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.

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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.

Definition of a Company

Company : sec.3 (1)(i)- " Company means a company formed and registered under this Act or an existing company"

clause (ii) of Sec.3 (1) defines an existing company as follows :

"Existing company" means a company formed and registered under any of the previous companies laws…"

Thus, every such organization would be a company which is registered under the relevant law as a company before or after the enactment of the companies Act, 1956.

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".

Haney : "A Company is an artificial person created by law having separate entity with a perpetual succession and common seal."

SPECIAL FEATURES OF A COMPANY

1. Incorporated entity
2. Artificial person
3. Separate legal identity
4. Limited liability
5. Perpetual succession
6. Transferable shares
7. Separate property
8. Common Seal
9. Capacity to sue and be sued
10. Governance by majority

LIFTING OR PIERCING CORPORATE VEIL

Lifting of corporate veil is a fiction of law which means disregarding the separate legal entity of a company and identifying the realities which lay behind the legal façade. In applying this doctrine, the court ignores the company and concerns itself directly with the members or directors.

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

I. Statutory Exceptions-

1. When the number of members falls below statutory minimum (Sec. 45)
2. Misdiscription in prospectus (Sec. 62)
3. Failure to refund application money [Sec.69 (5)]
4. Misdiscription representation of name (Sec. 147)
5. Subsidiary company (Sec. 212 & 214)
6. For investigation into affairs of related companies (Sec. 239)
7. for investigation of ownership of a company (Sec. 247)
8. Fraudulent conduct (Sec. 542)
9. Liability for pre-incorporation contracts

II. Judicial Exceptions –

1. Determination of character of company
2. For protection of revenue
3. Prevention of fraud
4. Where the company is acting as the agent of the shareholders
5. Avoidance of welfare laws
6. To punish for contempt of court

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KINDS OF COMPANIES

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

A. Mode of formation.
B. Permitted number of members.
C. Liability of members
D. Control of management.

A. **ON THE BASIS OF MODE OF FORMATION**

There are two modes under which a corporate body may be formed; one, through a special Act of parliament, and two, through registration under the Companies Act.

1. **Statutory Companies**: Corporations created under the special legislations of parliament or state legislatures may be called statutory companies; examples: Life Insurance Corporation of India, Food Corporation of India etc. The Acts creating such corporations would include in them all necessary rules and regulations for the corporate bodies so created.
2. **Registered Companies**: A corporate body registered under the Companies Act, 1956 would be called the registered company.

B. **ON THE BASIS OF PERMITTED NUMBER OF MEMBERS**

1. Private company

Sec. 3 (iii) has defined a private company as follows :

A private company means a company which has a minimum paid-up capital of one lakh rupees or such higher paid-up capital as may be prescribed, and by its articles.

(a) restricts the right to transfer its shares, if any;
(b) Limits the number of its members to 50 not including.
  (i) persons who are in the employment of the company; and
  (ii) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased.
(c) Prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company; and
(d) Prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives.

2. **Public company**

Sec. 3 (1) (iv) has defined a public company as follows :

Public Company ; A public company means a company which –

(a) is not a private company;
(b) has a minimum paid-up capital of five lakh rupees or such higher paid-up capital, as may be prescribed;
(c) is a private company which is a subsidiary of a company which is not a private company.

(C) ON THE BASIS OF LIABILITY OF MEMBERS

(a) Limited liability companies
  (i) Limited by shares
  (ii) Limited by guarantee
(b) Unlimited companies

1. **Company limited by shares**. In the matter of members liability, this is the most common type of company. Such a company must have a share capital. The members liability is limited up to the amount of shares held. Sec. 12(2) (a) states that such a company would be:
2. **Guarantee company**. This is also called a company limited by guarantee. The guarantee is received from the members. Such a company may or may not have share capital. This is also a limited liability company but the amount of members liability is based not on the shares held but on the guarantee given by the members. Sec. 12(2) (b) states that this is a company having the liability of its members limited by the memorandum to such amount as the

members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being would up.

3. **Unlimited company**. The unlimited company may or may not have share capital. The members liability being unlimited, the quantum of share capital is not a very crucial mater. If it has share capital, it can be easily increased or reduced by altering the Articles. The restrictions on changes in capital are not relevant for an unlimited liability company. Such a company may purchase its own shares and is free from the restrictions provided by Sec. 77.

(D) **ON THE BASIS OF CONTROL OVER MANAGEMENT**

A company is supposed to be autonomous in running its affairs but working under the supervision of law. Sometimes, however, a company may exercise control over another company. The former would be called a holding company and the latter its subsidiary company.

1. **Holding company**. A company would be a holding company in relation to another company if it possesses control over the other company. Sec 4(4) states that a company shall be deemed to be the holding company of another if, but only if, that other is its subsidiary.
2. **Subsidiary company**. Sec. 4(1) describes a subsidiary company as follows:

Subsidiary company: A company shall be deemed to be a subsidiary of another if, but only if,

(a) that other controls the composition of its Board of directors; or

(b) that other -

(i) where the first mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of equity shares, exercises or controls more than half of the total voting power of such company;

(ii) where the first mentioned company is any other company, holds more than half in nominal value of its equity share capital; or

(c) the first mentioned company is a subsidiary of any company which is that other's subsidiary.

Company M holds share capital of Rs. 5,00,000 out of Rs. 18,00,000 share capital in company R. Its subsidiary company N holds Rs. 4,50,000 capital in company R. Company R world be the subsidiary of company M since company M and its subsidiary company N together hold a majority share capital in company R.

CERTAIN OTHER KINDS OF COMPANIES

1. Non profit companies or Section 25 companies

It is not uncommon for people to form organizations or associations to pursue non business objectives, such as promotion of art, culture, science and commerce etc. Such associations may or may not be registered. If members do desire registration, then one of the options would be to get the registration under the Companies Act, 1956. Sec. 25 of the Act facilitates the registration of such non business associations as a company under the Act. For this reason, these associations are called Section 25 companies.

2. Government companies

A Government company is such a company registered under the Act in which not less than 50% of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary of a Government company as thus defined (Sec. 617).

3. Foreign companies

Foreign companies are defined in Sec. 59(1) as follows:

Foreign company: Foreign companies are the companies falling under the following two categories:

(a) Companies incorporated outside India which, after the commencement of this Act, establish a place of business within India; and

(b) Companies incorporated outside India which have, before the commencement of this Act, established a place of business within India and continue to have an established place of business within India at the commencement of this Act.

4. One-man company

Where almost the entire shareholding in a company is under the ownership of a single person, while a few more members, usually the family members, are there in the company to comply with the requirements of minimum number of members, such a company is commonly called a one-man company or a family company.

PRIVILEGES AND EXEMPTIONS AVAILABLE TO PRIVATE COMPANIES

The following privileges and exemptions are available to a private company:

1. The provisions of Sec. 81 dealing with the further issue of shares do not apply to a private company. So, the shares of a private company, in the event of further issue of capital, need not first be offered to the existing shareholders.
2. A certificate for commencement of business is not necessary for a private company (Sec. 149). It can commence its business as soon as the certificate of incorporation is obtained.
3. A private company need not hold a statutory meeting and file a statutory report [Sec. 165(10)].
4. In case of a private company, under Sec. 179, in a general meeting of the company, a demand for poll on a resolution, may be made by only one member.
5. At the time of getting the company incorporated with the Registrar of companies, the directors of a private company are not required to file with the Registrar their consent in writing to act in that capacity and the undertaking to take up qualification shares.
6. It can proceed to allot shares without having to wait for any such thing as minimum subscription.
7. A life director appointed by a private company on or before April 1, 1952, cannot be removed by the company in general meeting.
8. A private company need not keep an index of members (Sec. 151).
9. Financial assistance to acquire own shares. A private company is not prohibited from giving financial assistance to any one for purchasing or subscribing for its own shares (Sec. 77).
10. Share capital and voting rights. The provisions that there should be only two kinds of share capital i.e. equity share capital and preference share capital, and that voting rights should be proportionate to the capital paid-up, are not applicable to a private company.
11. Provisions as to general meetings. The provisions of sections 171 to 186 relating to the holding of general meetings do not apply on a private company.
12. Managerial remuneration. A private company is exempted from the provisions of Sec. 198 which fixes the overall limit to the managerial remuneration at 11% of net profits.
13. Appointment of firm or body corporate. A private company may appoint a firm or body corporate to any office or place of profit under it for any period.
14. Restriction on disclosure of profit and loss. No person other than a member of the company is entitled to inspect the profit and loss account of a private company in the office of the Registrar (Sec. 220).

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 (Sec. 12).

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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 (Sec. 3).
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 (Secs. 3 and 82).
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 (Sec. 252).
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 (Secs 258 and 259).
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 (Sec. 255).
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 (Sec. 256).
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 (Sec. 174).

When does a private company become a public company?

1. **Conversion by default (Sec. 43).** Where a default is made by a private company in complying with the essential requirements of a private company (viz., restriction on transfer of shares, limitation of the number of members to 50 and prohibition of invitation to the public to buy shares or debentures), the company ceases to enjoy the privileges and exemptions conferred on a private company. In such a case, the provisions of the Companies Act apply to it as if it were not a private company.

2. **Conversion by operation of law (deemed public company)** The Companies (Amendment) Act, 1960 introduced a new Sec. 43-A with a view to deal with those private companies which employed public money to a large extent but escaped the restrictions and limitations as to disclosure as apply to public companies J
   The Companies (Amendment) Act, 2000 abolished Sec. 43-A with effe from 13th December, 2000.

3. **Conversion by choice or volition** (Sec. 44). If a private company so alters its Articles that they do not contain the provisions which make it a private company, it shall cease to be a private company as on the date of the alteration. Il shall then file with the Registrar, within 30 days, either a prospectus or a statement in lieu of prospect us..

A private company which becomes a public company shall also

1. File a copy of the resolution altering the Articles
2. Take steps to raise its membership to at least 7 if it is below that number
3. Alter the regulations contained in the Articles which are inconsistent with those of a public company

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Conversion of a public company into a private company

A public company may be converted into a private company by passing a special resolution. The special resolution should be to change the Articles of the company so as to include the conditions as prescribed in Sec. 3 (!) (iii) Which make a company a private company? An alteration made in the Articles which has the effect of converting a public company into a private company shall have effect only when such alteration has been approved by the Central Government. Where the alteration has been approved by the Central Government a printed copy of the Articles as altered shall be filed by the company with the Registrar within 1 month of the date of receipt of approval.

FORMATION OF A COMPANY

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

1. Promotion;
2. Incorporation or Registration:
3. Capital Subscription;
4. Commencement of Business

Of these stages only the first two are necessary for the formation of a private company, and of a public company not having any share capital. A public company having a share capital has to pass through all the four stages mentioned above before it can commence business or exercise any borrowing powers. (Sec. 149)

PROMOTION

Before a company can be formed, there must be some persons who intended to form a company and who take the necessary steps to carry that intention into operation. Such persons are called promoters. The promotion of a company is a comprehensive terms denoting that process by which a company is incorporated and floated, or established financially as a joint concern, by the issue of a prospectus.

The 'promotion' is the first stage in the formation of a company. Promotion may be defined as "the discovery of business opportunities and the subsequent organisation of funds, property and managerial ability into a business concern for the purpose of making profit there from."

The Promoter

"A person who originates a scheme for the formation of the company, has the memorandum and articles prepared, executed and registered and finds the first directors and settles the terms of the preliminary contracts and prospectus (if any) and making arrangement for advertising and circulating the prospectus and placing the capital is a promoter."

A person may be a promoter even if the undertakes a lesser active role in the formation of a company. Section 62(6) makes it clear that person who acts in a professional capacity is not a promoter, like an advocate, solicitor and auditor.

Who can be a promoter:- A promoter may be a natural person or a company, firm or association of persons, whether a person is or is not a promoter depends upon the nature of the role played by him in the promotion of business.

Functions/Role of a Promoter

1. **To originate the scheme for formation of the company:** Promoter conceives the idea of forming a company after a through study of the business world and identify the business fields which are unexplored or may be explored further.
2. **To secure the cooperation of the required number of persons willing to associate themselves with the project:** In fact, the minimum number of members required to join a private company is two and in case of a public company seven.
3. **Nomenclature:** The promoters have to verify from Registrar of Companies whether the proposed name is available. Promoters usually give three names in order of preference.
4. **To get the documents of the proposed company prepared:** No company can be incorporated unless the M.O.A. and A.O.A. and other documents are not field with the Registrar. Since the company takes birth from the date when certificate of incorporation is issued.

5. **To appoint bankers, legal advisors of the company:**
6. **Arrangement of capital:** If a company is to be incorporated as a private company, it has to make arrangement of its capital through private sources as a private cannot invite public to subscribe for its shares.

However, if the company is to be incorporated as a public company and it intends to invite public for subscribing its shares, then the promoters have to prepare the prospectus.

Consent of Directors: Since the first directors are to be appointed by the promoters so they must get the consent of such persons who are to be so appointed.

7. **To enter into preliminary Contracts with the Vendors:**
8. **To arrange for filing of the necessary documents with the Registrar:**

Legal Position of Promoters

While the accurate description of a promoter may be difficult, his legal position is quite clear.

A Promoter is neither a trustee nor an agent:- The reason is that a person cannot act as an agent or trustee for a person who is non-existent and the company is non-existent at the time when the promoters act for it.

Fiduciary relations with the company: - It does not mean that the promoters do not have any legal relationship with the proposed company. The legal position of a promoter can be correctly described by saying that he stands in a fiduciary position (relationship of trust and confidence) in relation to the company be promoted.

Duties of Promoters

Since the promoters occupies a position of total trust and confidence in relation to the company promoted by him. The promoters in their fiduciary capacity have the following duties:

1. **Duty not to make any secret profit:** A promoter cannot make either directly or indirectly any profits at the expenses of the company he promotes, without the knowledge and consent of the company and that if he does so, in disregard of this rule, the company can compel him to account for it.

   In case, a promoter makes a secret profit, the company has the following remedies against him:

   (a) **Rescission of the contract:-** The Company may rescind the contract, in which the promoter has made secret profits.

   (b) Order for repayment of secret profits.

2. **Duty to make full disclosure to the company o all relevant facts:** It is the duty of the promoter to disclose to the company all relevant facts including any profit made from the sale of his own property to the company and his personal interest in a transaction with the company.

   Erlanger vs. New Sombrero Phosphate Co. (1878) 3 A.C. 1218.

3. **Duty towards future allotttees:** It is a study of the promoters to ensure that the real truth is disclosed to those who are induced by the promoters to join the company and the future allottees of the shares.

Liability of Promoters:-

(1) Selection 56 lays down matters to be stated and reports to be set out in the prospectus. Promoter may be held liable for the non-compliance of the provisions of this section.

(2) Under section 62, a promoter is liable for any untrue statement in the prospectus to a person who has subscribed for any shares or debentures on the faith of the prospectus.

(3) Section 63 specifies the criminal liabilities for issuing a prospectus which contains untrue statement. The punishment prescribed, is imprisonment for a term which may extend to two years or with fine which may extend to Rs. 50,000 or with both.

(4) A promoter can be held liable if he had mis-applied or retained any of the property of the company or is found guilty of breach of trust or misfeasance in relation to the company.

Remuneration to Promoters:-

The promoters cannot claim as a matter right any remuneration from the company for the service rendered for a company that is yet in existence. Even where the articles of a company

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specifically provide that a specified sum may be paid to the promoters for their services, it does not give the promoters a right to claim remuneration or to sue the company for the same.
However, the normal ways of rewarding the promoters for their valuable services are as follows:

(i) They may be paid a lump sum either in cash or in the form of shares or debentures of the company.
(ii) They may be given commission on the purchase price of the business taken over by the company.
(iii) They may be inducted into the Board of Directors.
(iv) He may be allowed to sell his own property to the company for cash at an inflated price, after he has made a full disclosure about the valuation and the profit earned to an independent Board of Directors.
(v) The company may give him an option to subscribe for a certain number of the company's unissued shares at par when their market price is higher.

Preliminary Contracts and Pre-incorporation Contracts
The promoters of a company usually enter into contracts to acquire some property or right for the company which is yet to be incorporated, such contracts are called pre-incorporation or preliminary contracts.

Provisional Contracts
The provisional contracts are those contracts which are entered by a public company after incorporation but before the company becomes entitled to commence business.

INCORPORATION OF A COMPANY
"Any seven or more persons or where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their name to a memorandum of associations and otherwise complying with the requirement of this Act in respect of registration, form an incorporated company, with or without limited liability." [Sec. 12]

Disqualifications of subscribers of MOA: The 'person' who subscribes to the memorandum of association of the company should not be an infant, an undischarged insolvent, an alien enemy, a lunatic and a person disqualified by law from entering into a contract.

Procedure of Incorporation of a Company
Before proceeding to register a company, the promoters have to decide the following aspects:

(a) Type of company: the promoters must decide whether they want to incorporate a private company or a public company.
(b) Availability of Name: A company is identified by the name with which it is registered.
As per section 13, the memorandum of association of a company should state the name of the company.

Promoters of a company under a proposed name may make an application to Registrar of Companies in e-Form No. 1A, accompanied with a fee of Rs. 500.

Corporate Identity Number: Registrar of Companies is to allot a Corporate Identity Number (CIN) to each company registered on or after Nov. 1, 2000.

Documents to be filed with the Registrar:-

1. Memorandum of Association
2. Articles of Association
3. Copy of Proposed Agreement
4. Power of Attorney
5. Consent of the Directors
6. Particulars of Directors
7. Notice of Registered Address
8. Statutory Declaration
9. Filing of Document with the Registrar for Registration

On registration, the Registrar will issue a certificate of incorporation whereby he certifies that the company is incorporated and in the case of a limited company, that the company is limited. **(Sec. 39**

(1)

This certificate contains the name of the company, the date of its issue, and the signature of the Registrar with his seal.

Effect of Certificate of Incorporation

From the date of incorporation mentioned in the certificate of incorporation, such of the subscribers of the memorandum and other persons, as may from time to time be members of the company, shall be a body corporate by the name contained in the memorandum.

Conclusiveness of the Certificate of Incorporation:-

The certificate of incorporation shall be conclusive evidence that:

(i) all the requirements of the Act have been complied with in respect of registration.
(ii) The company is duly registered, and
(iii) that the company has come into existence on the date of the certificate.
(iv)

CAPITAL SUBSCRIPTION

After being registered and receiving the Certificate of Incorporation, Company is ready for flotation. It can go ahead with raising capital from the public to commence its operation satisfactorily.

Since private company is prohibited from inviting public to subscribe, it can raise the necessary capital from friends and relatives.

Section 70 of the Companies Act requires every public company to take either of the following two steps:

(i) Issue a Prospectus if public is to be invited to subscribe to its share capital, or
(ii) File 'A Statme In Lieu of Prospectus', in case capital has been arranged privately.

COMMENCEMENT OF BUSINESS

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

No public company can commence any business on exercise any borrowing power unless the Certificate to Commence Business is obtained.

Penalty: If any public company having share capital commences business or exercises borrowing power without obtaining the certificate to commerce business, then every person at fault shall be liable to fine which may extend to Rs. 5,000 for every day of default. **(Sec. 149 (b))**

It should be noted that the company commences business within one year of its incorporation or otherwise it is liable to be wound up by the Tribunal. **(Sec. 433 (c))**

Procedure for the Incorporation of a Private Company: The procedure for the incorporation of a private company is the same as that of a public limited company with the following charges:

(a) There should be at least two subscribers in place of seven.
(b) e-Form No. 29 (relating to consent of directors) need not be prepared and filed.
(c) Registration of articles of association in compulsory.

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. {Sec. 12(3)}
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.

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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. { Sec. 4 and refer Table A of the Schedule I }

ALTERATION OF MEMORANDUM

(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. [Sec. 13 (4) (5) (6) (7)]

(iii) Change of registered office from one state to another. [Sec. 18 (2)]
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

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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 [Explanation to Sec. 23]

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. [Explanation to Sec. 32]
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.

SHELF-PROSPECTUS

Companies (Amendment) Act, 2000, has introduced the concept of 'shelf prospectus'. It was noticed that public financial institutions sometimes access the capital market more than once during a year. Under the Act, a company was required to issue a full-fledged prospectus each time it wanted to access the capital market. To do away with this time consuming process and to reduce the cost burden on the company, the concept of shelf prospectus from the date of opening of the first issue of securities under that prospectus has been introduced. The validity period of self prospectus is one year.

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Information Memorandum or Red-herring Prospectus

Companies (Amendment) Act, 2000 has inserted a new section 60B whereby the issue of securities through "book building" concept has been recognized. As per SEBI guidelines, book building is a pre-issue exercise whereby the issuer company collects order from investment bankers and large investors based on an indicative price range. Thus, the issue price and the exact number of securities to be issued is not decided in advance (and is not disclosed in the draft prospectus) but is fixed on the basis of bids received from potential investors.

The term 'Information memorandum' has been defined in section 2(19B) of the Act to mean a process undertaken prior to filing of a prospectus by which a demand for the securities proposed to be issued by a company is elicited, and the price and the terms of issue for such securities is assessed by means of a notice, circular, advertisement or document. An information memorandum can be issued by a public company which is already listed or which is already listed or which intends to be listed after the issue. Recently, Maruti Udyog Limited has invited applications by issuing information memorandum.

'Red-herring prospectus' means a prospectus which does not have complete particulars on the price of the securities offered and the quantum of securities offered through such document. In other words, a red-herring prospectus lacks price and quantity of the securities offered.

WHEN PROSPECTUS IS NOT REQUIRED TO BE ISSUED

The issue of a prospectus containing the details as required by section 56(1) 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. [Clause (a) of proviso 2 to Sec. 56 (3)]
2. Where the shares or debentures are not offered to the public. [Clause (b) of proviso 2 to Sec. 56(3)]
3. Where the shares or debentures are offered to the existing members or debenture holders of the company. [Sec.56(5)(a)]
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. [Sec. 5(b)]
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. [Sec. 66]

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.

Deemed Prospectus

Provisions relating to the prospectus are most stringent and duty of preparing and filling it in accordance with law is extremely onerous. So, a company may instead of offering its sharers or

debentures for sale to the public allot its shares or debentures to an intermediary called 'issuing house'. Thereafter the 'issuing house' offers them for sale to the public by advertisement or circular of its own. The document by which the offer is made to the public by the issuing house is deemed for all purposes to be a 'prospectus' issued by the company.

CONTENTS OF PROSPECTUS

Section 55 provides that a prospectus issued by or on behalf of a company, or in relation to an intended company shall be dated, and that date must, unless contrary is proved, be taken as the date of the publication of the prospectus.

Section 56 provides that a prospectus must (i) contain the matters specified in Part I Schedule II and set out the reports specified in Part II of Schedule II of the Companies Act, 1956. The third part of the schedule is explanatory of Part I and II.

The government has revised the format of prospectus given in Schedule II of the Companies Act, 1956. The revised format will be effective from 1.11.1991.

PROSPECTUS

After having obtained the certificate of incorporation the promoters of a public company will have to take steps to raise the necessary capital for the company. A public company may invite the public to subscribe to its shares or debentures. For this purpose a document known as Prospectus has to be issued.

Meaning of Prospectus

A document containing detailed information about the company and an invitation to the public for subscribing to the share capital and debentures issued is called prospectus.

According to section 2(36) of the Companies Act, "Prospectus means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in or debentures of a body Corporate". Any document to be called a prospectus must have the following ingredients;

(a) there must be an invitation offering to the public;
(b) the invitation must be made by or on behalf of the company or in relation to an intended company;
(c) the invitation must be to subscribe or purchase;
(d) the invitation must relate to shares or debentures.

[Parmatha Nath Sanyal vs. Kali Kumar Dutt AIR 1925 Calcutta 714]

Meaning of the word 'issued': The rules as to prospectus apply only where a prospectus is 'issued'. 'Issued' here means issued to the public. Whether the prospectus has been issued is a matter of fact.

Nash vs. Lynde (1929)

[South of England Natural Gas & Petroleum Company Ltd. (1900) 1. Ch. 513]

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 prospectus'.

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The term 'Information memorandum' has been defined in section 2(19B) of the Act to mean a process undertaken prior to filing of a prospectus by which a demand for the securities proposed to be issued by a company is elicited, and the price and the terms of issue for such securities is assessed by means of a notice, circular, advertisement or document. An information memorandum can be issued by a public company which is already listed or which is already listed or which intends to be listed after the issue. Recently, Maruti Udyog Limited has invited applications by issuing information memorandum.

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7. Where the shares or debentures are not offered to the public. [Clause (b) of proviso 2 to Sec. 56(3)]
8. Where the shares or debentures are offered to the existing members or debenture holders of the company. [Sec.56(5)(a)]
9. 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. [Sec. 5(b)]
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Deemed Prospectus

Provisions relating to the prospectus are most stringent and duty of preparing and filling it in accordance with law is extremely onerous. So, a company may instead of offering its sharers or debentures for sale to the public allot its shares or debentures to an intermediary called 'issuing house'. Thereafter the 'issuing house' offers them for sale to the public by advertisement or circular of its own. The document by which the offer is made to the public by the issuing house is deemed for all purposes to be a 'prospectus' issued by the company.

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UNIT-III
SHARE

Equity Share

Equity shares capital means all share capital which is not preference share capital. 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 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

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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.

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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 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)}

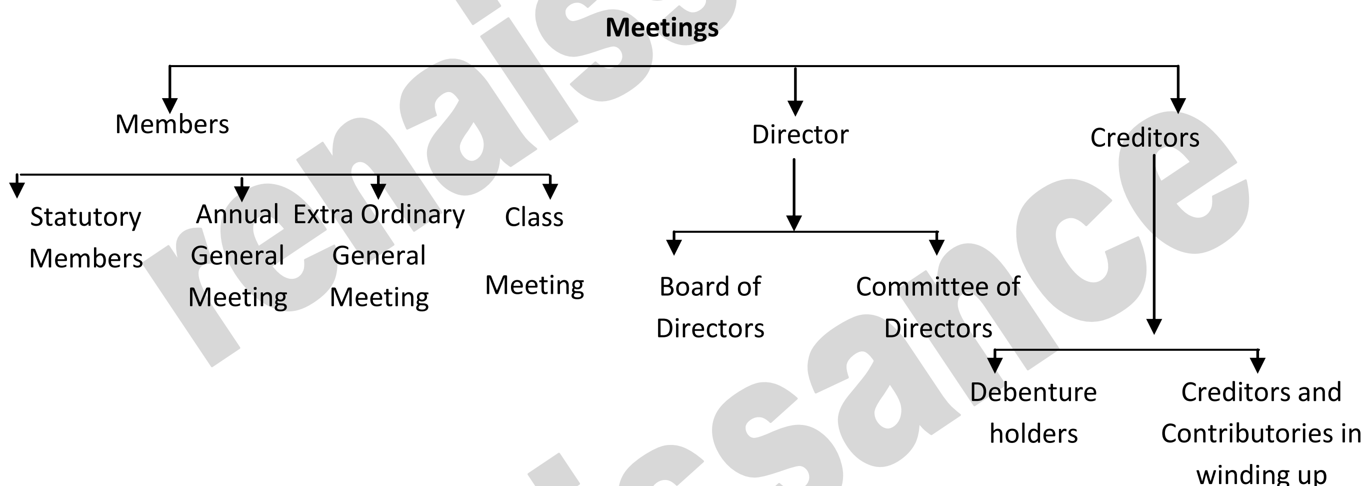
COMPANY MEETINGS

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.

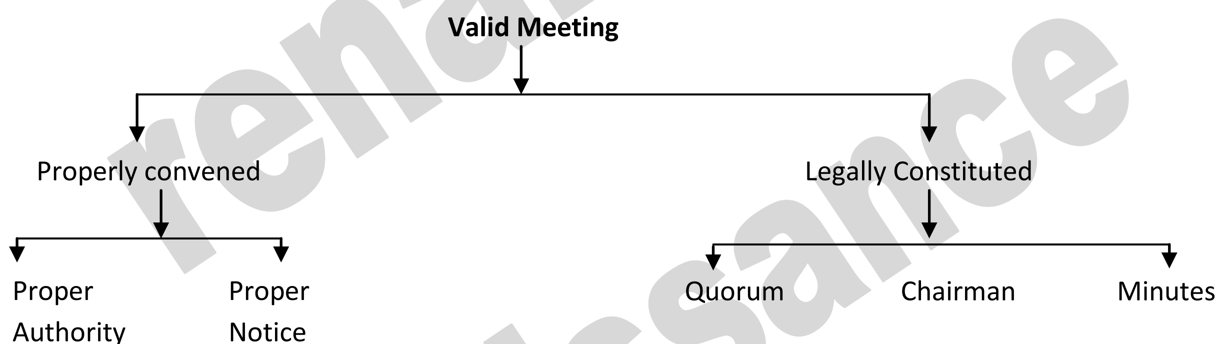
But every assembly or gathering do not constitute a meeting. Company meetings must be convened and held in perfect compliance with the various provisions of the Companies Act, 1956, and the rules framed there under.

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:
- Public Companies : 5 members personally present.
- Other Companies : 2 members personally present.

Articles may provide higher number to constitute a valid quorum but, when all members of the company are present in person, the quorum is present even if quorum required by articles is more than the number of members.

PROXIES :-
The term 'Proxy' is used both for the person who is authorised to act and vote for another at a meeting of the company and the instrument through which such as person is named and authorised to attend the meeting.

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Appointment of Proxy: Section 176 gives every shareholder, who is entitled to attend and vote, a statutory right to appoint another person as his Proxy to attend and vote for him. But the proxy so appointed has no right of audience, i.e, he cannot speak. The proxy may demand or join demanding a poll but (unless the articles otherwise provide) may vote only on a poll.

MINUTES :-

Minutes may be defined as the written record of the business transacted at a meeting. Section 193 imposes a statutory obligation on every company to cause minutes to all proceedings of General meetings, Board meetings and meeting of the Committee of the Board to be recorded.

- **(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 o 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.

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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.

Legal Provisions Regarding AGM [Sec. 166(1)]

(1) To be held every year
(2) Time for holding first AGM within 18 months of incorporation
(3) Gap between two AGMs – should not be more than 15 months
(4) Extension in Time- The Registrars may extend the time by a period not exceeding three months (not being the first AGM)
(5) Time of meeting – during business hours [Sec. 166(3)]
(6) Day of the meeting – on a day that is not a public holiday.
(7) Place of meeting – At any place within the postal limits and local limits of the city in which its registered office is situated.
(8) Notice of meeting – 21 days notice [Sec. 171]
(9) Quorum – in case of public Co. 5 members personally present and in case of a private Co. 2 members [Sec. 174]

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. [Sec. 106]

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. [Sec. 391]
2. to accept a scheme of arrangement or compromise., or to settle any existing between the company and creditors. [Sec. 391]
3. to pass a special resolution by creditors for voluntary winding up of the company. [Sec. 500]
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. (Sec. 508)
5. A final meeting of the creditors called by the liquidator (in the case of creditors voluntary winding up) to dissolve the company. [Sec. 509]

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-

1. Right to convene meeting – Usually, the chairman of the Board has the power to convene the meeting. However the articles may authorise any director to call the meeting.
2. Period and frequency- At least one meeting of the Board in a period of three months and four in a year.
3. Notice of Meeting – Notice shall be given in writing to every director for the time being in India.
4. time limit, form and mode of notice- Act does not prescribe the time limit, form and mode of notice of a Board meeting. But companies generally give at least one weeks notice.
5. Time, place and day of meeting – The meeting of the Board of directors may be held at any time, any day and place which is convenient to the members.
6. Agenda- The Act does not require a formal agenda in advance but it is a general practice with the well-managed companies to forward formal agenda in advance.
7. Quorum- One third of its total strength or two directors whichever is higher.
8. Adjournment of meeting- If a meeting cannot be held for want of quorum, it stands adjourned till the same day in the next week, at the same time and place. If that day is a public, holiday, it shall stand adjourned till the next day which is not a public holiday.
9. Voting and decision- Unless the articles otherwise provide, questions arising at any meeting of the Board of directors shall be decided by a simple majority.
10. Proxy- A director cannot appoint a proxy to attend the meeting. However, the Board has the power to appoint alternate director in place of a director who is absent or had gone out for more than three months.
11. Chairman- The Board may elect a chairman of its meeting and determine the period for which he is to hold office. If no such chairman is elected or the chairman is not present within five minutes from the schedules time then the directors present may choose one from amongst them to be chairman of the meeting.
12. Minutes- Every company must cause minutes of all proceedings within 30 days of the conclusion of such meeting.

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UNIT-V

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. <u>Winding up by the Tribunal or Grounds for Compulsory Winding Up</u>

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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