to do so, without invoking any discriminatory powers given to the chairman by the articles of association of the company.
- Usually, the chairman is not bound to adjourn a meeting even if majority of the members wish for the adjournment.
- The statuary meeting provides an exception in the rule that only unfinished business at the original meeting must be carried out at the adjourned meeting.
- Members have the right to initiate new topics of discussion in the adjourned meeting.
- The advantage of adjourned meetings over statutory meetings is that a resolution can be passed in an adjourned meeting, which is not possible in the case of the latter.
- If any resolution is needed to be passed based on the topics discussed in the statutory meeting, it must be passed at an adjourning meeting to go in accordance with the law.

**Default**

In case of any default made in filing the statutory report or in conduct of the statutory meeting, the members responsible will be liable to fine according to section 165(9) of the Companies Act. The fine may extend to INR 5000. The court can also order compulsory winding up of the company in accordance to section 433(b) of the Companies Act if the statutory meeting is not held within the prescribed time.

**Statutory Report**

The board of directors must forward a statutory report to every member of the company. This report must be sent at least 21 days before the meeting.

**The particulars to be mentioned in the report are as follows −**

- The total number of allotted shares with the account of fully paid and partly paid shares and the reasons for considerations and extension of the partly paid shares
- The net amount of cash collected after the allotment of shares
- A brief insight, i.e., an abstract of receipts and payments made within 7 days of the date of the report, balance remaining in the hands of the company and an estimation of the preliminary expenses of the company
- The names, addresses, and designations of the directors, managers, secretaries, and auditors along with the change log in case of any replacements made from the date of incorporation of the company
- The details of any modifications or contracts to be submitted in the meeting for approval
- The limit of non-carrying out of any underwriting contract along with justified reasons for the non-carrying out of the aforementioned contracts
- The arrears due on the calls of every manager and director
- Details on the context of commission or brokerage paid to any director or any manager for the issue of sale of shares or debentures

## ANNUAL GENERAL MEETING

An Annual General Meeting, as the name suggests, is a general meeting, which is held on a yearly basis. According to section 166 of the Companies Act, all companies must hold Annual General Meetings at

stipulated time intervals. The notice for an Annual General Meeting must contain all the particulars of the meeting. However, the time to hold the first Annual General Meeting for a company is relaxed to 18 months from the date of incorporation.

- As per section 166(1) of the Companies Act, a company is not bound to hold any general meetings till the first Annual General Meeting is held.
- This relaxation is intended for the company to set up its final reports on the basis of a longer period of time.
- One more relaxation provided by section 166(1) of the Companies Act is that with the registrar's consent, the date of an Annual General Meeting can be postponed.
- This date can be postponed to a maximum time period of three months.
- However, this relaxation is not applicable for the first Annual General Meeting.
- A company may not hold an Annual General Meeting in a year if the extension of the date of the meeting is made under the consent of the registrar.
- However, the reasons for the extension of the meeting should be genuine and should be properly justified.

**Interval between Two Annual General Meetings**

As per section 166(1) of the Companies Act, the time gap between two Annual General Meetings must not exceed fifteen months. According to section 210 of the Companies Act, a company must present a report containing the accounts of all the profits and losses. In case the company is not trading for profit, an income and expenditure account report must be made.

- The account shall state all the profits and losses earned and endured by the company from the day of its incorporation.
- The account shall be updated for at least 9 months from the date of the last annual general meeting.
- A balance sheet is also required to be attached along with the account.

**The Annual General Meeting is subjected to three rules −**

- The meeting must be held every year.
- A maximum gap of 15 months is allowed between two Annual General Meetings.
- The meeting must be held within six months from the preparation of the balance sheet.

Failure to comply with the above rules will be considered as an offence to the Companies Act by the law and will be treated as a default unless the registrar grants extension of time for holding a meeting.

**Date, Time and Place**

An Annual General Meeting can be held at any time during business hours. The day of the Annual General Meeting must not be a public holiday. The meeting can be held either at the registered office of the company or any preselected venue within the area of jurisdiction of the place where the registered office of the company is situated.

- A public company or a private company, which acts as a subsidiary of a public company, may fix the time of the meeting according to the articles of association of the company.
- A resolution may also be passed at a general meeting for the selection of time of the subsequent general meetings.
- However, for a private company, the time and venue of the meetings is fixed by passing a resolution in any of the meeting.
- The venue for the meeting of the private company may not be situated within the area of jurisdiction of the place where the registered office of the company is situated.
- The section 25 of the Negotiable Instruments Act, 1881, defines a public holiday to be a Sunday or any other day as declared by the Central Government to be a public holiday. A day may be declared as a public holiday after the notice for a meeting has been issued. For avoiding

difficulties that may be caused in the above mentioned scenario, section 2(38) of the Companies Act says that, "no day declared by the Central government to be a public holiday shall be a holiday in relation to such a meeting, unless the notice of declaration was issued before the declaration of the meeting."

**Default in Holding Annual General Meeting**

Not holding an annual general meeting according to section 166 of the Companies Act is considered to be a serious offence in the eyes of the law. Every member of the company who is in default and the company will be rendered as defaulters.

- A fine of up to INR 50,000 may be imposed on the defaulters.
- According to section 168 of the Companies Act, if the default is found to be continuing, then a fine of INR 2,500 will be imposed on the defaulters on a daily basis till the default continues.

**Extraordinary General Meeting**

Any general meeting of a company is considered to be an extraordinary general meeting, except the statutory meeting, an Annual General Meeting or any adjournment meeting. Such types of meetings can be fixed by the directors at any time that seems appropriate to the directors. However, the meetings must be held in accordance with the guidelines mentioned in the articles of association of the company.

These meetings are held generally for the transaction of the business of a special character. Various administrative affairs of a company, which can be transacted only by resolutions passed in general meetings, are carried out in these meetings.

It is not possible for the members of the company to wait for the next Annual General Meeting for clearance of such issues. The articles of association of a company, therefore, provides freedom to conduct extraordinary general meetings to sort out such issues.

**An extraordinary general meeting can be convened −**

- By the board of directors or on the requisitions of members.
- By the requisitionists themselves on the failure of the board to call for a meeting.
- By the Company Law board.

By the Board of Directors

If some business of special importance requires an approval of the members of the company, the board of directors may call for an extraordinary general meeting of the company. Going in accordance with the articles of association of the company, the board of directors of a company may call for an extraordinary general meeting whenever they feel appropriate.

The power of a director to convene an extraordinary general meeting must be exercised at a board of directors' meeting as in the case of all the powers exercised by the director.

According to the provision of the articles, if a resolution is signed by all the members of the board and is as effective as a passed resolution, a general meeting may be convened on the context of the resolution.

The articles also provide the facility that there may not be sufficient number of directors to call for a general meeting.

Thus in case of insufficient number of directors, any director or any two members of the company can call for the general meeting in the same way as called by the board of directors.

**On Requisition of Members**

The members of the company may also request for an extraordinary general meeting to be conducted. A request for holding an extraordinary general meeting can be made by the members −

- Holding at least 10% of the company's paid up share capital and having the right to vote on the context of the matter to be discussed at the meeting.
- Holding 10% of voting powers of the members in case the company has no capital.

- Preference shareholders can also call for a general meeting if the proposed resolution is going to affect their interest.
- If a member ceases to withdraw after the requisition is made, the withdrawal will not invalidate the requisition.
- The appointment of shares does not affect the rights of a member to make requisitions or vote at a meeting.

**By the Requisitionists Themselves**

In case the directors fail to call for the meeting within 21 days of a requisition for a meeting to be held within 45 days after the submission of the requisition, the following consequences may be called −

- In context of a company having a share capital, by the requisitionists who represent either a major value of the paid up share capital or not less than one tenth of the company's total share capital.
- For a company not having a share capital, by the requisitionists holding at least one-tenth of the total voting power
- This kind of meetings must be called within three months from the date when the requisition is filed.
- These kinds of meetings should be held similar to board meetings.
- It is not necessary for the requisitionists to disclose the reasons for the resolution to be proposed at the meeting.

**By the Company Law Board**

If it is practically impossible to call a meeting other than an Annual General Meeting for any arbitrary reasons, the Company Law Board, under section 186, may order a meeting to be called, either of its own accord or by an application of any director of the company to the Company Law Board.

A petition needs to be filed under section 186 of the Companies Act for the Company Law Board to call for a meeting.

**MEETING OF BOD**

The meeting held by the Board of Directors is an important aspect for the smooth functioning and working of a company. For ensuring that the actions approved by the board are in the interest of the company, the Companies Act, 1956, incorporates several statutory prescriptions.

**Periodicity of the Board Meetings**

According to section 285 of the Companies Act, the board meetings should be held every three months. The board of directors can meet any day between the 1st January and the 31st of March. Accordingly, the next meeting should be held between 1st April and 30th June. There is no scope in the section 285 of the companies act for backward calculation.

**Notice of Board Meeting**

According to section 286 of the Companies Act, appropriate notice should be given to all the directors about the meeting. The meeting can be held only after the notice is given. The notice should be delivered to every director of the board.

The notice should be delivered at least seven days before the meeting. It is not mandatory to give notice to a foreign director staying outside India. However, it is advised to deliver notices to all the directors whether inside India or outside.

**Day of Holding Meeting**

Generally, board meetings are held during the day within business hours. However, board meetings can also be held on a public holiday.

**Time of Holding Board Meeting**

The Companies Act, 1956, does not impose any restrictions on the timing of board meetings. They can be held during or outside business hours, as per the convenience of the board.

**Place for Holding Board Meetings**

Board meetings can be held anywhere as per the convenience of the board. The board is not bound to select a venue for the meeting in the same city where the company's registered office is situated as in the case of general and statutory meetings. Board meetings can also be held abroad.

**Quorum of the Board Meeting**

According to the provisions given by the Companies Act, at least one-third of the directors or two directors (whichever is higher) must be present to conduct a board meeting. If a fraction arises during the counting of one-third, the fraction is counted as one. These rules also apply to a private company. According to section 287(2) of the Companies Act, the company can raise the number of quorum through its articles of association.

**NOTICE**

A notification sent to shareholders of a company, informing them of a time, date, and location of a shareholder meeting. Because shareholder meetings are a venue for disclosing company information to holders of company stock in accordance with certain regulations, the notice of meeting may represent a legal obligation on the part of the company.

**NOTICE** is hereby given that the Meeting of the General Body of the Society will be held at **"Mainland China"**, Near Infinity Mall, Andheri Link Road, Andheri (W), Mumbai 400 053 on **Monday, 29th September, 2014 at 3 pm** to transact the following business:

**ORDINARY BUSINESS:**

1. To receive, consider and adopt the Audited Balance Sheet as on 31st March 2014, Income and Expenditure Account for the year ended on that date, together with Reports of Directors and Auditors thereon, as approved by the Board of Directors /Governing Council for the period ending 31st March, 2014
2. To appoint a Director in place of Mr. Sonu Nigam (DIN: 01255528) who retires by rotation and is eligible for re-appointment.
3. To appoint a Director in place of Mr. Suresh Wadkar (DIN: 02328736) who retires by rotation and is eligible for re-appointment.
4. To appoint a Director in place of Mr. Sanjay Tandon (DIN: 05317473) who retires by rotation and is eligible for re-appointment.
5. To consider and, if thought fit, to pass with or without modification(s), the following resolution as an Ordinary Resolution:-

   "RESOLVED THAT M/s. Kothari Mehta & Associates, Chartered Accountants, Mumbai, being retiring Auditors of the Company, be and are hereby re-appointed as Auditors of the Company to hold the office from the conclusion of the ensuing Annual General Meeting until conclusion of the sixth Annual General Meeting, on such fess as may be determined by the Board of Directors in consultation with the Auditors, in addition to reimbursement of service tax and all out of pocket expenses in connection with the audit of the Accounts of the Company."

**SPECIAL BUSINESS:**

6. To receive, consider and adopt the Budget Estimates along with programme of action as approved by the Board of Directors/Governing Council for the year 2014-15.
7. To place the following documents for being received, considered and approved by the members of the Society:
   a. The Register of Performer's and Other Owners of Performer's Right maintained by ISRA as provided in Rule 64(i) of the Copyright Rules, 1958 together with an up-to-date list of the Performers and other Owners of Performer's Rights for which ISRA has been authorized to issue or grant licenses that are so recorded in the said Register.
   b. The Tariff Scheme and the Distribution Scheme or any other Scheme including the decision of the Copyright Board on the said Schemes, if any
   c. The agreements if any entered with foreign copyright societies under Section 34(2) of the Copyright Act, 1957
   d. Any changes made in the instrument of registration of ISRA

**By order of the Board/Governing Council**
**For The Indian Singers' Rights Association**
Sd/-
**Sanjay Tandon**
**Managing Director**

**Place: Mumbai**
**Date: 30th August, 2014**

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## AGENDA

An agenda is a list of meeting activities in the order in which they are to be taken up, beginning with the call to order and ending with adjournment. It usually includes one or more specific items of business to be acted upon. It may, but is not required to, include specific times for one or more activities. An agenda may also be called adocket, schedule, or calendar. It may also contain a listing of an order of business.
An agenda lists the items of business to be taken up during a meeting or session.[3] It may also be called a "calendar".[4] A meeting agenda may be headed with the date, time and location of the meeting, followed by a series of points outlining the order in which the business is to be conducted. Steps on any agenda can include any type of schedule or order the group wants to follow. Agendas may take different forms depending on the specific purpose of the group and may include any number of the items. In business meetings of a deliberative assembly, the items on the agenda are also known as the orders of the day. Optimally, the agenda is distributed to a meeting's participants prior to the meeting, so that they will be aware of the subjects to be discussed, and are able to prepare for the meeting accordingly. In a workshop, the sequence of agenda items is important, as later agenda steps may be dependent upon information derived from or completion of earlier steps in the agenda. Frequently in standard meetings, agenda items may be "time boxed" or fixed so as not to exceed a predetermined amount of time. In workshops, time boxing may not be effective because completion of each agenda step may be critical to beginning the next step. In parliamentary procedure, an agenda is not binding upon an assembly unless its own rules make it so, or unless it has been adopted as the agenda for the meeting by majority vote at the start of the meeting. Otherwise, it is merely for the guidance of the chair. If an agenda is binding upon an assembly, and a specific time is listed for an item, that item cannot be taken up before that time, and must be taken up when that time arrives even if other business is pending. If it is desired to do otherwise, the rules can be suspended for that purpose.

7 Steps to The Perfect Meeting Agenda

According to a study conducted by Verizon Business, meetings are the #1 time waster in the work place. They are often unorganized, have no purpose and go off-topic. It's also no mistake that most of these meetings are missing a clear meeting agenda.

Meeting objectives give adults a reason to meet. If there is no clear objective, there's no point in meeting. This objective should outline exactly why you are holding a meeting and what you hope to accomplish as a result.

**Here are 7 guidelines to walk you through how to create an effective meeting agenda:**

1) Create your meeting agenda 3 days in advance

Follow a process, whether it's sent through email or printed and distributed, make sure everyone on your team knows what to expect.

Sending it in advanced ensures that attendees have ample time to prepare or read through any notes they will need before the meeting and raises flags if the objective doesn't match their expectations.

2) Start with the simple details

- What time it should start? (end time is determined after agenda topics are set)
- Who should be attending? (more on this in day 2)
- The place or dial-in information for accessing the meeting

3) The Meeting Objective

- Before you start writing an agenda what is the goal of this meeting?
- If asked why you are meeting, the objective should answer this in no more than 2 sentences.
- Once that goal is established, prioritize the list of topics from most important to least (to ensure the most important pieces get accomplished).

4) Time Per Topic

Let the content dictate how long each topic should take. Don't fall into the trap of over scheduling time per topic.

- ex: Introductions (2 minutes)

People tend to schedule time based on the automatic 30 minute time block in their default calendar even if it could be done in 15 minutes or requires 45. Let the content dictate time, not the software.

5) Keep the agenda to less than 5 topics

No one wants to spend 2 hours in a meeting. Long agendas seem daunting and often don't get read.

6) Include any other pertinent information for the meeting.

- Ex: @Stephen will be taking meeting minutes.
- Ex2: Please read attached document on weekly sales numbers prior to meeting.

7) What if someone sends an invite with no agenda?

Come up with a company policy to deal with agenda-less meetings.

A common solution is to decline any invites that don't include the necessary information to have a productive meeting.

**Below is an example of a typical agenda with a clear purpose:**

Sample Meeting Agenda Format for Dunder Mifflin:

Objective: Determine projected sales goals for 2014.

**Agenda:**

1) Intro (2 minutes)
2) Review previous years sales metrics (10 minutes)
3) Review upcoming paper lead accounts (5 minutes)
4) Set targeted goals (5 minutes)

*** Please review the attached doc with last years numbers prior to attending.**

*** Stephen will be taking notes to be sent out after meeting**

How to write effective meeting minutes

1. 1. How To Write Effective Meeting Minutes San Shway Wynn 2nd February 2013

2. 2. DEFINED • Minutes are the official record of an organization. • It is crucial that they are accurate since they are the legal record of the proceedings and actions of the organization.
3. 3. How To Write Effective Meeting Minutes • Why meeting minutes are important • What's involved with meeting minutes?
4. 4. Why meeting minutes are important Decisions made (motions made, votes, etc.) Next steps planned Identification and tracking of action items When a meeting's outcomes impact other collaborative activities or projects within the organization • Minutes can serve to notify (or remind) individuals of tasks assigned to them and/or timelines • • • •
5. 5. What's involved with meeting minutes? • There are essentially five steps involved with meeting minutes: • • • • • Pre-Planning Record taking - at the meeting Minutes writing or transcribing Distributing or sharing of meeting minutes Filing or storage of minutes for future reference
6. 6. 1. Pre-planning • A well-planned meeting helps ensure effective meeting minutes. • If the Chair and the Secretary or minutes-taker work together to ensure the agenda and meeting are well thought out, it makes minute taking much easier. • Depending on the meeting structure and the tools you use, the minutes-taker could work with the Chair to create a document format that works as an agenda and minutes outline as well.
7. 7. agenda checklist • • • • • • • • • Name of the meeting Date and Time Exact location of the meeting A list of expected attendees Expected meeting duration Clearly stated objectives of the meeting An agenda item to approve the minutes of the previous meeting An agenda item to handle matters arising from the previous meeting's minutes (actions that haven't been completed for example) An agenda item at the end to handle AOB – Any Other Business • • • • • • Each agenda item should be numbered Each agenda item should have a time allotted to it Where you have a speaker, their name should be next to the agenda item so they know they are running that item of the agenda. An agenda should be circulated in advance (ideally the day before) As chair (or secretary) you should bring enough printed copies of the agenda to the meeting and print-outs of the last meeting's minutes for everyone. The whole agenda should be simple and clear for all participants to understand, without extensive prior knowledge.
8. 8. 2. Record taking - what should be included? • • Before you start taking notes, it's important to understand the type of information you need to record at the meeting. Your organization may have required content and a specific format that you'll need to follow, but generally, meeting minutes usually include the following: -Date, time and place of the meeting -Name of the presiding officer and secretary -Names of the meeting participants and those unable to attend - Acceptance or corrections/amendments to previous meeting minutes
9. 9. 3. The Minutes Writing Process • Once the meeting is over, it's time to pull together your notes and write the minutes. - Write the minutes as soon after the meeting as possible while everything is fresh in your mind. • Review your outline and if necessary, add additional notes or clarify points raised. • Check to ensure all decisions, actions and motions are clearly noted. Check for sufficient detail: - include a short statement of each action taken by the board and a brief explanation of the rationale for the decision – when there is extensive deliberation before passing a motion, summarize the major arguments – Edit to ensure brevity and clarity, so the minutes are easy to read.
10. 10. • Decisions made about each agenda item, for example: – Actions taken or agreed to be taken – Next steps – Voting outcomes – e.g., (if necessary, details regarding who made motions; who seconded and approved or via show of hands, etc.) – Motions taken or rejected – Items to be held over – New business – Next meeting date and time
11. 11. • Be objective. – Write in the same tense throughout – Avoid using people's names except for motions or seconds. This is a business document, not about who said what. – Avoid inflammatory or personal observations. The fewer adjectives or adverbs you use, the better. – If you need to

refer to other documents, attach them in an appendix or indicate where they may be found. Don't rewrite their intent or try to summarize them.

12. 12. What NOT TO INCLUDE • The opinion or interpretation of the secretary • Judgmental phrases e.g. "heated debate" "valuable comment" • Discussion: Minutes are a record of what was done at the meeting, not what was said at the meeting • Motions that were withdrawn • Name of seconder is unnecessary
13. 13. 4. Distributing or Sharing Meeting Minutes • As the official "minutes-taker" or Secretary, your role may include dissemination of the minutes. • However, before you share these, be sure that the Chair has reviewed and either revised and/or approved the minutes for circulation.
14. 14. keep a record You don't need to note every word. Just keep a record as follows: • Names of everyone who was there (and apologies from those who weren't) • Key decisions made • Actions agreed • Next steps
15. 15. 5. Filing/Storage of Meeting Minutes • Most committees and Boards review and either approve or amend the minutes at the beginning of the subsequent meeting. • Once you've made any required revisions, the minutes will then need to be stored for future reference. • Some organizations may store these online (e.g., in Google docs or SkyDrive) and also back these up on an external hard drive. • You may also need to print and store hard copies as well or provide these to a staff member or Chair for filing.
16. 16. • • • • • ATTACHMENTS APPROVAL SIGNATURE MINUTES BOOK COPIES
17. 17. Standard Meeting Minute Template • Please note that since the format, style and content requirements for meeting minutes varies depending on the organization and the type of committee or Board . • Meeting minutes normally include these elements as standard; – • Time, date and venue. – • Attendees and apologies from absentees. • • Key outcomes from the meeting - decisions made, actions agreed and open issues.
18. 18. Example of Minutes Format Name of Organization: Purpose of Meeting: Date/Time: Chair: Topic 1. 2. 3. Discussion Action Person Responsible
19. 19. Problem Solving (Circle table)
20. 20. Training (Rectangular table)
21. 21. Decision Making (U Table)
22. 22. Thank You.

**TEXT BOOKS:**

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

**REFERENCES :**

1.N.D.Kapoor, (2010), Elements of Company Law, Sultan Chand & Sons, New Delhi.
2.M.C.Kuchhal, (2008), Secretarial Practice, Vikas Publications, New Delhi.
3.Avtar Singh, (2014), Introduction to Company Law, Eastern Book Company, New Delhi.
4.N.D.Kapoor, (2017), Mercantile Law, Sultan Chand & Sons, New Delhi.

# Unit – 3 - Multiple Choice Questions – Part - A Each question carry one mark

| SN | Questions | Option - A | Option - B | Option - C | Option - D | Answer |
|---|---|---|---|---|---|---|
| 1 | Meetings shall not include | Employees Meeting | Directors Meeting | Class Meetings of Members | Creditors Meeting | Employees Meeting |
| 2 | Statutory Meeting shall be conducted only once in the life time of the company | Creditors | Shareholders | Debenture Holders | Third Party Liability | Shareholders |
| 3 | Statutory Report of the meeting shall be forwarded for every member of the company which shall be not less than | 1 month | 6 months | 21 days | 90 days | 21 days |
| 4 | Members of the company are at liberty to discuss the matters relating to the | Boundaries of the Company | Construction of company | % Of Brokerage | Formation of Company | Formation of Company |
| 5 | Provision for Annual General Meeting is contained under section | 166 | 165 | 169 | 175 | 166 |
| 6 | In addition to other meeting each company shall conduct | Statutory Meeting | Annual General Meeting | Shareholder Meeting | Debenture Meeting | Annual General Meeting |
| 7 | Time gap between one AGM with the next shall be | 12 months | Not less than 12 months | More than 15 months | Not less than 15 months | More than 15 months |
| 8 | Annual General Meeting shall informed in advance of | 21 days | 15 days | 10 days | 24 hours | 21 days |
| 9 | Resolution shall be passed to convene general meeting of the shareholders at | Executive Meeting | Board Meeting | Members Meeting | Creditors Meeting | Board Meeting |
| 10 | If the company fails to call for annual general meeting, then who shall convene the meeting | M C A | R O C | C L B | Court | C L B |
| 11 | All Statutory meetings and Annual General Meetings shall be called as | Specific Meetings | Statutory Meetings | As per Companies Act | Ordinary Meetings | Ordinary Meetings |
| 12 | Any urgent or specific or special business which cannot be postponed further shall be called through | Extraordinary General Meeting | Annual General Meeting | Shareholder Meeting | Debenture Meeting | Extraordinary General Meeting |
| 13 | When company has more than one class of shareholders then such company shall conduct | Regular Meetings | Class meetings | Depositor Meeting | Shareholders meetings | Class meetings |
| 14 | Management and Administration of the affairs of a compnay are vested in the elected representatives of shareholders | Annual Meeting | Special Meeting | Board Meeting | Statutory Meeting | Board Meeting |

## Unit – 3 - Multiple Choice Questions – Part - A Each question carry one mark

| | | | | | | |
|---|---|---|---|---|---|---|
| | who in turn shall meet | | | | | |
| 15 | Frequency of Meeting shall be at lest once in | A Month | Two Months | Four Months | Three Months | Three Months |
| 16 | Whether notice to all the directors of a meeting not served | Invalid Meeting | Valid Meeting | Meeting Cancelled | Based on Quorum | Invalid Meeting |
| 17 | Following is not the business transacted in the board meeting | Issue & Allotment | Director Appointment | Calls & Forfeiture | Transfer & Transmission | Director Appointment |
| 18 | First board meeting shall be conducted | before incorporation | commencement of business | after incorporation | Getting Registered | after incorporation |
| 19 | Directors are empowered to delegate their powers to small committees to investigate in to the matters | Memorandum | C L B | M C A | Articles | Articles |
| 20 | Requisites of a valid meeting shall not include | Prospectus | Quorum be present | Chairman preside | Minutes to be ready | Prospectus |
| 21 | General Meeting can be attended by all | shareholders | members | officials | Members from C L B | members |
| 22 | Contents of a notice shall not include | Date, Day | Time, Place | List of Participants | Statement of the Business | List of Participants |
| 23 | Business to be transacted during the meeting shall be | Ordinary | Special | As Requested | Ordinary & Special | Ordinary & Special |
| 24 | Minimum number of members must be present in order to constitute for a valid meeting is called | Quorum | Proxy | Agenda | Minutes | Quorum |
| 25 | Normally all meetings shall have a | Secretary | Chairman | Quorum | Agenda | Chairman |
| 26 | The Chairman of a meeting shall not held responsible for | Pass Resolutions | Count the votes | Just Present | Declare Result | Just Present |
| 27 | The way in which the Chairman of the meeting shall conduct is prescribed in the | Memorandum | Prospectus | Table A | Articles | Articles |
| 28 | Ascertainment of the motion passed shall not include | Post | Acclamation | Voice Vote, Poll | Show of Hands | Post |
| 29 | One who is responsible for the minutes of a meetings shall be | Chairman | Secretary | Members | Court | Secretary |
| 30 | Member entitled to attend and vote at a meeting in the absence called as | Members Vote | Voting Rights | Proxy | Majority | Proxy |

# Unit – 3 - Multiple Choice Questions – Part - A Each question carry one mark

| | | | | | | |
|---|---|---|---|---|---|---|
| 31 | A proxy shall not be one of the following | Duly Signed & Stamped | Need not be a member | Must lodged 48hrs before the meeting | Cannot Vote | Cannot Vote |
| 32 | Motions passed in the general meetings shall be declared as passed only when | Given a right to vote | By show of hands | By Poll | Any of the three | Any of the three |
| 33 | Questions specified in a meetings of the company shall become | Motions | Resolutions | Minutes | Agenda | Motions |
| 34 | Before a motion is left to vote, any member can make | Adjournment | Amendment | Stop the Motion | Abstain from Voting | Amendment |
| 35 | When a point of order is raised the chairman has to | Refer Articles | Refer Memorandum | Debate on main motion to be stopped | Refer Court of Law | Debate on main motion to be stopped |
| 36 | Any wish of the company shall be expressed through | Minutes | Agenda | Quorum | Resolution | Resolution |
| 37 | Under Section 188 to 192 of Companies Act 1956, there are | 3 types of resolutions | 4 types of resolutions | 5 types of resolution | No limits | 3 types of resolutions |
| 38 | Ordinary resolution shall be deemed to be passed | The way it is conducted | simple majority | 3/4 majority | voted by all present | simple majority |
| 39 | "Things to be done" implies about | Minutes | Resolutions | Agenda | Order | Agenda |
| 40 | Agenda Book shall be treated as | Public Document | Private Document | Not a Permanent Record | Permanent | Permanent |
| 41 | One of the Permanent evidence for the conduct of a meeting is called as | Minutes | Resolutions | Agenda | Point of Order | Minutes |
| 42 | Various kinds of minutes are | Minutes of Resolution | Minutes of Resolution &Narration | Minutes of Narration | Minutes by Record | Minutes of Resolution &Narration |
| 43 | Legal provisions relating to a minutes shall not include | Pages to be serially numbered | Signing of Minutes | Chairman not to sign | Fair & Correct summary | Chairman not to sign |
| 44 | Under Section 195 of the companies act, a minutes book shall be placed at the | With R O C | With C L B | Court | Registerd office | Registerd office |
| 45 | Different minutes books shall be maintained in the case of | Board Meeting | A G M | Statutory Meeting | All the three | All the three |
| 46 | Chairman of a meeting shall not exercise his power in the case of | Informing Privately | Decide Point of order | Order of Priority of Speakers | Adjourn the Meeting | Informing Privately |
| 47 | Assembling, Gathering or coming together | Quarrelling | Meeting | Discussing | Resolving | Meeting |

# Unit – 3 - Multiple Choice Questions – Part - A Each question carry one mark

| | | | | | | |
|---|---|---|---|---|---|---|
| | by more than one or more is called | | | | | |
| 48 | Any advance intimation so as to give the person an opportunity to prepare oneself is called as | Minutes | Resolution | Notice | Agenda | Notice |
| 49 | Under Section 186 of companies act 1956 shall convene the meeting | Court | M C A | S E B I | C L B | C L B |
| 50 | Unless the articles provide for a larger number minimum of persons shall personally present and constitute | Quorum | Majority | Number of Members | Minimum Members | Quorum |
| 51 | Exemption for a quorum shall not include | Convened by Central Government | By the members | Ordered by C L B | Board appoints one man committee | By the members |
| 52 | Agenda for the meeting shall not include | Discuss the matters | Appoint alternate directors | Not to fix date for next meeting | Read & Sign the minutes | Not to fix date for next meeting |
| 53 | Duties of a Chairman for a meeting shall not include | Ensure meeting properly conducted | Discipline maintained | Acted at the best interest of the company | One Sided Decisions | One Sided Decisions |
| 54 | Following transaction needs a special resolution | Internal Reconstruction | Declaration of Dividends | Appointment of Auditors | Adoption of Statutory Report | Internal Reconstruction |
| 55 | Is it mandatory to register the resolutions passed in the meeting within | 15 days | 30 days | 60 days | 90 days | 30 days |
| 56 | Proceedings of the meetings of a company meeting is called as | Resolution | Agenda | Minutes | Motion | Minutes |
| 57 | Proxy form shall not be rejected in the case of | Incomplete form | Requisite Revenue Stamp not affixed | appointer revokes | If proper | If proper |
| 58 | Who is not exempted from the provision of holding statutory meeting | Private Company | Unlimited Company | Limited by Guarantee | Deemed to be Public Company | Private Company |
| 59 | With regard to the duties of a secretary one of the duty is not necessary | Duty before the meeting | Duty concerned with next meeting | Duty at the time of meeting | Duty after the meeting | Duty concerned with next meeting |
| 60 | U/S 173(1) a general business shall not include | Consideration of accounts | Declaration of Dividends | Changes in M O A | Appointment of Directors | Changes in M O A |

UNIT IV

Company Secretary – Meaning – Definition – Types – position – Qualities – Qualifications – Appointment and Dismissal – Power – Rights – Duties – Liabilities of a Company Secretary – Role of a Company Secretary.

**INTRODUCTION :** A *Company Secretary* is a senior position in a private sector company or public sector organisation, normally in the form of a managerial position or above. In large American and Canadian publicly listed corporations, a company secretary is typically named a Corporate Secretary or Secretary. Despite the name, the role is not a clerical or secretarial one in the usual sense. The company secretary ensures that an organisation complies with relevant legislation and regulation, and keeps board members informed of their legal responsibilities. Company secretaries are the company's named representative on legal documents, and it is their responsibility to ensure that the company and its directors operate within the law. It is also their responsibility to register and communicate with shareholders, to ensure that dividends are paid and to maintain company records, such as lists of directors and shareholders, and annual accounts. In many countries, private companies have traditionally been required by law to appoint one person as a company secretary, and this person will also usually be a senior board member.

**WHAT IS A PROFESSION?** Before taking up the discussion of secretary-ship as a profession it is necessary to clarify the term 'profession'. The word 'profession' means a vocation or calling. Profession requires specialised or expert knowledge for giving instructions, guidance and advice.

**A PROFESSION SHOULD HAVE THE FOLLOWING CHARACTERISTICS:**

1. A body of specialised knowledge;
2. There must be a formal method of acquiring training and experience;
3. There must be a code of conduct;
4. There must be a professional ideology;
5. There must be a professional body which is authorised to issue licence for practising the profession;
6. There is the practice of charging fees for services;
7. A membership and licence have to be obtained from the respective Institute

**TYPES OF SECRETARIES :** There are different types of secretaries—private secretary, secretary to the govt. department, club secretary or secretary of an association etc. These types of secretaries have not gained recognition as professionals because most of the basic features of a profession are absent in these occupations. The secretary has got a prestigious status in the organisation. The secretary holds a responsible post of permanent nature. The governing body of an organisation may change from time to time, but the post of secretary is permanent. Presidents come and go, may be every year. It is the work of the Secretariat and staff that promotes the growth of the organisation. Secretary-ship is not just an occupation—it is a profession. People engage themselves in certain occupations in order to earn their living. But all occupations are not professions. A profession is an occupation involving something more than earning a living.

**DEFINITION OF A COMPANY SECRETARY:** A Company Secretary means "a person who is a member of the Institute of Company Secretaries of India". [Sec. 2(i) (c) of the Company Secretaries Act, 1980]

According to Section 2(45) of the Companies Act, 1956, "Secretary means any individual possessing the prescribed qualifications, appointed to perform the duties which may be performed by a secretary under this Act and any other ministerial or administrative duties"
The Companies Act, 1956, imposed certain statutory obligations on the secretary of a company but law does not define his exact position. From the nature of functions performed by a secretary, we can have some idea about the legal position of a Company Secretary. According to the law of the land, a secretary is merely a servant of the company working under full control of the Board of Directors of the company.
He will carry out the orders given to him by the Directors. But since the judgment of Lord Esher in 1887, everything has changed. Legal position of the Company Secretary has completely changed. Today a secretary occupies a very important position in the administrative setup of the company. He is an officer of the company with extensive duties and responsibilities. He is no longer a mere clerk. He regularly makes representations on behalf of the company and enters into contracts on its behalf which come within the day-to-day running of the company's business, so much so that he may be regarded as having authority to do such things on behalf of the company. Companies Act also regards him as the principal officer of the company who is personally responsible for filing various returns to the Registrar of Companies. The legal status of the secretary has been described as a servant of the company but the actual position is much more than a servant.

**QUALITIES :** (1). Educational Qualifications (2). Professional Qualifications (3). Personal Qualities

**Educational qualifications of company secretary:** A company secretary has to deal with many people of name and fame. So he must have higher education for better understanding. He represents the company to the outside world and therefore he should have language proficiency to be well conversant. He should be updated with wide general knowledge relevant to run the company activities.
**Professional qualifications of company secretary:** A company secretary requires specialized knowledge on secretarial practice to deal with notice, agenda, resolution, minutes of a meeting. He must know about office correspondence for communication. A company secretary must have sufficient knowledge on companies Act, Industrial & Commercial law, and law of income tax, stamp Act, Accounting principles and rules of Securities and Exchange Commission (SEC) to deal with legal and statutory affairs. A company secretary should have better understanding about money and capital market, foreign exchange and socio-economic condition to dealÂ Â with trading and financing. He requires proper knowledge to work with computer for documentation preservation and future use of data or information. To maintain good relation with all stakeholders a company secretary should have knowledge of human relations. Personal qualities of company secretary. A company secretary is a high profile officer and therefore he should be a person to have below qualities: Honesty, Integrity, Loyalty, Courtesy, Punctuality, Tactfulness, Cautiousness, Sense of Discipline and Responsibility, Professional minded, Managing Schedule, Interpersonal skills, Tackle Confidential Information, Communication Skill, Judgment, Ability to solve basic queries and Organizing Skills

**QUALIFICATIONS OF THE SECRETARY:** Since the amendment of the Companies Act in 1994, only a person having prescribed qualifications can be appointed secretary of a

company. Apart from the statutory qualifications, he should also have other qualifications as may be necessary to conduct the affairs of the company.

**STATUTORY QUALIFICATIONS:** According to Section 2(45) of the Companies Act 1956, as amended in 1974, a Company Secretary must possess the qualifications prescribed by the Central Govt. from time to time.

**The qualifications as prescribed by the Companies (Secretary's Qualifications) Rules 1975, for the Secretary of a Company are:**

(a) In case of a company having a paid-up share capital of Rs. 50 lakhs or more, the Secretary must be a member of the Institute of Company Secretaries of India incorporated under the Companies Act, 1956, and licensed under Sec. 25 of that Act. A person who is a member of the Institute of Chartered Secretaries of London shall also be eligible for appointment as Secretary of such a company.

(b) In the case of any other company, one or more of the following qualifications shall have to be possessed by the Secretary: (i) Qualifications specified in clause (a) above; (ii) A degree in law granted by any university. (iii) Membership of the Institute of Chartered Accountants of India.

(iv) Membership of the Institute of Cost and Works Accountants of India. (v) A post-graduate degree or diploma in Management granted by any university or the Indian Institute of Management.

(vi) A post-graduate degree is Commerce granted by any university. (vii) A diploma in Company Law granted by any Indian Law Institute.

**OTHER QUALIFICATIONS:** In order to be a Company Secretary, statutory qualifications are not enough.

**1. Knowledge of Company Law:**

The Secretary must know the detailed provisions of the Companies Act and its implications. He must have a knowledge of the rules of meetings.

**2. Knowledge of Mercantile Law:**

Most of the companies carry on their business as mercantile firms and have to act according to different provisions of Mercantile Law including the Contract Act, Sale of Goods Act, Negotiable Instruments Act, MRTP Act, Insurance Act etc.

The company also faces problems of labour, trademarks, patents, copyrights and so on. Therefore, the Secretary must have a sound knowledge of Labour Laws, Factories Act, ESI Act, Mercantile Laws and Patent, Copyright and Trade Mark Laws.

**3. Knowledge of Economics:**

In order to handle economic problems of the company, the Secretary should have a sound knowledge of Economics—theoretical and practical—general money market, capital market and financial institutions.

**4. General Knowledge:**

The Secretary must have a sound general knowledge. He must have thorough acquaintance with social, political and economic conditions of the country.

5. The Secretary must be smart, unbiased, and must have high IQ, presence of mind and amiable personality.

**APPOINTMENT:** The secretary of a cooperative society may either be appointed as a paid secretary or may be elected from amongst the members of the Managing Committee to act as an honorary secretary. Every cooperative society must have a secretary. The secretary of a cooperative society is the Chief Executive Officer of the society. He manages the society and is fully liable to the Managing Committee for the management of the society.

The First Secretary of a company is generally appointed by promoters and his name may be mentioned in the Articles of Association. If the First Secretary is appointed subsequently, it has to be done by the Board of Directors by passing a resolution in their meeting. The terms and conditions of appointment should be mentioned in the resolution of the Board meeting. A Director may also be appointed as a Secretary.

**DISMISSAL:** The Secretary is a servant of the company and his dismissal is governed by the normal law applicable to master and servant. The Secretary can ordinarily be dismissed by the Board of Directors. He may be removed in the following manner:
(i) By giving a written notice;
(ii) On the expiry of the tenure of service;
(iii) As prescribed by the Articles of Association of the company.
The Secretary may also be removed without notice for i. Wilful misconduct; ii. Wilful disobedience to order of the manner; iii. Negligence of duty; iv. Permanent disability; and v. Moral turpitude.

**POWERS OF THE COMPANY SECRETARY :** The Company Secretary can authenticate documents or proceedings of the company and the signature of the Secretary on a written resolution is evidence of the proceedings. The Companies Act 1985 provides that a document signed by a director and the Secretary of a company and expressed (in whatever form of words) to be executed by the company has the same effect as if executed under the common seal of the company. If the office of Secretary is vacant, or the Secretary is incapable of carrying out his/her duties, the assistant or deputy secretary shall carry out the functions of the Secretary and the document is deemed to be executed by the company. In addition, a document which purports to be signed by a director and the Secretary or by two directors shall be deemed to have been duly executed in favour of a purchaser in good fait for valuable consideration who acquires an interest in property.

**POSITION OF A COMPANY SECRETARY :**
As a servant of the company - As an agent of the company - As an Officer of the company. It is arguable, therefore, that the secretary has also graduated as an organ of the company. Though appointed by the directors he is not their servant but an officer of the company" with substantial authority in the administrative sphere and with powers and duties derived directly from the articles and the Companies Acts. Andlin the performance of his statutory duties he is clearly entitled to resist interference from the members, board of directors or managing director. Where he differs from them is .that he has no responsibility for corporate policy or for making managerial decisions, as opposed to playing an administrative role in ensuring that the policy and managerial decisions are implemented.

**ROLE AND DUTIES OF A COMPANY SECRETARY:** Companies law requires only a listed company to have a whole time secretary and a single member company (any company that is not a public company) to have a secretary. The secretary to be appointed by a listed company shall be a member of a recognized body of professional accountants, or a member of a recognized body of corporate / chartered secretaries or a person holding a masters degree in Business Administration or Commerce or is a Law graduate from a university recognized and having relevant experience. However, the company secretary of a single member company shall be a person holding a bachelor degree from a university recognized. The

duties of a company secretary are usually contained in an "employment contract". However, the company secretary generally performs the following functions:-

**Functions of secretary:**

**(1). Secretarial functions:** To ensure compliance of the provisions of Companies Law and rules made there-under and other statutes and bye-laws of the company. To ensure that business of the company is conducted in accordance with its objects as contained in its memorandum of association. To ensure that affairs of the company are managed in accordance with its objects contained in the articles of association and the provisions of the Companies Law. To prepare the agenda in consultation with the Chairman and the other documents for all the meetings of the board of directors. To arrange with and to call and hold meetings of the board and to prepare a correct record of proceedings. To attend the broad meetings in order to ensure that the legal requirements are fulfilled, and provide such information as are necessary. To prepare, in consultation with the chairman, the agenda and other documents for the general meetings. To arrange with the consultation of chairman the annual and extraordinary general meetings of the company and to attend such meetings in order to ensure compliance with the legal requirements and to make correct record thereof. To carry out all matters concerned with the allotment of shares, and issuance of share certificates including maintenance of statutory Share Register and conducting the appropriate activities connected with share transfers. To prepare, approve, sign and seal agreements leases, legal forms, and other official documents on the company's behalf, when authorised by the broad of the directors or the executive responsible. To advise, in conjunctions with the company's solicitors, the chief executive or other executive, in respect of the legal matters, as required. To engage legal advisors and defend the rights of the company in Courts of Law. To have custody of the seal of the company.

**(2). Legal obligations of secretary:** Filling of various documents/returns as required under the provisions of the Companies Law. Proper maintenance of books and registers of the company as required under the provisions of the Companies Law. To see whether legal requirements of the allotment, issuance and transfer of share certificates, mortgages and charges, have been complied with. To convene/arrange the meetings of directors, on their advise. To issue notice and agenda of board meetings to every director of the company. To carry on correspondence with the directors of the company on various matters. To record the minutes of the proceedings of the meetings of the directors. To implement the policies formulated by the directors. To deal with all correspondence between the company and the shareholders. To issues notice and agenda of the general meetings to the shareholders. To keep the record of the proceedings of all general meetings. To make arrangement for the payment of the dividend within prescribed period as provided under the provisions of the Companies Law.

**(3). To maintain the following statutory books:** the register of transfer of shares; the register of buy-backed shares by a company; the register of mortgages, charges etc.; the register of members and index thereof; the register of debenture-holders; the register of directors and other officers; the register of contracts; the register of directors' shareholdings and debentures; the register of local members, directors and officers, in case of a foreign company; Minute books; Proxy register; Register of beneficial ownership; Register of deposits; Register of director's share holding; and Register of contracts, arrangements and appointments in which directors etc are interested.

**(4). Other duties:**

*The company secretary usually undertakes the following duties:* **(a)** Ensuring that statutory forms are filed promptly. **(b)** Providing members and auditors with notice of meeting. **(c)** Filing of copy of special resolutions on prescribed form within the specified time period.

**(5).** Supplying a copy of the accounts to every member of the company, every debenture holder and every person who is entitled to receive notice of general meetings. You must send annual audited accounts. **(6).** Keeping or arranging for the having of minutes of directors' meetings and general meetings.Apart from monitoring the Directors and Members minutes books, copies of the minutes of board meetings should also be provided to every director. **(7).** Ensuring that people entitled to do so, can inspect company records.For example, members of the company are entitled to a copy of the company's register of members, and to inspect the minutes of its general meetings and to have copies of these minutes.
**(8).** Custody and use of the common seal.Companies are required to have a common seal and the secretary is usually responsible for its custody and use. (Common seals can be bought from seal makers)

**Functions of the Company Secretary may be discussed under two headings:**
(i) Statutory Functions or Duties and (ii) Non-statutory Functions or Duties.

**Statutory Functions:**
The Companies Act, 1956, imposes certain duties upon the Secretary.

**The Companies Act has specified the following duties of the Company Secretary:**
1. Signing of Annual Returns, 2. Registration of Allotment Returns, 3. Issuing Share Certificates,
4. Convening Annual General Meeting, 5. Maintaining Share Registers, 6. Maintaining Register of Directors. The Indian Stamp Act also requires a Company Secretary to ensure that proper stamps are affixed on the company's documents. The Indian Sales Tax Act also provides that the Secretary of the Company should arrange for registration of the company, if necessary, and submit the tax returns. Under the Income Tax law, the Company Secretary has to deduct income tax from the salaries of the staff and dividend payable at source and to submit income tax returns to the authorities in accordance with the law. Under the MRTP Act, FERA (now FEMA) and Essential Commodities Act, he is entrusted with certain obligations under the Payment of Wages Act, Bonus Act, Provident Fund Act and Gratuity Act. He is personally liable for the violation of provisions of the respective Acts.

**Non-statutory Functions:**
The non-statutory functions of the Company Secretary vary with the nature and size of the company. He has got certain non-statutory functions in relation to Directors, shareholders and office and staff.

**1. Functions in Relation to Directors:**
Company secretary is an employee of the Company and acts as the mouthpiece of the Board of Directors. From the legal standpoint the Secretary is an employee of the company but actually his position is not like a servant because he is a highly responsible and honorable person, often more qualified and knowledgeable than the Directors.
The Secretary helps the Directors in framing policies and arriving at decisions. It is his duty to implement these decisions. He helps the Chairman of the Board in conducting Board meetings.

**The functions of the Secretary in relation to the Directors are:**
(i) He is to ensure that the actions of the Board of Directors are strictly in accordance with the provisions of the law. (ii) He helps the Board of Directors to formulate policies and arrive at decisions. (iii) He issues notices and prepares the agenda in consultation with the Chairman for the meeting of Board of Directors. (iv) He records the attendance of the Directors. (v) He prepares the Minutes of the Board meeting. (vi) He issues the orders and instructions of the Board to the members of the staff. (vii) He arranges for the payment of Directors' fees. (viii) He maintains all important correspondence, files, documents and records of Board office.

**2. Functions in Relation to Shareholders:**

A Company Secretary is the medium of communication between the Directors and the shareholders, debenture holders, and creditors. A secretary handles all confidential matters. By virtue of his position he knows the percentage of dividend to be declared beforehand. He should not leak out any confidential matter like the above before they are officially notified to the public.

A company is created for making profit. Every shareholder can reasonably expect a return on his investment in the company's shares. The return on the shares is given to the shareholders in the form of dividend. The Secretary of a company has to take-full responsibility for the payment of dividend to the shareholders within 42 days from the date of Annual General Meeting.

After the dividend is declared at the Annual General Meeting, Secretary will have to prepare dividend warrants and send them to the shareholders.

**The functions of the Secretary in relation to shareholders may be summed up as:**

(i) He has to issue share certificates, share warrants and debentures. (ii) He issues allotment letters and letters of regret. (iii) He issues call letters. (iv) He has to issue notices and agenda of the Statutory Meeting, Annual General Meeting and Extraordinary General Meeting of shareholders.

(v) He has to maintain the Minute Book of shareholders' meeting. (vi) He has to maintain the Share Register and Share Transfer Register. (vii) He maintains the proceedings of all meetings.

**3. Functions in Relation to Office and Staff:**

The Secretary is the executive head of the company and he is responsible for smooth functioning of the office work. He exercises an overall supervision of all clerical activities in the office. Legal and financial matters are under his direct control. The Secretary is the kingpin of the whole corporate machinery. It is the duty of the Secretary to see that all the departments are properly coordinated, controlled and supervised.

**4. Functions in Relation to Meetings:**

The Secretary of the company has to deal with all kinds of meetings of the company.

There are different types of company meetings—Statutory Meeting, Annual General Meeting, Board Meeting, Extraordinary General Meeting, meeting of debenture holders etc.

In all these cases, the Secretary has to arrange for everything in connection with the meeting.

**The functions of the Secretary can be discussed under three stages:**

(i) Functions before the meeting. (ii) Functions at the meeting. (iii) Functions after the meeting.

**Functions before the Meeting:**

**The functions of the Secretary before the meeting are:**

(i) To fix up the date of the meeting in consultation with the Chairman; (ii) To prepare the agenda of the meeting; (iii) To issue notices to the members entitled to attend the meeting; (iv) To arrange for convening the meeting; (v) To append the proxy forms; (vi) To send the notice of holding the Annual General Meeting to the auditors of the company; (vii) To draft and circulate the Director's Report, Statutory Report and Chairman's speech.

**Functions at the Meeting:**

**The functions of the Secretary at the meeting are:**

(i) To record the attendance in the Attendance Register; (ii) To distribute relevant papers and documents amongst the members; (iii) To read out the notice of the meeting and the minutes of the last meeting; (iv) To read out the Audit Report, the Director's Report or any other report in the meeting;

(v) To help the Chairman in conducting the meeting smoothly; (vi) To take notes of the proceedings of the meeting; (vii) To draft the resolutions. Functions after the Meeting The

functions of the Secretary do not end with the meeting. As soon as the meeting is over, he should draft the proceedings of the meeting and get them signed by the Chairman. He should arrange to file the Statutory Report, Annual Returns along with Director's Report and Audit Report (in case of AGM) with the Registrar of Companies. If any special resolution is adopted, a copy of such resolution should be filed with the Registrar of Companies. He has to execute decisions of the meeting. He has to send press reports for publication. The Secretary should also make all arrangements for voting and, if necessary, should conduct the poll peacefully and efficiently. Lastly, he has to arrange for refreshments for members immediately after the meeting.

**Functions of the Company Secretary as:**

**Executive Officer:**

The Company Secretary is the executive head of the office. He has to carry out official functions and see that the activities of the company are in accordance with the provisions of the Companies Act. He is responsible for cash, accounts, records, share and publicity affairs. The Secretary has to supervise, coordinate and manage the activities of the office.

**As the Chief Executive Officer, the Secretary's principal functions are:**

(i) Supervising, controlling and coordinating the activities of the office. (ii) He has to look after all staff matters. He handles recruitment, induction, promotion, transfer, remuneration of office staff.

(iii) He has to arrange and attend meetings, conferences and seminars. (iv) He has to handle correspondence, records, routine work, incoming and outgoing mails, attend callers, arrange interviews etc. (v) He issues orders, circulars, directives to the departmental heads. (vi) He has to carry out the decisions of the Board of Directors. (vii) He has to negotiate with third parties on behalf of the company.

**Functions of the Company Secretary as a Liaison Officer**

The Company Secretary has to act as a Liaison Officer between the Board of Directors and the government and the public. He is the linkman between the top management and the staff and through him the decision of the management is conveyed to the staff. The suggestions and grievances of the employees are conveyed by the Secretary to the management. The Secretary also acts as the Public Relations Officer.

**As a Liaison Officer the Company Secretary has to:**

(i) Maintain cordial relations between the management and staff. (ii) Convey all decisions, policies, orders and directions of the Board to the members of the staff, shareholders and the public. (iii) Inform the shareholders about the necessary rules for transfer of shares. (iv) Negotiate with the third parties for the settlement of contracts and bargains. (v) The management inform of any discontentment among the members of the staff.

**Functions of the Company Secretary as Advisor to the Management:**

The Company Secretary is an advisor to the management. In most cases, the authorities depend largely on the advice of the Secretary. His suggestions and opinions are valuable to the management. The exact nature and the extent of the advice given by the Secretary will vary according to the nature, and size of the organisation.

The advisory functions of the Company Secretary are very valuable to their employers. The Secretary advises the Board of Directors to take decisions. The Directors know little about the legal, procedural and constitutional aspects of company matters. A qualified Company Secretary, well-conversant with all the aspects of company management, is in a better position to give right advice to the Board of Directors.

**Rights of a Company Secretary are:**

1. As the head of the secretarial department, the Secretary has the right to control, direct and supervise the activities of the department.
2. As the principal executive officer of the company the Secretary has the right to sign documents which require authentication of the company.
3. The Secretary has the right to get remuneration from the Company. As an officer of the company he has the right to claim two months' salary as a preferential creditor at the time of winding-up of the company.
4. The Secretary has the right to claim damages and compensation when his service is terminated before the expiry of his terms as per service contract.
5. The Secretary has the right to inspect the books maintained by the secretarial department.

**DUTIES OF COMPANY SECRETARY :** Maintaining the statutory registers - members, directors and secretaries and directors' interests. Ensuring that statutory forms are filed promptly. Sending the Registrar copies of resolutions and agreements. The main duty of the Company Secretary is to safeguard and protect such interests of the company at all levels viz. legal, statutory, administrative, arbitrational and in other policy matter. If authorized by the Board, it is duty of the secretary to convene a Board or Shareholders meeting in time, sign notices of such meeting, send annual and, half yearly accounts to shareholders, prepare minutes of the meeting timely and correctly, make sure that the quorum requisite is present in the meeting etc. It is company secretary's duty to oversee before execution that the various agreements, deeds, contracts are properly framed, worded etc. Sometimes company secretary has to work as public relations officer of the company etc.

**CORE DUTIES OF THE COMPANY SECRETARY :** Below mentioned duties includes both those duties which are legal obligations as well as those which result from best practice. Besides, a Secretary may have to use his/her inventiveness to ensure that all core duties are fulfilled. 1. Meetings of the Board of Directors, 2. General Meetings, 3. Memorandum and Articles of Association, 4. Requirements of Stock Exchanges, 5. Statutory Registers : Following statutory registers has to be maintained: 1. Members register 2. Register of directors 3. Register of contracts with Directors 4. Directors' interests in shares and debentures 5. Interests in voting shares 6. Register of mortgages & charges 7. Minutes book 8. Books of Accounts 9. Register of debenture holders (if applicable). Etc. 6. Statistical Books : 1. Application and allotment register 2. Register of share transfer 3. Attendance record book 4. Agenda book 5. Proxy register 6. Index cards for maintaining specimen signatures of members 7. Share certificate and debenture book. etc., 7. Statutory Returns, 8. Report and Accounts, 9. Registration of Shares, 10. Communications to and from Shareholder , 11. Shareholder Monitoring, 12. Issues of Share and Capital and Restructuring, 13. Acquisitions, Disposals and Mergers, 14. Corporate Governance, 15. Non-Executive Directors, 16. Common Seal of the Company, 17. Identity of the Company and 18. Subsidiary Companies

**LIABILITIES:** Liabilities of a Company Secretary emanate from various statutes and service contracts. The Secretary has two sets of liabilities—statutory liabilities and contractual liabilities.

**Statutory Liabilities:**

The Company Secretary may be held liable for many penalties under the Companies Act if he makes any default in complying with its provisions.

**The Company Secretary may be held liable for:**

(i) default in holding Statutory Meeting and filing and circulating the Statutory Report to the Registrar of Companies and members of the company;
(ii) Default in holding the Annual General Meeting of the Company;

(iii) Failure to give due notice of Board Meetings;
(iv) Failure to record the minutes of the Board and General Meetings;
(v) Failure to maintain Director 'Members' and Debenture holders' Registers and Index;
(vi) Failure in registering resolutions and agreements which need to be registered;
(vii) Failure to make entries in the register of members on the issue of a share warrant;
(viii) Default in filing with the Registrar particulars of any change created by the company;
(ix) failure to file with the Registrar copies of the annual Balance Sheet, Profit and Loss Account, annual returns, statements, certificates, etc.;
(x) Failure in circulating resolutions for which members have given notice;
(xi) Failure in delivering share certificates, debentures etc. within 3 months of the date of allotment and within 2 months of the application for registration of transfer of shares;
(xii) Failure in painting or affixing the name of the company outside every office and place of business;
(xiii) Non-compliance with the provisions of the Act relating to the appointment of auditors, audit of accounts and auditor's report;
(xiv) Like any officer of the company, the Secretary will be punishable with imprisonment for falsifying the books of the company and making willfully and knowingly a material false statement in the Balance Sheet, or, in certain returns, reports, certificates or other documents of the company.

**Under the Income Tax Act, the Company Secretary is liable for**:
(i) Failure to deduct income tax from salaries of employees at source;
(ii) Failure to deduct income tax from dividend payable to shareholders;
(iii) Failure to deposit tax deducted at source to the Income Tax Authority;
(iv) Failure to pay corporate tax in time.

**Under the Stamp Act, the Company Secretary is liable for:**
(i) Failure to verify whether the requisite stamps are affixed to various documents.

**Under the Sales Tax Act, the Company Secretary is liable for**:
(i) Failure to get the company registered with the Sales Tax Authority;
(ii) Failure to pay sales tax in time.

**Under the Registration Act, the Company Secretary is liable for**:
(i) Non-compliance with the rules and procedures of registration.
(ii) Non-payment of registration charges under the MRTP, FERA, Shops and Establishment Act. The Secretary may incur personal liability for default of any provision of the respective Acts.

**Contractual Liabilities**:

**The Company Secretary also has certain liabilities arising out of his contract of service with the company for:**
(i) Disclosure of official secrets;
(ii) Acts done beyond the limits of his authority;
(iii) Acts of omission and commission in violation of the rules and fraud in course of employment;
(iv) Making breach of trust;
(v) Discharging duties without reasonable care and skill.

**ROLE OF THE COMPANY SECRETARY:**

**To** The three main areas, a Company Secretary has the role to play viz. to the Board, to the Company and to the Shareholder. Within each, the Company Secretary's role can be very diverse.

**The Board**

A Company Secretary must ensure that the procedure for the appointment of directors is properly carried out and assist in the proper induction of directors, including assessing the specific training needs of directors / executive management. Secretary needs also to be available to provide comprehensive practical support and guidance to directors both as individuals and as a collective with particular emphasis on supporting the non-
executive directors. He/she should also facilitate the acquisition of information by all board and committee members so that they can make best use of their ability to have a board meetings, discussions etc. Further to these tasks, he/she needs to assist in the compilation of board papers and to filter them to ensure compliance with the required standards of good governance .It may also be part of the Company Secretary's role to raise matters which may warrant the attention of the board.

**To the Company**

Secretary ensures compliance with all relevant statutory and regulatory requirements and that due regard is paid to the specific business interests of the company, for example, a manufacturing company may require a different approach from that of a bank or a financial services company or from that of a charitable company. Secretary also need to assist in the implementation of corporate strategies by ensuring that the board's decisions and instructions are appropriately carried out and communicated. Further to this, he/she should be available to provide a central source of guidance and advice within the company on matters of business ethics and good governance.

**To the Shareholder**

The Company Secretary needs to communicate with the shareholders as appropriate and to ensure that due regard is paid to their interests. He/she also need to act as a primary point of contact for institutional and other shareholders, especially with regard to matters of Corporate Governance.

**TEXT BOOKS:**

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

**REFERENCES :**

1.N.D.Kapoor, (2010), Elements of Company Law, Sultan Chand & Sons, New Delhi.
2.M.C.Kuchhal, (2008), Secretarial Practice, Vikas Publications, New Delhi.
3.Avtar Singh, (2014), Introduction to Company Law, Eastern Book Company, New Delhi.
4.N.D.Kapoor, (2017), Mercantile Law, Sultan Chand & Sons, New Delhi.

# Unit – 4 - Multiple Choice Questions – Part - A Each question carry one mark

| SN | Questions | Option - A | Option - B | Option - C | Option - D | Answer |
|---|---|---|---|---|---|---|
| 1 | An office which works of another is called as | Secretary Office | Chairman Office | Registrar Office | Company Office | Secretary Office |
| 2 | One of the features given does not belong to a secretary | Confidential | Not to be Secret | Attend the orders | Officer to manage | Not to be Secret |
| 3 | Any person who posses prescribed qualification, appointed to perform the duties is a | Chairman | Auditor | Secretary | Banker | Secretary |
| 4 | Company Secretary shall be a member of | ICAI | ICFAI | ICWAI | ICSI | ICSI |
| 5 | Any person who posses prescribed qualification, appointed to perform the duties is called as a | Secretary | Chairman | Registrar | Officer | Secretary |
| 6 | Qualities of a Secretary shall not include | Knowledge in Law | Knowledge in Accounts | Professional | Personal | Knowledge in Accounts |
| 7 | Impressive & Sense of responsibility, Sharp Memory, Honesty are examples of secretary | Personality Traits | Unethical | Personal Qualities | Professional Qualities | Unethical |
| 8 | Position of a Company Secretary shall be servant or employee, officer, agent and representative | M C A | Court | Legal | Before C L B | Legal |
| 9 | Role of Directors, Shareholders, Creditors, public | Powers | Functions | Liabilities | Duties | Duties |
| 10 | Under which of the Act the secretary is not liable | Civil Law | Stamp Duty Act | Income Tax Act | Estate Duty Act | Civil Law |
| 11 | A secretary shall perform his duty towards | Directors | NGOs | Shareholders | Creditors | NGOs |
| 12 | Secretary should not execute the following | Call the meetings | Send Share Allotment letter | Contractual Liabilities | Correspondence towards call on shares | Contractual Liabilities |
| 13 | Statutory and Contractual are the | Limitations of a Secretary | Relationship | Nature of Contact | Liabilities of a Secretary | Liabilities of a Secretary |
| 14 | Liabilities which arises out of his service contract is said to be | Contractual | Civil | Criminal | Statutory | Contractual |
| 15 | Company Secretary shall not be removed | Serving notice based on appointment | Wilful Disobedience | Misfeasance | Not Negligence | Not Negligence |
| 16 | Secretary shall be an | An Individual | A Firm | An Association | A Body Corporate | An Individual |

# Unit – 4 - Multiple Choice Questions – Part - A Each question carry one mark

| | | | | | | |
|---|---|---|---|---|---|---|
| 17 | An appointed secretary shall posses the prescribed qualification from time to time declared by | State Government | Central Government | ICSI | M C A | Central Government |
| 18 | Company having more than Rs.50 lac shall have a | Part Time Secretary | Full Time Secretary | Whole Time Secretary | Multiple Secretary | Whole Time Secretary |
| 19 | Usually the first secretary is appointed by | Memorandum | Articles | Prospectus | Promoter | Promoter |
| 20 | When Directors are brains of the company, a secretary shall be | Ears, Eyes, Hands | Ears, Eyes, Legs | Ears, Eyes, Heart | Ears, Eyes, Fingers | Ears, Eyes, Hands |
| 21 | Statutory Duty shall include | Maintaining Statutory Books | Settlement of Disputes | Maintaining the Registers | Attending various meetings | Settlement of Disputes |
| 22 | Company Secretary shall not be permitted to | Sign documents for authentication | Control the affairs of the company | Sign documents illegally | Right to claim damages | Sign documents illegally |
| 23 | Company Secretary shall not be dismissed from service | Serving Notice | Completion to term | Due to wilful disobedience | Act by procedure | Act by procedure |
| 24 | As secretary one has no power to do during forfeiture of shares | Not to publicise regarding forfeiture | Procedure is strictly complied with | Remainder for defaulting shareholders | Issue warning notice | Not to publicise regarding forfeiture |
| 25 | Secretary shall not take into consideration of one of the following | Arrange scrutiny and sorting of applications | Moneys received shall not be sent to the bank | Issue Public Notification regarding last date of payment | Incomplete application to be returned | Moneys received shall not be sent to the bank |
| 26 | Secretary is not responsible for | Check Share certificates | Share certificate is duly filled in counter foils | Quotation for printing certificates | Every certificate bears the companies seal | Quotation for printing certificates |
| 27 | Whether the secretary is responsible for issue of | Duplicate | Mutilated | Defaced | Can Not be Sub-Divided | Can Not be Sub-Divided |
| 28 | What are the words to be super scribed on | Duplicate Shares | Counter foil | Marked in Register | Separate Register to be maintained | Duplicate Shares |
| 29 | Does the secretary shall collect requisite fee for issue of duplicate certificate in the place of lost shares. If so it is Rs. | 10/- | 2/- | 5/- | 15/- | 2/- |
| 30 | Secretary does not perform during transmission of shares | Accompanied Transmission Fee | No Legal Formalities | Convene Board Meeting | Enter the details in the Register | No Legal Formalities |

# Unit – 4 - Multiple Choice Questions – Part - A Each question carry one mark

| | | | | | | |
|---|---|---|---|---|---|---|
| 31 | At the time of declaration of dividend, a secretary shall not | Send a notice to leading newspapers | draft the form of dividend warrant printed | Not to dispatch warrants by post | Declare Book Closure Date | Not to dispatch warrants by post |
| 32 | As secretary, one has coordinate for annual general meeting until its life. Secretarial work shall be | Before the meeting | After the Meeting | ON the Day of Meeting | Before, After & During meeting | Before, After & During meeting |
| 33 | One of the function shall not be the function of the secretary. | Prepare Profit & Loss, Balance Sheet | Preparing Documents | Receiving Proxies | Press Reports | Prepare Profit & Loss, Balance Sheet |
| 34 | Is it the duty of a Secretary to assist chairman | Before the meeting | After the Meeting | During the meeting | No not at all | During the meeting |
| 35 | It is essential to prepare minutes and submit the same to the Chairman | 30 Days | After 30 Days | Within 30 days | As the case may be | Within 30 days |
| 36 | One of the following is not the routine of the secretary after the annual general meeting | 2 copies to Dept. of Company Affairs | Filling with Registrar | Take action on matters | To publish in leading newspapers | To publish in leading newspapers |
| 37 | In order to convene a board meeting, the secretary shall | Not to disclose financial information's | Fix Date, time, place | Prepare Agenda | Issue Notice | Not to disclose financial information's |
| 38 | During Board meeting, the secretary shall | Read the Notice | Not to consider Quorum | Read the previous minutes | Have complete notes of the meeting | Not to consider Quorum |
| 39 | During the meeting the role of the secretary shall not be responsible for | Ascertain from articles for quorum | Advise Chairman regarding quorum | Not to draw attention if quorum is not present | Dissolve or Adjourn the meeting | Not to draw attention if quorum is not present |
| 40 | Secretaries duty with regard to Proxy shall not cover the following | Get forms printed | Countersign forms | To reject late forms | Not subject for inspection | Not subject for inspection |
| 41 | During ballot through postal a secretary shall not | Not less than 45 days notice to be served | Notification for the same shall be made | Postal Ballot includes electronic media | Notice to the effect shall be made to shareholders | Not less than 45 days notice to be served |
| 42 | When Board of Directors of a company comprises of two, neither of them shall | Not act as Secretary | Act as Secretary | Either of them are Secretaries | To be nominated externally | Act as Secretary |
| 43 | Any secretary shall be a part time secretary whose capital shall be | More than Rs.50lacs | More than Rs100.lacs | Shall be Rs.50 lac | Less than Rs.50 lacs | Shall be Rs.50 lac |

# Unit – 4 - Multiple Choice Questions – Part - A Each question carry one mark

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|---|---|---|---|---|---|---|
| 44 | Pro-Term secretary shall be a person who is appointed by | Chairman | Secretary | Board of Management | Promoter | Promoter |
| 45 | Secretary shall also be appointed by way of | Through Articles of Association | Through Memorandum of Association | By Prospectus | By the court of law | Through Articles of Association |
| 46 | Is it essential that a secretary shall posses knowledge in | Vouching | Accounts | Accounting | Standards of Accounting | Accounts |
| 47 | Role of Director and Secretary shall be that of | Not so essential | Supplementary | Complimentary | Alternate | Complimentary |
| 48 | Secretary gains all powers through | Court | C L B | M C A | Board | Board |
| 49 | Whether the secretary is responsible for the director | Responsible for the entire functioning of the company | Only to the Director | Only to the Officials of the company | Only to the Court of Law | Responsible for the entire functioning of the company |
| 50 | If any non-compliance of statutory obligation is faced then one of the following officer is questioned at the first instance | Directors | Secretary | Board of Management | Auditors | Secretary |
| 51 | Common Seal, Title Deeds, and records shall be in the hands of | Directors | Auditors | Secretary | Board of Management | Secretary |
| 52 | Minutes and Minutes Register shall be in the control of | Board of Management | Accountant | Auditors | Secretary | Secretary |
| 53 | Under Income Tax Act can a Secretary not to deduct TDS from | Personal Income of Shareholders | Dividends | Salary of Employees | Monthly Incomes | Personal Income of Shareholders |
| 54 | Will be the liaison officer among the officials of a company | Directors | Secretary | Board of Management | Trustees | Secretary |
| 55 | Information connected with timely payment of interest, creditors meeting etc shall be taken care by | Directors | Board of Management | Secretary | Trustees | Secretary |
| 56 | Being a whole time secretary how many months salary can be claimed at the time of winding up of the company | As in agreement | Two | Three | Four | Four |
| 57 | Before his tenure of appointment as secretary he has the claim to claim to | Damages | Do not claim | No such interest | Might be permitted | Damages |
| 58 | Failed to present Trading, P&L a/c and Balance sheet during the course of meeting, a secretary shall be | Punished with Rs5000 | Punished with imprisonment for six months | Both (a) and (b) | | Both (a) and (b) |

## Unit – 4 - Multiple Choice Questions – Part - A Each question carry one mark

| | | | | | | |
|---|---|---|---|---|---|---|
| 59 | A secretary is an employees of the company hence he may be | Cannot be removed | Removed by noticed | Dismissed without notice | Dismissed from office | Dismissed from office |
| 60 | If the court orders for compulsory winding up then | Termination shall take place | Termination may not be made | Procedurally | Without prior notice | Termination shall take place |

UNIT V

Accounts of Companies – Audit and Auditors' – Prevention of Oppression and Mismanagement – Wingding up – Official Liquidators – National Company Law Tribunal.

**ACCOUNTS OF COMPANIES : REQUIREMENT OF KEEPING BOOKS OF ACCOUNT (SECTION 128)** 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.

**Place of Keeping Books of Account** Section 128(1) requires every company to prepare and keep the books of account and other relevant books and papers and financial statements at its registered office. However, all or any of the books of accounts may be kept at such other place in India as the Board of directors may decide. When the Board so decides the company is required within seven days of such decision to file with the Registrar a notice in writing giving full address of that other place. Maintenance of Books of account in electronic form The maintenance of books of account and other books and papers in electronic mode is permitted and is optional. Such books of accounts or other relevant books or papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent use (the Companies (Accounts) Rules, 2014 hereinafter referred in this Chapter as Rule) (Rule 3(1)). The information contained in the records shall be retained completely in the format in which they were originally generated, sent or received, or in a format which shall present accurately the information generated, sent or received and the information contained in the electronic records shall remain complete and unaltered (Rule 3(2)).

**Inspection by directors** As provided in sub-section (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.

**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 Accounts of Companies 5 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.

**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.

**Definition of Financial Statement** Financial Statement is defined under Section 2 (40), to include Balance Sheet, Profit and Loss account or Income and Expenditure account, Cash flow Statement, Statement of change in equity, if applicable, any explanatory notes annexed to or forming part of financial statements, giving information required to be given and allowed to be given in the form of notes. However, the financial statement with respect to one person company, small company and dormant company, may not include the cash flow statement. Financial statements should be prepared for financial year and shall be in form as per Schedule III

**Persons responsible for compliance** The persons responsible to take all reasonable steps to secure compliance by the company with the requirement of Section 129 are (sub-section 7) - Managing

Director, Whole-Time Director, CFO, Other person of a company charged by the Board with the duty of complying with requirements of section 129. Where any of the aforementioned officers are absent, all the directors shall be responsible and punishable.

**What is an audit?**
An audit is the examination of the financial report of an organisation - as presented in the annual report - by someone independent of that organisation. The financial report includes a balance sheet, an income statement, a statement of changes in equity, a cash flow statement, and notes comprising a summary of significant accounting policies and other explanatory notes.
The purpose of an audit is to form a view on whether the information presented in the financial report, taken as a whole, reflects the financial position of the organisation at a given date, for example: Are details of what is owned and what the organisation owes properly recorded in the balance sheet? Are profits or losses properly assessed? When examining the financial report, auditors must follow auditing standards which are set by a government body. Once auditors have completed their work, they write an audit report, explaining what they have done and giving an opinion drawn from their work. Generally, all listed companies and limited liability companies are subject to an audit each year. Other organisations may require or request an audit depending on their structure and ownership.

**How is the audit conducted?**
The organisation's management prepares the financial report. It must be prepared in accordance with legal requirements and financial reporting standards. The organisation's directors approve the financial report. Auditors start their examination by gaining an understanding of the organisation's activities, and considering the economic and industry issues that might have affected the business during the reporting period. For each major activity listed in the financial report, auditors identify and assess any risks which could have a significant impact on the financial position or financial performance, and also some of the measures (called internal controls) that the organisation has put in place to mitigate those risks. Based on the risks and controls identified, auditors consider what management does has done to ensure the financial report is accurate, and examine supporting evidence. Auditors then make a judgement as to whether the financial report taken as a whole presents a true and fair view of the financial results and position of the organisation and its cash flows, and is in compliance with financial reporting standards and, if applicable, the Corporations Act. Finally, auditors prepare an audit report setting out their opinion, for the organisation's shareholders or members.

**What do auditors do, specifically?**
Auditors discuss the scope of the audit work with the organisation – the directors or management may request that additional procedures be performed. Auditors maintain independence from management and directors so that tests and judgments are made objectively. Auditors determine the type and extent of the audit procedures they will perform, depending on the risks and controls they have identified. The procedures may include: asking a range of questions - from formal written questions, to informal oral questions - of a range of individuals at the organisation examining financial and accounting records, other documents, and tangible items such as plant and equipment making judgments on significant estimates or assumptions that management made when they prepared the financial report obtaining written confirmations of certain matters, for eg, asking a debtor to confirm the amount of their debt with the organisation testing some of the organisation's internal controls watching certain processes or procedures being performed.

**ELIGIBILITY & QUALIFICATIONS OF AUDITOR** Section 141 (1) & (2) of the Act prescribed the following eligibility and qualifications of auditor which are as under:- i. Only a Chartered Accountant (individual) or a firm where majority of partners practicing in India are Chartered Accountants can be appointed as auditor. ii. Where a firm including a limited liability partnership

(LLP) 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.

**DISQUALIFICATIONS OF AUDITOR** Section 141 (3) of the Act read with Rule 10 prescribed the following persons shall not be eligible for appointment as an auditor of a company, namely: A body corporate, except LLP; An officer or employee of the company; Any partner/employee of officer or employee of company; A person who himself or his relative/partner is holding any security or interest in the company, or any company which is its holding, subsidiary, associate; A person whose relative is holding security or interest not exceeding Rs. one Lac face value in companies as mentioned above. Provided that this condition be also applicable in the case of a company not having share capital or other securities, wherever relevant. Provided further that in the event of acquiring any security or interest by a relative, above the threshold limit i.e. Rs. one lac, the corrective action to maintain the limits (Rs. one lac) shall be taken by the auditor within 60 days of such acquisition or interest; A person who or whose relative or partner is indebted to the company or its subsidiary or its holding or associate company or a subsidiary of such holding company, in excess of rupees five lakh shall not be eligible for appointment; A person who or whose relative or partner has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of one lakh rupees shall not be eligible for appointment; A person or a firm who, whether directly or indirectly, has "business relationship" with the company, or its subsidiary, or its holding or associate company.

**APPOINTMENT** and notice to Registrar Rule 4 of the Companies (Audit and Auditors) Rules, 2014 hereinafter referred in this chapter as Rule As per second proviso of section 139(1) read with rule 4 stipulated that written consent of the auditor must be taken before appointment. The auditor appointed shall submit a certificate that: (a) the individual/firm is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder; (b) the proposed appointment is as per the term provided under the Act; (c) the proposed appointment is within the limits laid down by or under the authority of the Act; (d) the list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct. Certificate shall also indicate whether the auditor satisfies the criteria provided in section 141 of the Act. Company shall inform the auditor concerned of his or its appointment and also file a notice of such appointment with the Registrar in Form ADT-1 within 15 days of the meeting in which the auditor is appointed.

**APPOINTMENT OF AUDITOR IN GOVERNMENT COMPANY-** Section 139 (5), 139 (7), 139(8),139 (11) The appointment of auditor in Government company or 4 Audit and Auditors government controlled (directly/indirectly) company shall be held in accordance with the following provisions: The First auditor shall be appointed by the Comptroller and Auditor General within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting. In case of subsequent auditor for existing government companies, the Comptroller & Auditor General shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting. In the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Comptroller and Auditor-General of India within thirty days. In case the Comptroller and Auditor-General of India does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next thirty days. The Act also provides that in case the Company has an Audit Committee, then all appointments of Auditor including filling of casual vacancy, shall be made after taking into account the recommendations of the Committee.

**ELIGIBILITY & QUALIFICATIONS OF AUDITOR** Section 141 (1) & (2) of the Act prescribed the following eligibility and qualifications of auditor which are as under:- i. Only a Chartered Accountant (individual) or a firm where majority of partners practicing in India are Chartered Accountants can be appointed as auditor. ii. Where a firm including a limited liability partnership (LLP) 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.

**MAXIMUM NUMBER OF COMPANIES FOR AN AUDITOR** Section 224 (1B) places a ceiling on the number of audits of public companies which a Chartered Accountant not in full time employment, or a firm of Chartered Accountants, can conduct. (a) A person can be appointed as an auditor, who is not in full-time employment elsewhere, of a maximum of 20 companies as described below (b) Where some companies have paid-up capital of or more than 25 Lacs, a person can be appointed as auditor of only 20 companies out of which not more than 10 companies can have paid up capital of or exceeding Rs. 25 Lacs. (c) In a firm of auditors, total number of 20 companies shall be for every partner of the firm who is not in full-time employment elsewhere. As per the fourth proviso added to sub-section (1B) by the Companies (Amendment) Act, 2000, private companies have been excluded from the existing ceiling of 20 audits per partner and sub-ceiling of 10 audits for companies having a paid up capital of Rs. 25 Lacs or more. Thus, apart from 20 audits of public companies, an auditor may conduct audit of private companies without any ceiling.

**DISQUALIFICATIONS OF AUDITOR** Section 141 (3) of the Act read with Rule 10 prescribed the following persons shall not be eligible for appointment as an auditor of a company, namely: A body corporate, except LLP; Audit and Auditors. An officer or employee of the company; Any partner/employee of officer or employee of company; A person who himself or his relative/partner is holding any security or interest in the company, or any company which is its holding, subsidiary, associate; A person whose relative is holding security or interest not exceeding Rs. one Lac face value in companies as mentioned above. Provided that this condition be also applicable in the case of a company not having share capital or other securities, wherever relevant. Provided further that in the event of acquiring any security or interest by a relative, above the threshold limit i.e. Rs. one lac, the corrective action to maintain the limits (Rs. one lac) shall be taken by the auditor within 60 days of such acquisition or interest; A person who or whose relative or partner is indebted to the company or its subsidiary or its holding or associate company or a subsidiary of such holding company, in excess of rupees five lakh shall not be eligible for appointment; A person who or whose relative or partner has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of one lakh rupees shall not be eligible for appointment; A person or a firm who, whether directly or indirectly, has "business relationship" with the company, or its subsidiary, or its holding or associate company; The term "business relationship" shall be construed as any transaction entered into for a commercial purpose, except – (i) commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under those Acts; (ii) commercial transactions which are in the ordinary course of business of the company at arm's length price - like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses. A person whose relative is a director or is in the employment of the company as a director or key managerial personnel; 6 Audit and Auditors. A person who is in full time employment elsewhere; Person who is auditor of more than 20 companies; 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; Any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialized services as provided in section 144. According to section 141 (4) where a person appointed as an auditor of a company incurs any of the disqualifications mentioned as above after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

**TERM OF AUDITOR-** Section 139 (2) and Rule 5 Listed company or all unlisted public companies having paid up share capital of Rs. 10 crore or more, all private limited companies having paid up share capital of Rs. 20 crore or more, all companies having public borrowings from financial institutions, banks or public deposits of Rs. 50 fifty crores or more shall not 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. These auditor (either individual/audit firm) can be re-appointed after cooling off period of 5 years. Three years transition period will be given to comply this requirement. No audit firm shall be appointed as auditor of the company for a period of five years, if same firm presently having a common partner(s) to the previous audit firm, whose tenure has expired in a company immediately preceding the financial year. The right of the company to remove the auditor or the right of the auditor to resign from such office of the company is not affected by this sub-section. Thus, an auditor can resign or be removed by the shareholders before completion of his term as discussed above. The firm shall include a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008.

**RE-APPOINTMENT OF RETIRING AUDITOR** - Section139 (9) At any annual general meeting, a retiring auditor shall be Audit and Auditors 7 reappointed as auditor of the company except under the following circumstances: (a) he is not qualified for re-appointment. (b) he has given the company a notice in writing of his unwillingness to be re-appointed. (c) a special resolution has been passed at that meeting appointing somebody else instead of him or providing expressly that retiring auditor shall not be re-appointed. Section 139 (10) lays that where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

**ROTATION OF AUDITORS-** Section 139(3) Members of a company can provide for following by passing a resolution: (a) In the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or (b) The audit shall be conducted by more than one auditor. A transition period of 3 years from the commencement of the Act has been prescribed for the company existing on or before the commencement of the Act, to comply with the provisions of the rotation of auditor.

**ROTATION OF AUDITORS ON EXPIRY OF THEIR TERM** - Section 139 (4) and Rule 6 Rotation of auditors on expiry of auditor's term then same procedure will be followed as required for appointment of auditors. The procedure is as under:- (1) The Audit Committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent. (2) Where a company is required to constitute an Audit Committee, the Board shall consider the recommendation of such committee, and in other cases, the Board shall itself consider the matter of rotation of auditors and make its recommendation for appointment of the next auditor by the members in annual general meeting. 8 Audit and Auditors For the purpose of rotation, the period for which the auditor is holding office prior to the commencement of this act will also be counted in calculating the period of 5 years or 10 years as the case may be. The incoming auditor/audit firm shall not be eligible if such auditor/audit firm is associated with the outgoing auditor/audit firm under the same network of audit firms i.e. includes the firms operating/ functioning under the same brand name, trade name or common control, hitherto or in future. 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. Where a company has appointed two or more persons as joint auditors, the company may follow the rotation of auditors in such a manner that both or all of the joint auditors, as the case may be, do not complete their term in the same year.

**CASUAL VACANCY IN THE OFFICE OF AUDITOR-** Section 139 (8) Any casual vacancy in the office of an auditor shall— (i) in the case of a company other than a company whose accounts are

subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors within thirty days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting; (ii) in the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Comptroller and Auditor-General of India within thirty days: It may be noted that that in case the Comptroller and AuditorGeneral of India does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next thirty days.

**REMOVAL OF AUDITOR -** Section 140 (1) and Rule 7 The auditor appointed under section 139 may be removed from his office before the expiry of the term only by – (i) Obtaining the prior approval of the Central Government by Audit and Auditors 9 filling an application in form ADT-2 within 30 days of resolution passed by the Board (ii) The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution. (iii) The auditor concerned shall be given a reasonable opportunity of being heard.

**RESIGNATION OF AUDITOR-** Section 140 (2), 140 (3) and Rule 8 The auditor who has resigned from the company shall file a statement in Form ADT-3 indicating the reasons and other facts as may be relevant with regard to his resignation as follows: (i) 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. (ii) In case of Government Company or government controlled company, auditor 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 onus to file such statement containing relevant facts and reasons for resignation is on the resigning auditor and any contravention of sub clause (2) is punishable with monetary fine which could be minimum Rs. 50,000 and maximum Rs. 5 lakh.

**REMUNERATION OF AUDITOR** Section 142 of the Act prescribed that the remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein. Board may fix remuneration of the first auditor appointed by it. The remuneration will be in addition to the out of pocket expensed incurred by the auditor in connection with the audit of the company and any remuneration paid to him for any other service rendered by him at the request of the company.

**WHAT DOES PREVENTION OF OPPRESSION AND MISMANAGEMENT MEAN?** A company is an association of individuals working with a common aim to achieve the purpose of the formation of the company and to earn maximum profit. There are difference of interests and opinions among individuals which results in forming of majority and minority group. These groups requires proper balancing under strict judicial securitization so that position of any of the group is not misused or abused. In today's scenario , this topic has become a significant part of the companies law and practice.

**OPPRESSION**: The Oppression of small/minority shareholders take place by majority shareholders who controls the company. It is understood as an act or omission on the part of management which implies majority, who holds or controls the management. The law, however, has not defined what is oppression but certain prominent case laws has defined the term "Oppression."

**MISMANAGEMENT:** Similarly , mismanagement is not uncommon in companies. It means mismanagement of resources by following means Absence of basic records of the company, Drawing considerable expenses for personal purposes by directors/management of the company, Not filing documents with The Registrar of Companies relating to compliances under The Companies Act,1956, Misuse of companies finances/funds, Sale of assets at very low prices, Violation of provisions of law

and Memorandum or article of association of the company, Making Secret Profits Diverting company funds for personal use of directors, Continuation in office by director beyond the specified term and not holding any qualification shares.

**WHAT DOES PREVENTION OF OPPRESSION AND MISMANAGEMENT MEAN?**

**Prevention of Oppression** : Section 397 (1) of the Companies Act provides that any member of a company who complains that the affair of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members may apply to the Tribunal for an order thus to protect his / her statutory rights. Sub-section (2) of Section 397 lays down the circumstances under which the tribunal may grant relief under Section 397, it it is of opinion that (a) the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members; and (b) to wind up the company would be unfairly and prejudicial to such member of members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound. The tribunal with the view to end the matters complained of, may make such order as it thinks fit.

Prevention of Mismanagement : the present companies act does provide the definition of the expression "mismanagement". When the affairs of the company are being conducted in a manner prejudicial to the interest of the company or its members or against the public interest, it amounts to mismanagement.

**THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL** (NCLAT) is a quasi-judicial body in India that adjudicates issues relating to companies in India.[1] The NCLAT was established under the Companies Act 2013 and was constituted on 1 June 2016.

**NATIONAL COMPANY LAW TRIBUNAL :** The National Company Law Tribunal was setup by the Central Government in 2016 under Section 408 of the Companies Act, 2013. The National Company Law Tribunal has been setup as a quasi-judicial body to govern the companies registered in India and is a successor to the Company Law Board. In this article, we look at the National Company Law Tribunal, its functions and powers in detail.
Scope of National Company Law Tribunal : The National Company Law Tribunal (NCLT) consolidates the corporate jurisdiction of the Company Law Board, Board for Industrial and Financial Reconstruction (BIFR), The Appellate Authority for Industrial and Financial Reconstruction (AAIFR) and the powers relating to winding up or restructuring and other provisions, vested in High Courts. Hence, the National Company Law Tribunal will consolidate all powers to govern the companies registered in India. With the establishment of the NCLT and NCLAT, the Company Law Board under the Companies Act, 1956 has now been dissolved.

**ADVANTAGES FOR NATIONAL COMPANY LAW TRIBUNAL**

- NCLT is a specialized court only for Corporates, i.e., companies registered in India.
- This will be no more than a Tribunal for the Corporate Members.
- NCLT will reduce the multiplicity of litigation before different forums and courts.
- NCLT has multiple branches and is able to provide justice at a close range.
- NCLT consists of both judicial and technical members while deciding on matters.
- The time taken to windup a company is reduced.
- Speedy disposal of cases will help reduce the number of cases.
- NCLT & NCLAT have exclusive jurisdiction.

**POWERS OF NATIONAL COMPANY LAW TRIBUNAL (NCLT)** : The Tribunal and the Appellate Tribunal is bound by the rules laid down in the Code of Civil Procedure and is guided by the principles of natural justice, subject to the other provisions of this Act and of any rules that are made by the Central Government. The Tribunal and the Appellate Tribunal has the power to control its own procedure. Further, no civil court has the jurisdiction to consider any suit or proceeding with reference to any matter which the Tribunal or the Appellate Tribunal is empowered to decide.
National Company Law Tribunal enjoys a wide range of powers. Its powers include: Power to seek assistance of Chief Metropolitan Magistrate - De-registration of Companies - Declare the liability of members unlimited - De-registration of companies in certain circumstances when there is registration of companies is obtained in an illegal or wrongful manner - Remedy of oppression and mismanagement - Power to hear grievance of refusal of companies to transfer securities and rectification of register of members - Protection of the interest of various stakeholders, especially non-promoter shareholders and depositors - Power to provide relief to the investors against a large set of wrongful actions committed by the company management or other consultants and advisors who are associated with the company - Aggrieved depositors have the remedy of class actions for seeking redressal for the acts/omissions of the company which hurt their rights as depositors - Powers to direct the company to reopen its accounts or allow the company to revise its financial statement but do not permit reopening of accounts. The company can itself also approach the Tribunal through its director for revision of its financial statement - Power to investigate or for initiating investigation proceedings. An investigation can be conducted even abroad. Provisions are provided to assist investigation agencies and courts of other countries with respect to investigation proceedings - Power to investigate into the ownership of the company - Power to freeze assets of the company - Power to impose restriction on any securities of the company - Conversion of public limited company into private limited company - If the company cannot or has not held an Annual General Meeting as required under the Companies Act or a required Extraordinary General Meeting, then the Tribunal has powers to call for a General Meetings - Power to alter the financial year of a company registered in India.

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL (NCLAT)** : Appeal from order of Tribunal can be raised to the National Company Law Appellate Tribunal (NCLAT). Appeals can be made by any person aggrieved by an order or decision of the NCLT, within a period of 45 days from the date on which a copy of the order or decision of the Tribunal. On the receipt of an appeal from an aggrieved person, the Appellate Tribunal would pass such orders, after giving an opportunity of being heard, as it considers fit, confirming, changing or setting aside the order that is appealed against. The Appellate Tribunal is required to dispose the appeal within a period of six months from the date of the receipt of the appeal.

**WHAT ARE LIQUIDATIONS, RECEIVERSHIPS AND EXAMINERSHIPS**? The liquidation of a company is also known as 'winding up' a company. The process takes the company out of existence in an orderly way by paying debts from any available assets. Receivership is used by banks or other lenders to sell a company asset that was promised to them if the company failed to repay its loan as agreed. Examinership is a process that protects a company from its creditors (the people to whom it owes money) while efforts are being made to keep it running as a going concern. What are liquidators, receivers and examiners? A liquidator is the person who winds up a company. A receiver is the person who sells particular company assets on behalf of a lender. Where a loan is secured on a company's entire business, a 'receiver manager' can be appointed as manager of the business during the receivership. Once a receiver raises enough money to pay back the debt, their job is finished.

**I. AN INTRODUCTORY NOTE ABOUT THE OFFICE OF OFFICIAL LIQUIDATOR:** The Official Liquidator is appointed by the Central Government under section 448 of the Companies Act, 1956 attached to High Court of the State for the purpose of conducting liquidation proceedings of those companies which are ordered to be wound up by the High Court. Functionally the Official Liquidator

is under the supervision and control of the High Court but administratively is under the control of the Central Government through the Regional Director. The Primary function of the Official liquidator is to administrate the assets of companies under liquidation, sale of the assets and realization of all debts of companies in liquidation for the purpose of distributing the same among the various creditors and other shareholders of the companies and to finally dissolve such companies after the affairs are completely concluded. When a company is put to winding up by an order of the High Court, the Official Liquidator attached to the said High Court takes possession of the company's assets, books of accounts, etc. and liquidates the company as per the further orders of the High Court. The procedure of liquidation is prescribed under the Companies (Court) Rules, 1959. These rules are approved by the Honorable Supreme Court of India and notified by the Central Government. The duties and powers of the Official Liquidator as laid down in section 457 of the Companies Act, 1956 are mainly of, filing of claims against, the debtors for realization of the debts due to the company, sale of movable and immovable assets of the company taken possession by the Official Liquidator, institute criminal complaints and misfeasance proceedings against the former Directors of the company for their acts and omissions, breach of trust etc., invitation of claims from the creditors, adjudication of claims and settlement of list of creditors, payment to creditors by way of dividend and settlement of list of contributories wherever necessary, and payment of return of capital where the company's assets exceeded its liability and finally dissolve the company under section 481 of the Companies Act,1956.

**II. POWERS AND DUTIES OF OFFICERS AND EMPLOYEES :** The Officers and employees are performing the duties as prescribed in the Companies Act, 1956 and the Companies (Court) Rules, 1959 subject to the supervision, control and orders of the High Court of Delhi. The duties are assigned to the officers and employees by the Official Liquidator to take possession of the assets and liabilities of the properties of the companies in liquidation. Arrange for sale of the properties and other duties as mentioned in Para 1 above. The Official Liquidator passes appropriate orders regarding the duties of officers and employees working under him.

**A. OFFICIAL LIQUIDATOR:** In exercise of the powers conferred by Section 552 and clause (b) of the proviso to section 647, read with subsection (1) of section 642 of the Companies Act, 1956, the Central Government has framed the Companies (Official Liquidator's Accounts) Rules, 1965.The Official Liquidators are officers appointed by the Central Government under Section 448 of the Companies act and are attached to the various High Courts. The Official Liquidators are under the administrative charge of the respective Regional Directors who supervise their functioning. In the conduct of the winding up of the companies, however, Official Liquidators act under the directions of the High Courts. The Primary function of the Official liquidator is to administer the assets of companies under liquidation, sale of the assets and realization of all debts of companies in liquidation for the purpose of distributing the same among the various creditors and other shareholders of the companies and to finally dissolve such companies after the affairs are completely concluded. When a company is put to winding up by an order of the High Court, the Official Liquidator attached to the said High Court takes possession of the company's assets, books of accounts, etc. and liquidates the company as per the further orders of the High Court. The procedure of liquidation is prescribed under the Companies (Court) Rules, 1959. These rules are approved by the Honourable Supreme Court of India and notified by the Central Government.

**B. WHO CAN BE APPOINTED AS OFFICIAL LIQUIDATOR?** A member from the panel of the professional firms of chartered accountants, advocates, company secretaries, cost and work accountants which the central government may constitute. Body corporate approved by central government. Whole-time or part-time officer appointed by the central government.

**C. ROLE OF OFFICIAL LIQUIDATOR :** The role of official liquidator has been well discussed in various provisions in the Companies Act 1956 and the Companies (Official Liquidator's Accounts) Rules, 1965. Sections 448 to 463 of the Companies Act 1956 deals with the overall role of official

liquidators in winding up proceedings. Let's have a sneak view of the provisions relating to liquidators:

**SECTION: MATTERS DEALING UNDER THE SAID SECTIONS**

448 APPOINTMENT OF OFFICIAL LIQUIDATOR
449 OFFICIAL LIQUIDATOR TO BE LIQUIDATOR
450 APPOINTMENT AND POWERS OF PROVISIONAL LIQUIDATOR
451 GENERAL PROVISIONS AS TO LIQUIDATORS
452 STYLE ETC OF LIQUIDATOR
453 RECEIVER NOT TO BE APPOINTED OF ASSETS WITH LIQUIDATOR
454 STATEMENT OF AFFAIRS TO BE MADE TO OFFICIAL LIQUIDATOR
455 REPORT BY OFFICIAL LIQUIDATOR
456 CUSTODY OF COMPANY'S PROPERTY
457 POWERS OF LIQUIDATOR
458 DISCRETION OF LIQUIDATOR
458A EXCLUSION OF CERTAIN TIME IN COMPUTING PERIODS OF LIMITATION
459 PROVISION FOR LEGAL ASSISTANCE TO LIQUIDATOR
460 EXERCISE AND CONTROL OF LIQUIDATOR'S POWERS
461 BOOKS TO BE KEPT BY LIQUIDATOR
462 AUDIT OF LIQUIDATOR'S ACCOUNTS
463 CONTROL OF CENTRAL GOVERNMENT OVER LIQUIDATORS.

**DUTIES OF THE OFFICIAL LIQUIDATOR : A. Investigation** Where a winding-up order is made by the court the official receiver has a statutory duty to investigate–a) If the company has failed, the causes of the failure; and b) Generally, the promotion, formation, business, dealings and affairs of the company. This applies to all cases including those where an insolvency practitioner is appointed liquidator by the court immediately on the making of the winding-up order. The official receiver may make a report to the court if he/she thinks fit, though this is carried out rarely.

**B. Official receiver as liquidator :** The official receiver becomes liquidator immediately the winding-up order is made and will remain so until someone else becomes liquidator. He/she also becomes liquidator during any subsequent vacancy. The official receiver has a duty to protect the company's assets and, where appropriate, to take into custody or under his/her control all property, etc. to which the company is or appears to be entitled, to realise and distribute the same to the company's creditors and, if there is a surplus, to the persons entitled to it.

**C. Realisation of assets at the initial stage :** There is no reason why the official receiver should not use his/her powers as liquidator to commence the realisation of assets, where the assets involved are easy to realise and, particularly, where an asset may be rendered valueless by the date of the first meeting, such as bulky items of stock which are expensive to store or small value bank balances held in accounts that incur charges. Even if the early realisation of an asset were to prejudice the appointment of an insolvency practitioner, the official receiver should act in the best interests of creditors and seek realisation.

**D. Statement of affairs :** The official liquidator must decide whether to require a statement of affairs. It is not usually the case that a statement of affairs will be required before the first interview with the director(s) and generally the information supplied in form PIQC relating to assets and liabilities will be used rather than a separate statement of affairs being required.

If the company has been subject to earlier insolvency proceedings a statement of affairs may have been prepared in relation to those proceedings.

**E. Case files :** The official liquidator is required to maintain a case file in respect of each winding up. The file is divided into ten parts and papers are filed within those parts as follows: Preliminary

examination papers, Further investigation, Court papers, Statutory notices, Correspondence, Meetings, reports to creditors, notices and proofs, Assets, Closing/IP handover and Miscellaneous

**F. Confidentiality :** The official liquidator must not disclose information about a case to any person who does not have a legitimate reason to have the details of the case.

**G. Insolvency Practitioner appointed liquidator immediately :** Where a winding - up order is made immediately upon the appointment of an administrator ceasing to have effect, or where there is a supervisor of a voluntary arrangement in office, the court may appoint the former administrator or supervisor as liquidator of the company. In such circumstances, the official liquidator remains under a statutory duty to investigate, to give notice of, advertise and gazette the order and to provide information to creditors and contributories. Any inspection of the company's books and papers will need to be made with the arrangement of the liquidator – possibly, by inspecting the records at their offices. The liquidator has a duty to co-operate with the official receiver's investigations, including making company records available. The official liquidator does not have to summon meetings of creditors and contributories or issue notice of no meeting. Where a liquidator is appointed by the court in the circumstances mentioned, it is the liquidator's duty to send forms of proof of debt. A proof of debt must be sent to any creditor of the company on request. The official liquidator may encounter the involvement of insolvency practitioners in respect of other insolvency proceedings involving the company. An insolvency practitioner in office will probably be a useful source of information regarding the company's affairs – particularly at initial enquiry stage.

**DUTIES OF THE LIQUIDATOR** Under The Companies Act, Various duties are imposed on liquidators by the Companies Act and these may be conveniently divided into the following categories: duties of notice; duty to keep certain financial and administrative records; duty to hold certain meetings; duty to provide information; duty to examine the conduct of officers of the company; duty to get in and distribute the property of the company. A F**inal** N**ote is** Undoubtedly the company's act sets both the powers and the duties of the liquidator and clarifies the liquidator's position. Indeed it renders the office holder accountable towards the company, creditors and the Court.

**SECTION 236. POWERS OF LIQUIDATOR :**
(1) The liquidator may with the authority either of the Court or of the committee of inspection—
(a) carry on the business of the company so far as is necessary for the beneficial winding up thereof, but the authority shall not be necessary to so carry on the business during the four weeks next after the date of the winding up order; (b) subject to section 292 pay any class of creditors in full; (c) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable; (d) compromise any calls and liabilities to calls, debts and liabilities capable of resulting in debts and any claims, present or future, certain or contingent, ascertained or sounding only in damages subsisting or supposed to subsist between the company and a contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as are agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof; and (e) appoint an advocate to assist him in his duties. (2) The liquidator may— (a) bring or defend any action or other legal proceeding in the name and on behalf of the company; (b) compromise any debt due to the company other than calls and liabilities for calls and other than a debt where the amount claimed by the company to be due to it exceeds one thousand five hundred ringgit; (c) sell the immovable and movable property and things in action of the company by public auction, public tender or private contract with power to transfer the whole thereof to any person or company or to sell the same in parcels; (d) do all acts and execute in the name and on behalf of the company all deeds, receipts and other documents and for that purpose use when necessary the company's seal; (e) prove rank and

claim in the bankruptcy of any contributory or debtor for any balance against his estate, and receive dividends in the bankruptcy in respect of that balance as a separate debt due from the bankrupt and rateably with the other separate creditors; (f) draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business; (g) raise on the security of the assets of the company any money requisite; (h) take out letters of administration of the estate of any deceased contributory or debtor, and do any other act necessary for obtaining payment of any money due from a contributory or debtor or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall for the purposes of enabling the liquidator to take out the letters of administration or recover the money be deemed due to the liquidator himself; (i) appoint an agent to do any business which the liquidator is unable to do himself; and (j) do all such other things as are necessary for winding up the affairs of the company and distributing its assets. (3) The exercise by the liquidator of the powers conferred by this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

**PREAMBLE - WINDING UP** is a process by means of which the affairs of a company are wound up in a manner to dissolve the company and put an end to the life of a Company. In the process of winding up, the company's assets and properties are administered for the benefit of the members and creditors of the Company. The administrator, called liquidator, realises its assets, pays its debts and finally distributes the surplus, if any, among the members/creditors, in accordance with their right as provided in the article of the Company.

In other words, winding up is a legal process to dissolve the business of a company. The term "Winding Up" and "liquidation" are used interchangeably. However, there are various means of winding up, i.e., by way of- members' voluntary up, creditors' winding up, winding up by the tribunal etc. In this article we have dealt with practical aspects in relation to members' voluntary winding up.

**Provisions of Winding up :** Section 425 to Section 520 of the Companies Act, 1956 (Act, 1956) (corresponds to Section 270 to Section 365 of the Companies Act, 2013) read with Companies Court Rule, 1959 (hereinafter referred to as CCR, 1959), deals with the provisions of winding up. Since the provisions of the Companies Act, 2013 has not yet come into force, the provisions of the Act, 1956 still governs the proceedings of winding up.

**MODES OF WINDING UP :** The Act, 1956 provides for the following three types of winding up: Winding up by the order of the Tribunal or Compulsory winding up; (Sec 433 to Sec 483), Voluntary winding up; (Sec 484 to Sec 520) and Subject to the supervision of the Court.

**Grounds on which winding up may take place**

In case of Compulsory winding up

The winding up of a company by the order of court is called compulsory winding up. Section 433 of the Act, 1956 envisaged the following circumstances under which the affairs of a company wound up by the Tribunal:

1. If the company, of its own, passes a Special Resolution that it should be wound up by the court, and presents a petition to the court for same.
2. If the company makes any default in filing the statutory report with the registrar of companies or in holding the statutory meeting within the prescribed 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.

7. If the company has made default in filing its Balance sheet and Profit and Loss account or annual return for any five consecutive financial year.
8. If the company has acted against the sovereignty or integrity of India, the security of the state or friendly relation with foreign state etc,
9. If the tribunal is of the opinion that the Company should be wound up under circumstances mentioned under Section 424G (sick company).

In case of Voluntary winding up

Winding up the affairs of a company either by its members or by its creditors, without any interference of court it is called voluntary winding up of a company. Section 484 of the Act, 1956 lays down the following circumstances under which a Company may wound up voluntarily:

**1. By passing Ordinary Resolution**: When the period fixed for the duration of the Company by its Article has expired or the event, if any, on the occurrence of which the Article provides that the Company is to be dissolve, the Company may wound up voluntarily by passing a Ordinary resolution in the General Meeting.

**2. By passing Special Resolution:** The members of the company may, at any time by passing a Special Resolution**,** wound up the affairs of the Company voluntarily. No reasons need to be given when majority of the members decided to wind up the Company.

**APPOINTMENT OF LIQUIDATOR:** Liquidator is an officer appointed by the creditors of the company (in case of Creditor's Voluntary Winding up) or by the members of the Company (in case of Members' Voluntary Winding up), when the company goes into winding up or liquidation voluntarily. A company may appoint an insolvency practitioner (CA, CS or Lawyer) to whom it wishes to act as a liquidator for the purpose of voluntary winding up. However, the Official liquidator is appointed by the Central Government as per section 448 of the Act, 1956 who shall be attached to the High Court of the state for the purpose of conducting liquidation proceeding or say winding up proceeding of those companies which are ordered to be wound up by the Tribunal. Functionally the Official Liquidator is under the supervision and control of the High Court but administratively is under the control of the Central Government through the Regional Director.

*Types of Voluntary winding up*

A company may wind up its affairs voluntarily in any of the following two manners:

1**. Members' voluntary winding up**: Winding up the affairs of the company voluntarily under the supervision of members whereby declaration of solvency is made by the Board and the same has been filed with the Registrar.

**2. Creditors' voluntary winding up**: Winding up the affairs of the Company when declaration of solvency is not made by the directors and the Creditors of the Company control and supervise the entire process.

*Process of Members' Voluntary Winding Up*

Pre-condition for members' voluntary winding up is the solvency of the company, since cash will be require for disposal of the liabilities, if any, and for the payment of various expenses during the proceeding of the process.

However, there are differences between member's voluntarily winding up and creditor's voluntarily winding up. Only solvent company can opt for members' voluntarily winding up, therefore the process requires filing of Declaration of Solvency by the directors of the company and once the company has appointed liquidator, the power of Board of directors, Managing director and manager shall cease to exist. Whereas, Creditor's voluntary winding up is resorted to by the insolvent companies. It requires the holding of meetings of creditors besides those of the members' right from the beginning of the process of voluntary winding up. It is the creditors who get the right to appoint liquidator and hence, the entire process of winding up takes place under the supervision and control of the Creditors' of the Company.

Winding Up and Dissolution : Many get confused between winding up, dissolution and insolvency. But the fact is that winding up and insolvency are two different phases. Even as a solvent company

can wind up its affairs, with the approval of the members of the company. Further, there are differences between winding up and dissolution also. Winding up is a process that leads to dissolution. During winding up the assets and liabilities of the companies are disposed off by the liquidator so that at the end, the company shall not have any assets or liabilities. Whereas, when the affairs of the company are fully wound up, dissolution takes place. On dissolution, the name of the company gets struck off the register of the companies and its legal status as a corporation disappears.

**TEXT BOOKS:**

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

**REFERENCES :**

1.N.D.Kapoor, (2010), Elements of Company Law, Sultan Chand & Sons, New Delhi.
2.M.C.Kuchhal, (2008), Secretarial Practice, Vikas Publications, New Delhi.
3.Avtar Singh, (2014), Introduction to Company Law, Eastern Book Company, New Delhi.
4.N.D.Kapoor, (2017), Mercantile Law, Sultan Chand & Sons, New Delhi.

# Unit – 5 - Multiple Choice Questions – Part - A Each question carry one mark

| SN | Questions | Option - A | Option - B | Option - C | Option - D | Answer |
|---|---|---|---|---|---|---|
| 1 | Public company shall have at least | 3 Director | 2 Director | 4 Director | 5 Director | 3 Director |
| 2 | Private company shall have at least | 3 Director | 2 Director | 4 Director | 5 Director | 2 Director |
| 3 | Secretary, Accountant, Dept. Managers, Auditors, Solicitor shall be under the control of | Chairman | Shareholders | Board of Directors | Bankers | Board of Directors |
| 4 | Increase beyond the maximum permitted by the Articles shall be approved by | C L B | M C A | Court | Central Government | Central Government |
| 5 | Person who has a overall direction, conduct, management, superintendence of the affairs of a company is called as | Director | Chairman | Manager | Secretary | Director |
| 6 | Who of these can become a Director of company | Body corporate | Individual | Association | Firm | Individual |
| 7 | First Director of the company shall not be appointed by way of | Prescribed in the manner | Named in the Articles | Promoter | Subscriber of M O A | Promoter |
| 8 | Every annual general meeting state the ratio of directors to be retired | 1/3 by rotation | 25% of total | 50% by rotation | 2/3 by rotation | 2/3 by rotation |
| 9 | New Director shall be appointed by depositing | Rs.500 Refundable | Rs. 500 Non Refundable | Rs. 500 | No Money Required | Rs.500 Refundable |
| 10 | No Directors shall be appointed by directors in the case of | Casual Vacancy | On his Discretion | Alternate Director | By third parties | On his Discretion |
| 11 | The position of a Director shall not be that of | Agent | Servant | Commission Agent | Officer | Commission Agent |
| 12 | One should poses a certain number of shares to become a | Secretary | Accountant | Chairman | Director | Director |
| 13 | The nominal value of the qualification shares shall not be more than | Rs. 5,000 | Above Rs.5000 | Less than Rs.5000 | Rs. 10,000 | Rs. 5,000 |
| 14 | Share qualification of directors shall be under sections | 270 | 270 & 272 | 272 | 274 | 270 & 272 |
| 15 | Unsound mind, undischarged insolvent, convicted by court cannot become | Secretary | Manager | Director | Auditor | Director |
| 16 | A person cannot hold office for more than | 2 Companies | 5 Companies | 10 Companies | 15 Companies | 15 Companies |
| 17 | Being absent for three consecutively one will lose the position of | Director | Chairman | Secretary | Auditor | Director |

# Unit – 5 - Multiple Choice Questions – Part - A Each question carry one mark

| | | | | | | |
|---|---|---|---|---|---|---|
| 18 | Statutory Vacation of office by a Director shall not include | adjudged unsound mind | adjudged insolvent | convicted by law | Not a Director | Not a Director |
| 19 | Removal of Directors shall not be based on the recommendation of | Central Government | M C A | C L B | Court | M C A |
| 20 | Managerial Remuneration shall not include | Chairman | Managing trustees | Executives | Ex Officio Members | Executives |
| 21 | The overall managerial remuneration shall not exceed | 5% of GP | 5% of NP | 11% of GP | 11% of NP | 11% of NP |
| 22 | One of the following shall not be a part of profit for the purpose of calculating net profits | Expenses | Bounties | Subsidies | Premium on Shares | Expenses |
| 23 | Size of compensation shall not be more than the | Loss incurred | Remuneration | Net Profit | Insurance Cover | Remuneration |
| 24 | Fixation of Remuneration by central government shall not be | Based on the financial position | Based on Public Policy towards disparity in income | Annual Reports of the Company | Commission drawn by individual | Annual Reports of the Company |
| 25 | Section 291 of the companies act specifies | Specific Power | Exercised in Meetings | Powers through C L B | General Powers | General Powers |
| 26 | Powers of the directors shall not be exercised through | Memorandum | Prospectus | Promoter | Table A | Memorandum |
| 27 | Duties of a director shall not incorporate | Fiduciary Duties | Financial Autonomy | Duties of Care & Skill | Duties of Diligence | Financial Autonomy |
| 28 | Consequence of default of section 299 shall not incorporate | Punishment with fine Rs5000 | Cessation of Office of Director | Punishment | Fine of Rs.5000 for every day | Punishment |
| 29 | As in Section 301 the register shall not contain | Date & Contract | Names of the Parties | Principles terms & conditions | Punishment thereof | Punishment thereof |
| 30 | Disabilities of a director shall not include | Sound Mind | Relieving of Liability | Undischarged Insolvent | More than 15 Companies | Sound Mind |
| 31 | When the number of directors are more than 12 in number the company has to obtain permission from | Court | Central Government | C L B | M C A | Central Government |
| 32 | Once Director is appointed, from the date of appointment one has to file Form No.29 with the Registrar within | 15 days | 45 days | 30 days | 60 days | 30 days |
| 33 | Whether a director shall appoint another director, if so under section of the companies act provides for | Yes, u/s260 | Yes, u/s262 | Yes, u/s313 | Yes, u/s260,262,313 | Yes, u/s260,262,313 |

## Unit – 5 - Multiple Choice Questions – Part - A Each question carry one mark

| | | | | | | |
|---|---|---|---|---|---|---|
| 34 | Restrictions of appointment of directors shall contain in the section | 266 of Companies Act | 258 of Companies Act | 259 of Companies Act | 270 of Companies Act | 266 of Companies Act |
| 35 | Article 66 of Table A specifically lays down the share qualification of a | Secretary | Director | Board of Directors | Auditor | Director |
| 36 | Director may not be disqualified from service | unsound mind | undischarged insolvent | acquired shares | convicted by law | acquired shares |
| 37 | While calculating the number of directorship the companies are excluded | Unlimited Company | Non Profit Companies | Neither a subsidiary not holding company | Limited by Shares | Limited by Shares |
| 38 | Various duties, powers and liabilities are laid down in | Articles of the company | Memorandum of Company | Prospectus of the company | Laid down by the Court of Law | Articles of the company |
| 39 | Based on the prescribed limits the maximum and minimum limits of the director is shown by way of | Memorandum | Articles | C L B | M C A | Articles |
| 40 | In order to increase or decrease the number of director a company shall pass | Special Resolution | Approval from Central Government | Ordinary Resolution | Based on the C L B | Ordinary Resolution |
| 41 | Whether a vacancy of director position shall filled by retired directors | u/s 254 | u/s 253 | u/s 255 | Yes, u/s Sec 256 (2) | Yes, u/s Sec 256 (2) |
| 42 | Vendors, Debenture holders, Bankers, Other Financial Institutions shall be appointed as director based on the section | 255 | 256 | 257 | 258 | 255 |
| 43 | When director is appointed by Central Government the number will be determined by | Court of Law | Central Government | C L B | M C A | Central Government |
| 44 | If Director is appointed by Central Government the period shall be | 2 years at a time | 6 years at a time | 3 years at a time | Based on the C L B | 3 years at a time |
| 45 | Retirement by Rotation a rule shall not apply for directors appointed by | C L B | M C A | Court | Central Government | Central Government |
| 46 | Director when appointed by the central government, they are not liable to | Take & pay for qualification shares | Take for qualification shares | Pay for qualification shares | Noted in the Articles | Take & pay for qualification shares |
| 47 | Whether periodical reports shall be called by central government | Can not call for | Yes, u/s 408 | u/s 408 request be made | only based on the situation | Yes, u/s 408 |
| 48 | One of the essential qualification to be a director shall be | Acquire Shares | Only Qualification Shares | Holding at least 1 Share | Not necessary to purchase shares | Holding at least 1 Share |

## Unit – 5 - Multiple Choice Questions – Part - A Each question carry one mark

| | | | | | | |
|---|---|---|---|---|---|---|
| 49 | Not less than the given period a director should obtain the required number of shares | Two Months | After Two months | Not before second month | Within Two Months | Within Two Months |
| 50 | Disqualifications of a director shall be relaxed by Central Government when | Non Payment & Disqualify for moral turpitude | Non Payment of Call money | Disqualification for moral turpitude | Can not disqualify | Non Payment & Disqualify for moral turpitude |
| 51 | Restrictions of appointing maximum number of directors shall not apply for a company | without share capital | private company | operating under as non-profit | as said in all options | as said in all options |
| 52 | When a director is declared disqualified by a court u/s 203 he shall be | Disqualified | Can not be removed | Can be disqualified | Obey the order of the court | Disqualified |
| 53 | In the case of complaints of mis-management or fraudulent a director shall removed from office by | Debenture Holder | Shareholders | Bankers | Court | Shareholders |
| 54 | When a director is removed from office, in whose place a new director is so appointed will hold office for | Full period of new director | As prescribed by the article | Remaining period of the remove director | As in Memorandum | Remaining period of the remove director |
| 55 | When director is removed by C L B he is eligible after | Five years | Three years | after the period of punishment | when make an appeal before the court | Five years |
| 56 | The Powers of the Board of Directors shall be vested with | From Articles of Association | Exercised by Resolution | Approved by Memorandum | By the court of Law | Exercised by Resolution |
| 57 | Duty of Good faith, reasonable care, no delegation of powers, work in the capacity as agents etc shall be | Under the provision of the Act | Statutory Duties | General Duties | Other Duties | General Duties |
| 58 | When the director has acted honestly and reasonably in order to protect the interest of the company he may be | Civil Liability | Criminal Liability | Imprisonment | Relieved from Criminal Liability | Relieved from Criminal Liability |
| 59 | Managing Director shall be one of the | Director | Manager | Secretary | Chairman | Director |
| 60 | Managing Director shall be terminated from service provided such appointment lies with | State Government | Central Government | C L B | M C A | Central Government |

Reg. No.....

[14BAU402]

# KARPAGAM UNIVERSITY

Karpagam Academy of Higher Education
(Established Under Section 3 of UGC Act 1956)
COIMBATORE – 641 021
(For the candidates admitted from 2014onwards)

## BBA DEGREE EXAMINATION, APRIL 2016

Fourth Semester

**BUSINESS ADMINISTRATION**

**BUSINESS LAW**

Time: 3 hours Maximum : 60 marks

**PART – A (20 x 1 = 20 Marks) (30 Minutes)**
**(Question Nos. 1 to 20 Online Examinations)**

**PART B (5 x 8 = 40 Marks) (2 ½ Hours)**
**Answer ALL the Questions**

21. a. Discuss the essentials of a Valid a Contract.

Or

b. State the legal rules as to consideration.

22. a. Discuss the various remedies available to a party in case of breach of contract.

Or

b. Discuss the Essentials of a Wagering agreement.

23. a. Explain in detail the different modes of creation of Agency.

Or

b. Give out the extent of relations of principal with third parties.

24. a. What are the essentials of a contract of sale? Illustrate with suitable examples.

Or

b. Briefly explain the conditions implied by law in a contract for the sale of goods.

25. a. Distinguish the charter party from the bill of lading?

Or

b. Explain the Essential Features of Negotiable Instruments?

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Reg. No.....

[13BAU505]

# KARPAGAM UNIVERSITY

Karpagam Academy of Higher Education
(Established Under Section 3 of UGC Act 1956)
COIMBATORE – 641 021
(For the candidates admitted from 2013 onwards)

## BBA DEGREE EXAMINATION, NOVEMBER 2015

Fifth Semester

### BUSINESS ADMINISTRATION

### COMPANY LAW AND SECRETARIAL PRACTICE

Time: 3 hours Maximum : 60 marks

**PART – A (20 x 1 = 20 Marks) (30 Minutes)**
**(Question Nos. 1 to 20 Online Examinations)**

**PART B (5 x 8 = 40 Marks) (2 ½ Hours)**
**Answer ALL the Questions**

21. a. What is meant by certificate of Incorporation? What are the documents that should be filed with the Registrar for obtaining certificate of incorporation?

Or

b. Briefly explain the difference between Memorandum and Articles of Association.

22. a. Enumerate and explain the powers of the directors.

Or

b. How can a director be terminated from his office and by whom?

23. a. Briefly explain the procedure for compulsorily winding up the company through court.

Or

b. State the functions of a liquidator in voluntary winding up.

24. a. Briefly state how a Company Secretary is appointed.

Or

b. List out the liabilities of a Company Secretary



25. a. Explain the various types of general meetings convened under company law with their objectives

Or

b. Discuss briefly the proceedings of a board meeting.

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Register No.: .....

[15BAU502]

# KARPAGAM UNIVERSITY

**Karpagam Academy of Higher Education**

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

**COIMBATORE – 641021**

**(For the candidates admitted from 2015 onwards)**

**First Internal Examination - July 2017**

**BBA – V Semester**

## COMPANY LAW AND SECRETARIAL PRACTICE

**Date :24.07.2017** **Time: 2 Hours**

**Session : FN** **Maximum: 50 Marks**

**PART – A (20 X 1 = 20 Marks)**

**ANSWER ALL QUESTIONS**

1. Companies Act was passed in the year _____

a. 1956 b.1948 c.1969 d.1950

2. Companies Act carries ____ Sections

a. 658 b.685 c.865 c.568

3. Schedules involved in the original companies act shall be _____

a. 41 b.14 c.44 d.21

4. More than 51% of the shares held by a company is called as _____

a. Foreign Company b. Holding Company c. AOP d. Government

5. Formation of a Company shall not include _____

a. Promotion Stage b. Registration Stage c. Alteration Stage d. Capital Subscription

6. Can a Memorandum of Association be altered _____

a. Yes b. No c. Yes, with special meeting d. Cannot be altered

7. U/S 13 of the ICA, a Memorandum of Association shall consists of ____ clauses.

a. Six b. Five c. Several d. Subject to the discretion of the company

8. "Articles are controlled by Memorandum" is one of the characteristics of _____

a. Memorandum b. Prospectus c. Articles d. SEBI

9. Arbitration provision is one of the subject matter of _____

a. Memorandum of Association b. Articles of Association c. Prospectus d. Table A

10. Articles of Association shall be altered as said in section _____

a. U/s31 (2) b. U/s31 (2) c. Approval of members needed d. If Permitted

11. Alteration of Articles are restricted into _____

a. Statutory Restriction b. Judicial Restriction c. A and B d. Administrative Restriction

12. Which of the following powers not exercised by Director of a company _____

a. Passed by Resolution b. Consent with General Meetings c. Consent from Central Govt. d. SEBI

13. Director of a company shall exercise the following duties _____

a. Under the provision of the Act b. Statutory Duties c. General Duties d. All the duties

14. Liability of the companies director shall have the following _____

a. Towards the company b. Towards the outsiders c. Towards the third parties d. Criminal Liability

15. Appointment of Director of a company shall be _____

a. Provision of the Articles b. Subscribers to the Memorandum c. By way of General Meetings d. A, B & C

16.Find out which is the proper way of removal of a director _____

a. Removal by Shareholders b. Removal by Panchayat Members c. Removal by Local Authorities d. Removal by Bankers

17. While removing a director, a company shall issue _____

a. 14 Days Notice to the Director b. 14 Day Notice to its shareholders c. 14 Day Notice to its shareholder before such meeting d. 14 Day Notice to its shareholder before such meeting by the shareholder intending to remove a director.

18. U/S 2 (13) of the Act "_____ includes any person occupying the position of a director by whatever name called" _____

a. Company Secretary b. Cost Auditor c. Chartered Accountant d. Director

19. On the basis of control a company is classified as _____

a. Foreign b. Partnership c. Joint Venture d. Holding

20.Chartered Companies are those incorporated under a special charter granted by _____

a. King or Queen b. King c. Queen d. President

## PART – B (3 X 10 = 30 Marks)
## Answer All the Questions

21a. Explain the basis of classification of Companies

**(or)**

21b. List various stages in the formation of a Company in detail.

22a. Discuss the clauses involved in Memorandum of Association.

**(or)**

22b. Bring the contents of Articles of Association.

23a. Express various powers of a Director as laid in Companies Act.

**(or)**

23b. Discuss Director's liability as said in Companies Act.

Register No.: .....

[15BAU506A]

# KARPAGAM UNIVERSITY

**Karpagam Academy of Higher Education**

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

**COIMBATORE – 641021**

**(For the candidates admitted from 2015 onwards)**

**Second Internal Examination - July 2017**

## BBA – V Semester

## COMPANY LAW AND SECRETARIAL PRACTICE

**Date : 01.09.2017** **Time: 2 Hours**

**Session : AN** **Maximum: 50 Marks**

### PART – A (20 X 1 = 20 Marks)

### ANSWER ALL QUESTIONS

1 Meetings shall not include

a. Employees Meeting b. Directors Meeting

c. Class Meetings of Members d. Creditors Meeting

2 Statutory Meeting shall be conducted only once in the life time of the company for _____

a. Creditors b. Shareholders

c. Debenture Holders d. Third Party Liability

3 Statutory Report of the meeting shall be forwarded for every member not less than

a. 1 month b. 6 months

c.21 days d. 90 days

4 Members of the company are at liberty to discuss the matters relating to the

a. Construction of company b. % Of Brokerage

c. Formation of Company d. Boundaries of the Company

5 Provision for Annual General Meeting is contained under section

a. 166 b.165 c. 169 d. 175

6 In addition to other meeting each company shall conduct

a. Statutory Meeting b. Annual General Meeting

c. Shareholder Meeting d. Debenture Meeting

7 Time gap between one AGM with the next shall be

a. 12 months b. Not less than 12 months

c. More than 15 months d. Not less than 15 months

8 Annual General Meeting shall informed in advance of

a. 21 days b.15 days c. 10 days d. 24 hours

9 Resolution shall be passed to convene general meeting of the shareholders at

a. Executive Meeting b. Board Meeting

c. Members Meeting d. Creditors Meeting

10 If the company fails to call for annual general meeting, then who shall convene the meeting

a. R O C b. C L B c. Court d. M C A

11 An office which works of another is called as

a. Secretary Office b. Chairman Office

c. Registrar Office d. Company Office

12 One of the features given does not belong to a secretary is _____

a. Confidential b. Not to be Secret

c. Attend the orders d. Officer to manage

13 A person who posses prescribed qualification, appointed to perform the duties is a

a. Chairman b. Auditor

c. Secretary d. Banker

14 Company Secretary shall be a member of

a. ICAI b. ICFAI c. ICWAI d. ICSI

15 Information connected with timely payment of interest, creditors meeting etc shall be taken care by

a)Directors b)Board of Management
c)Secretary d)Trustees

16 Qualities of a Secretary shall not include

a. Knowledge in Language b. Knowledge in Accounts
c. Professional d. Personal

17 Impressive & Sense of responsibility, Sharp Memory, Honesty are not an examples of secretary's

a. Personality Traits b. Unethical Traits
c. Personal Qualities d. Professional Qualities

18 _____ position of a Company Secretary shall be servant or employee, officer, agent and representative

a. M C A b. Court
c. Legal d. Before C L B

19 Under which of the Act the secretary is not liable

a. Civil Law b. Stamp Duty Act
c. Income Tax Act d. Estate Duty Act

20 During Board meeting, the secretary shall

a. Read the Notice b. Not to consider Quorum
c. Read the previous minutes d. Have complete notes of the meeting

## PART – B (3 X 10 = 30 Marks)
## Answer All the Questions

21a. Discuss various types of meetings conducted by Indian Companies.

**(or)**

21b. Write short notes on the following

(a) Agenda (b) Quorum (c) Proxy (d) Motion

22a. Bring out various features of Companies Chairman Speech.

**(or)**

22b. Who is a Company Secretary? Discuss various provisions relating to Company Secretary.

23a. List out various powers and rights of a company secretary?

**(or)**

23b. Bring out the duties and liabilities of a company secretary.

Register No.: .....

[15BAU506A]

# KARPAGAM UNIVERSITY

**Karpagam Academy of Higher Education**

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

**COIMBATORE – 641021**

**(For the candidates admitted from 2015 onwards)**

**Model Examination - September 2017**

## BBA – V Semester

## COMPANY LAW AND SECRETARIAL PRACTICE

**Date** : 15.09.17 **Time: 3 Hours**

**Session :** **Maximum: 60 Marks**

## PART – A (20 X 1 = 20 Marks)

## ANSWER ALL QUESTIONS

1. Internal rules and regulation are shown in
a. Memorandum of Association b. Prospectus
c. Certificate of Origin d. Articles

2. Articles of a company is controlled by its
a. Memorandum of Association b. Ownership
c. Prospectus d. Government

3. Articles of Association is to be treated as
a. Private Document b. Public Document
c. Government Document d. Court Record

4. Contents of Articles of Association shall not include
a. Underwriting Commission b. Accounts
c. Association Clause d. Audit

5. Restrictions of appointing maximum number of directors shall not apply for a company
a. without share capital b. private company
c. operating under as non-profit d. as said in all options

6. When a director is declared disqualified by a court u/s 203 he shall be
a. Disqualified b. Cannot be removed
c. Can be disqualified d. Obey the order of the court

7. In the case of complaints of mis-management or fraudulent a director shall removed from office by
a. Debenture Holder b. Shareholders
c. Bankers d. Court

8. When a director is removed from office, in whose place a new director is so appointed will hold office for
a. Full period of new director
b. As prescribed by the article
c. Remaining period of the remove director
d. As in Memorandum

9. Proceedings of the meetings of a company meeting is called as
a. Resolution b. Agenda
c. Minutes d. Motion

10. Proxy form shall not be rejected in the case of
a. Incomplete form b. Requisite Revenue Stamp not affixed
c. appointer revokes d. If proper

11. Who is not exempted from the provision of holding statutory meeting
a. Private Company b. Unlimited Company
c. Limited by Guarantee d. Deemed to be Public Company

12. With regard to the duties of a secretary one of the duty is not necessary
a. Duty before the meeting
b. Duty concerned with next meeting
c. Duty at the time of meeting
d. Duty after the meeting

13. Role of Directors, Shareholders, Creditors, public
a. Powers b. Functions
c. Liabilities d. Duties

14. Under which of the Act the secretary is not liable
a. Civil Law b. Stamp Duty Act
c. Income Tax Act d. Estate Duty Act

15. A secretary shall perform his duty towards
a. Directors b. NGOs
c. Shareholders d. Creditors

16. Secretary should not execute the following
a. Call the meetings
b. Send Share Allotment letter
c. Contractual Liabilities
d. Correspondence towards call on shares

17. When company appoints another person in the place retiring auditor then resolution passed with
a. Ordinary Notice b. Special Notice
c. Special Resolution d. Ordinary Resolution

18. First auditor of the company shall be appointed by the
a. Promoter b. C L B
c. Director d. Chairman

19. Removal of an auditor shall be made by its, in
a. Shareholders, Ordinary Meeting
b. Shareholders, Extra Ordinary General Meeting
c. Shareholders, Notice
d. Shareholders, General Meeting

20. Remuneration for auditors of a company shall be fixed by the company in its
a. General Meeting b. Promoter
c. Board of Management d. Secretary

**PART – B (5 x 8 = 40 Marks)**
**Answer All the Questions**

21a. Under Section 13 of Companies Act 1956 discuss various clauses of Memorandum of Association shall be prepared.
**(or)**
21b. Write in detail the contents of Articles of Association

22a. Explain the ground under which a Director shall be disqualified.
**(or)**
22b. Discuss the duties and liabilities of a Director

23a. Draft the role of a Secretary during the conduct of a Statutory Meeting. **(or)**
23b. Discuss the types of meetings conducted by a Company.

24a. How will you appoint a Company Secretary.
**(or)**
24b. Discuss the duties of a Company Secretary.

25a. Discuss the mode of appointment and removal of auditors U/S224 of Companies Act 1956.**(or)**
25b. Discuss in detail the role of official liquidator in the process of Winding Up of a company.