renaissance
college of commerce & management

SYLLABUS

Class – B.Com. II Year (Plain)

Subject – Indian Company Act

UNIT – I	Company definition, characteristics, types of company, formation of company, promotion, incorporation & commencement of business.
UNIT – II	Detailed study of memorandum of association, articles of association & prospectus.
UNIT – III	Shares – share capital, types of shares, transfer & transmission of shares, shareholders V/s members of the company.
UNIT – IV	Directors – managing directors, whole time director, their qualification, appointment, powers, duties & responsibilities. Company Meetings : Types. Quorum, Voting, Resolution and Minutes.
UNIT – V	Majority powers & minority rights, prevention of oppression & mis management, winding up of companies – types of methods.

UNIT — I

Company

The word 'company' in its literary sense, conveys the idea of togetherness. In the business world, the word 'company' may be found being used loosely for any large business concern. In the legal sense the word 'company' point towards a very specific form of business set-up, floated and run by more than one person. This is the body corporate form of business organization.

CAPTION	OLD COMPANIES ACT 1956	NEW COMPANIES ACT 2013.
E-governance	No such provision existed.	Inspection of documents in electronic form is made.
Women director	No such provision existed.	In prescribed companies classes or class women can be a director.
Maximum no. of Directors	Max. no of directors are 12 not beyond them with approval of central govt.	Number increased to 15 but by passing with special resolution .
Corporate Social Responsibility (C.S.R.)	• No provisions for CSR initiatives	• Constitution of corporate social responsibility (C.S.R.) Committee of the board is compulsory for companies: - Having turnover of rupees **1000 crore** or more or -a net profit of rupees **5 crore** during financial year. • Every financial year at least **2%** of the average net profits to be spent on CSR activities,

Definition of a Company:

According to the Companies Act, 2013, "Company' means a company incorporated under this Act or under any previous company law". [Sec. 2 (20)]

Chief Justice Marshall of the USA defines, "A corporation is an artificial being, invisible, intangible, existing only in contemplation of the law. Being a mere creation of law, it possesses only the properties which the Charter of its creation confers upon it, either expressly or as incidental to its very existence."

According to **Prof Haney,** "A company is an artificial person created by law, having separate entity, with a perpetual succession and common seal."

Lord Justice Lindley: "A company is an association of persons who contribute money to a common stock and employed in some trade or business and who share the profit and loss arising there from. The common stock so contributed is denoted in money in money and is the capital of the company".

SPECIAL FEATURES OF A COMPANY

1. Incorporated body
2. Incorporated by a person or persons
3. Artificial person
4. Separate legal entity
5. Perpetual succession
6. Common seal limited liability and two
7. Limited liability
8. Transferable shares
9. Separate property
10. Capacity to contract
11. Capacity to sue and to be sued

12. Managerial team
13. Governance by majority
14. Social responsibility

LIFTING OR PIERCING CORPORATE VEIL:

Lifting of corporate veil means this regarding the separate legal entity of a company and identifying the realities which existed behind the legal facade. In applying this doctrine, the court/tribunal ignores the companies separate existence and concerns itself directly with the numbers or directors.

The various cases in which the corporate veil is lifted may be put under two categories:

I. Statutory Exceptions-

1. Incorporation on the basis of false information
2. Misleading statement in the prospectus
3. Failure to repay deposits accepted for fraudulent purposes
4. Investigation of ownership of a company
5. Investigation of the affairs of a company
6. Non-payment of income tax
7. Fraudulent conduct of business

II. Judicial Exceptions –

1. Misdescription or nondisclosure of name of the company
2. For determination of character of the company
3. For protecting government revenue
4. For prevention of fraud or improper conduct
5. For fixing liability for economic offences
6. Where companies formed for evading legal obligation
7. Where companies acting as agent or trustee of the shareholders
8. Where a company is used for illegal purpose
9. For fixing liability under welfare legislations
10. To punish for contempt of court
11. For determination of qualifications or technical competence

KINDS OF COMPANIES

The incorporated bodies or the companies may be put in various classes on the basis of following aspects:

I. On the basis of mode of formation
II. On the basis of liability of members

III. On the basis of number of members
IV. On the basis of control
V. On the basis of ownership
VI. On the basis of access to capital market
VII. Other companies

I. ON THE BASIS OF MODE OF FORMATION:

On the basis of mode of formation or incorporation, the companies may be classified into two categories:

A. Unregistered or Unincorporated Companies- Any entity or organisation formed but not registered under the companies act 2013 or under any previous company law may be called an unincorporated or unregistered company.

According to the companies act 2013, the expression 'unregistered company' includes the following entities:

1. Any partnership formed
2. Any limited liability partnership
3. Any co-operative Society
4. Any society
5. Any other business entity

B. Incorporated companies- The incorporated companies a company formed by registered under any statute or law. Such companies may be following kinds:

1. Companies incorporated by Royal Charter
2. Companies formed under statute/statutory companies
3. Companies incorporated under the companies act

II. On the basis of liability of members:

III.On the basis of number of members:

1. **Public company:** A public company means a company [Sec.2(71)], which:

a. is not a private company, and
b. has a minimum paid-up capital as may be prescribed

2. **Private company:** A private company means a company having a minimum paid-up share capital as may be prescribed, and which by its articles provides for the following [Sec.2(68)]:
    a. Restricts the right to transfer its shares.
    b. Except in case of OPC, limits the number of its members to 200 excluding the present or former employees who are members of the company.
    c. Prohibits any invitation to the public to subscribe for any securities of the company.
3. **One-person company:** "One-person company means a company which has only one person is a member." [Sec.2(62)]

IV.On the basis of control:

1. **Holding company:** "Holding company in relation to one or more companies means a company of with such companies are subsidiary companies." [Sec.2(46)]
2. **Subsidiary companies:** The companies act states that a subsidiary company means a company in which the holding company has controll in any of the following ways:
    i. Control the composition of the Board of Directors.
    ii. Exercises control on more than one half of its total share capital either at its own or together with one or more of its subsidiary companies.
3. **Associate company:** Associate company, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary of the company having such influence, it includes a joint-venture company.

V.On the basis of ownership:

A. Government companies: [Sec.2(45)] A government company means any company in which not less than 51% of the paid-up share capital is held by the following-
    i. By the Central government or
    ii. By any state government or governments or
    iii. Partly by the Central government and partly by one or more state governments.

B. Non-government company: A company in which 51% or more of the paid-up capital is held by one or more private entrepreneurs or by public or a group of persons other than government is said to be a non-government company.

C. Joint companies: The companies in which the share capital is held in parts by the private

persons and the Government, are known as joint companies. However, the Government's part in the paid – up share capital is always less than 51%.

VI.On the basis of access to capital market:

A. Listed company: listed company means a company which has any of its securities listed on any recognised stock exchange.

B. Unlisted company: Unlisted companies are those companies which do not have any of its securities listed on any recognised stock exchange.

VII.Other companies: In addition to the above discussed companies, there are certain other companies, they are as under:

A. Charitable companies
B. Small companies
C. Dormant companies
D. Nidhis or mutual benefit societies
E. Foreign companies

PRIVILEGES AND EXEMPTIONS AVAILABLE TO PRIVATE COMPANIES

1. Every private company except OPC may be formed with two members whereas a public company must have at least seven members. [Sec.3(1)]
2. A private company need not and cannot issue prospectors for issue of its security, but a public company is required to issue. [Sec.23(1)]
3. A private company can allot securities even before receiving minimum subscription. [Sec. 39]
4. Except a OPC, every private companies are required to have at least two directors there is a public company must have at least three. In case of OPC, minimum one director is required. [Sec.165]
5. The provisions as to rotational retirement directors do not apply to any independent private company. [Sec. 152(6)]

6. A private company made by its articles provide any additional disqualification for appointment as directors in addition to those specified in the act, but a public company can't do so. [Sec.164(3)]
7. An independent private companies exempted from the overall limit of managerial remuneration of 11% of the net profit. [Sec.197]
8. Unless the article provide for a larger number, only two persons personally present shall be the quorum for a meeting in case of a private company.
9. A private company need not to prepare the report on each annual general meeting and file it with the registrar. [Sec. 121]

Distinction between Private and Public Company

1. **Paid-up capital**. A private company must have a minimum paid-up capital of Rs. 1 lakh whereas the public company should have at least Rs. 5 lakhs.
2. **Minimum number of members**. In the case of a private company, minimum number of persons to form a company is two while it is seven in the case of a public company.
3. **Maximum number of members**. In case of private company the membership must not exceed 50 whereas there is no such restriction on the maximum number of members for a public company.
4. **Transferability of shares.** In a private company, the right to transfer shares is restricted, whereas in the case of public company the shares are freely transferable.
5. **Prospectus**. A private company cannot issue a prospectus; while a public company may issue a prospectus to invite the general public to subscribe for its shares or debentures.
6. **Statement in lieu of prospectus**. A public company, if it does not issue a prospectus, is required to file a Statement in lieu of prospectus with the Registrar of Companies at least 3 days before allotment. A private company is not required to do this.
7. **Minimum number of directors**. A private company must have at least two directors, whereas a public company must have at least three directors.
8. **Increase in number of directors**. The number of directors in a private company may be increased to any extent but in case of a public company if the maximum number of directors is more than twelve, then the approval of the Central Government is necessary for any increase in the number of directors.
9. **Appointment of directors**. Directors of a private company may be appointed by a single resolution, but it is not so in case of a public company where each director is to be appointed by a separate resolution.
10. **Retirement of directors**. Directors of a private company are not required to retire by rotation, but in case of a public company at least 2/3rds of the directors must retire by rotation at each annual general meeting.
11. **Quorum for general meetings**. Two members personally present form the quorum in a private company but in a public company the number is five members.

One-person company:

"One-person company means a company which has only one percent as a member." [Sec. 2(62)]

It may be stated that a OPC is an artificial person incorporated under companies act 2013 with only one person as its member, having separate legal existence from the member forming eight, with a perpetual succession.

Benefits of one-person company:

1. One-person needed to form company
2. Separate existence
3. Perpetual succession
4. Limited liability
5. Secrecy
6. Low operation cost
7. Services of professional directors
8. Easy financial and banking services
9. Low regularity cost
10. Growth of entrepreneurs

Limitations of OPC:

1 Many formalities

2. High cost of formation
3. High managerial cost
4. High rate of taxation
5. Limited financial resources
6. Limited scope of activities

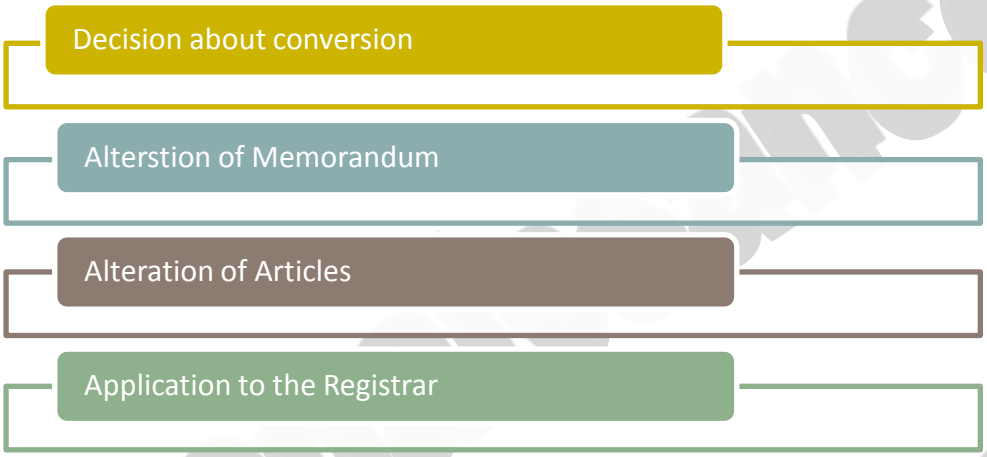
Difference among one person company, private company and public company

One Person company	Private company	Public company
Min. and Max member is one.	Min 2 and Max 200 (*excluding present and past employee members*)	Min. 7 and Max no limit
Not transfer of share as only one member	AOA restricts the transfer of share	Transfer of share is usually without restriction
Shares can not be offered to public	Share can not be offered to public	Share can be offered to public

Difference among one person company, private company and public company

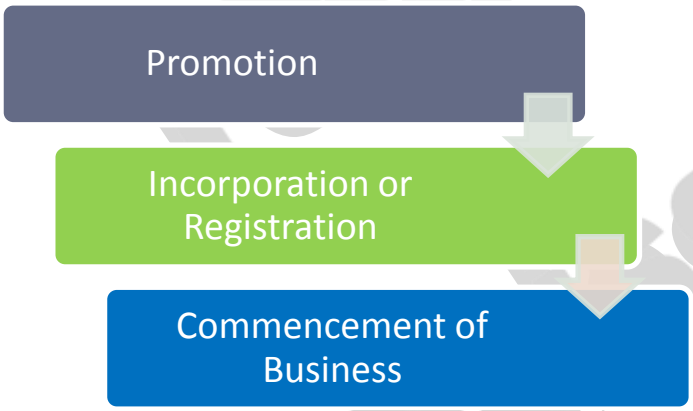
One Person company	Private company	Public company
Min. one director	Min 2 Directors	Min. 3 Directors
Max directors 15	Max. 15 Directors	Max. 15 directors
Can not invite and accept deposit from public	Can not invite and accept public deposit	Can invite and accept deposit from public
The word "OPC" is used as part of name	The word "Private Limited" are used as part of the name	The Word " Limited" is used as part of name

Procedure for Conversion of a public company into a private company or a private company into a public company: (Sec 18)



FORMATION OF A COMPANY

The process of formation of a company can be divided and discuss under the following three stages:



A. Promotion stage
B. Registration and incorporation stage
C. Commencement of business stage

Promotion

A. Promotion of company: Promotion is the process of discovery and investigation of business opportunities, planning and organisation of physical, financial and human resources with a view to forming a company.

Promoter: Promoter means a person who fulfills any of the following conditions:

a. Who has been named as promoter in a prospectors.
b. Who is identified as promoter by the company in its annual return.
c. Who has control over the affairs of the company directly or indirectly whether as a shareholder, director or otherwise.
d. In accordance with whose advice, directions or instructions the Board of director of the company is accustomed to act.

Functions/Role of a Promoter:

1. Conceiving the idea of the company
2. Investigation and verification of the idea
3. Assembling the requirements
4. Making preliminary contracts
5. Financial planning
6. Compliance of legal formalities
7. Getting the company incorporated
8. Ensuring subscription to the initial capital
9. Ensuring verification of registered office
10. Controlling affairs of the company
11. Advising and giving directions
12. Appointing directors of all directors resign

Duties of Promoters:

1. To disclose all material facts
2. Not to make secret profit
3. To disclose the interest in the transaction
4. Not to sell own property without informing
5. To make full disclosure of the property bought
6. Not to make unfair use of his position
7. Not to accept appointment as independent director
8. To provide opportunity to exit from securities if objects are changed

9. To attend before the Tribunal

Liability of Promoters:-

1. Selection liability for furnishing false information for incorporation
2. liability for misleading prospectus
3. liability for contravention of provisions as to issue of securities in private placement mode
4. liability for failure to make disclosure of a non-disclosure items of a special business
5. liability for failure to repay money or restore property
6. liability for non-cooperation to company liquidator
7. liability for preliminary contracts

Registration and Incorporation of Company

Second stage of formation of company is known as the registration or incorporation stage. A company comes into existence only after its registration and issue of certificate of incorporation to it. The registration and incorporation of a company usually involves the following steps:

I. Preliminary steps:

1. Deciding the kind of company
2. Deciding the place of registered office
3. Obtaining DIN by the prospect of directors
4. Obtaining digital signature by promoters/prospected directors
5. Selecting and reserving name of the company
6. Drafting memorandum and articles
7. Printing the documents
8. Obtaining signature subscribers
9. Obtaining declaration as to compliance with legal requirements
10. Obtaining affidavit from subscribers and persons named as first directors
11. Obtaining particulars of subscribers and first directors
12. Obtaining consent of directors
13. Drafting other contracts

II. Application for incorporation and delivery of documents:

The application shall be accompanied by the following documents and information:

1. Notice of address for communication
2. Memorandum of the company
3. Approval of sectoral regulators
4. Articles of the company
5. Declaration as to compliance with legal requirement
6. Affidavit from subscribers and persons named as first directors
7. Particulars of every subscriber
8. Particulars of first directors
9. Consent to act as directors
10. Power of attorney by subscriber
11. Power of attorney to make corrections
12. Payment of fees

प्रारुप 1
पंजीकरण प्रमाण-पत्र

U70100AP2010PLC070972 2010 - 2011

VISWASGOLD INFRASTRUCTURES INDIA LIMITED

Form 1
Certificate of Incorporation

Corporate Identity Number : U70100AP2010PLC070972 2010 - 2011
I hereby certify that VISWASGOLD INFRASTRUCTURES INDIA LIMITED is this day incorporated under the Companies Act, 1956 (No. 1 of 1956) and that the company is limited.

Given under my hand at Hyderabad this Twenty Seventh day of October Two Thousand Ten .

(SATYAJIT ROUL)
Assistant Registrar of Companies
Andhra Pradesh

Mailing Address as per record available in Registrar of Companies office:
VISWASGOLD INFRASTRUCTURES INDIA LIMITED
H.NO.1-90/12, GROUND FLOOR, OPP.CCMB, HASSGUDA 'X' ROAD,
HYDERABAD - 500007,
Andhra Pradesh, INDIA

III. Scrutiny and registration of documents: After receiving application and delivery of documents were incorporation, the registrar shall scrutinise the documents. When all documents are found in order, the register on the basis of documents and

information filed to him shall register all these documents and information in the register of companies. [Sec. 7 (2)]

IV. **Issue certificate of incorporation and see I and CIN:** On registration of all the documents and information, the registrar shall issue a certificate of incorporation. On and from the date mentioned in the certificate of incorporation, the registrar shall allot to the company a corporate identity number or CIN.

Commencement of Business

According to the latest provisions of companies act, every company is entitled to commence its business as soon as it obtains its certificate of incorporation. No other formality is required to be complied with four commencement of business by any company after its incorporation.

If a company fails to commence its business within one year of its incorporation, the Registrar may initiate action for removing its name from the register of companies. [Sec. 248]

व्यापार प्रारंभ करने का प्रमाण-पत्र

Certificate for Commencement of Business

Corporate Identity Number : U70100AP2010PLC070972

I hereby certify that the VISWASGOLD INFRASTRUCTURES INDIA LIMITED which was incorporated under the Companies Act, 1956(No. 1 of 1956) on the Twenty Seventh day of October Two Thousand Ten and which has this day filed or duly verified declaration in the prescribed form that the conditions of the Section 149(2)(a) to (c) of the said act, have been complied with and is entitled to commence business.

Given under my hand at Hyderabad this Third day of November Two Thousand Ten

Andhra Pradesh

VISWASGOLD INFRASTRUCTURES INDIA LIMITED
H.NO 1-90/12, GROUND FLOOR, OPP:CCMB, HABSIGUDA 'X' ROAD,
HYDERABAD - 500007,
Andhra Pradesh, INDIA

Integrated process of incorporation

With effect from 1 May 2015, MCA has introduced a new process of incorporation of companies which is called as the integrated process of incorporation of companies. It is an alternative process of incorporation by which a company may be registered within 24 hours of the application.

The integrated process of incorporation is applicable for the registration of the following kinds of companies:

i. OPCs
ii. Private companies
iii. Public companies
iv. Producer companies

Non-trading companies on not-for-profit companies or charitable companies cannot be registered by following this procedure.

Steps in the process:

1. Application
2. One name for the proposed company
3. Memorandum
4. Articles
5. Non applicability from certain provisions
6. Verification of registered office
7. Processing of application and calling further information by the Registrar
8. Defective or incomplete resubmitted documents
9. Rejection of the from
10. Registration
11. Certificate of incorporation

UNIT-II

Definition

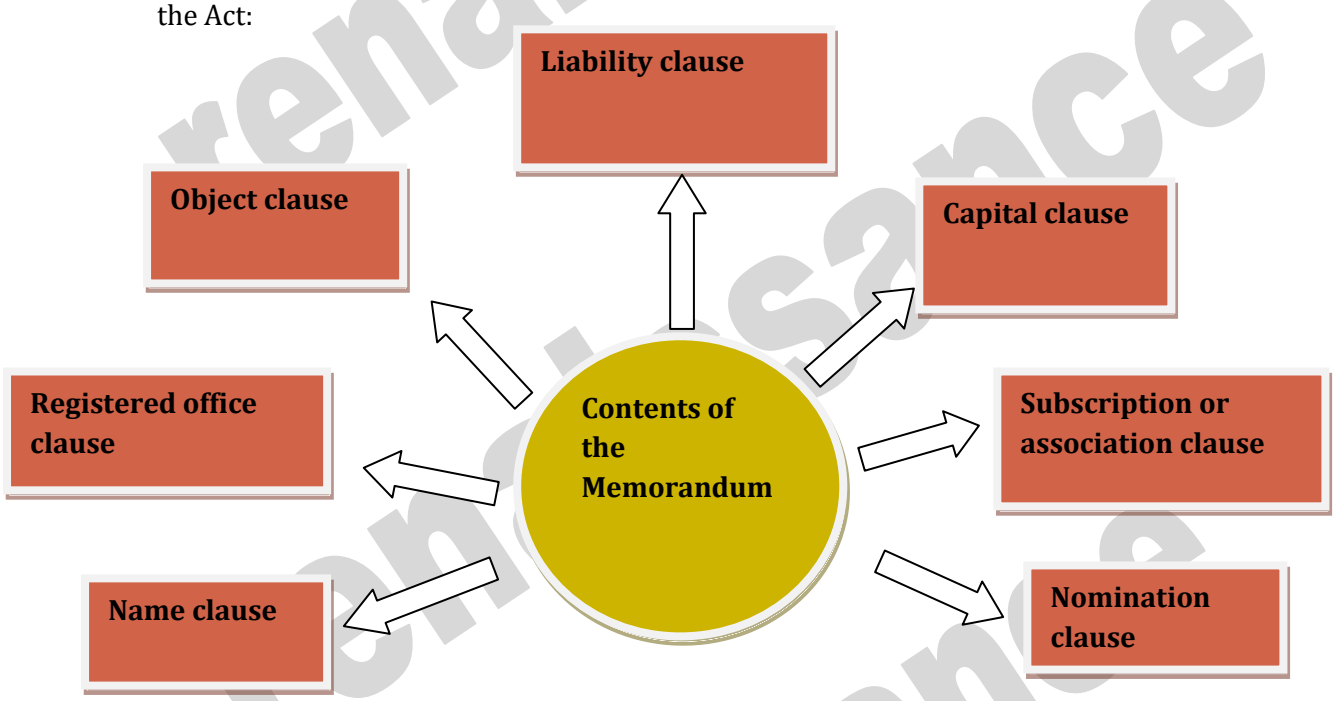
Memorandum means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous companies' law or of this Act. {Sec. 2 (56)}
Palmer… It contains the objects for which the company is formed and therefore, identifies the possible scope of its operations beyond which its actions cannot go. It defines as well as confines the powers of the company.

Significance

1. It determines some basic features of the company being formed, such as its name, registered office, capital etc.
2. It determines the area of activity for the company.
3. It lays down the basic parameters to guide the relationship between the company and the outsiders who deal with the company.

Contents of the Memorandum:-

Contents of a memorandum depend on the kind of company. The contents of memorandum of a company limited by shares shall contain the following clauses as per Table A of the Schedule I to the Act:



1. **Name clause** :
   Every company has to adopt its corporate name carefully. This name has to be stated in the Memorandum. The name of the company as approved by the Registrar would need to be given sufficient display as per the rules, such as outside every office, on the letters, notices etc. In the case of a limited liability company, the word Limited Private limited must be there as the last words of the name.
   In case of a **OPC**, words 'One Person Company' shall be mentioned in brackets below the name of such company, wherever its name is printed affixed or engraved.
2. **Registered office clause** :
   This clause requires the mention of the state in which the registered office of the company is to be statute. A company must have a registered office as a stable place for its location and as its domicile.
3. **Object clause** :

The memorandum must state the objects for which the company is being formed. This clause defines the area of activities for which the company is being formed. Any activity outside the limits defined by this clause would be ultra vires (beyond the powers) for the company and the company can neither do it nor ratify it if it is done by any agent without its sanction.

4. **Liability clause** :
   The nature of liability of the members of the company being formed must be indicated by the memorandum. The memorandum of a company limited by shares or by guarantee shall also state that the liability of its members is limited.
5. **Capital clause** :
   The capital clause lays down the maximum limit of the capital beyond which the company cannot issue shares. This amount is described as registered capital or authorized capital or nominal capital.
6. **Subscription or association clause**
   This clause contains the declaration by the signatories to the Memorandum about their desire to be formed into a company, about their commitment to acquire the qualification shares, if any, and the personal details about the subscribers with their signatures attested by a witness.

   In case of a OPC, this clause contains the name of the only subscriber and his other particulars and his undertaking to take all the shares of the company.

7. **Nomination clause:**
   This clause is application only in case of OPC. This clause contains the name of a some other person with his written consent. He shall become member of the company in the event of subscriber's/member's death or incapacity to contact.

ALTERATION OF MEMORANDUM (Section 13)

(A) Alteration of name clause

A company may, be special resolution and with the approval of the Central Government signified in writing change its name: If a company makes default in complying with any direction given by the government.

(B) Alteration of registered office clause

(i) Change of office within the same city. A company can make a change in the registered office within the local limits of the same city, town or village through a resolution of the Board of directors. Such a change must be brought to the notice of the Registrar within 30 days of the change.

(ii) Change from one city to another within the same state. A change in the registered office from one city to another within the same state would require the passing of a special resolution in the general meeting of the company and filing its copy with the Registrar within 30 days.

(iii) Change of registered office from one state to another. {Sec 13(4)}
The office is shifted to the new state and the address notified to the new Registrar within 30 days of shifting to the new office.

(C) Alteration of object clause

A company can alter its objects clause also, but, since it is a very vital clause in the Memorandum.

a) passing a special resolution in the general meeting [Sec. 13(8)]
b) Filing the resolution with the Registrar with 1 month together with the printed copy of the altered Memorandum.

(D) Alternation of liability clause

Liability of members of a company can be altered (increased or decreased) only if the company is converted form one class of company to another class. A company of any class registered under this Act by alteration of memorandum and articles of the company.

If a company intends to convert itself from one class of company to another class of company to another class it shall pass a special resolution and make an application to the Registrar. The company shall be required to comply with all the provision application for registration of companies. The Registrar after satisfying himself shall close the former registration of the company. Then the Registrar shall register all the documents filed for re-registration and issue a certificate of incorporation in the same manner as its first registration. [sec.18]

(E) Alteration of capital clause

If the articles authorize, a company limited by shares can alter capital clause of its memorandum. An alteration may result in increase, reduction or reorganization of the capital. Sometimes it involves the conversion of shares into stock or vice-versa. [Sec. 61] For details on alteration of capital clause, refer Chapter entitled 'Share Capital'.

DOCTRINE OF ULTRA VIRES

The doctrine of ultra vires is one of the most important principles of company law.

The word ultra means beyond, and the word vires means powers. So, the doctrine of ultra vires means that it is beyond a company's powers to do those activities which have been kept outside the scope of the objects clause in the Memorandum. If any such act is undertaken by the company or any of its agents on its behalf, the act shall not be deemed to be done by the company. Even the entire Board or the body of the shareholders cannot approve or ratify it.

Effects of ultra vires Transactions

(i) Contact are void ab initial. A contract which is ultra vires the company is void ab initial. Under such a contract, the company cannot sue or be sued upon.

(ii) Personal liability of directors to the company. If the directors of the company utilize funds of the company in ultra vires transactions, they would be personally liable to compensate the company for any loss suffered by the company.

(iii) Personal liability of directors to third parties. As the agent of the company, the directors are expected to act within the authority available to them. If they act outside the scope of this authority by presenting themselves to the possessing the authority, this will be a breach of warranty of their authority.

(iv) Property acquired ultra vires. The funds of the company may be spent in acquiring a property ultra vires. The company's right over the acquired property shall be secure and intact.

(v) Injection. In case a company has done is about to do an act ultra vires its Memorandum, any shareholder may seek an order of injunction from the court restraining the company from doing so.

Where the Doctrine does not Apply under some circumstances as mentioned below:

(i) Where the act is ultra vires only the directors, it may be ratified by the company.

(ii) Where the act is ultra vires only the Articles of Association, the Articles may be altered to make the action intra vires the articles.

(iii) Where the act is intra vires but has been done in violation of some bye-laws of the company, the Board or the general meeting may condone it.

ARTICLES OF ASSOCIATION

The Articles of Association is the second important document to be prepared by the promoter and then submitted at the time of registration. The Articles contain the rules and regulations and the bye-laws of the company to govern its internal affairs and functioning.

Definition: According Sec. 2(5) of the Act

"Articles means the articles of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act, including, so far as they apply the company the regulations contained in Table A in Schedule I annexed to this Act".

A public company limited by shares may either frame its own Articles and get them registered or may adopt Table A of Schedule I as its Articles.

Form

Articles shall be printed, be divided into paragraphs numbered consecutively, and be signed by each subscriber of the memorandum of association.

Contents

1) Various classes of shares the company shall issue and their rights.
2) Procedure for issue of shares and their allotment.
3) Procedure for issuing share certificates and share warrants.
4) Forfeiture of shares and the procedure for their re-issue.
5) Procedure for transfer and transmission of shares.
6) Calls on shares.
7) Conversion of shares into stock.
8) Payment of commission on shares and debentures to underwriters.
9) Borrowing powers of directors.
10) Rules for adoption for preliminary contracts, if any,
11) Re-organization and consolidation of share capital.
12) Alteration of shares capital.
13) Payment of dividends and creation of reserves.
14) General meetings, proxies and polls.
15) Voting rights of members.
16) Keeping of books of account and their audit.
17) Rules regarding use of the Common Seal of the company.
18) Appointment, powers, duties, qualifications and remuneration of directors.
19) Appointment, powers, duties remuneration, etc of auditors.
20) Appointment, powers, duties, qualifications, remuneration etc of the managing director, manager and secretary, if any.
21) Lien on shares.
22) Capitalization of profits.
23) Board meeting and their proceedings
24) Rules as t resolutions.
25) Winding up of the company.

ALTERATION OF ARTICLES

The expression 'alter' or 'alteration' shall include the making of additions, omissions and substitutions. [Sec. 2(3)]

Every company has a statutory power to alter its articles by a special resolution. But this power is subject to the provision of the companies Act and conditions of the memorandum of the company. [Sec 14]

It is pertinent to note that no provision in the articles can prevent a company from including any additional matter in its articles that the company considers necessary for its management. [Proviso to Sec. 5]

The power of alteration of articles is almost absolute and irrevocable. Any clause of the articles or any contract which takes away the company's power to alter its articles is void as being contrary to the provisions of the Companies Act. [State of Karnataka v. Mysore Coffee Curing Works. Ltd. (1984) 55 Comp Cases 70 Karnataka] However, a company's power to alter its articles is subject to certain statutory and judicial restrictions.

Procedure of Alteration

The procedure of alteration of articles may be discussed under the following three heads:

I. Where the nature of company remains unchanged.
II. Where a public company is converted into a private company.

I. Where the nature of company remains unchanged:

1. Approval of the Board of directors.
2. Special resolution.
3. Complying with entrenchment provisions.
4. Filling resolution with the Registrar.

II. Where a public company is converted into a private company:

1. Board shall approve the draft resolution.
2. Special resolution.
3. Approval of the tribunal.

Limitations of freedom to alter the Articles

(i) Alteration must not exceed the scope of or conflict with the Memorandum.
(ii) The alteration must not be inconsistent with the provisions of the Companies Act or any other law.
(iii) The Articles cannot be made to include anything which is in itself unlawful or opposed to public policy.
(iv) The alteration must not seek to undo the alteration made by the CLB or Tribunal in the documents of the company.
(v) The alteration must be bona fide and for the benefit of the company as a whole.
(vi) The alteration must not amount to a fraud by majority on the minority.
(vii) The alteration cannot be done to break a contract with a third party.
(viii) An alteration would not be complete unless it is followed by the approval of the Central Government wherever necessary.

Distinction between Memorandum and Articles

The memorandum and articles are two important documents for incorporation and governance of a company. The two may, however, be distinguished on the basis of the following points :

(i) The memorandum contains the basic conditions associated with the incorporation of the company. This includes the name, the maximum capital and the total area of activity of the company etc. The articles however, are the rules governing the internal functioning of the company.
(ii) The memorandum is a supreme document sub-ordinate to the Companies Act only. The articles is the document sub-ordinate to the memorandum and cannot override it.
(iii) A memorandum has to be compulsorily registered. The articles may not be registered.
(iv) The memorandum defines the relationship between the company and the outside world. The articles determine the relationship between the company and the members.

(v) The alteration in memorandum requires a somewhat difficult procedure. The articles will require a simple procedure for alteration.

(vi) The acts of the company which are ultra vires the memorandum cannot be made valid through their ratification by the company. However, the acts ultra vires the articles can be made valid through their ratification if they are intra vires the memorandum.

Constructive Notice of MOA & AOA-

The term constructive notice means the presumption of notice in certain circumstances. MOA and AOA are public documents. They are open for public inspection in registrar's office. It is duty of every person dealing with the company to inspect these documents and make sure that this cataract with the company is in accordance with the provisions of these documents. He will be presumed to have read the documents and to know their contents. This kind of presumes knowledge of these documents is called 'constructive Notice' of memorandum and articles of association. If any person enters into a contract with the company which is contract to the provisions of memorandum and articles of association, he will not get any right under such contract.

Doctrine of 'Indoor Management'

According to this doctrine, a person dealing with the company is not presumed to have the knowledge of internal proceedings of the company i.e. there is no constructive notice as to how the company's internal machinery is handled by its officers. Thus, every person dealing with the company is entitled to assume that everything has been done regularly so far as the internal proceedings of the company are concerned. This doctrine seeks to protect the outsiders against the company. If the internal formalities have not been complied with the contract will be binding on the company and it will be liable to the outsiders.

PROSPECTUS

Every company require capital for its business activities. Therefore, every company issues its securities. But the public and private companies cannot use almost the same ways or methods for issuing their securities. The ways/modes of issuing securities by both the classes of companies are briefly described in the ensuing paragraphs.

Meaning of Prospectus

Prospectus means any document described or issued as a prospectus and includes a red herring prospectus (referred to in Section 32) or shelf prospectus (referred to in section 31) or any notice, circular, advertisement or other documents inviting offers from the public for the subscription or purchase of any securities of a body corporate. [Sec. 2 (70)]

Contents of the Prospectus

The new companies Act. 2013 does not contain any model prospectus. It only prescribes the contents of a prospectus. It also states that a prospectus shall also contain the matters as may be prescribed. According to the provision of Companies Act and the Rules made there under, a prospectus to be issued shall contain the particulars with respect to the following matters:

1. The date
2. Signature

3. Information
   a. Names of address
   b. Dates of opening and closing of the issue
   c. Declaration about the issue of allotment letters and refunds
   d. A statement by the Board
   e. Underwriting
   f. Consent of the directors
   g. The authority for the issue
   h. Procedure and time schedule for allotment
   i. Capital structure
   j. Main objects of public offer
   k. Main objects and present business of the company
   l. Minimum subscription
   m. Details of directors
4. Particulars of project
5. Particulars of Litigation
6. Reports
7. Declaration

Who can issue Prospectus?

Prospectus may be issued by any of the following:

1. Public company
2. Any person on behalf
3. Who has been engaged who is or interested
4. On behalf of a person who is or who has been engaged of interested

When issue of Prospectus not Need

1. Not offered to the public
2. Offered to the existing members
3. Offered are uniform in all respects
4. A bona fide invitation is made to a person to enter into an underwriting agreement

Public Offer

Public offer of securities means an offer of securities made to the public through a prospectus. The expression 'public offer' is quite comprehensive and it includes the following kinds of offers:

1. Initial public offer or IPO.
2. Further or follow up public offer or FPO. Both these public offers are made through prospectus
3. Offer for sale of securities to the public by an existing shareholder. Such offer is also made through issue of a prospectus. It may be both the initial public offer or IPO and further or follow up public offer or FPO.

Abridged Prospectus

Abridged prospectus means a memorandum containing such salient features of a prospectus as may be specified by the SEBI by making regulations in this behalf. [Sec. 2 (1)]

Deemed Prospectus

It is a common practice that the securities of a company are allotted or agreed to be allotted to some intermediary known as 'Issuing House'. The issuing house in turn, is required to offer all or any of these securities to the public by means of some documents. Such a document issued by an issuing house is known as offer for sale of securities. For all purpose it shall be and deemed to be a prospectus issued by

the company. The provision relating to offer for sale of securities by a issuing house are summarized as under.

Shelf Prospectus
Definition:- 'Shelf prospectus' means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. [Explanation to Sec. 31]

Red Herring Prospectus
Definition:- Red herring prospectus means a prospectus which does not have complete particulars on the quantum or price of the securities offered and the quantum of securities included therein.

Offer to the Public
Section 67(1) of the Act States that public includes "any section of the public whether elected as members or debenture holders, or as clients of the person issuing the prospectus or in any other manner." But an offer is not to be treated as made to the public where the offer can in all the circumstances be properly regarded as a domestic concern of the persons making and receiving it.

Abridged Prospectus
It is no longer necessary to furnish a copy of the prospectus along with every application form which the company may issue while inviting the public to purchase or subscribe for its shares or debentures. In future, application form is to be accompanied only by a gist of material formation. This is referred to as 'abridged prospectuses.

WHEN PROSPECTUS IS NOT REQUIRED TO BE ISSUED

The issue of a prospectus containing the details as required by section 23 is not necessary in the following cases:

1. Where an offer is made in connection with bonafide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.
2. Where the shares or debentures are not offered to the public.
3. Where the shares or debentures are offered to the existing members or debenture holders of the company.
4. Where the shares or debentures offered are uniform in all respects with shares or debentures previously issued and dealt in or quoted on a recognized stock exchange.
5. Where any prospectus is published as a newspaper advertisement, it is not necessary to specify the contents of the Memorandum or the signatories thereto, or the number of shares subscribed for them.

STATEMENT IN LIEU OF PROSPECTUS

All public companies either issue a prospectus or file a statement in lieu of prospectus. A private company is prohibited from inviting monetary participation of the public. But the promoters of a public company need not necessarily go to the public for money. The promoters may be confident of obtaining the required capital, through private sources.

In such a case no prospectus need be issued to the public, but promoters must prepare a document, akin to the prospectus known as 'Statement in lieu of prospectus.' This document must be in the form set out in Schedule III of the Act and must contain practically the same information as is required in the prospectus.

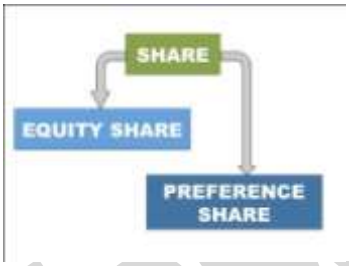
UNIT-III

SHARE

Shares:

"A share in the share capital of the company and includes stock", is the definition of the term 'Share'. This is in accordance with Section 2(84) of the Companies Act, 2013.

In other words, a share is a measure of the interest in the company's assets held by a shareholder. In this article, we will look at the different types of shares like preferential and equity shares. Further, we will understand certain definitions and regulations surrounding them.



Equity Share

Equity shares capital means all share capital which is not preference share capital (Sec. 43). In other words, a share or share capital which does not give the definition of preference shares or preference share capital is equity share capital.
Equity shareholders receive dividend out of profits as recommended by the Board of directors and as declared by the shareholders in an annual general meeting but after preference shares have been paid their fixed dividend.
Moreover, equity shareholders have a right to vote on every resolution placed in the meeting and the voting right shall be in proportion to the paid up equity capital. Unless a company issue equity shares with differential rights.

Preference Shares

Preferences shares with reference to any company (Sec. 43) limited by shares are those which carry:

(a) A right to be paid a fixed amount of dividend or the amount of dividend, calculated at a fixed rate.
(b) A right to be paid the amount of capital paid up as such shares in the event of winding up of the company.

Types of Preference Shares

These may be of the following types:

1. **Cumulative Preference Shares:** These share are entitled to dividend at a fixed rate whether there are profits or not. The company pays dividend if it has sufficient profits. In case the company does not have sufficient profits, dividend on cumulative preference shares will go on accumulating till it is fully paid off, such arrears are carried forward to the next year and are

actually paid out of the subsequent years' profits. In the case of winding up of the company, the arrears of dividend on these shares are payable only if the article of association contains express provision in this respect. It may be noted, that all preference shares are presumed to be cumulative unless expressly stated in the articles to be non-cumulative.

2. **Non-cumulative Preference Shares:** Non-cumulative preference shares are those shares on which the arrears of dividend do not accumulate. If in a particular year there are no profits are inadequate, the shareholders shall not get anything or receive a partial dividend and they cannot claim the arrears of dividends in the subsequent year. In simple words, on such shares the unpaid dividends do not accumulate but lapse, i.e., the shareholders lose them forever.
3. **Participating Preference Shares:** The holders of such shares are entitled to receive dividend at a fixed rate and, in addition, they have a right to participate in the surplus profits along with equity shareholders after dividend at a certain rate has been paid to equity shareholders, there are surplus assets, then the holders of such shares shall be entitled to share in the surplus assets as well. Such shares can be issued only if there is a clear provision in the memorandum or articles of association or the terms of issue.
4. **Non-participating Preference Shares:** The holders of such shares are entitled to only a fixed rate of dividend and do not participate further in the surplus profits. If the articles are silent, all preference shares are deemed to be non-participating.
5. **Convertible Preferences Shares:** The holder of such shares have a right to convert these shares into equity shares within a certain period.
6. **Non-convertible Preference Shares:** The preference shares, where the holders have no right to convert their shares into equity shares are known as non-convertible preferences shares. Unless otherwise stated preference shares are assumed to be non-convertible.
7. **Redeemable Preference Shares:** Ordinarily, the amounts received by the company on shares is not returned except on the winding up of the company. A company limited by shares, if authorised by its articles, may issue preference shares which are to be redeemed or repaid after a certain fixed period. Thus, the amounts received on such shares can be returned during the life-time of the company. Such shares are termed as redeemable preferences shares.

CLASSES OF CAPITAL

In view of the stages involved in collecting the money on shares, the shares capital of a company may be classified as follow:

(1) Authorised Capital: It is the capital which is stated in company's memorandum of association with which the company intends to be registered. It is called the nominal or registered capital. It is the maximum amount of shares capital which a company is authorised to raise by issuing the shares.

(2) Issue Capital: It is that part of the authorised capital which is actually offered (issued) to the public for subscription. Therefore, the issued capital can never be more than the authorised capital. It can at the most be equal to the nominal capital. The balance of nominal capital remaining to be issued is called 'unissued capital'.

(3) Subscribed Capital: It is that part of the issued capital which has been actually subscribed by the public. In other words, it is that part of issued capital for which the applications have been received from the public and shares allotted to them.

(4) Called-up Capital: It is that part of nominal value of issued capital which has been called-up or demanded on the shares by the company. Normally, a company does not collect the full amount of shares it has allotted.

(5) Paid-up Capital: It is that part of the called-up capital which has actually been received from the shareholders.

(6) Reserve Capital: It is that part of the uncalled capital which cannot be called by the company except in the event of its winding up.

ISSUE OF SHARES AT PREMIUM (SECTION 52)

The premium is an amount in excess of par value or nominal value or face value of the securities (shares). Where a company issues securities at a premium whether for cash or for a consideration other than cash, a sum equal to aggregate amount of premiums on these securities shall be transferred to Securities Premium Account. The Securities Premium Account may be applied by the company:

(a) in paying up unissued shares of the company to be issued to the members of the company as fully paid bonus shares:
(b) in writing off the preliminary expenses of the company;
(c) in writing off the expenses of or commission paid or discount allowed on any issue of shares or debentures of the company.
(d) In providing for the premium payable on the redemption of any redeemable preference shares or any debentures of the company.

A company may issue shares at a premium, i.e, at a value greater than its face value. Premium so received shall be credited to a separate account called **Securities Premium Account.**

PROHIBITION ON ISSUE OF SHARES AT DISCOUNT (SECTION-53)

1) Except as provided in section -54, a company shall not issue shares at a discount.
2) Any share issued by a company at a discounted price shall be void.
3) Where a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

ISSUE OF SWEAT EQUITY SHARES (SECTION-54)

1) Notwithstanding anything contained in section-53, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely -
   a) The issue is authorized by a special resolution passed by the company;
   b) The resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
   c) Not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business; and
   d) Where the equity shares of the company are listed on a recognized stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as may be prescribed.
2) The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank parri passu with other equity shareholders.

TRANSFER & TRANSMISSION OF SHARES

MEANING OF TRANSFER OF SHARES:

Transfer of shares means a transfer by sale or otherwise by the registered holder of the shares. It does not include any involuntary or forced sale such as a court auction – sale or sale of forfeited shares for non payment of calls.

Every shareholder of a company is entitled to transfer his shares subject to certain restrictions. The restrictions can be classified into two heads:

a. Restriction under the companies act or statutory restrictions
b. Restrictions under the company's articles.

TRANSMISSION OF SHARES:

When the shares of a member are transferred to another person by operation of law, it is said to be the transmission of shares. Generally the transmission of shares taken place in the following cases:

a. On the death of member, the shares are transmitted to his nominee or executor or successor.
b. On the insolvency of a member, the shares are transferred to the official receiver/assignee/liquidator.
c. On the lunacy of a member, the shares are transferred to the administrator appointed by the court or to his legal representative or guardian.

Bonus Shares

- **Issue of bonus shares :-**

Issue of bonus shares is governed by the provision of sec 63 along with rule 14 of the companies (share capital and debentures) Rules 2014. In case of listed company it has to comply with the provisions of chapter IX of SEBI (ICDR) regulations 2009.

- **Source of Bonus Share:-**

According to the provision of sec 63 a company may issue fully paid up bonus shares to its members, in any manner whatsoever, out of:-

1. Its free reserves;
2. The securities premium account;
3. The capital redemption reserve account.

Issue of bonus shares shall not be made by capitalizing reserves created by the revaluation of assets. The bonus shares shall not be issued in lieu of dividend.

- **Conditions for Issue of Bonus share:-**

1) It is authorized by articles of association;
2) It has, on the recommendation of the board, been authorized in the general meeting of the company;
3) It has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
4) It has not defaulted in respect of payment of statutory dues of the employees, such as contribution to PF, gratuity, and bonus;
5) The partly paid up shares, if any outstanding on the date of allotment, are made fully paid up;
6) It complies with such condition as may prescribed.

According to the rule 14 of the companies rules 2014 if once a company announced the decision of its board recommending a bonus issue shall not subsequently withdraw the same.

- **Procedure for issue of bonus share:-**

The company shall hold the board meeting and get the following proposal to be approved by board:-

I. To recommend the bonus issue;

II. To approve the resolution to be passed at general meeting;
III. To approve requisite resolution for increase of the capital and consequential alteration of the MOA/AOA (if necessary);
IV. To authorize the bonus issue;
V. To enable the articles to authorize the issue, if necessary.

Hold the general meeting and get the resolution for issue of bonus shares passed by the members.

After passing special resolution in general meeting the company shall file a form MGT-14 along with fee with the registrar within 30 days of passing special resolution.

File the return of allotment in form PAS-3 along with fee with the registrar within 30 days of allotment.

All share certificates shall be delivered by the company to its shareholders within two months from the date of allotment of bonus issue. The details of allotment of shares intimate to the depository immediately on allotment of such shares.

Debentures

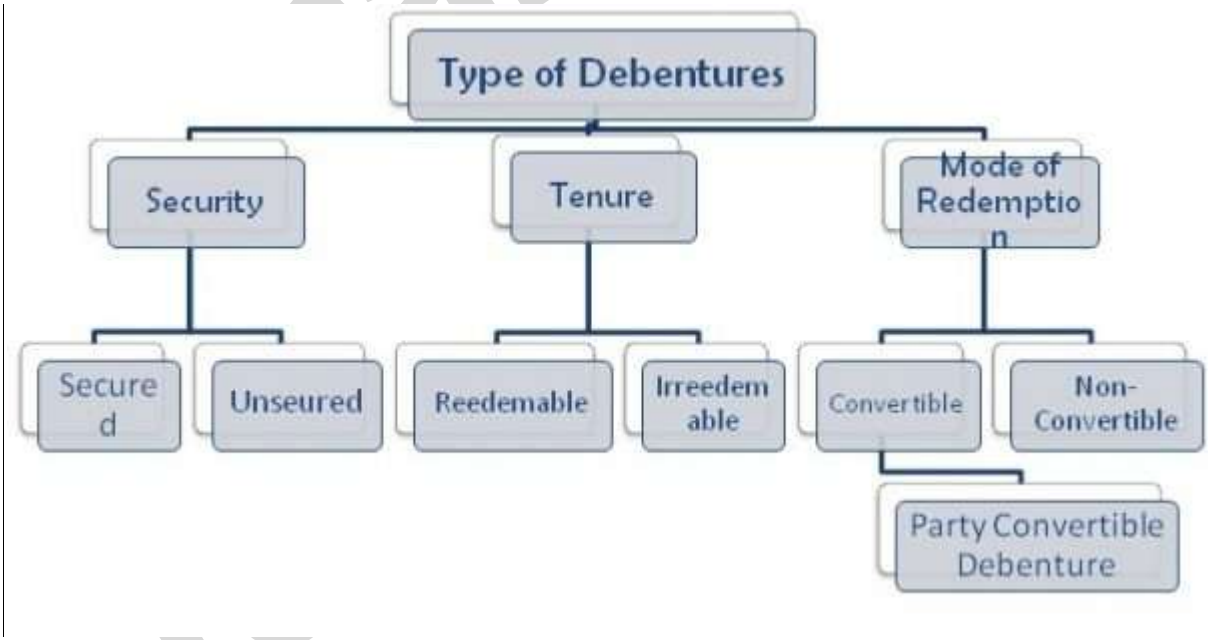
Debentures as defined under the Companies Act, 2013 ('2013 Act') *includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not.* The power to issue debentures can be exercised on behalf of the company at a meeting of the Board of Directors under the provisions of section 179(3) of 2013 Act.

Section 71 of Chapter IV of the 2013 Act deals with the provisions relating to the issuance of debentures along with the penalties for the non compliance of the same and can be read as follows:-

1. *A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption:*
2. *Provided that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.*
3. *No company shall issue any debentures carrying any voting rights.*
4. *Secured debentures may be issued by a company subject to such terms and conditions as may be prescribed.*
5. *Where debentures are issued by a company under this section, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures.*
6. *No company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.*
7. *A debenture trustee shall take steps to protect the interests of the debenture holders and redress their grievances in accordance with such rules as may be prescribed.*
8. *Any provision contained in a trust deed for securing the issue of debentures, or in any contract with the debenture-holders secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against, any liability for breach of trust, where he fails to show the degree of care and due diligence*

required of him as a trustee, having regard to the provisions of the trust deed conferring on him any power, authority or discretion:

9. *Provided that the liability of the debenture trustee shall be subject to such exemptions as may be agreed upon by a majority of debenture-holders holding not less than three fourths in value of the total debentures at a meeting held for the purpose.*
10. *A company shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue.*
11. *Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Tribunal and the Tribunal may, after hearing the company and any other person interested in the matter, by order, impose such restrictions on the incurring of any further liabilities by the company as the Tribunal may consider necessary in the interests of the debenture-holders.*
12. *Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon.*
13. *If any default is made in complying with the order of the Tribunal under this section, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than two lakh rupees but which may extend to five lakh rupees, or with both.*
14. *A contract with the company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.*
15. *The Central Government may prescribe the procedure, for securing the issue of debentures, the form of debenture trust deed, the procedure for the debenture-holders to inspect the trust deed and to obtain copies thereof, quantum of debenture redemption reserve required to be created and such other matters.*



Dividend: As per Section 2(35) of Companies Act, 2013 defines the term as including any interim dividend.

- Dividend is basically the share of profit distributed among shareholders.
- Ordinary meaning of dividend is a share of profits, whether at a fixed rate or otherwise, allocated to holders of shares in a company.
- Dividend can be paid on Equity or preference shares both.
- The word "Dividend" has origin from the Latin word "Dividendum". It means a thing to be divided.

DECLARATION OF DIVIDEND:-

According to the provision of sec 123 of companies act 2013, a company shall declare dividend only out of profit of the company for the financial year or out of undistributed profit of any previous financial year or out of both.

In case, any guarantee give by any government (central or state), the company may declare dividend out of money provided by that government for payment of dividend after providing for depreciation.

Before declaration of any dividend, a company may transfer a portion from the profit to the reserves of the company. The company is free to decide the percentage for such transfer to the reserve.

When a company has no adequate profit or any profit in financial year or accumulated profit to distribute as dividend, it may declare dividend out of reserves. The company may pay dividend only from free reserves, not from any other reserves.

Prohibition on declaration of dividend:-

A company which fails to comply with the provision of sec 73 and 74 related to deposit and repayment of deposit or interest thereon shall not declare and dividend on its equity shares as long as such failure continue.

Deposit of declared Dividend:-

The amount of dividend and interim dividend shall be deposited in a separate account in a scheduled bank within five days from the date of declaration of such dividend. The dividend shall be paid to shareholders in cash not otherwise. Any dividend payable in cash may be paid by cheque or warrant or in any electronic mode to the shareholders.

Unpaid Dividend:-

According to sec 124 of the companies act 2013, where a dividend has been declared by the company, but has not been paid or claimed within 30 days from the date of declaration to any shareholder entitled to the payment of the dividend, the company shall within seven days from the date of expiry of said thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account "unpaid dividend account" opened by the company in any scheduled bank.

The company shall within a period of ninety days of making any transfer of an amount to the unpaid dividend account, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the website of the company.

Any person who is entitled for the money transferred to the unpaid dividend account may apply to the company for payment of the money. The person can claim this amount from company only within seven years of its transfer to unpaid dividend account. After this period not only his dividend but also shares shall be transferred to the Investor Education Protection Fund.

If a company fails to comply with the requirement of this section, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty five lakh rupees and every officer of the company who is in default shall be

punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Punishment for failure to distribute dividend:-

When a divided has been declared by a company but has not been paid within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, the company shall be liable to pay simple interest @18% per annum during the period for which such defaults continue and every director of the company shall, if he is knowingly party to the default be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues.

- **According to sec 127 no offence shall deemed to have been committed under following circumstances:-**

1. Where the dividend could not be paid by reason of the operation of any law;
2. Where shareholder has given directions to the company regarding to the payment of dividend and those directions cannot be complied with and the same has been communicated to him;
3. Where there is dispute regarding the right to receive the dividend.
4. Where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder;

Membership of a Company

"member", in relation to a company, means—

(*i*) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;

(*ii*) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;

(*iii*) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository

Rights of the Members

The members of a company enjoy several rights and they are the ultimate authority in the matters of the company and its management. Their rights can be grouped under three heads. They are detailed below:

1. **Statutory Rights**: These are the rights conferred upon the members by the Companies Act. These rights cannot be taken away by the Articles of Association or Memorandum of Association. Some of the important statutory rights are given below

i. Right to receive notice of meetings, attend, to take part in the discussion and vote at the meetings.
ii. Right to transfer the shares [in case of public companies].
iii. Right to receive copies of the Annual Accounts of the company.
iv. Right to inspect the documents of the company such as register of members, annual returns, etc.

v. Right to participate in appointments of directors and auditors in the Annual General Meetings.
vi. Rights to apply to the Government for ordering an investigation into the affairs of the company.
vii. Right to apply to the Court for winding up of the company.
viii. Right to apply to the National Company Law Tribunal for relief in case of oppression and mismanagement under Secs. 397 and 398.

2. **Documentary Rights**: In addition to the statutory rights, there are certain rights that can be conferred upon the shareholders by the documents like the Memorandum and the Articles of Association.
3. **Legal Rights**: These are the rights, which are given to the members by the General Law.

Difference between Member & Shareholder

MATTER	Member	Shareholder
Meaning	A person whose name is entered in the register of members of a company.	A person who owns the shares of the company.
Definintion	Companies Act, 2013 defines 'Member' under section 2(55)	Shareholder is not listed under the Companies Act, 2013
Share Warranges	The holder of the share warrant is not a member.	The holder of the share warrant is a Shareholder.
Company	Every company must have a minimum number of members.	The Company limited by shares can have shareholders
Memorandum	A person who signs the memorandum of association with the company becomes a member.	After signing the memorandum, a person can become a shareholder only if shares are allotted to him.

UNIT-IV

COMPANY MANAGEMENT

DIRECTOR

"Director means a director appointed to the Board of a company." {Sec. 2(34)}

According to the Supreme Court of India. "A Person, who guides policy and superintends the working of the company, is a director. The name by which he is called is immaterial.

A few Facts about Directors:

1. Director is an individual person who is appointed as director to the Board of a company. {Sec. 2(34)}
2. A director is an officer of the company if the Board of directors of a company is accustomed to act with the directors of him {Sec. 2(59)}
3. There must be at least 3 directors in a public company and 2 directors in a private company and one director in case of a One Person Company. {Sec. 149(1)}
4. Usually a company can have maximum of 15 directors. But it may appoint more than 15 directors after passing a special resolution. {Sec. 149(1)}
5. Subject to any regulation in the articles. Subscribers of the memorandum (who are individuals) shall be deemed to be the first directors of the company until the directors are duly appointed. {Sec. 152}
6. The directors collectively are referred to as 'Board of directors' or 'Board'. {Sec. 2(10)}
7. The ultimate responsibility for management and control of the affairs of a company vests in the Board of directors.
8. Only individuals can be appointed as directors. No body corporate, association or firm can be appointed as directors of a company. {Sec. 149 (1)}

COMPOSITION OF BOARD OF DIRECTORS –

The provisions with respect to composition of Board of directors of companies are as follows:

Every Company to have Board of Directors:

Every company shall have a Board of directors consisting of individuals as directors. {Sec. 149(1)}

Minimum Number of Directors:

I. In case of public company- Every public company shall have a minimum of 3 directors on its Board
II. In case of private company- Every private company (other than OPC) shall have a minimum of 2 directors on its Board.
III. In case of OPS- Every One Person Company shall have minimum of one director on its Board. {Sec. 149(1)}

Maximum Number of Directors:

Every company may have maximum of 15 directors on its Board. However, any company may appoint more than 15 directors after passing a special resolution. {Sec. 149(1) and its first proviso}

Women Directors:

Only such class or classes of companies, as may be prescribed, shall have at least one woman director. {Second proviso to Sec. 149(1)}

The Rules notified by the MCA have prescribed that any of the following class of companies shall appoint at least one woman director:

I. Every listed company
II. Every other public company having paid-up share capital of Rs. 100 crore or more.
III. Every other public company having turnover of Rs.300 crore or more. (Rule DIR-3)[1]

NUMBER OF DIRECTORSHIPS:

Maximum Number of Directorships:

No person shall hold office as a director, including any alternate directorship, in more than 20 companies at the same time.

Directorships Held in Public Companies:

The maximum number of public companies in which a person can be appointed as a director shall not exceed 10. {Sec. 165(1)}

Members' Right to Limit Directorships:

The members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as director {Sec. 165(2)}

METHODS OF APPOINTMENT OF DIRECTOR:

The methods or ways of appointing directors of a company are as follows:

I. Appointment of first directors.
II. Appointment by company/members:
    1. In the first general meeting
    2. In the first annual general meeting and subsequent general meeting.
III. Appointment by the Boards of directors:
    1. Additional director
    2. alternate director
    3. Appointment to fill up casual vacancy
    4. Nominee director.
IV. Appointment by proportional representation.
V. Appointment by the order of the Tribunal.
VI. Appointment by the Central Government.

DIRECTOR IDENTIFICATION NUMBER:

No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number or DIN. {Sec. 152(3)}

Every individual intending to be appointed as director of a company shall make an application for allotment of DIN to the Central Government Electronically in Form No. DIR-3 along with such fees as may be prescribed. {Sec. 153 and Rule DIR-9}

The Central Government shall, within one month from the receipt of the application, allot a DIN to an applicant in such manner as may be prescribed.

DISQUALIFICATION OF DIRECTORS:

The following persons cannot be appointed as a director or an additional director or an alternate director:

(i) Declared to be of unsound mind.
(ii) An undercharged insolvent.

(iii) Adjudicated insolvent.
(iv) Convicted by a Court of Law and sentenced to at least 6 months of imprisonment for an offence and a period of not less than 5 years has not lapsed from the date of expiry of such sentence.
(v) Failed to pay call on his shares for the last six months.
(vi) Has been disqualified by the Court of Law for fraudulent activities in the promotion or management of the company.
(vii) Has not applied for and allotted [under sec. 152(3)] the Director Identification Number or DIN. [Sec. 164(1)]
(viii) A private company may add any other disqualifications in its article of association for appointment of a director.

REMOVAL OF DIRECTORS

A director of a company may be removed by any of the following ways:

I. Removal by company/Members.
II. Removal by the Tribunal.

1. **Removal by Company/Members:**

I. **Ordinary resolution-** A company (the members of company) may by ordinary resolution at its general meeting, remove a director before the expiry of his period of office. However, the company may remove a director only after giving him a reasonable opportunity of being heard. But a company connot remove any of the following directors:
   a. Directors appointed (under Sec. 242) by the Tribunal
   b. Directors appointed (under Sec. 163) according to the principle of proportional representation. {Sec. 169(1)}

II. **Special Notice**- Any member intending to propose a resolution at a general meeting to remove a director shall give a special notice of the resolution to the company. {Sec. 169(2)} This notice shall be given at least 14 days before the meeting.

2. **Removal by the Tribunal:**

Sometimes, an application is made by a member or members of a company to the Tribunal for prevention of oppression and mismanagement (under Section 241) in the company. In such a case, if the Tribunal finds that a relief ought to be granted, it may terminate of modify any agreement between the company and its director or other managerial personnel. Consequently, such directors are removed from their office. (Sec. 242)

When appointment of a director etc. is so terminated, it shall be necessary for the Tribunal to satisfy the following conditions:

I. Notice of the intention to apply for leave has been served on the Central Government.
II. The Government has been given a reasonable opportunity of being heard in the matter. {Sec. 243(1)}

DUTIES OF DIRECTORS:

Duties of directors may be classified under two heads:

I. General duties under the companies Act.
II. Special duties under the companies Act.

1. **General Duties under the companies Act:**

I. To act in accordance with articles
II. To act in good faith to promote objects of the company
III. To perform duties with due and reasonable care and diligence

IV. Not to act in conflict of interest with the company
V. Not to achieve any undue gain
VI. Not to assign office

2. Special Duties under the Companies act:

I. To ensure full and correct disclosure in prospectus
II. To Sign the prospectus
III. To deliver prospectus to Registrar before issue
IV. To keep deposited application money in a scheduled bank
V. To deliver share certificates
VI. To sign and file annual return
VII. To call AGM
VIII. To lay financial statements before AGM
IX. To recommend dividend and pay
X. To prepare and attach directors ' report
XI. To file the financial statement with the Registrar
XII. To call Board meeting

POWERS OF DIRECTOR:

1. The Board of Director of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorized to exercise and do.
2. No regulation made by the company in general meeting shall invalidate any prior act of the board which would have been valid if that regulation had not been made.
3. The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolution passed at meeting of the Board, namely:-
   A. To make calls on shareholders in respect of money unpaid on their shares.
   B. To authorize buy-back of securities under section 68.
   C. To issue securities, including debentures, whether in or outside India.
   D. To borrow monies.
   E. To invest the funds of the company
   F. To grant loans or give guarantee or provide security on respect of loans.
   G. To approve financial statement and the Board's report
   H. To diversify the business of the company
   I. To approve amalgamation, merger or reconstruction
   J. To take over a company or acquire a controlling or substantial stake in another company.
   K. Any other matter which may be prescribed.
4. Nothing in this section shall be deemed to affect the right of the company in general meeting to impose restriction and conditions on the exercise by the Board of any powers specified in the section.

LIABILITIES OF DIRECTORS:

The liabilities of directors may be discussed under the following heads:

1. Liability to outsiders/third parties.
2. Liability to the company.
3. Civil/criminal liability to the law.
4. Liability for acts of co-directors.

1. Liability to outsiders/third parties:

I. Breach of implied warranty of authority
II. Omission or misstatement in the prospectus
III. Failure to repay application money on non-receipt of minimum subscription

IV. Failure to repay application money on refusal to list shares
V. Fraudulent trading

2. **Liability to the company:**
   I. Ultra vires acts
   II. Mala fide acts
   III. Negligence
3. **Civil/criminal liability to the law:**
   I. Issuing prospectus which includes any untrue statements
   II. Fraudulently inducing persons to invest money
   III. Failure to repay excess application money
   IV. Failure to file return of allotment
   V. Failure to make application for listing of securities in stock exchange
   VI. Failure to deliver share/debenture certificate within prescribed time after allotment or transfer
   VII. Failure to comply with provision regarding annual return
   VIII. Failure to hold AGM
   IX. Failure to distribute dividend within thirty days
   X. Failure to lay financial statements at AGM
   XI. Failure to comply with accounting standards in preparation of financial statement

4. **Liability for acts of co-directors:**
   A director can be liable for the acts of his co-directors only in the following cases,
   I. If the co-directors do any act with the knowledge of such other director
   II. If the other director participates in the meeting of the Board in which the act is done or approved
   III. If the other director participates in the meeting in which the minutes of the meeting are confirmed at which such act was approved
   IV. If the other director later gives his consent to the act done by the directors

MANAGING DIRECTORS:
A managing director means a director who is entrusted with substantial powers of management.
Characteristics:
1. Must be director of the company.
2. Entrusted with substantial powers of management
3. Chief executive officer
4. Eligible for reappointment
5. Can be more than one managing directors.
6. Subordinates to the Board of Directors

Conferred upon powers by agreement, resolution or provision of MOA

Conditions for appointment as a Managing or Whole – Time Director or a Manager
1. Must not had been sentenced to imprisonment or to a fine exceeding 1000Rs.
2. Must had not been detained
3. Must be of specified age
4. Ceiling on remuneration
5. Must be Resident in India
6. Approval in general meeting
7. Certificate of compliance

MAXIMUM LIMIT OF MANAGERIAL REMUNERATION :

Managerial remuneration means the remuneration payable to managerial personnel of a company. For the purpose of calculation and payment of managerial remuneration, the expression managerial personnel mean the following personnel:

A. Managing director of manager
B. Whole-time director
C. Other directors.

The maximum remuneration payable by a public company to its directors (MD, WD and part-time directors) and manager in respect of a financial year connot exceed 11 percent of the best profits of the company. {Sec. 197(1)}

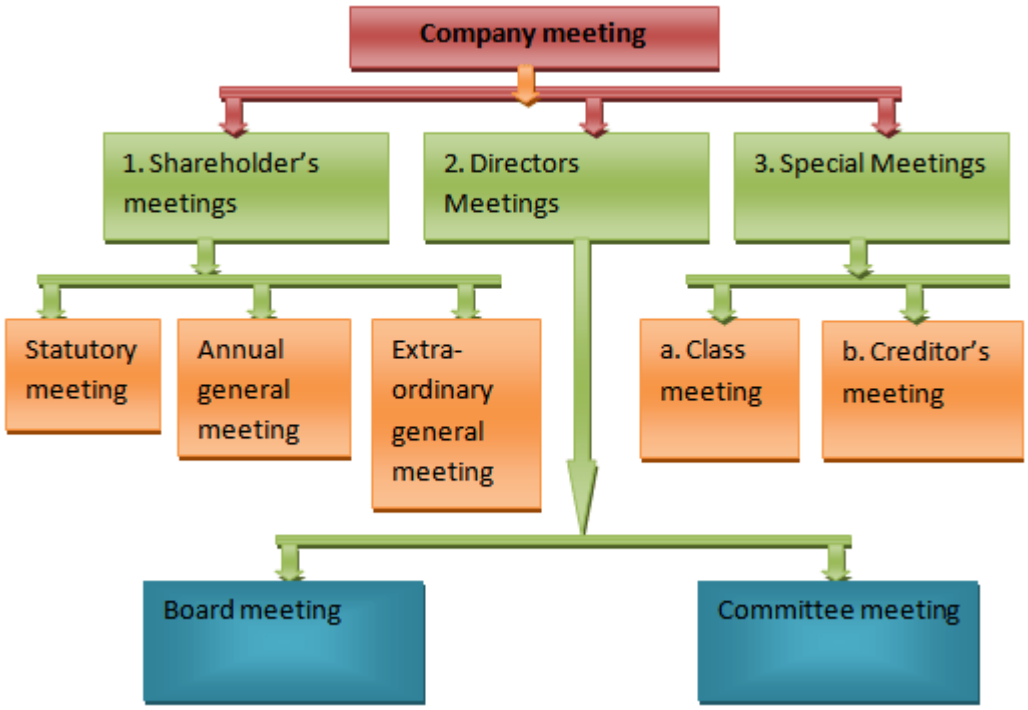
COMPANY MEETINGS

GENERAL PROVISION:- A meeting may be generally defined as a gathering or assembly or getting together of a number of persons for transacting any lawful business. For proper working of the company, it is necessary that the shareholders meet as often as possible and discuss matters of mutual interest and take important decision, there must be at least two persons to constitute a meeting.

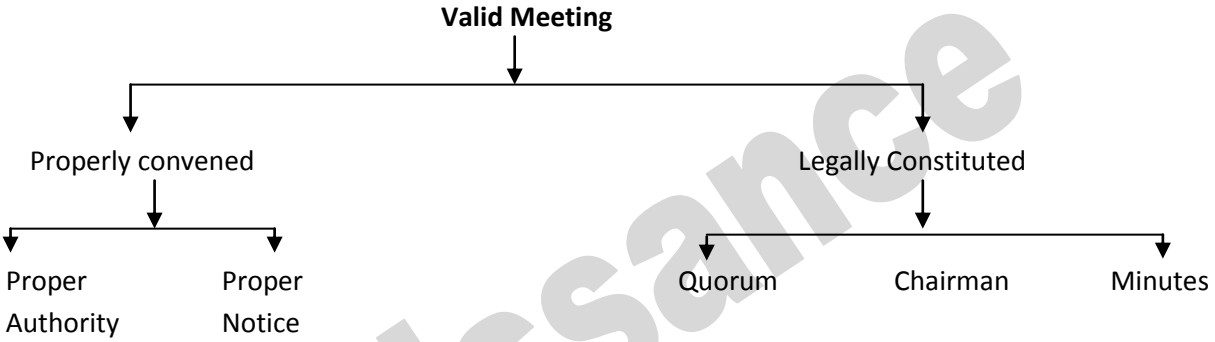
But every assembly or gathering do not constitute a meeting. Company meetings must be convened and held in perfect compliance with the various provisions of the Companies Act and the rules framed there under.

KINDS OF MEETINGS:

Company meetings are different kinds. The following chart depicts the various categories of meetings.



Requsisites of Valid Meeting: A meeting to be held valid, must satisfy the provisions laid down in the Act. Any irregularities in the procedure followed for convening and conducting the meeting will make the meeting invalid. So meeting must be properly convened and legally constituted.



(1) Meeting must be properly convened:
  (a) Proper authority must convene the meeting
  (b) Proper notice must be served in the prescribed manner to all the persons entitled to receive the notice.

(2) Meeting must be legally constituted
  (a) A quorum must be present
  (b) Proper Person must be in the chair
  (c) Minutes of the meeting shall be kept in prescribed manner.

Proper Authority :-

Proper authorities to call meeting are:

(a) Board of Directors: The articles of association of a company normally empower the Board of Directors to convene general meetings and they have this power at common law even if not conferred expressly on them.

(b) Members: If the directors do not call the meeting, then requisitionists (member) u/s 169 are eligible to call EGM.

(c) Central Government: An AGM can be called by Central Government u/s 167.

(d) National Company Law Tribunal (NCLT). An EGM can be called by NCLT u/s 186.

PROPER NOTICE :-

'Notice' means an advance intimation of the meeting so as to enable the person concerned to prepare himself for it. The notice must be clear and should state the purpose for which the meeting is called and the notice must be in writing.

It must be given at least 21 clear days before the date of the meeting. In case notice is sent by post, service of notice shall be deemed to have been effected at the expiry of 48 hours after it is posted.

Contents of Notice: Every notice must specify the date, day, place, hour of the meeting. In case, the particulars provided in the section 172 are not specified in the notice, the meeting will be held invalid.

(i) Place of Meeting :

- In case of AGM: at registered office of the company or at some other place within the same town, city, village, in which registered office of the company is situated.
- In case of any other meeting : not subject to aforesaid restriction.

(ii) Day of Meeting:

- In case of AGM: any day which is not a public holiday.
- In case of any other meeting : not subject to aforesaid restriction.

(iii) Time of Meeting:

In case of AGM: during business hours, but it may continue beyond usual hours.

(iv) Type of business:

- Ordinary Business
- Special Business

QUORUM :-

Quorum is the minimum number of members who are personally present and their presence is necessary to constitute meeting and to validates the transactions and resolutions passed in the meeting.

Requisite Quorum:

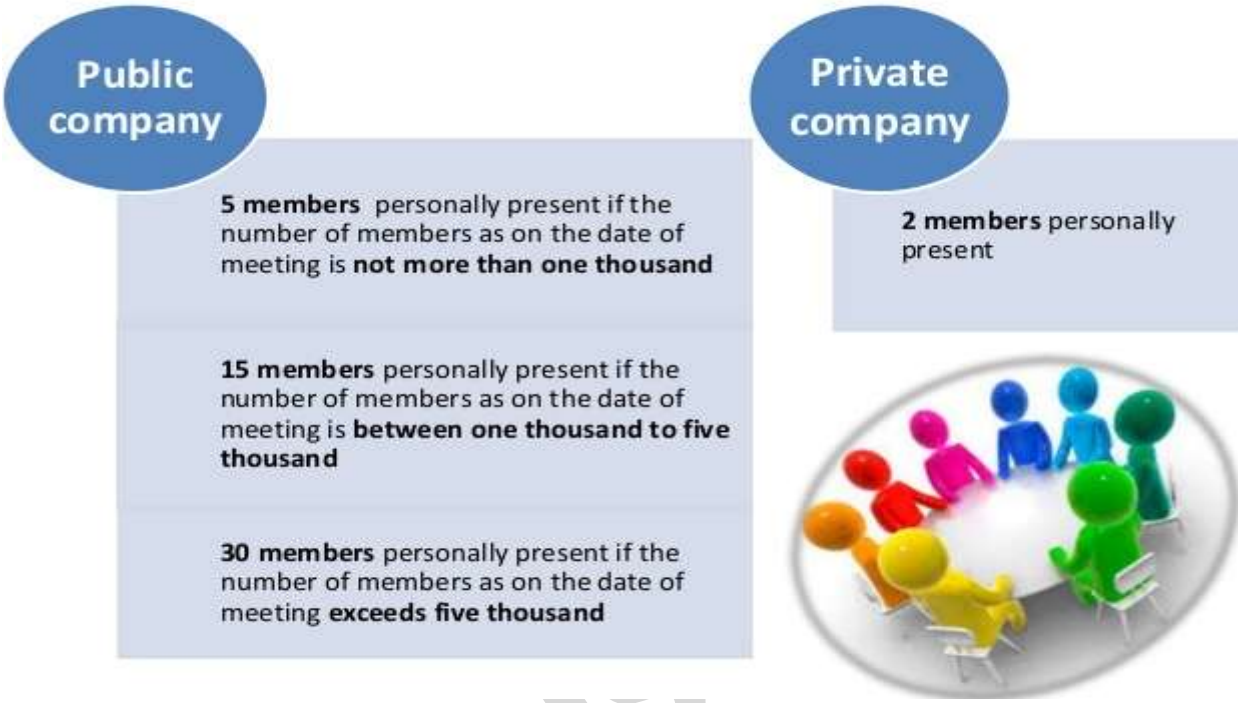
a) in case of a public company,—

(*i*) five members personally present if the number of members as on the date of meeting is not more than one thousand;

(*ii*) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand;

(*iii*) thirty members personally present if the number of members as on the date of the meeting exceeds five thousand;

(*b*) in the case of a private company, two members personally present, shall be the quorum for a meeting of the company.



PROXIES :-

Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf:

Provided that a proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll:

Provided further that, unless the articles of a company otherwise provide, this subsection shall not apply in the case of a company not having a share capital:
Provided also that the Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy:
Provided also that a person appointed as proxy shall act on behalf of such member or number of members not exceeding fifty and such number of shares as may be prescribed.

MINUTES :-

Minutes may be defined as the written record of the business transacted at a meeting. Every company shall keep Minutes of all Board and Committee Meetings in a Minutes Book. Minutes kept in accordance with the provisions of the Act evidence the proceedings recorded therein. Minutes help in understanding the deliberations and decisions taken at the Meeting.

(a) Writing of minutes: For this purpose, every company is required to make entries of the proceedings of its meetings in books kept for the purpose within 30 days of the conclusion thereof. Minutes have to be written by hand and typed minutes cannot be posted in the Minute Books.

(b) Signing of minutes: Every page of the book, with pages consecutively numbered, should be initialed or singed and the last page shall be dated and singed: (i) in the cases of Board or Committee minutes, by the Chairman of the meeting or the Chairman of the succeeding meeting; (ii) in the case of minutes of general meeting, by the Chairman o the meeting within the aforesaid period of 30 days of the conclusion of the meeting or in the event of death or inability of the Chairman, by the Director duly authorised for the purpose.

KINDS OF MEETINGS

STATUTORY MEETINGS:- Every Company limited by shares, and every company limited by guarantee and having a share capital, shall, within a period of not less than one month or not more than six months from the date at which the company is entitlted to commence business, hold a general meeting of the memebers of the country, which shall be called "the satatutory meeing." [Sec. 165(1)]

Legal provisions regarding statutory meeting

1. Obligation – Every company limited by shares and every co. limited by guarantee and having share capital is required to hold S.M.
2. Exempted companies-
   Companies exempted from holding statutary meeting –
   (i) Private company
   (ii) Company Limited by Guarantee having no share capital
   (iii) Companies with unlimited liabilities
   (iv) Government Co.
3. Time period of holding meeting- not less than one month or not more than six months from commencement.
4. Notice – at least 21 days
5. Statutory report certified by the directors
6. Certification by auditor
7. Forwarding statutory report to members
8. Delivery of report to Registrar
9. List of members to be kept open for inspection
10. Discussion by the members
11. Penalty- It default is made upto five thousand Rs.

Winding up- If a company fails to hold statutory meeting any contributory on the Registrar may apply to the Tribunal for winding up of the company.

Statutory Report :-
The Board of directors shall, at least 21 days before the day of the meeting, forward a statutory report inform No. 22 to every member of the company.

Contents of the report

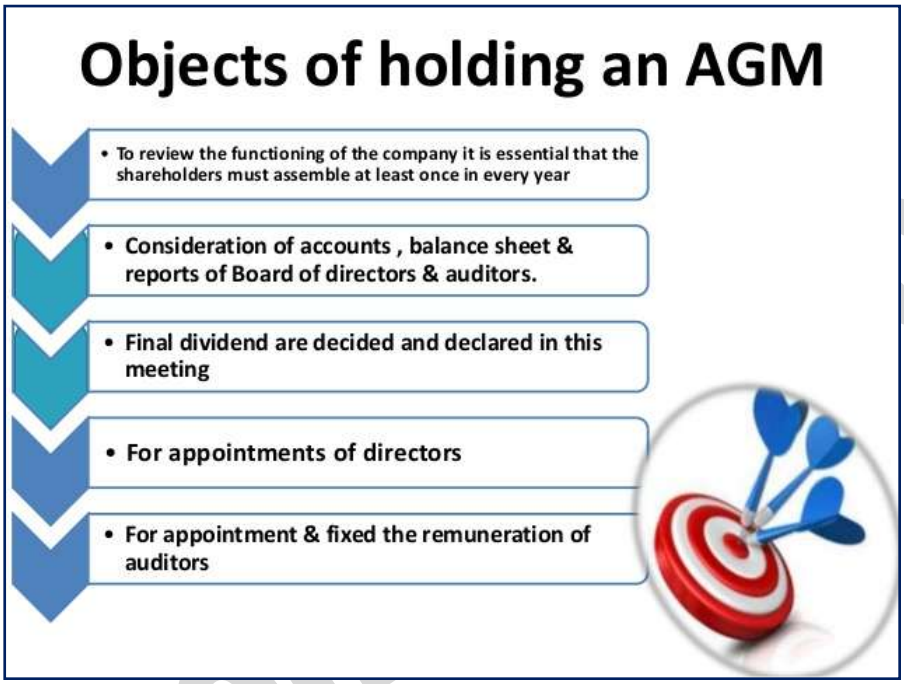
(1) Total shares allotted and consideration
(2) Cash received
(3) Abstract of receipts and payments
(4) Particulars of directors, auditors, manager and secretary
(5) Particulars of contracts
(6) Underwriting contract
(7) Calls in arrears from directors and manager
(8) Commission and brokerage

ANNUAL GENERAL MEETING

Meaning of AGM:
Every public as well as private company is required to hold at least one meeting of its members during every year. This meeting is called an annual general meeting. Thus annual general meeting is a mandatory for every company. The notice calling such meeting must specify in that it shall be the annual general meeting of the company.

Applicability – Every company whether public or private having share capital or not, limited or unlimited must hold AGM.

- **Section 96(1) of the Companies Act,2013** provides that every company, other than OPC, shall in each year hold (in addition to any other meetings) at least one meeting of its shareholders each year.



EXTRAORDINARY GENERAL MEETING (EGM)

Meaning and Needs for EGM:-

All general meetings other than annual general meetings are known as extraordinary general meetings. [Regulation 47 Table A]

A public company limited by shares and a company limited by guarantee and having a share capital, is required hold a statutory meeting. This general meeting is also not included in extraordinary general

meetings. Therefore, it can be said that all general meetings than the statutory general meetings and annual general meetings are extraordinary general meetings.
Extraordinary general meetings are called for transaction some urgent or special business. Therefore, all business transacted at such a meeting is a special business. Any business other than ordinary business is called special business. Illustrations of special business are as follows:

1. Alternation of any of the clauses of the memorandum.
2. Alternation of the clauses of articles of the company.
3. Reconstitution of the Board of directors. [L.I.C. of India V. Escorts, (1986) 60 Comp Cases 659 SC]

Who can call EGM?

(A) By the Board of Directors -

(ii) By the Board of Directors on its own motion
(iii) By Board of directors on the requisition of members.

(B) By the Requisitionists –

(i) By the requisitionists themselves or
(ii) In case of a company having a share capital by the requisitionists who hold at least one-tenth of the total paid up share capital or
(iii) In case a company not having share capital, by such of the Requisitionists as represent not less than one tenth of the voting power of the members of the company.

(C) By the Tribunal –

(i) Either on its own motion or
(ii) On the application of any directors of the company or
(iii) On an application of any member entitled to vote at that meeting

CLASS MEETINGS :-

Class meetings are those meetings which are held by the holders of particular type or class of shares, e.g., preference shareholders class. Such meetings are held when it is proposed to vary the rights of a particular class of shareholders.
Subject to the following conditions:

(i) The provision with respect to such variation must be contained in the memorandum or articles of the company.
(ii) In the absence of any such provision in the memorandum or articles, such variation must not be prohibited by the terms of issue of the shares of that class.

MEETING OF CREDITORS :-

Sometimes, company calls meetings of its creditors. Such meetings may be called either during life of the company or in the event of its being wound up. Meetings of the creditors are called in the following cases:

1. To finalise reorganisation or reconstruction or the capital of the company.
2. to accept a scheme of arrangement or compromise., or to settle any existing between the company and creditors.
3. to pass a special resolution by creditors for voluntary winding up of the company.
4. Where the process of creditors voluntary winding up exceeds one year, the liquidators may call a meeting of the creditors and present before them his actions during the year.
5. A final meeting of the creditors called by the liquidator (in the case of creditors voluntary winding up) to dissolve the company.

MEETING OF DEBENTURE HOLDERS :-

When a company issues secured debentures, it executes a trust deed. The deed empowers the debenture holder to hold meetings and to pass resolutions to vary their rights in certain cases. All matters relating to holding, conduct, and proceedings of the meetings are given in the trust deed. The decisions arrived at such meetings with requisite majority are binding up all the debenture holders.

BOARD MEETINGS :-

Meaning:- The affairs of a Company are managed by the Board of Directors. In other words, powers delegated by a company to its directors must be exercised at properly convened and duly constituted meeting generally referred to as Board meeting. Only acts done at duly constituted meetings are therefore valid, unless the articles provide otherwise.

Legal provisions regarding Board meetings-

The board of directors is the supreme authority in a company and they have the powers to take all major actions and decisions for the company. The board is also responsible for managing the affairs of the whole company.

For the effective functioning and management, it is imperative that board meetings be held at frequent intervals. For this, Section 173 of Companies Act, 2013 provides –

In the case of a Public Limited Company, the first board meeting has to be held within the first 30 days, since the incorporation date. Additionally, a minimum of 4 board meetings must be held in a span of one year. Also, there cannot be a gap of more than 120 days between two meetings.

In the case of small companies or one person company, at least two meetings must be conducted, one in each half of the financial year. Additionally, the gap between the two meetings must be at least 90 days. In a situation where the meeting is held at a short notice, at least one independent director must be attending the meeting.

Notice of Board Meeting

The notice of Board Meeting refers to a document that is sent to all directors of the company. This document informs the members about the venue, date, time, and agenda of the meeting. All types of companies are required to give notice at least 7 days before the actual day of the meeting**.**

Quorum for the Board Meeting

The quorum for the Board Meeting refers to the minimum number of members of the Board to conduct a valid Board Meeting. According to Section 174 of Companies Act, 2013, the minimum number of members of the board required for a meeting is 1/3rd of a total number of directors.

At any rate, a minimum of two directors must be present. However, in the case of One Person Company, the rules of Section 174, do not apply.

Participation in Board Meeting

All directors are encouraged to actively attend board meetings and in case that's not possible at least attend the meetings through a video conference. This is so that all directors can take part in the decision-making process.

Requirements for Conducting a Valid Board Meeting

- **Right Convening Authority**

The board meeting must be held under the direction of proper authority. Usually, the company secretary (CS) is there to authorize the board meeting. In case the company secretary is unavailable, the predetermined authorized person shall act as the authority to conduct the board meeting.

- **Adequate Quorum**

The proper requirements of the quorum or the minimum number of Directors required to conduct a Board meeting must be present for it to be considered a valid board meeting.

- **Proper Notice**

Proper notice is one of the major requirements to be fulfilled when planning a board meeting. Formal notice has to be served to all members before conducting a board meeting.

- **Proper Presiding Officer**

The meeting must always be conducted in the presence of a chairman of the board.

- **Proper Agenda**

Every board meeting has a set agenda that must be followed. The agenda refers to the topic of discussion of the board meeting. No other business, which is not mentioned in the meeting must be considered.

UNIT-V

Majority powers and minority rights:

INTRODUCTION

In the corporate world, all democratic decisions and management of a company are made with the majority rule which is deemed to be fair and justified. Majority power has great importance in the working of a company and the "Courts will not generally intervene at the instance of the shareholder in matters of internal administration. Courts will not interfere with the management of a company by its Board of Directors so long as they are acting within the powers conferred on them under the articles of the company.

It follows that the majority of the members enjoy the supreme authority to exercise the powers of the company and generally to control its affairs and the minority shareholders have to concede to the majority decision. This, however, may lead to a possibility that the members having majority vote may tend to be oppressive towards the minority shareholders misusing their majority strength.Because of this reason, it has been said that "the protection of the minority shareholders within the domain of corporate activity constitutes one of the most difficult problems facing modern company law. The aim must be to strike a balance between effective control of the company and the interests of the small individual shareholders. To overcome this problem faced by the minority, the Companies Act, 2013 came up with the solution to tackle the problems which are usually faced by the minority shareholders.

Majority powers and minority rights

Principle of majority rule- The Company is governed and managed by the will of the majority of the shareholders the overall powers are exercised through general meeting except the powers specifically vested in the board of directors, and question relating to management are derived by a simple majority or by a special majority of the votes of equity shareholders. It is known as the majority rule, once the decision has taken it become binding or all the shareholders including the minority shareholders Therefore, the interest of minority shareholders requires protection.

The principle that the will of the majority should prevail and bind the minority is known as the principle of majority rule. The basic principle of non-inference with the internal management of company by court was laid down in Foss vs. Harbottle.

Advantages of rule of Foss Vs Harbottle

a. Will of majority should prevail
b. Recognition of separate legal entity
c. multiplication of Futile suits avoided

d. The court's order may be made ineffective

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."

Oppression takes place in a company when the affairs of the company are conducted in a manner which or tyrannical of unfair of prejudicial or oppressive to any or some of the members or to public interest or to the interest of the company.

Mismanagement:

Mismanagement is said to exist in a company when by reason of a material change in the management or control of the company, the affairs of the company are likely to be conducted in a manner prejudicial to its own interest or to its members or to any classes of members.

Mismanagement is not uncommon in companies. It means mismanagement of resources by following means:

1. Absence of basic records of the company
2. Drawing considerable expenses for personal purposes by directors/management of the company.
3. Not filing documents with The Registrar of Companies relating to compliances under The Companies Act,1956
4. Misuse of companies finances/funds
5. Sale of assets at very low prices
6. Violation of provisions of law and memorandum or article of association of the company.
7. Making Secret Profits
8. Diverting company funds for personal use of directors
9. Continuation in office by director beyond the specified term and not holding any qualification shares.

PREVENTION OF OPPRESSION AND MISMANAGEMENT:

Previsions regarding prevention of oppression and mismanagement in a company are as follow:

Ground for application to Tribunal:

1. **Ground for Application by a member-** Any member of a company (who is entitled to apply for relief to the Tribunal under Sec. 244) may apply to the Tribunal for an order on any the following grounds:

a) If the affairs of the company have been or are being conducted in a manner prejudicial to (i) public interest, or (ii) prejudicial or oppression to him, or to any other member, or to other members, or (iii) prejudicial to the interest of the company.

b) If any material change has taken place in the management or control of the company and by reason of such a change it is likely that the affairs of the company will be conducted in a manner prejudicial to its own interest or to its members or any class of members.

2. **Grounds for application by Central Government –** The Central Government may apply to the Tribunal if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, {Sec. 241 (1)}

Persons Entitled to Apply:

The following persons are entitled to apply to the Tribunal:

1. **Member or members of the company**- The following member or members are entitled to apply to the Tribunal for relief in case oppression or mismanagement:

a) **In case of a company having a share capital-** Any of the following members can apply for relief:
   (i) Not less than 100 member or not less than one-tenth of the total members (at least 10% members) of the company, whichever is less.
   (ii) Any member or members holding not less than one-tenth of the issued share capital (at least 10% of capital) of the company. But such applications must have paid all calls and other sums due of their shares.

b) **In case of a company not having a share capital**- Not less than one-fifth or the total members (at least 20% members) of the company can apply for relief to the Tribunal. {Sec. 244(1)}

However, the Tribunal may, on an application made to it in this behalf, waive all or any the requirements specified above so as to enable the members to apply to the Tribunal.

Joint-holders counted as one- Where any share or shares are held by two or more persons jointly, they shall be counted only as one member. {Explanation to Sec.244(1)}

Any entitled member may apply with the consent of others – Where amy members of a company are entitled to make an application, any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them. {Sec. 241 (1)}

2. **Central Government** – If the Central Government is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order. {Sec. 241 (2)}

In addition, the following persons are also entitled to apply for relief from oppression or mismanagement:

3. **A legal representative-** A legal representative of a deceased member (who is entitled to transmission of shares by operation of law) is entitled to apply to the Tribunal. Such representative may present petition even before the registration of those shares in his shares in his actual name.
4. **Trustees-** Trustees of a shareholder/member may also apply to the Tribunal.

Winding up of a company

Winding up of a company is defined as a process by which the life of a company is brought to an end and its property administered for the benefit of its members and creditors. An administrator, called the liquidator, is appointed and he takes control of the company, collects its assets, pays debts and finally distributes any surplus among the members in accordance with their rights. At the end of winding up, the company will have no assets or liabilities. When the affairs of a company are completely wound up, the dissolution of the company takes place. On dissolution, the company's name is struck off the register of the companies and its legal personality as a corporation comes to an end.

Difference between dissolution and winding up

1. Winding Up is first stage where assets/liabilities are realised/paid-off; Dissolution is final stage where company ceases to exist.
2. Winding up is carried on by liquidator appointed by company/court; Order for dissolution is given by court only.
3. Liquidator can represent company during winding up till dissolution; After dissolution liquidator don't represent co.
4. Creditors can prove their debts in winding up but not on dissolution
5. Winding up always don't lead to dissolution

Winding up a Registered Company

The Companies Act provides for two modes of winding up a registered company:

A . Winding up by the Tribunal

B. Voluntary Winding Up

A. Winding up by the Tribunal or Grounds for Compulsory Winding Up

The petition for winding up to the Tribunal may be made by:-

- The company, in case of passing a special resolution for winding up.
- A creditor, in case of a company's inability to pay debts.
- A contributory or contributories, in case of a failure to hold a statutory meeting or to file a statutory report or in case of reduction of members below the statutory minimum.
- The Registrar, on any ground provided prior approval of the Central Government has been obtained.
- A person authorized by the Central Government, in case of investigation into the business of the company where it appears from the report of the inspector that the affairs of the company have been conducted with intent to defraud its creditors, members or any other person.
- The Central or State Government, if the company has acted against the sovereignty, integrity or security of India or against public order, decency, morality, etc.

The following circumstances for the winding up of accompany by the court:

a) If the company has, by a Special Resolution, resolved that the company be wound up by the Tribunal.
b) If default is made in delivering the statutory report to the Registrar or in holding the statutory meeting. A petition on this ground may be filed by the Registrar or a contributory before the expiry of 14 days after the last day on which the meeting ought to have been held. The Tribunal may instead of winding up, order the holding of statutory meeting or the delivery of statutory report.
c) If the company fails to commence its business within one year of its incorporation, or suspends its business for a whole year. The winding up on this ground is ordered only if there is no intention to carry on the business and the Tribunal's power in this situation is discretionary.
d) If the number of members is reduced below the statutory minimum i.e. below seven in case of a public company and two in the case of a private company.
e) If the company is unable to pay its debts.
f) If the tribunal is of the opinion that it is just and equitable that the company should be wound up.
g) Tribunal may inquire into the revival and rehabilitation of sick units. It its revival is unlikely, the tribunal can order its winding up.
h) If the company has made a default in filing with the Registrar its balance sheet and profit and loss account or annual return for any five consecutive financial years
i) If the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

B. Voluntary Winding Up of a Registered Company

When a company is wound up by the members or the creditors without the intervention of Tribunal, it is called as voluntary winding up. It may take place by:-

- By passing an ordinary resolution in the general meeting if: -
  - (i) the period fixed for the duration of the company by the articles has expired; or
  - (ii) Some event on the happening of which company is to be dissolved, has happened.
- By passing a special resolution to wind up voluntarily for any reason whatsoever.

Within 14 days of passing the resolution, whether ordinary or special, it must be advertised in the Official Gazette and also in some important newspaper circulating in the district of the registered office of the company.

The Act provides two methods for voluntary winding up:-

1. Members' voluntary winding up
2. Creditor's voluntary winding up

1. Members' voluntary winding up

It is possible in the case of solvent companies which are capable of paying their liabilities in full. There are two conditions for such winding up:-

a) A declaration of solvency must be made by a majority of directors, or all of them if they are two in number. It will state that the company will be able to pay its debts in full in a specified period not exceeding three years from commencement of winding up. It shall be made five weeks preceding the date of resolution for winding up and filed with the Registrar. It shall be accompanied by a copy of the report of auditors on Profit & Loss Account and Balance Sheet, and also a statement of assets and liabilities upto the latest practicable date; and

b) Shareholders must pass an ordinary or special resolution for winding up of the company.

The provisions applicable to members' voluntary winding up are as follows:-

a) Appointment of liquidator and fixation of his remuneration by the General Meeting.
b) Cessation of Board's power on appointment of liquidator except so far as may have been sanctioned by the General Meeting, or the liquidator.
c) Filling up of vacancy caused by death, resignation or otherwise in the office of liquidator by the general meeting subject to an arrangement with the creditors.
d) Sending the notice of appointment of liquidator to the Registrar.
e) Power of liquidator to accept shares or like interest as a consideration for the sale of business of the company provided special resolution has been passed to this effect.
f) Duty of liquidator to call creditors' meeting in case of insolvency of the company and place a statement of assets and liabilities before them.
g) Liquidator's duty to convene a General Meeting at the end of each year.
h) Liquidator's duty to make an account of winding up and lay the same before the final meeting.

2.Creditor's voluntary winding up

It is possible in the case of 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 winding up proceedings are dominated by the creditors.

The provisions applicable to creditors' voluntary winding up are as follows:-

- The Board of Directors shall convene a meeting of creditors on the same day or the next day after the meeting at which winding up resolution is to be proposed.
- A statement of position of the company and a list of creditors along with list of their claims shall be placed before the meeting of creditors.
- A copy of resolution passed at creditors' meeting shall be filed with Registrar within 30 days of its passing.
- It shall be done at respective meetings of members and creditors. In case of difference, the nominee of creditors shall be the liquidator.
- A five-member Committee of Inspection is appointed by creditors to supervise the work of liquidator.
- Fixation of remuneration of liquidator by creditors or committee of inspection.
- Cessation of board's powers on appointment of liquidator.

As soon as the affairs of the company are wound up, the liquidator shall call a final meeting of the company as well as that of the creditors through an advertisement in local newspapers as well as in the Official Gazette at least one month before the meeting and place the accounts before it. Within one week of meeting, liquidator shall send to Registrar a copy of accounts and a return of resolutions.

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