CORPORATE LAWS

VRINDAWAN e-UNIVERSITY

SYLLABUS

(Core-4)

CORPORATE LAWS

Objectives: The objective of the course is to impart basic knowledge of the provisions of the Companies Act, 2013 and the Depositories Act, 1996. Case studies involving issues in corporate laws are required to be discussed.

Contents:

Unit – I: INTRODUCTION TO COMPANY

Meaning and Definition – Features –, High Lights of Companies Act 2013 - Body Corporate ,Kinds of Companies (Concept, Definition and Features) – One Person Company, Private Company, Public Company, Company limited by Guarantee, Company limited by Shares, Holding Company, Subsidiary Company, Government Company, Associate Company, Small Company, Foreign Company, Listed Company, Dormant company

FORMATION OF A COMPANY

Steps in formation of a Company, Promotion Stage, Meaning of Promoter, Position of Promoter & Functions of Promoter, Incorporation Stage – Meaning, Contents, Forms of Memorandum of Association & Articles of Association and its alteration, Distinction between Memorandum of Association and Articles of Association, Certificate of Incorporation, Subscription Stage – Meaning & contents of Prospectus, Types, Misstatement in prospectus and its consequences.

Unit - II: COMPANY ADMINISTRATION

Director (Concept and Definition), DIN, Qualification, Disqualification, Appointment, Position, Rights, Duties, Power, Resignation, Liabilities, Removal and Resignation of director, Key Managerial Personnel (Definition, Appointment and Qualifications) – Managing Director, Whole time Directors, the Companies Secretary, Chief Financial Officer, Resident Director, Independent Director, Women director.

Unit - III: SHARE CAPITAL & DEBENTURE

Share and Share Capital - Types and Definition, Allotment and Forfeiture, Calls on Shares, SOP, Buyback, Sweat Equity, Bonus, Right, Capital Reduction, Share Certificate, Demat System, Transfer and Transmission, Redemption of Preference Shares, Debenture –Definition, Types, Rules Regarding Issue of Debenture, Rules regarding Dividend and distribution of dividend.

Unit - IV: CORPORATE MEETINGS

Corporate Meetings - Shareholder and Board, Types of Meetings – Annual General Meeting Extraordinary General meeting, Minutes of Proceedings of General Meeting, Meeting of BOD and other meetings (Section 118), Requisite of Valid Meeting- Notice,

Agenda, Chairman, Quorum, Proxy, Resolutions, Minutes, Postal Ballot, E- voting,Video Conferencing,

Learning Outcomes: Students would acquire knowledge about the legal framework and the ways and means to deal with the legal aspect of different situations of corporatesector.

Text Books Recommended

1. Corporate Laws-Maheswari, Maheswari- Himalaya Publishing House
2. Corporate Law, Ashok Sharma, V.K. Global Publishing Pvt. Ltd., New Delhi

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UNIT-I
INCORPORATION OF COMPANY

Aims and Objectives

After going through this unit, you will be able to:-

- Understand the concept of India's Companies Act, 2013
- Understand various amendments in the Companies Act, 1956.
- Describe salient features of Companies Act, 2013.
- Define formation of Joint Stock Company
- Discuss document for Incorporation

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INCORPORATION OF COMPANY

1.1 INTRODUCTION TO INDIAN COMPANY LAW AND ITS DEVELOPMENT.

Company Law in India is the cherished child of the English parents. Our various Companies Acts have been modeled on the English Acts. Following the enactment of the Joint Stock Companies Act, 1844 in England - believed to be the first in the world, the first Companies Act was passed in India in 1850. It was the British who pioneered company legislation in India. Like in England, companies were established in India by a royal Charter, like the East India Company, or by a Special Act of Parliament, like the various Reserve Bank of India, Unit Trust of India or Indian Railways.

The different phases of the development of company legislation in India are as follows:

(1) Joint Stock Companies Act, 1850: The first company legislation in India was enacted in 1850 on the pattern of the company legislation of 1844 in England. Under the provisions of this Act, companies with unlimited liability could be incorporated in the country. For the first time, the Act provided the facility for the companies to be registered. The registration of companies could be done through the High Courts of Bombay, Calcutta and Madras. The Act also provided for the transfer of shares by the shareholders, but the liability of the shareholders, like in a partnership concern, was not limited to their share in the company.

(2) Joint Stock Companies Act, 1857: This Act is of special importance in the history of company legislation in India because, for the first time, the law recognized the concept of' limited liability' of the shareholders of a company. Banking and insurance companies were, however, not covered by the provisions of the Act. It was made specifically clear in the Act that the liability of the shareholders in a limited company shall be limited to the extent of their share in the capital invested in the company. This Act also made it possible for non-limited companies to be registered.

(3) Joint Stock Companies Act, 1860: Under the provisions of this Act, banking and insurance companies were also permitted to be established with limited liability of

the shareholders. This Act was on the pattern of the Company Legislation, 1856, of England.

(4) Joint Stock Companies Act, 1866: This Act was based on the legislation enacted in England in 1866. The Act cancelled all the previous legislations and defined the laws governing the incorporation, regulation and winding up of companies.

(5) Joint Stock Companies Act, 1882: Modeled on the lines of the Companies Act, 1880, of England, this Act elaborated the provisions of the Indian Companies Act, 1866. Besides, three other Acts—Companies Memorandum of Association Act, 1895; Companies Branch Register Act, 1900 and Companies Act, 1910— were enacted to fill the loopholes and remove the shortcomings of the Act.

INDIAN COMPANIES ACT 1913

In 1913, a consolidated act called the Indian Companies Act was enacted in India on the pattern of the British Companies Act, 1908. This act had 288 sections and 4 schedules. The Act defined the laws governing the functioning of companies and other commercial organizations; and the institution of' Private Company' was for the first time recognized by law. Various amendments were made to the Indian Companies Act, 1913 from time to time, and the Act remained in force till it was replaced by the Indian Companies Act, 1956.

Indian Companies Amendment Act, 1936: There were many shortfalls in the Indian Companies Act, 1913; and various amendments to the Act were made in 1914,1915,1920,1926, 1930 and 1932 in an attempt to remove these shortfalls. The last important amendment was made in 1936, which was on the lines of the British Companies Act, 1929, and it came to be accepted as the Indian Companies Act, 1936.The Amendment Act introduced various provisions relating to the functioning of the directors and managing agents, investigation of any fraudulent activity by the company, and guaranteeing the security and payment of provident fund to its employees. Later, from 1937 to 1951, amendments to the Act were made almost every year to keep up with the changing scenario.

1.2 THE COMPANIES ACT, 1956

The Companies Act, 1956 was enacted with a view to consolidate and amend the earlier laws relating to companies and certain other associations. The Act came into force, on 1st April, 1956. This Companies Act was based largely on the recommendations of the Company Law Committee known as Bhabha Committee after its Chairman, C.H. Bhabha which submitted its report in March, 1952. This Act was the longest piece legislation ever passed by our Parliament. Amendments have been made in this Act periodically. The Companies Act, 1956 consisted of 658 Sections and 15 Schedules.

This Act extends to the whole of India provided that it shall apply to the State of Nagaland and Jammu and Kashmir and the Union Territory of Goa, Daman and Diu subject to such exceptions and modifications, if any, as the .Central Government may, by notification in the Official Gazette, specify. [Section 1(3), 620B and 620C]

Objectives

Following are the main objectives of the Indian Companies Act, 1956:

(a) To help in the establishment and management of companies on a healthy and honest basis.

(b) To ensure that the rights and interests of shareholders and creditors are recognized and respected by the management.

(c) To ensure that the shareholders have the maximum say in the management of company affairs,

(d) To ensure that the affairs of the company are managed by a consensus to the maximum degree,

(e) To help the government attain the ends of social and economic justice and establish a 'socialistic pattern of society'.

(f) To investigate the affairs of the company when they are not in order and can result in a loss to the shareholders or the public,

(g) The Act was not enacted only from the legalistic or 'calculative' or scientific point of view; rather it was based more on the social and economic needs of the country.

Full and fair disclosure of various matters in prospectus; detailed information of the financial affairs of company to be disclosed in its account; provision for intervention

and investigation by the Government into the affairs of a company; restrictions on the powers of managerial personnel; enforcement of proper performance of their duties by company management; and protection of minority shareholders were some of the main features of the Companies Act, 1956 and it was based on social, and economic needs of the country.

1.3 VARIOUS AMENDMENTS IN THE COMPANIES ACT, 1956

Despite the fact that extra-ordinary caution was exercised in the enactment of the Companies Act, 1956, it came under severe criticism within a year of its enactment. As a result, the Government of India appointed an Ad-hoc Committee in 1957 under the chairmanship of Shri A.V Vishwanath Shastri (ex-Judge of the Madras High-Court to review the Act and give its recommendations). The Committee submitted its report in November 1957 and, on the basis of its recommendations, the Act was amended in 1960. After this, many important amendments were made in the Act in 1962, 1963, 1965, 1966, 1967, 1969, 1971, 1972,1974,1977,1985 and 1988. Despite the above amendments, the Indian Companies Act, 1956 is still in force and is the largest of the Companies Acts in the world. The various amendments are briefly discussed as follows:

(l) The Companies Amendment Act, 1960: Under this amendment, some restrictions were imposed on the management of companies, remuneration ofmanagers and private companies. As many as 218 sections of the Act were amended in detail.

(2) The Companies Amendment Act, 1962: This amendment added a new Section 293B to the Act under which companies were given the right to contribute such amount as they thought fit to the National Defence Fund or any other Fundapproved by the Central Government for the purpose of national defence.

(3) The Companies Amendment Act, 1963: The 1963 Amendment provided for setting up Companies Tribunal and Companies Law Board. It also provided for better management of company finance and security against fraud and other malpractices.

(4) **The Companies Amendment Act, 1965**: Based on the recommendations of the Vivian Bose Commission, the Companies (Amendment) Act, 1965 introduced some major changes, such as clear definition of the main and subsidiary objects of a company in its Memorandum of Association; strengthening the provisions relating to investigation into the affairs of the company. This amendment made it mandatory for a company to add its subsidiary objectives to its main objective in the memorandum of association. It also provided for proper maintenance of books of account and their effective audit, blank transfer of shares, defined the authority of the inspectors and terminated the restriction on the age limit of companydirectors.

(5) **The Companies Amendment Act, 1966**: There were two amendments in the Companies Act in 1966, and a total of four sections were altered. The main purpose of the alteration was to restrict the blank transfer of shares of a company.

(6) **The Companies Amendment Act, 1967:** This amendment was made to establish company tribunals.

(7) **The Companies Amendment Act, 1969**: Two important changes were introduced by the Companies (Amendment) Act, 1969. Firstly, the institutions of managing agents and secretaries and treasurers were abolished with effect from April 3, 1970. Secondly, contributions by companies to any political party or for any political purpose were prohibited.

(8) **The Companies Amendment Act, 1971**: A new Section 193A was added to the Act by this amendment which allowed the directors of the company or the managers appointed by them to donate Rs. 25,000 or 5 per cent of the company's profits to the National Defence Fund or any other fund approved by the Central Government. It also made it mandatory for the company to get the proposal approved by a general meeting in case it wanted to donate more than Rs. 25,000 or5 per cent of its profits.

(9) **The Companies Amendment Act, 1972:** Under the amended Act of 1972, the Central Government was given the power to appoint as many directors as it

deemed to be necessary for the proper management of company affairs. Amendments were also made with respect to investigating foreign companies in terms of their control and sharing and distribution of profits.

(10) **The Companies Amendment Act, 1974:** The Companies (Amendment) Act,1974 which came into force from February 11, 1975 had introduced some important and major changes in the Companies Act, 1956. The object of the Amendment Act was to inject an element of public interest in the working of the corporate sector. Under this amendment, various provisions were made to curb mismanagement, fraud and other malpractices on the part of companies, the word 'group' was projected with a new interpretation. The definition of private companies which were deemed public companies was made more elaborate and detailed. In certain new situations, it was made mandatory for a company to appoint a person as secretary.

(11) **The Companies Amendment Act, 1977**: The Amendment Act incorporated significant changes in Sections 10E, 58A, 108H, 220, 293 and 635. A new Section 634A was also added to the Act. An important amendment was made to Section 293 under which the ceiling for donations for charitable purposes by companies was raised from Rs. 25,000 to Rs. 50,000.

(12) **The Companies Amendment Act, 1985**: The following important changes were made in the Act under this amendment:

(a) Under Section 293 A, every company which is not a government company and has been in existence for at least three years can make contribution to any political party. The amount of such contribution cannot exceed five percent of the company's average net profits for the preceding three financial years, and the amount has to be included in the company's Profit and Loss Account. It is also necessary to record the amount of contribution and the name of the political party.

(b) In case of winding up of a company, the workmen's dues and debts due to secured creditors shall be paid in priority to all, other debts. Sections 529 and 530

of the Companies Act, 1956; were amend and a new Section 529A was introduced.

(13) The Companies Amendment Act, 1988: Based on the recommendations made by the Expert Committee (Sachar Committee) the Companies (Amendment) Act,1988 substantially amended the Companies Act, 1956 in order, to streamline someof the existing provisions of the Companies Act, 1956 and to ensure better working and administration of the Act. The committee made an attempt to introduce workers participation in management of the company affairs, define the social obligations of the company and bring in professionalization in the management sectors; The Committee recommended the deletion or amendment of as much as 175 sections.

The important changes introduced by the Amendment Act of 1988 were:

Definition of Secretary brought in line with the definition of Company Secretary in the Company Secretaries Act, 1980 and includes an individual possessing the prescribed qualifications.

The concept of company secretary in practice was introduced for the first time in the Companies Act. The Amended Act, among other things, also set up an independent Company Law Board to exercise such judicialand quasi-judicial functions, earlier being, exercised either by the Court or the Central Government.

(14) The Companies Amendment Act, 1996: After the implementation of this amendment, a company limited by shares cannot issue irredeemable preference shares and the companies have been permitted to issue preference shares having maximum 20 years redemption period instead of 10 years. In addition to equity and preference shares, the companies have been given the privilege of issuing shares without voting rights. Mutual Fund, Venture Capital Fund, etc., having approval from Indian security and Exchange Board and have share capital of a company have been given voting rights, in the meeting of that company. Companies have been allowed to present papers anddocuments to the registrar on computer format. The company can make alteration in Memorandum of Association without rectification from Company Law Board will be

necessary if registered office of the company is to be transferred from one state to another. In the event of winding up of the company the maximum limit of Rs. 1000 regarding of claims in respect of arrears of wages and salary of an employee has been abolished.

The Depositories Act, 1996 made the other following major amendments to the Companies Act, 1956:-

(a) Every person holding equity share capital of a company and whose name isentered as beneficial owner in the records of the depository shall be deemed to bea member of the concerned company.

(b) Stamping of transfer instruments is not required where both the transferor and transferee are entered as beneficial owners in the records of a depository.

(c) The securities of a company other than a private company have been made freely transferable. The transfer has to be effected immediately by the company/depository.

(d) The register of members shall indicate the shares held by a member in demat mode but such shares need not be distinguished by a distinctive number.

(e) Company to give in the offer document option to the investor to ask for issue of securities in demat mode.

(15) The Companies Amendment Act, 1999. The companies (Amendment) Act, 1999 made the following major changes to the Companies Act, 1956:-

- Companies allowed to issue Sweat Equity shares and to buy back their own securities.
- Companies have been empowered to allot shares to investors and employees in lieu of services rendered by them.
- Facility for nomination provided for the benefit of share/debenture/deposit holders.
- An Investor Education and Protection Fund to be established.
- National Advisory Committee on Accounting Standards for companies to be established.

- Prior approval of Central Government not required for inter-corporate investment/lending proposals subject to certain conditions.

(16) The Companies Amendment Act, 2000: Under this amendment the provision regarding appointment of Public Trustee by the Central Government has been abolished, so that the trust can directly exercise its voting rights. For smooth functioning of the company postal ballot system on special resolution has been introduced. The company will have to make payment of dividend and interim dividend within 30 days of its declaration. Earlier the time limit was 42 days. A person can be appointed auditor of 20 companies excluding private companies. A person who is a shareholder in a company andhas voting rights cannot be appointed auditor of that company. While preparing report,the auditor will have to write compulsorily the factors in bold letter that have badly affected the functioning of the company. After this amendment, no person can be directorof more than 15 companies at a time. This number does not include private companies.

Further the Companies (Amendment) Act, 2000 made the following major amendments:

(a) Private Companies and Public Companies to have a minimum paid-up capital of Rupees one lakh and five lakh respectively.

(b) Change of place of registered office from the jurisdiction of one Registrar of Companies to another Registrar of Companies within the same state requires confirmation from the Regional Director.

(c) Provisions relating to deemed public companies became inoperative and a new provision relating to conversion of a public company to a private company inserted in the Companies Act, 1956.

(d) SEBI has given powers regarding issue and transfer of securities and non-payment of dividend by listed public companies.

(e) Certain measures included for protecting the interest of small deposit holders in a company.

(f) Preferential offer/Private placement of securities to 50 (fifty) persons or more treated as public issue. This shall not apply to a preferential offer made by public financial institutions and NBFCs.

(g) Provisions relating to shelf-prospectus and information memorandum, issue of equity share capital with differential rights as to dividend, voting or otherwise included.

(h) Every listed company making initial public offer of any security for a sum of Rupees ten crores or more will have to issue the same only in a dematerialized form.

(17) The Companies Amendment Act, 2002: Parliament has by this amendment provided the legal framework for the establishment and growth of an innovative model of private company called The Producer Company'. The producer company will be formed as a private company, but in this private company there shall be at least ten or more individual producers as members or two or more producers and producer institutions. There is no limit on the maximum members as against minimum two and maximum fifty in other private companies. The word 'Private' does not form part of the name in these companies. The formation and management of these companies will be in accordance with the statutory provisions in Part IX A of the Companies Act, 1956. In Producer Company the other provisions of Company Act will apply in the same manner as are applicable in any other private company.

(18) The Companies Second Amendment Act, 2002: By this amendment under section 10 FB, the Central Government has been given power to constitute a Tribunal known as the National Company Law Tribunal. Under section 10 FR National Company Law Appellate Tribunal has also been established to hear the appeals against the orders ofthe Tribunal. The appeals against the orders of the Appellate Tribunal will be heard by the Supreme Court. By this amendment under section 10 FR, Company Law Board has. been abolished and some powers earlier under the jurisdiction of the Company LawBoard have been transferred toCentral-Government and some toNational Company Law

Tribunal (called the Tribunal) under section 75/ 80 A(2)/ 100 to104/107/203/243/394 A and 395. The word 'Court' has been changed as Tribunal'.

In nutshell the Companies (Amendment) Act, 2002 and Companies (Second Amendment) Act, 2002 made the following changes to the Companies Act, 1956:-

(a) New Part IXA consisting of Section 581A to 581ZT relating to Producer Companies inserted.

(b) The existing Company Law Board is proposed to be dissolved and in its place a National Company Law Tribunal (Tribunal) is to be constituted.

(c) Appeals against the orders of the Tribunal can be filed with the Appellate Tribunal. Further appeal against the orders of the appellate tribunal would lie to the Supreme Court.

(d) The Board for industrial and Financial Reconstructions to be abolished and SICA will be repealed.

(e) Transfer ofall the powers from the BIFR to the Tribunal.

(f) Transfer ofcertain powers ofthe High Court to the Tribunal.

(g) Greater role for professionals in the administration of Company Law.

(h) Transfer of powers relating to winding up, mergers and amalgamations from Court to the Tribunal.

(19) The Companies (Amendment) Act, 2006: This Amendment Act received the assent of the President of India on 29th May 2006 and was notified in the Gazette of Indian Extraordinary dated 30th May, 2006. The amending Act shall come into force on such date as the Central Government may, by notification, appoint and different dates may be notified for different provisions of the Act.

The Companies (Amendment) Act, 2006 inserted new Sections 61 OB, 61OC, 61OD and 61OE and also certain sections pertaining to Director Identification Number (DIN), Salient features of the provisions of Companies (Amendment) Act, 2006 are as follows:

New Sections 266A, 266B, 266C, 266D, 266E, 266F and 266G have been inserted so as to provide for allotment a unique DIN to all existing directors and every other

person, intending to become a director in future, for the purpose of his identification as such through electronic form and to provide for penalty for any violation in this regard.

The applications, balance sheet, prospectus, return, declaration, memorandum and articles of association, particulars of charges or any other particulars or document required to be filed or delivered, are to be filed in electronic form. The Amendment Act contains provisions for implementing an e-governance progamme of the Ministry of Corporate Affairs (MCA) through a project named MCA-21. E-filing or electronic filing is a key-feature of the MCA-21 programme.

1.4 EVOLUTION OF COMPANIES ACT 2013

TheCompanies Act, 1956 was enacted with the objective to amend and consolidate thelaw relating to companies. This Act provided the legal framework for corporateentities in India and was a mammoth legislation. As the corporate sector grew in numbersand size of operations, the need for streamlining this act was felt and as many as 24 amendments had taken place since then. Major amendments were made through the Companies (Amendment) Act, 1988 after considering the recommendations of the SacharCommittee, and then again in 1998, 2000 and in 2002 through the Companies (Second Amendment) Act, 2002. Unsuccessful attempts were made in 1993 and 1997 to replace the present Act with a new law. Companies (Amendment) Bill, 2003 containing important provisions relating to Corporate Governance and aimed at achievingcompetitive advantage was also introduced.

Till some time back Companies Act, 1956 was the principal legislation governing the corporate sector in India. However, several changes had taken place in the national and international economic environment after the enactment of this Act during the last two to three decades. Thus, modernization of company law governing setting up and functioning of enterprises, structures for sharing risk and reward, governance and accountability to the investors and other stakeholders and structural changes in the law commensurate with global standards had become critical for governing and guiding a vibrant corporate sector and business environment.

To frame a law that enables companies to achieve global competitiveness in a fast changing economy, the Government had taken up a fresh exercise for a comprehensive revision of the Companies Act, 1956, even if through a consultative process. As a the first step in this direction, a Concept Paper on Company Law drawn up in the legislative format was exposed for public viewing on the electronic media so that all interested parties may not only express their opinions on the concepts involved but may also suggest formulations or various aspects of Company Law.

The response to the concept paper on Company Law was tremendous. The Government, therefore, felt it appropriate that the proposals contained in the Concept Paper and suggestions received thereon be put to merited evaluation by an independent Expert Committee. A Committee was constituted on 2nd December, 2004 under the Chairmanship of Dr. J J Irani, Director, Tata Sons, with the task of advising the Government on the proposed revisions to the Companies Act, 1956 with the objective to have a simplified compact law that will be able to address the changes taking place in the national and international scenario, enable the adoption of internationally accepted best practices as well as provide adequate flexibility for timely evolution of new arrangementsin response to the requirements of ever-changing business models. The Committee remitted its report to the Government on 31st May 2005.

1.5 INTRODUCTION TO COMPANIES ACT 2013

The Companies Act, 2013 replaced the Companies Act, 1956 which was about six decades old. The Companies Bill, 2012 was assented to by the President of India on 29th August, 2013 and notified in the Gazette of India on 30th August, 2013. It finally became the Companies Act, 2013. Highlights of the Companies Act, 2013 are as follows:

Passed in Lok Sabha	December18, 2012
Passed in Rajya Sabha	August 08, 2013
President's Assent	August 29, 2013
Came in to force w.e.f	30th August, 2013
Total Number of Sections	470
Total Number of Chapters	29

Total Number of Schedules	7
Number of Sections Notified (282)	Section 1 on August 29, 2013
	98 Sections on September 12, 2013
	183 Sections onApril 01,2014
Total Number of Rules Notified	Rules Under 21 Chapter Notified

1.6 OBJECTIVES OF COMPANIES ACT 2013

The Companies Act, 2013 has the following objectives-

- To provide free access to entrepreneurs to the open global market.
- To protect the interests of investors and stakeholders.
- To provide for more simplified and rationalized legislation.
- To promote transparency and accountability in the working of companies.
- To provide strict provisions prohibiting insider trading practices.
- To promote corporate social responsibility activities undertaken by the companies.

1.7 MAJOR CHANGES/ CHARACTERISTICS OF COMPANIES ACT, 2013.

1. The concept of One Person Company (OPC) has been introduced by this Act which means a private limited company may have only one person as a member. Itmay enjoy limited liability. The Memorandum of Association of such a company should indicate the name of the other person who shall become member of the company in the event of subscriber's death or his incapacity to contract due to insanity, etc.
2. It prescribes a uniform financial year i.e., from 1st April to 31st March for all the companies subject to certain exceptions. This would facilitate financial accounting of companies to a great extent.
3. The private companies can now have maximum of 200 members as against the maximum 50 as provided in the Companies Act, 1956. This increase would provide greater scope for operation of private companies.

4. The permissible limit of 18 months for holding Annual General Meeting (AGM) from the date of its incorporation has been curtailed to nine months. Therefore now the company shall have to hold its annual general meeting within nine monthsfrom the closure of its first financial year, and in other case, within the period of six months from the date of closing of the financial year.

5. The requirement of 'object clause' of the Memorandum of Association into three distinct classes, i.e., the main, ancillary and other objects, have been scrapped in the new Companies Act of 2013 and now only the objects for which the company is incorporated are required to be mentioned in the Memorandum of Association.

6. Where money raised from public through prospectus has not been fully utilized for the purpose and object it was raised, the un-spent money cannot be utilized for any other object unless a special resolution for this purpose has been passed and dissenting share-holders are provided an exit-opportunity.

7. Misuse of 'public deposits' in the past is well known. Companies will no longer be permitted to invite, accept or renew deposits from the public. However, this restriction will not apply to the following classes of companies:

(a) Banking companies;

(b) Non-banking financial companies (NBFCs);

(c) Public companies having such net worth or turnover as may be prescribed subject to compliance with the specified conditions; and

(d) Such other companies as Central Government may specify after consultation with the Reserve Bank of India.

Companies, however, have been permitted to accept deposits from their members subject to certain conditions.

8. The requirement of Statement in lieu of Prospectus by private companies has been done away with. The new Act of 2013 requires a detailed prospectus to be issued and the companies cannot vary the terms of contract or objects referred to in the prospectus without the approval of shareholders by special resolution in the general meeting of the company.

9. The preceding Companies Act, 1956 permitted only financial institutions, public sector banks and scheduled banks to issue shelf prospectus but the Act of 2013 empowers SEBI to prescribe class/ classes of companies which can file Shelf Prospectus with the Registrar of Companies (ROC).
10. The Act of 2013 requires the Companies to file return of allotment for all kinds of securities besides the securities in the form of shares and a Company may issue Global Depository Receipt (GDR) by passing a special resolution in the general meeting subject to conditions as prescribed.
11. The provisions relating to buy back of shares by companies have been fairly liberalized and now consequent to the enforcement of the Companies Act, 2013, the companies can buy back their shares even if they have defaulted in repayment of deposits or interest payable thereon, redemption of debentures or payment of dividend to shareholders etc.
12. The Non-Banking Financial Companies (NBFCs) will now be governed by RBI rules in the matter of acceptance of deposits and not by the provisions of Companies Act, 2013.
13. The 2013 Act specifically provides that the books of accounts may be kept in electronic form. The company is required to prepare and file financial statement which shall include its balance sheet, profit and loss account and cash flow statement in a consolidated form. These documents are not required to be-filed separately as was necessary under-preceding Companies Act, 1956.
14. The National Advisory Committee on Accounts Standards (NACAS) has been renamed by the 2013 Act as the National Financial Reporting Authority (NFRA). It was merely an advisory body under the 1956 Act which has now been converted into a quasi judicial authority having power to exercise disciplinary control over the Chartered Accountants of C.A. Firm.
15. A new provision relating to Corporate Social Responsibility (CSR) has been introduced which provides that every company having a specified net worth or turnover or net profit during any financial year shall constitute the Corporate

Social Responsibility Committee of its Board of Directors to formulate policies for the activities specified in Schedule VII of the Act for social and economic welfare of the people, particularly, those who have remained deprived or neglected so far.

16. It has been made mandatory that the prescribed class or classes of companies shall have at least one Director of the Board must have stayed in India for not less than 182 days in the previous calendar year.

17. Every listed company should have at least 1/3rd of the total number of its Director, non-executive Director, on its Board as independent Directors. The independent Director shall be a not being a promoter or key managerial personnel,

18. The maximum number of Directors that a company may have is raised from 12 to 15 under the 2013 Act. Similarly, now a person can become Director of maximum 20 companies instead of 15 as was provided under the Companies Act, 1956. Out of these 20 companies, he cannot be the Director of more than ten public companies at a time.

19. New provisions, duties of directors have been codified for the first time and various duties have been prescribed. Contravention of any of the duties is punishable with fine ranging from Rs.1,00,000 to Rs.5,00,000. It is also provided that if any director is found guilty of making any undue gain either to himself or to his relatives, partners or associates, he shall be liable to pay an amount equal to that gain to the company.

20. It has been made mandatory for a Director who resigns from his post, to forward the copy of his resignation to the Registrar of Companies (ROC) within thirty days of such resignation. There was no such provision in the earlier Act of 1956.

21. The Companies Act of 2013 requires a company to hold at least four meetings in every year and the gap between two consecutive meetings should not exceed 120 days. It allows the Director(s) to participate in Boards meeting through Video conferencing or other audio-visual mode as may be prescribed. Video conferencing is a great facility for transacting business with speed, apart from cost saving and helping the directors to participate in board meetings from their work

place. Thus, the requirement that a company should hold its meeting quarterly as existed in the preceding Companies Act, 1956, has been modified.

22. For the first time the expression ‘Key Managerial Personnel’ has been inserted by the Act. According to section 2 (51), ‘Key Managerial Personnel’, in relation to a company means:

(a) The Chief Executive Officer or the Managing Director or Manager,

(b) The Company Secretary,

(c) The Whole time Director;

(d) The Chief Financial Officer, and

(e) Such other officer as may be prescribed.

23. The new Companies Act, 2013, has raised the limit of political contribution by company from 5 per cent to 7.5 per cent of the average net profit of the company during the three immediately preceding financial years.

24. The term ‘loan’ shall not include debentures.

25. The new Act has done away with the requirement of Central Government's approval for:

(i) Giving loan to Directors by companies, or

(ii) For entering into any related party transactions, or

(iii) For appointment of any Director or any other person to any office of profit in the company or its subsidiary.

Such approval was mandatory under the earlier Companies Act, 1956.

26. The conditions required to be fulfilled for the appointment of Managing Director/whole time Director/Manager and the provisions of the Act in this regard shall also apply to a private company.

27. The 2013 Act provides a new provision defining 'fraud' in relation to affairs of a company or anybody corporate. It also provides stringent punishment for this offence. There was no definition of 'fraud' in the Companies Act, 1956 nor was there any specific punishment for this offence under the Act.

28. The Companies Act, 2013 makes the submission of Auditor's certificate mandatory before the Tribunal grants sanction for compromise or arrangement.

29. In respect of any property, stocks, shares, debentures, securities, goodwill or net worth of a company or its assets, if valuation is required, it shall be done by a registered value appointed by the Audit Committee or in its absence by the Board of Directors of the company. Any Chartered Accountant, Cost Accountant, Company Secretary or such other person possessing such qualifications, as may be prescribed, may apply to the Central Government (Ministry of Corporate Affairs) for being registered as a valuer. The Central Government shall maintain a register of valuer.

30. The Companies Act of 2013 provides for 'class action suit' for relief from oppression and mismanagement.

31. The new Act of 2013 seeks to rationalize the revival and rehabilitation of sick companies by providing that a company which fails to repay the debt of secured creditors representing 50 per cent or more of its debt amount may also apply to the Tribunal for declaring the company as sick company.

32. A new provision regarding appointment of interim administrator by the Tribunal has been inserted for revival or rehabilitation of a sick company.

33. A new provision in the form of Section 442 is inserted in the Act of 2013 for setting up mediation and conciliation panel of experts to mediate at the request of parties to the proceedings before the Central Government i.e., Tribunal or the Appellate Tribunal.

34. A new-provision in the form of Section 195 has been inserted in the Companies Act, 2013 to prohibit insider trading of securities by Directors or Key Managerial personnel of companies.

35. In the procedure set out for voluntary winding up of a company, some new requirements have been prescribed under Section 310 of the Companies Act, 2013. Firstly, the Company Liquidator for a voluntarily winding up company shall be appointed from the panel prepared by the Central Government. Secondly, the

Company Liquidator so appointed shall, (throughout the term of his appointment) file a declaration in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the company or the creditors.

36. As regards disclaimer of onerous property of a company which is being wound up, by the Company Liquidator, the powers and functions which hitherto exercisable by the Court under the Companies Act, 1956 are now transferred to the Tribunal under Section 333 of the new Companies Act, 2013.

37. The new Act does not require the Central Government to notify companies as Nidhi companies and provides a new provision regarding dormant company.

1.8 BRIEF HIGHLIGHTS OF COMPANIES ACT, 2013

1. Introduction of new types of companies

(i) Oneperson Company: 'One person Company' means a company which has only person as a member. [Section 2(62)]

(ii) Associate Company : A company is considered to be an associate company of the other, if the other company has significant influence over such company but which is not a subsidiary company of the company and includes a joint venture company. Significant influence means control of at least 20 per cent, of total share capital of a company or of business decisions under an agreement. [Section 2(6)]

(iii) Small company: Small company means company, other than a public

(i) paid - up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed not exceeding Rs.5 crore or

(ii) turnover of which does not exceed two crore rupees or such higher amount as may be prescribed not exceeding twenty crore rupees. [Section 2(85)].

(iv) Dormant Company : Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

2. Board of Directors

(i) Number of directors: Maximum number of directors in a company has been increased to 15 from 12. More directors can be added by passing of special resolutions without getting the approval of Central Government as earlier required.

(ii) Women director: At least one woman director shall be on the Board of such class or classes of companies as may be prescribed. [Section 149 (2)]

(iii) Resident Director: Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year. [Section 149 (3)]

(iv) Independent Director: Concept of independent directors has been introduced for the first time in Company Law. All listed companies shall have at least one-third of the Board as independent directors. [149(4)]

(v) Duties of Directors: Duties of directors have been defined for the first time.

3. Appointment of key Managerial Personnel

Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel:

(i) Managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;

(ii) Company Secretary; and Chief Financial Officer [Section 203]

4. Related Party Transaction

Related party transactions by a company having prescribed paid-up capital **or** value of transaction exceeding prescribed limits will require prior approval of members by special resolution. The related party who is a member of such a company cannot vote in such special resolution. The Boards report has to disclose related party transactions along with the justification. [Section 188]

5. Cross Border Amalgamation

Mergers and amalgamations between companies registered under this Act. Companies incorporated in the jurisdictions of such countries as may be notified from time to time by Central Government are allowed.

6. **Class Action Suits**

For the-first time a provision has been made for; class action. Class action suits may be filed by investors in a court of law if they believe that the affairs of the company are being conduct in amanner detrimental to the interest of the company and its shareholders. Enabling such class action suits should, in the long-run, may help: to improve the quality of financial reporting as well as the quality of corporate governance among firms: [Section 245]..

7. **Serious Fraud Investigation Office (SFIO)**

The Companies Bill, 2012 has provisions to give SFIO suo moto powers to arm it with legal and statutory powers to probe corporate misdoings. Given that corporate frauds are becoming increasingly sophisticated with the improvement in technology, SFGIO has been demanding more powers, in line with those enjoyed by Income Tax Authorities, Customs Department, Enforcement directorate, etc. [Section 211]

8. **Prohibition of insider trading**

New clause has been introduced with respect to prohibition of insider trading of securities. The government proposes to tighten the insider trading regulations, prescribing in five years of jail for key company executives and directors found guilty. [Section 195]

9. **Fraud defined**

The term "Fraud" has for the first time been defined in the Bill. Any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than months but which may extend to ten years and shall also be liable to fine which shall not be less than amount involved in the fraud, butwhich may extend to three times the amount involved in the fraud. [Section 447]

10. **National Company Law Tribunal and Appellate Tribunal**

The Central Government shall, by notification constitute a Tribunal to be known as National Company Law Tribunal and an Appellate Tribunal to known as National Company law Appellate Tribunal. [Section 408 and 410]

11. Special Court

The Central Government may, for the purpose of providing speedy trail of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

12. Constitution of National Financial Reporting Authority

The Central Government may, by notification, constitute a National Financial Reporting Authority to provide for matters-relating to accounting and auditing under this Act. [Section 132]

1.9 JOINT STOCK COMPANY

With the technological improvements, the scale of operations of business has increased. The requirements for finances and managerial resources have gone up. The traditional forms of organization such as sole-proprietorship, joint Hindu family, partnership, could not meet the requirements of business. The company form of organization has developed as the most suitable alternative.

A joint stock company is an association of persons joining together for carrying on business and having a separate legal entity. The persons joining the business contribute to the stock of the company and are called shareholders.

- A company is registered under the Companies Act 2013.
- A company is an artificial person created under law.
- It is a voluntary association of persons, having separate legal entity with limited liabilities of shareholders.
- The company has perpetual succession and common seal.
- The shareholders are the real owners of the company and elect Board of Directors for carrying on managerial activities.
- Shares of the company are transferrable without disturbing its continuity.

Definitions

James Stephenson: A company is 'an association of many persons who contribute money or money's worth to a common stock and employs it is some trader business and who share the profit and loss (as the case may be) arising there from'.

Prof. L.H. Haney, "A Joint Stock Company is a voluntary association of individuals for profit, having a capital divided into transferable shares, the ownership of which is the condition of membership".

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

Section 2(20) of the Companies Act, 2013 provided that "Company means a company incorporated under this Act or under any previous Company Law".

Characteristics of Joint Stock Company

Following are the characteristics of a Joint Stock Company:

1. **Artificial Person.** A company iscreated under law and existsindependent of its members. Like a person, a company can own property, own bank accounts, undertake agreements with outsiders, raise capital, borrow money, sue others. Therefore, a company is called an artificial person.
2. **Formation.** A company is formed under Companies Act, 2013, There are anumber of formalities, which need to be completed before a company is formed. Anumber of documents are prepared which are submitted at the time of registration. The formation of a company is complicated and time-consuming process.
3. **Independent Legal Entity.** The company is created under law. It has a separate legal entity apart from its members. A company acts independently of its members. The company is not bound by the act of its members, and members do not act as agents of the company. A person can own its shares and can be its creditor too. The life of the company is independent of the lives of its members. The company can sue and be sued in its own name.

4. **Limited Liability.** The liability of its shareholders is limited to the value of shares they have purchased. In case the company incurs huge liabilities, the shareholders can only be called upon to pay the unpaid balance of their shares. The company being a separate legal entity can incur debts in its own name and the shareholders will not be personally liable for that. However, shareholders of an unlimited company have unlimited liability. The liability of members of a company limited by guarantee is limited to the guaranteed amount.

5. **Common Seal.** A company being an artificial person cannot put its signatures. The law requires every company to have a seal and get its name engraved on it. The seal of the company is affixed on all important documents and contracts as a token of signature. The directors must witness the affixation of the seal.

6. **Transferability of Shares.** The shares of a company can be transferred by its members. Whenever the members want to dispose off the shares, they can do by following the procedure devised for this purpose. Under Articles of Association, the company can put certain restrictions on the transfer of shares, but it cannot altogether stop it. However, private companies can put more restrictions on transferability of shares, virtually making it zero.

7. **Separation of Ownership and Management.** The share holders of a company are widely scattered. A shareholder may like to invest money but may not be interested inits management. The companies are managed by Board of Directors. The ownership and management are in two separate hands. The shareholders do not get any right to participate in company management. The right to manage company affairs is vested in the directors who are elected representatives of the shareholders.

1.10 FORMATION OF A JOINT STOCK COMPANY

The promotion of every business requires a process to be followed. A number of formalities have to be completed before a unit can come into existence. The promotion of a company involves the conceiving of a business opportunity and taking the initiative to give it a practical shape.

Stages for Promotion of a Company

Following are the stages for promotion and incorporation of a company:

A. Promotion Stage

B. Incorporation/Registration Stage

C. Floatation or Raising of Capital Stage

D. Commencement of Business Stage

A. Promotion Stage

Promotion of a company is the first important stage where necessary steps are taken for bringing the idea of a company into practice. It is the process of planning and arranging various inputs required for running an enterprise. Promotion involves identification of an opportunity, studying the feasibility, assembling the requirements, financing the proposition, etc. All these activities are undertaken by the promoters who perform various stages of promotion.

Promoter

Section 2(69) of the Company Act, 2013 defines the promoter as a person :

(a) Who has been named as such in the prospectus or is identified by the Company in the annual statement.

(b) Who has control over the affairs of the company, directly or indirectly.

(c) In accordance with whose advice, direction or instructions the Board of Directors of the Company is accustomed to act.

A promoter is a person who initiates the setting up of a company and controls its working. A promoter may be an individual, a firm or body corporate.

Following are the steps in promotion :

1. Identification of Business Opportunity. The first stage in promotion of a business is the identification of a business opportunity. The promoter visualizes that there are opportunities for a particular type of business and it can be run profitably. The idea may be to exploit a new area of natural resources or a venture in the existing line of business. He develops the ideas with the help of technical experts of that field. When the

promoter feels that there are opportunities in taking up a particular venture then the idea is taken further.

2. Detailed Investigation. At the second stage, various factors relating to the business are studied from a practical point of view. The demand for the product is estimated and the likely business share is determined. After determining the prospective demand, the promoter thinks of arranging finances, labour, raw materials, power, etc. Thecost structure of the product is analysed to find out profitability from the venture. An expert opinion is sought upon the viability of the project.

3. Signatories to Memorandum. The promoters decide the names of persons to be the signatories to the memorandum of association. Usually, the first signatories to the memorandum become the first directors of the company. The written consent of the persons to act as directors is taken and they are asked to take qualifying shares of the company.

4. Appointment of professionals. The next stage is of raising funds and deciding about various contracts. So, promoters appoint the brokers and underwriters to ensure the availability of capital by sale of company's securities. They also appoint solicitors to deal with legal matters of the company.

5. Preparing necessary documents. The promoters take steps to prepare various legal documents of the company which have to be submitted to the Registrar of Companies at the time of incorporation. The documents which are required to be prepared include Memorandum of Association, Articles of Association, Prospectus, etc.

B. Incorporation/Registration Stage

A company being an artificial entity comes into existence only after its registration with the Registrar of Companies. A number of formalities have to be completed before a request is made to the Registrar for its registration. A legal process has to be completed before a company obtains a separate legal entity. After ensuring that all necessary documents are filed, the Registrar of Companies issues a Certificate of Incorporation. With this Certificate, the company becomes a separate legal entity.

Steps for Incorporating a Company

Before getting a company registered, a number of steps have to be taken up:

1. **Application for approval of name.** The first step in getting a company incorporated is of obtaining the approval of name from Registrar of Companies. Acompany may adopt any name which is not prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950 and which is not identical with or does not closely resemble the name of a company already registered. The applicant should give a maximum of six names in order to avoid delay. The application for the approval of name should be sent to the Registrar of Companies of the state in which the company is to be situated. The Registrar is expected to approve the name within 7 days of the receipt of application. The proposed name must be registered within 3 months from the date of intimation by the Registrar failing which the promoter will have to apply again to the Registrar for the revalidation of the approval.

2. **Preparation of Memorandum of Association.** The preparation of Memorandum of Association is the next step in the incorporation of a company. It is the constitution of the company which describes its objects and scope and the relation with outside world. The memorandum is to be signed by at least seven persons if it is a public limited company and atleast two persons in case of a private limited company. The memorandumshould be printed and properly stamped.

3. **Preparation of Articles of Association**. Besides memorandum, the promoters will also prepare Articles of Association. It is a document which contains rules and regulations relating to the internal management of the company. A public limited company may not file its own Articles of Association, it may adopt model clauses prescribed in Table A, Schedule I of the Act. A private limited company is also required to submit its Articles duly signed by the signatories.

4. **Preparation of other documents.**

The promoters are also expected to prepare the following documents at the time of incorporating the company:

(i) Power of Attorney: With a view to fulfilling various formalities that are required for incorporation of a company, the promoters may execute a power of attorney in favour of

one of them or an advocate or some professional to carry out the formalities required for registration.

(ii) Consent of Directors: A list of persons who have agreed to become the first directors of the company along with their consent should be filed

(iii) Particulars of Directors: Where the company names in its Articles the persons who are to act as directors, the particulars of such directors may be filed with the Registrar at the time of registration.

(iv)Affidavit by Subscribers and First Directors : Affidavits from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he/she is not convicted of any offence in connection with the promotion, formation or management of any company.

(v)Address for Communication and Notice of Registered Address : Address for communication till the company acquires its registered office shall also be supplied. A company is required to have a registered office within 15 days of incorporation and within 30 days of incorporation, it must submit the verification of the registered office in the prescribed manner.

(vi)Statutory Declaration: A statutory declaration to the effect that all the requirements of this Act and the rules made there, under in respect of registration have been complied with. The declaration is to be signed by an advocate, chartered accountant, cost accountant or company secretary who is engaged in the formation of the company. A person named in the articles as a director, manager or secretary of the company should also sign this declaration.

5. Payment of fee. At the time of registration, prescribed registration fee and filing fee for each document filed for registration are to be paid at the Registrar's office. The feeto be paid varies with the amount of nominal capital in case of companies with share capital or according to the number of members in case of companies without share capital.

INCORPORATION CERTIFICATE

When all the required documents are filed with the Registrar along with the requisite fee, a scrutiny is made. When all documents are found in order, the Registrar will enter the name of the company in the Register of Companies and issues a Certificate of Incorporation. The date mentioned in the certificate is the date of incorporation of the company.

Effect of Certificate of Incorporation

After the incorporation, the company becomes a separate legal entity with perpetual succession. The certificate of incorporation is a conclusive proof of the existence of the company. Once a certificate of incorporation is issued, the company comes into existence from the date mentioned on it. Any deficiency or infirmity found in the incorporation of the company later on will not influence the existence of the companyand the incorporation will remain valid.

Specimen of Certificate of Incorporation

GOVERNMENT OF INDIA MINISTRY OF CORPORATE AFFAIRS

Registration of Companies, New Delhi

Certificate of Incorporation

Pursuant to sub-section (2) of section 7 of the Companies Act, 2013 and rule 8 of the Companies (Incorporation) Rules, 2014.

I hereby certify that................is incorporated on this eight day of December Two Thousand Fifteen, Under the Companies Act, 2013 and that the company is limited by shares.

The CIN of the company is ....

Given under my hand at New Delhi this eighth day of December Two Thousand Fifteen.

Sd.
Registrar of Companies
New Delhi

C. Floatation or Raising of Capital Stage

After going through the incorporation formalities, the next stage will be to raise funds.

A public or private company having share capital cannot commence business unless minimum subscription as stated in the prospectus has been subscribed. A company not having share capital may commence business after obtaining certificate of incorporation. The amount stated for allotment should be duly received in cash and allotment has been made properly.

Following steps are required to raise funds from the public:

(i) SEBI approval. SEBI (Securities Exchange Board of India) is a regulatory body to control capital markets in India. A public company is required to submit relevant information with the SEBI before issuing securities in the capital market. The companies are required to give information according to guidelines for disclosure and investor protection 2000'. So, prior permission of SEBI is required before raising funds from the public.

(ii) Filing of prospectus. A prospectus or a 'statement in lieu of prospectus[7] has to be filed with the registrar of companies. A prospectus is a document inviting general public to subscribe to the shares or debentures of the company. The investors make-up their mind about investments on the basis of information contained in the prospectus.

(iii) Appointment of bankers, brokers, underwriters. The bankers are appointed to receive application money from the public. The application money goes to the bank account of the company. The brokers encourage public to subscribe to the shares offered by the company. If the company is not sure of selling the whole lot of shares, it may appoint underwriters. The brokers purchase unsold shares themselves and charge commission for this service.

(iv) Minimum subscription. In order to prevent companies to start business with inadequate funds, a minimum subscription is fixed. A company must sell a minimum number of shares before starting the next process. This minimum number is called minimum subscription. As per the rules of SEBI, a company must receive 90 per cent of the issued amount within a period of 120 days from the issue of prospectus. In case the company does not receive the minimum subscription then it must return the application money within the next 10 days.

(v) Application to Stock exchange. A company must get itself listed in a stock exchange before selling the securities to general public. The company must make application to atleast one stock exchange for a permission to deal in its stocks. The stock exchange authorities verify the financial soundness and other aspects of the company. After satisfying from the information of the company, the name of the company is listed in the exchange. If the company fails to get permission from the stock exchange within ten weeks from the date of closure of subscription list then the allotment will become void and money received on applications must be returned within eight days.

(vi) Allotment of shares. After getting the shares listed, the company makes allotment of shares. A list is prepared giving details about names and addresses of all the shareholders, and the number of shares allotted etc. The company has to submit a return of allotment with the registrar giving details of shares allotted to each shareholder.

D. Commencement of Business

After obtaining the certificate of incorporation, a company not having share capital can commence business. The companies having share capital, whether public company or private company, cannot commence business before obtaining the certificate of commencement of business. The Companies Act, 2013 provides that companies having share capital shall not commence any business or exercise any borrowing power without complying with the following requirements:

(i) Declaration by a Director: A declaration needs to be filed by a director with the Registrar that every subscriber to the memorandum has paid the value of shares agreed to be taken by him and the paid-up share capital of the company is not less than five lakh rupees in case of a public company and one lakh rupees in case of a private company on the date of making this declaration.

(ii) Filling of Verification of Registered Office: The company shall file with the Registrar a verification of registered office in the prescribed form.

The Registrar will scrutinize all those documents and if he is satisfied, then he issues a Certificate of Commencement of Business. The grant of this certificate computes

the process of formation of a company. The company can start its business activities from the date of issue of the certificate.

Relevance of Certificate of Commencement

- This certificate is a legal document and proof that formation of the company is complete.
- This certificate is a concluding evidence that the company is entitled to commence its business.
- It is also a declaration that every subscriber to the memorandum has paid the value of shares agreed to be taken by him.
- The paid up share capital is not less than five lakh rupees in case of a public company and one lakh rupees in case of a private company.

1.11 MEMORANDUM OF ASSOCIATION (MOA)

The Memorandum of Association is the constitution of the company and provides the foundation on which its structure is built. It is the principal document of the company and no company can be registered without the memorandum of association. It defines the scope of the company's activities as well as its relation with the outside world.

The company law defines it as per Section 2 (56) of the Companies Act, 2013, “The memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.

Purpose

The main purpose of the memorandum is to explain the scope of activities of the company. The prospective shareholders know the areas where company will invest their money and the risk they are taking in investing the money. The outsiders will understand the limits of the working of the company and their dealings with it should remain within the prescribed scope.

Clauses of memorandum

Thememorandum ofassociation contains thefollowing contents :

1. The Name Clause. A company being a separate legal entity must have a name. A company may select any name which does not resemble the name of any other company

and it should not contain the words like king, queen, emperor, government bodies and the names of world bodies like U.N.O., W.H.O., World Bank, etc. The name should not be objectionable in the opinion of the government. The word 'Limited' must be used at the end of the name of a Public and 'Private Limited' is used by a Private Company. These words are used to ensure that all persons dealing with the company should know that the liability of its members is limited. The name of the company must be painted outside every place where business of the company is carried on.

If the company has a name which is undesirable or resembles the name of any other existing company, this name can be changed by passing an ordinary resolution.

2.Registered Office Clause. Every company should have a registered office, the address of which should be communicated to the Registrar of Companies. This helps the Registrar to have correspondence with the company. The place of registered office can beintimated to the Registrar within 30 days of incorporation or commencement of business, whichever is earlier.

A company can shift its registered office from one place to another in the same town with intimation to the Registrar. But if the company wants to shift its registered office from one town to another town in the same state, a special resolution is required to be passed. If the office is to be shifted from one state to another state it involves alteration in the memorandum.

3.Object Cause. This is one of the important clauses of the Memorandum of Association. It determines the rights and power of the company and also defines its sphere of activities: The object clause should be decided carefully because it is difficult to alter thisclause later on. No activity can be taken up by the company which is not mentioned in theobject clause. Moreover, the investors, i.e. shareholders will know the sphere of activities which the company can undertake. The choice of the object clause lies with the subscribers to the memorandum. They are free to add anything to it provided it is not contrary to the provisions of the Companies Act and other laws of the land.

The object clause can be altered to enable a company to carry on its activities more economically or by improved means to carry on some business which under existing circumstances may conveniently be combined with the object clause.

4.Liability Clause. This clause states that the liability of the members is limited to the value of shares held by them. It means that the members will be liable to pay only the unpaid balance of their shares. The liability of the members may be limited by guarantee. It also states the amount which, every member will undertake to contribute to the assets of the company in the event of its winding-up.

5. Capital Clause. This clause states the total capital of the proposed company. The division of capital into equity shares capital and preference share capital should also be mentioned. The number of shares in each category and their value should be given. If some special rights and privileges are conferred on any type of shareholders, mention may also be made in the clause to enable the public to know the exact nature of capital structure of the company.

The capital clause can be altered by passing a special resolution and by obtaining the approval of the Company Law Board.

6. Name of Nominee in case of One Person Company: In case of one person company, memorandum must state the name of the person who, in the event of death of the subscriber or his inability to act shall become the member of the company.

7. Association Clause. This clause contains the names of signatories to the memorandum of association. The memorandum must be signed by atleast seven persons in the case of a public limited company and by at least two persons in case of private limited company. Each subscriber must take at least one share in the company. The subscribers declare that they agree to incorporate the company and agree to take the shares stated against their names. The signature of subscribers is attested by at least one witness each. The full addresses and occupations of subscribers and the witnesses are also given.

1.12 ARTICLES OF ASSOCIATION (AOA)

The rules and regulations which are framed for the internal management of the company are set out in a document named Articles of Association. The articles are

framed to help the company in achieving its objectives set out in memorandum of association. It is a supplementary document to the memorandum.

Purpose

The purpose of preparing Articles of Association is to frame various rules and regulations for the internal working of the company. The articles will act as a guide to all those persons who are required to take various decisions. The written document helps in improving the day to day working and decision maker also acts within their authority.

Section2(2) of the Companies Act, 2013, "Articles of association of the company as originally framed or as altered from time to time in pursuance of any previous companies law or of this act."

The private companies limited by shares, companies limited by guarantee and unlimited companies must have their articles of association. A public company limited by shares may or may not have its own Articles of Association. As per Companies Act, it is not obligatory on the part of a public company limited by shares to prepare and register Articles of Association along with Memorandum of Association. However, such a company may adopt all or any of the regulations contained in the model set of Articles given in Table A in Schedule I of the Act. It means the company can partly frame its own articles and partly incorporate some of the regulations in Table A. Unless the company prepares its own articles, regulations of Table A shall be applicable in the same manner as if they were contained in its own registered articles.

The articles cannot contain anything contrary to the Companies Act and also to the memorandum of association. Each subscriber to the memorandum must sign the articles in the presence of at least one witness.

Nature of Articles of Association

(i) Articles of association are subordinate to memorandum of association,

(ii) These are controlled by memorandum.

(iii) Articles help in achieving the objectives laid down in the memorandum.

(iv) Articles are only internal regulations over which members exercise control.

(v) Articles lay down the regulations for governance of the company.

Contents of Articles of Association

(i) Share capital shares their value and their division into equity and preference shares, if any.

(ii) Rights of each class of shareholders and procedure for variation of the rights.

(ii) Procedure relating to the allotment of shares, making of calls and forfeiture of shares.

(iv) Increase, alteration and reduction of share capital.

(v) Rules relating to transfer or transmission of shares and the procedure to be followed for the same.

(vi) Lien of the company on shares allotted to the members for the amount unpaid in respect of such shares and the procedure in respect thereof.

(vii) Appointment, remuneration, powers, duties etc. of the directors and officers of the company.

(viii) Constitution and composition of Audit Committee, Remuneration Committee, CSR Committee.

(ix) Procedure for conversion of shares into stock and vice versa.

(x) Notice of the meetings, voting rights of members, proxy, quorum, poll, etc.

(xi) Audit of accounts, transfer of amount of reserves, declaration of dividend, etc.

(xii) Borrowing powers of the company and the mode of exercise of those powers.

(xiii) Issue of share certificates including procedure for issue of duplicate shares.

(xiv) Winding up of the company

Alteration of Articles of Association

The articles of association can be altered by passing a special resolution. Certain restrictions are imposed on the nature and extent of the alternation that may be made.

(a) The change should not be violating the provisions of the Companies Act.

(b) It should not be contrary to the provisions of the memorandum of association. (c) The alteration must not have anything illegal.

(d) The alteration should not adversely affect the minority shareholders.

1.13 GOVERNMENT COMPANY

A government company means any company in which not less than 51% of the paid-up share capital is held by the Central Government and / or by any State Government(s) or partly by the Central Government and partly by one or more State Government.

Such companies have to follow all provisions of the Indian Companies Act, 1956. It has to be registered under the Indian Companies Act, 1956.

Examples: Hindustan Machine Tools, Bharat Heavy Electricals Ltd.

A public enterprise incorporated under the Indian Companies Act, 1956 is called a government company. These companies are owned and managed by the central or the state government. According to Indian Companies Act, 1956, a government company means "any company in which not less than 51 percent of the paid up share capital is heldby the central or by state government and partly by the central government and includes a company which is a subsidiary of Government Company". These companies are registered as private limited companies though their management and their control vest with the government. This is a type of organization where both the government and private individuals are shareholders. Sometimes these companies are called as a mixed ownership company.

The following are some of the essential features of a government company:

i) It is formed under the provisions of the Indian Companies Act, 1956.

ii) The total share capital or 51 percent or more of share capital is held by the government.

iii) It enjoys the status of a legal entity and therefore it can sue or be sued by others.

iv) The finance of a government company is obtained from the government and from private share holders.

v) The employees are governed by the rules prescribed for the company by the board of directors.

vi) It is not subject to budgeting, accounting and audit rules applicable to a government department.

vii) The directors are nominated by the government depending upon participation of private capital.

1.14KEY MANAGERIAL PERSONNEL

As per Section 203 (1) read with Rule 8 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, every listed company and every other public company having a paid up share capital of ten crore rupees or more shall have the following whole time key managerial personnel's,

(i) Managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;

(ii) Company secretary; and (iii) Chief Financial Officer

In this regard the following points are to be noted:

(1) An individual shall not be appointed or reappointed as the chairperson of the company as well as the managing director or chief executive officer of the company at the same time unless (a) the articles of such a company provide otherwise or (b) the company does not carry multiple businesses

(2)Appointment of whole-time key managerial personnel should be in a Board meeting and by way of passing a Board resolution. The Board resolution should contain the terms and conditions of the appointment including the remuneration of such personnel.

(3) If the office of any whole-time key managerial personnel is vacated (by resignation or otherwise), the resulting vacancy shall be filled-up by the Board of directors at a Board meeting within six months from the date of such vacancy.

(4)Whole-time key managerial personnel can't hold office in more than one company except in its subsidiary company at the same time. However, with the permission of the Board of directors, such key managerial personnel may be appointed as a director in any other Company. To clarify, a whole time key managerial person can't hold any office in other companies at the same time (either as a director or otherwise) except (a) in its

subsidiary company (b) as a director in any other company with the previous approval of Board.

(5) A person can't be appointed as a managing director of a company if he is themanaging director or manager of another company except if such person is the managing director or manager of not more than one company. He can be appointed as a managing director if his appointment is approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting. For such Board meeting specific notice should be been given to all the directors then in India.

ROC filing for appointment of key managerial personnel and/or changes in managerial personnel:

The Company is required to file a form MR. 1 for appointment of key managerial personnel (i.e. Managing Director, Whole Time Director or Manager, Chief Executive Officer (CEO), Company Secretary and Chief Financial Officer (CFO)).

Form MR Ishould be filed within sixty days from the date of appointment.

In addition to the aforesaid, form DIR 12should also be filed with the Registrar of Companies for appointment and/or changes in the key managerial personnel (s) within thirty days of such appointment or change, as the case may be.

Disclosures and statement related to key managerial personnel (kmp), directors and other employees in the board report

(1) Every Listed Company shall make the following disclosures in its Board report related to key managerial personnel's:

a) The ratio of the remuneration of each director to the median remuneration of the employees of the company for the financial year; (NOTE: "median" means the numerical value separating the higher half of a population from the lower half and the median of a finite list of numbers may be found by arranging all the observations from lowest value to highest value and picking the middle one)

b) The percentage increase in remuneration of each director, Chief Financial Officer, Chief Executive Officer, Company Secretary or Manager, if any, in the financial year;

c) The percentage increase in the median remuneration of employees in the financial year;

d) The number of permanent employees on the rolls of company;

e) The explanation on the relationship between average increase in remuneration and company performance;

f) Comparison of the remuneration of the Key Managerial Personnel against the performance of the company;

g) Variations in the market capitalization of the company, price earnings ratio as at the closing date of the current financial year and previous financial year and percentage increase over decrease in the market quotations of the shares of the company in comparison to the rate at which the company came out with the last public offer in case of listed companies, and in case of unlisted companies, the variations in the net worth of the company as at the close of the current financial year and previous financial year;

h) Average percentile increase already made in the salaries of employees other than the managerial personnel in the last financial year and its comparison with the percentile increase in the managerial remuneration and justification thereof and point out if there are any exceptional circumstances for increase in the managerial remuneration;

i) Comparison of the each remuneration of the Key Managerial Personnel against the performance of the company;

j) The key parameters for any variable component of remuneration availed by the directors;

k) The ratio of the remuneration of the highest paid director to that of the employees who are not directors but receive remuneration in excess of the highest paid director during the year

l) Affirmation that the remuneration is as per the remuneration policy of the company.

(2) The board's report shall include a statement showing the name of every employee of the company, who:

a) If employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than sixty lakh rupees;

b) If employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than five lakh rupees per month;

c) If employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependentchildren, not less than two percent of the equity shares of the company.

d) The said statement shall also indicate -

- designation of the employee;
- remuneration received;
- nature of employment, whether contractual or otherwise;
- qualifications and experience of the employee;
- date of commencement of employment;
- the age of such employee;
- the last employment held by such employee before joining the company;
- the percentage of equity shares held by the employee in the company within the meaning of clause (iii) of sub-rule (2)above and
- whether any such employee is a relative of any director or manager of the company and if so, name of such director or manager.

e) Particulars of employees posted and working in a country outside India, not being directors or their relatives, drawing more than sixty lakh rupees per financial year or five lakh rupees per month, as the case may be, as may be decided by the Board, shall not be circulated to the members in the Board's report, but such particulars shall be filed with the Registrar of Companies while filing the financial statement and Board Reports. Such particulars shall be made available to any shareholder on a specific request made by him in writing before the date of such Annual General Meeting wherein financial statements for the relevant financial year are proposed to be adopted by shareholders and such particulars shall be made available by the company within three days from the date of

receipt of such request from shareholders. In case of request received even after the date of completion of Annual General Meeting, such particulars shall be made available to the shareholders within seven days from the date of receipt of such request.

Member

In relation to a company, means -

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

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

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

Net Worth

Net worth means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

Officer

Who is in default, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:

i) Whole-time director;

ii) Key managerial personnel;

iii) Where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

iv) Any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorizes, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

v) Any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity, 20.

vi) Every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by of any proceedings of the Board or participation in such proceedings without objecting to the same or where such contravention had taken place with his consent or connivance;

vii) In respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

1.15 ONE PERSON COMPANY

A view concept of 'one person company' has been incorporated in the Companies Act, 2013. This concept is widely accepted in developed countries like the UK and one of our neighbouring countries China. Minimum two members are required to form a private company and minimum seven members are required for a public company under the Companies Act. This is looked as a barrier by businessmen and professionals who do not want any participant in business. But with introduction of one person company it will be possible to form a company with only one member. One person company provides benefit of both forms of business- Proprietorship and Company. With formation of a one person company, business can be run in same way as a proprietorship, of course, by complying with law and keeping liability of the member limited by share or guarantee, asthe case may be.

Section 2(62) of the Act defines one person company. As the name suggests, it means a company which has only one person as a member and where legal and financial liability is limited to the company only and not to that person (i.e., liability is limited). Section 2(68) of the Act provides for the definition of a private company to include one

person company. This implies that all the provisions of the Act applicable to a private company shall also be applicable to an one person company, unless otherwise excluded from the compliance. Also section 3 of the Act, further clarifies the fact that one person company shall be treated as a private company for all legal purposes with only one member.

Formation of One Person Company (OPC)

The 2013 Act allows the formation of a one person company (OPC). The following provisions regarding formation of OPCs may be noted:

1. For forming a private company being a one person company, one person should subscribe his name to memorandum and comply with the requirements of the 2013 Act in respect of registration. (Section 3(l)(c) of the 2013 Act.)

2. Only an Indian citizen and resident of India is eligible to incorporate a one person company. This means body corporate and persons resident outside India cannot set up.

3. To ensure smooth perpetual succession of OPCs, the first proviso to section 3(1) of the 2013 Act provides that the memorandum should indicate the name of the other person (nominee) who shall become the member of the company in the event of the subscriber's death or his incapacity to contract. Prior consent of the nominee should be obtained in prescribed form for mentioning his name in memorandum. Such written consent shall be filed with Registrar of Companies at the time of incorporation of the OPC along with its memorandum and articles.

4. The nominee person may withdraw his consent in such manner as may be prescribed. (Second proviso to section 3(1) of the 2013 Act).

5. The member of the-OPC may at any time change the nominee in such manner as may be prescribed: (Third-proviso to section 3(1) of the, 2013 Act).

6. The member of a One Person Company shall intimate the company the change, if any, in the name of the person nominated by him by indicating in the memorandum or otherwise within such time and in such manner as maybe prescribed. The company shall intimate such change to ROC within such time and in such manner as may be prescribed. (Fourth proviso to section 3(1) of the 2013 Act.) Such change in the name of the nominee

shall not be deemed to be an alteration of the memorandum (Firth proviso to section 3(1) of the 2013 Act.)

Penalty

Where a one person company or any of its officer contravenes the provisions, then a fine shall be composed whichmay extend to ten thousand rupees and a further fine which may extend to one thousand rupees for everyday of default.

1.16 PRIVATE COMPANY

A Private Company can be formed with the association of atleast two members but the maximum number of share holders, cannot exceed 200. A Private Company restricts the transfer of its shares, prohibits any invitation to public for subscribing to share.

According to [Sec. 2(68)], a private company is a very suitable form for carrying on the business of family and small concerns as the minimum number of members required is only tow. [Sec. 2(68)] of the Companies Act, 2013 deals with the definition ofa private company.

The definition of private company is quoted u/s 2(68) of the Companies Act, 2013. It means a company which has paid-up capital as may be prescribed and by its articles:-

(i) restricts the right to transfer its shares,

(ii) limits the numbers of its members to two hundred (excluding members who are or were in the employment of the company); [Maximum no has been increased from 50 to 200 as per Companies Act, 2013].

(iii) Prohibits any invitation to the public to subscribe for any shares or debentures of the company, and

(iv) prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives.

1.17 DIFFERENCEBETWEENMEMORANDUMOFASSOCIATION ANDARTICLESOFASSOCIATION

	Memorandum of Association	Articles of Association
1	**Scope** The memorandum is a sort of constitution of the company. The company works in the framework given in the memorandum	The articles contain bye-laws for the day-to-day working of the company. Articles are framed in the orbit of the memorandum of association.
2	**Necessity** The memorandum is a must for getting a company registered.	Public companies may not have their own articles, but can adopt Table A of Schedule as its articles. Private companies, companies limited by guarantee and unlimited companies must have their own articles.
3	**Provisions** The memorandum cannot contain anything contrary to Companies Act.	The articles of association are subordinate to the memorandum and Companies Act and cannot contain anything contrary to both.
4	**Limitation** A company cannot do anything beyondthe scope of the memorandum. Any act beyond its scope done will be void.	Anything done beyond the scope of the articles will not be void and it can be ratified by passing a special resolution.
5	**Relationship** It regulates the relationship between company and the members of the public.	It defines relationship between company and the members and among members themselves.
6	**Alternation** Memorandum can be altered only under special circumstances and involves many	Alteration of articles is not difficult. It can be altered by passing special resolution.

	formalities.	

1.18 PROSPECTUS

After getting the company incorporated, promoters will raise finances. The public is invited to purchase shares and debentures of the company through an advertisement. A document containing detailed information about the company and an invitation to the public subscribing to the share capital and debentures is issued. This document is called 'prospectus'. Private companies cannot issue a prospectus because they are strictly prohibited from inviting the public to subscribe to their shares. Only public companiescan issue a prospectus.

Section 2(70) of Companies Act, 2013 defines a prospectus as :

“Any document described or issued as a prospectus and includes a red herring prospectus referred to in Sec. 32 or shelf prospectus referred to in Sec. 31 or 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.”

In simple words, a prospectus is a document, notice, circular, advertisement issued for inviting public to subscribe to the shares or debentures of a company.

A prospectus should have the following essentials:

(i) There must be an invitation offering to the public.

(ii) The invitation must be made on behalf of the company or intended company.

(iii) The invitation must be to subscribe or purchase.

(iv)The invitation must relate to shares or debentures.

A prospectus must be filed with the Registrar of Companies before it is issued to the public. The issue of prospectus is essential when the company wishes the public to purchase its shares or debentures.

A prospectus brings to the notice of the public that a new company has been formed. The company tries to convince the public that it offers best opportunity for their investment. A prospectus outlines in detail the terms and conditions on which the shares

or debentures have been offered to the public. Every prospectus contains an application form on which an intending investor can apply for the purchase of shares or debentures. A company must get minimum subscription within 120 days from the issue of prospectus. If it fails to obtain minimum subscription from the members of the public within the specified period, then the amount already received from public is returned. The company cannot get a certificate of commencement of business because the public is not interested in that company.

1.19 LEGAL REQUIREMENTS IN RELATION TO A PROSPECTUS

(1)Dating of prospectus (Section 26)

A prospectus issued by a company must be dated. Section 26 further provides that the date on the prospectus shall, unless contrary is provide, be taken as the date of the publication of the prospectus. This ensures a prima facie evidence of the date of its publication. However, this evidence may be rebutted by a contrary evidence.

(2)Registration of prospectus (Section 27(7))

(i) Nature. A prospectus must not be issued unless a copy thereof has been delivered to the Registrar for registration.

(ii) Time Limit Registration must be made on or before the publication of the prospectus.

(iii) Signatures. The copy sent for registration must be signed by every person who is named in the prospectus as a director or a proposed director of the company or by his agent duly authorized in writing.

(iv) Date of issue of prospectus. The date of issue of prospectus is the date on which the prospectus first appears as a newspaper advertisement.

(v)Contents. Prospectus should—

(a) State that a Copy thereof has been delivered to ROC for registration,

(b) Specify documents endorsed or attached to the copy so delivered, and

(c) Contain an endorsement that the consent of Experts has been obtained.

(vi)Enclosures

(a) Consent of the Expert to the Issue of Prospectus, where it contains a Report by an Expert,

(b) Copy of every material contract appointing or fixing remuneration of a MD or Manager.

(c) Copy of every other material contract. However, the following need not be enclosed—

- Contract entered into in ordinary course of business, or
- Contract entered into more than 2 years before the date of Prospectus.

(d) Written statement from Auditors relating to the adjustments to figures of abridged Financial Statements along with reasons there for.

(e) Consent of every person named therein as Auditor, Legal Adviser, Attorney, Solicitor, Banker or Broker of the Company/Intended Company to act in that capacity.

(vii) Registration. The prospectus must be issued within ninety days of its registration. If it is issued say 91 days after, it shall be deemed to be a prospectus a copy of which has not been delivered for registration.

(viii)Penalty for non-registration of prospectus

If a prospectus is issued without a copy thereof being delivered to the Registrar for registration or without the required documents or consent attached thereto, the company and every person knowingly party to the issue of the prospectus, shall be punishable with fine which may extend to Rs.50000which may extend to rupees three lakhs.

(ix) Opening of subscription list. Where a prospectus has been issued, no allotment of any shares shall be made until—

(a) The beginning of the 5th day after prospectus is first issued; or

(b) Such later time as may be specified in the prospectus or

(c) The beginning of the 5th day after public notice is given. Such day is referred to as 'date of opening of subscription list'.

Disclosures to be made (Section 26)

Section 26 of the Companies Act requires every prospectus to disclose the matters specified in Schedule II of the Act. The Schedule is divided into three parts.

When Registrar can Refuse registration (Sec. 26)

The Registrar can refuse to register a prospectus if:

(a) it is not dated;

(b) it does not comply with the requirements of as to the matters and reports to be set out in it;

(c) it contains statements or reports of experts engaged or interested in the formation or promotion or management of the company;

(d) it includes a statement purported to be made by an expert without a statement that he has given and has not withdrawn his consent to the manner of its inclusion in the prospectus;

(e) it does not contain the consent in writing of directors and copy of the documents has not been filed or does not comply with the provisions with regard to the fact that a copy of it has been filed with the Registrar;

(f) it is not accompanied by the consent in writing of the auditor, legal adviser, solicitor, banker or broker of the company if named in the prospectus to act in that capacity.

CONTENTS OF PROSPECTUS

A prospectus is the most important document since the intending investors base their decisions on the facts and figures furnished in the prospectus. It is the window through which a prospective investor can look into the soundness of a company's venture.In order to protect the interests of the investing public against the frauds of the promoters,the Companies Act requires every company issuing a prospectus to observe a large number of regulations. Failure to observe them is made punishable with fine or imprisonment or both. Hence, utmost care should be taken in drafting a prospectus.

Section 26 of Companies Act, 2013 read with Rule-3 of Companies (Prospectus and Allotment of Securities) Rules, 2014

Under Section 26 and Rule 3, every prospectus shall be datedand signedand shall contain the following matters:

(A) MATTERS IN PROSPECTUS

(i) Names and addressesof the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed;

(ii) Dates of the opening and closingof the issue, and declaration about the issue of allotment letters and refunds within the prescribed time;

(iii) A statementby the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilised and unutilised monies out of the previous issue in the prescribed manner;

(iv) Details about underwritingof the issue;

(v) Consent of the directors,auditors, bankers to the issue, expert's opinion, if any, and of such other persons, as may be prescribed;

(vi)The authority for the issueand the details of the resolution passed therefore;

(vii)Procedure and timeschedule for allotment and issue of securities;

(viii)Capital structure of the company in the prescribed manner;

(ix) Main objects of public offer, terms of the present issue and such other particulars as may be prescribed;

(x) Main objects and present business of the company and its location, schedule of implementation of the project;

(xi)Particulars relating to—

(a) Management perception of risk factors specific to the project;

(b) Gestation period of the project;

(c) Extent of progress made in the project;

(d) Deadlines for completion of the project; and

(e) Any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company;

(xii) Minimum subscription,amount payable by way of premium, issue of shares otherwise than on cash;

(xiii) Details of directorsincluding their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed; and

(xiv)Disclosuresin such manner as may be prescribed about sources of promoter's contribution;

(B) REPORTS IN PROSPECTUS

The prospectus must set out the following reports for the purposes of the financial information, namely:

(i) Reports by the auditorsof the company with respect to its profits and losses and assets and liabilities and such other matters as may be prescribed;

(ii) reports relating to profits and lossesfor each of the five financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries and in such manner as may be prescribed;

In case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out the reports relating to profits and losses for each of the financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries;

(iii) Reports made by the auditors upon the profits and losses of the businessof the company for each of the five financial years immediately preceding issue and assets and liabilities of its business on the last date to which the accounts of the business were made up, being a date not more than one hundred and eighty days before the issue of the prospectus :

In case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out the reports made by the auditors upon the profits and losses of the business of the company for all financial years from the date of its incorporation, and assets and liabilities of business on the last date before the issue of prospectus; and

(iv) Reports about the business or transactionto which the proceeds of the securities are to be applied directly or indirectly.

(C) DECLARATION

The prospectus shall make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the

provisions of this Act, the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made there under.

The prospectus shall also state such other matters and set out such other reports, as may be prescribed.

1.20 COMPARATIVE STUDY OF COMPANIES ACT,1956 AND COMPANIES ACT, 2013

The first Indian Companies Act was passed in 1850 for registration of companies. After independence, Companies Act 1956 was passed to register and regulate the working of companies. This act was amended a number of times and finally it has been replaced by Companies Act, 2013. Some important changes in the Companies Act, 2013 as compared to the Companies Act 1956 which are relevant for the syllabus of this class are mentioned as follows:

1. Number of Members in Companies: A private company can have a maximum of 200 members as per the new act whereas it was 50 under Companies Act, 1956. The increased number would provide greater scope for the operations of private companies. There is no limit on maximum number of members of a public company. The minimum number of members for starting a company (2 in case of a private company and 7 in case of public company) remained the same.

2. One Person Company: The concept of One Person Company (OPC) was incorporated in Companies Act 2013 whereas there was no such provision in the earlier act. A private limited company can be started by one person also.

3. Concept of Small Company. The latest Companies Act has also introduced the concept of small company for the first time. A small company is one whose share capital does not exceed Rs. 50 lakhs and its turnover does not exceed Rs. 2 Crore. The limits of capital and turnover may be changed but not beyond Rs. 5 Crore and Rs. 20 Crore respectively.

4. Objective Clause: Memorandum of Association contains 'Object Clause', defining the areas of activities the company will undertake. In Companies Act, 1956, the object clause

was divided into three classes **i.e.** the main, auxiliary and other objects. The Companies Act 2013 has now scrapped this classification and now only the objects for which the Company is incorporated are required to be mentioned in the Memorandum of Association.

5. Statement in Lieu of Prospectus: The statement in lieu of prospectus by private companies has been done away with. The Act of 2013 requires a detailed prospectus to be issued.

6. Commencement of Business: As per the Companies Act, 1956, a private company could commence business after getting a 'Certificate of Incorporation. These Companies were not required to get a certificate of Commencement of Business. The public companies were required to get a Certificate of commencement before starting the business. Now the Companies Act, 2013 has stated that Companies having share capital, whether public or private, must acquire a 'Certificate of Commencement of Business' before starting the business.

7. Corporate Identity Number: As per the new act, the Registrar of Companies shall allot to the Company a 'Corporate Identity Number' (CIN) which shall be a distinct identity for the company and which shall also be included in the certificate of incorporation.

8. Number of Directors: The Companies Act, 2013 has raised the maximum number of directors from 12 to 15. A person can become director of maximum of 20 Companies instead of 15 Companies as prescribed in the Act of 1956. Out of the 20 Companies, he/she cannot be the director of more than ten public Companies at a time.

9. Woman Director: As per the new Act of 2013 it is mandatory that the prescribed class or classes of Companies shall have atleast one Woman Director.

10. Use of Technology for Filling Information: The new Act of 2013 has given statutory recognition to filing of applications, documents, etc. with the Registrar of Companies through electronic means.

1.21 PROMOTER

A promoter is a person who initiates the setting up of a company and controls its working. A promoter makes preliminary investigation and ensures about the future prospectus of the business. This stage includes all the processes starting from the inception of an idea to the completion of the project. It includes following steps:

(a) Identification of business opportunity

(b) Detailed investigation

(c) Signatories to Memorandum

(d) Preparing necessary documents.

Role and Importance of Promoter

A promoter can be defined as a person or group of persons who conceive the idea of setting up a new business, assess its feasibility and take necessary steps to arrange the basic requirements and establish a business unit say, a Company and put into operation. Promoter plays a pivotal role in the promotion of a company. He conceives the idea of business enterprise, analyses its prospects, works out a tentative scheme of organization, brings together the requisite men, material, machines and money and starts the enterprise.

Functions of a Promoter

The main functions of a promoter are as follow:

1. Planning and assessing the possibilities.

2.Discovering of idea for establishing a company.

3. Make detailed investigation about the demand for the product, availability of power, labour, raw material, etc.

4. Find out suitable persons who are willing to act as first directors of the company and are ready to sign on the Memorandum of Association.

5. Selecting of bank, legal advisor, auditors and underwriters for the company.

6. To prepare essential documents of the company.

7. To prepare draft of the Memorandum of Association, Articles of Association, Prospectus of the company and get them printed,

8. To submit all the documents, required for incorporation with the Registrar.

9. To arrange for advertisement of prospectus of the company in the newspapers.

10. To meet all the preliminary expenses for floating of a company.

11.To make contracts with vendors, underwriters and managing director of the company.

12. To raise the required finances and get the company going.

13. To make proper arrangement for the office of the company.

Rights of Promoters

The rights of promoters are as follows:

1. Right to receive preliminary-expenses.
2. Right to receive remuneration for their services.
3. Right to receive the proportionate money from co-promoters.

Liability of the Promoters

The liabilities of promoters are as follows:

1. To disclose the liability and pay the secret profits if promoters have earned.
2. Liability is up to the completion of contracts.
3. Liability on statutory mistakes or fraud in the prospectus.
4. His property becomes liable for payment even after his death.

Types of Promoters

The task of business promotion may be carried out by an individual, a firm, a body corporate or a banker. Based on the nature of their operation the promoters can be classified into the following categories:

(a) Professional Promoters: These promoters are specialists in promoting new business ventures. They do it on a whole time basis as their occupation or profession. They initiate all the steps in establishing new enterprises and find out the persons who can finance it. After completing all the formalities they pass on the management to their owners or shareholders and then move to another new venture.

(b) Financial Promoters: These promoters float companies only during favorable conditions in the securing market. They have the financial capacity and look forward to opportunities for new investment.

(c) Technical Promoters: These promoters are technical experts in different fields. They make use of their specialized knowledge, experience and training in promoting new business. They generally charge fees for their services.

(d) Entrepreneurial Promoters: They are the people who conceive new ideas of business, take necessary steps to set up the business unit to give it a shape and ultimately control and manage it. Most promoters in India (like Tata, Birla and Ambanies) fall in this category.

(e) SpecializedInstitutions: There are certain financial institutions which provide financial assistance and guidance in launching new ventures and often collaborate with new entrepreneurs to promote new business. They also provide management and technical expertise to the existing enterprises.

(f) Government: Both the central and state governments also act as promoters in most cases where the new business is floated either in public sector or joint sector which involve huge amount of capital and risk. HMT, ONGC, SAIL, BHEL are glaring examples of units set up by the government.

1.22 SUMMARY

A company is a corporate body and a legal person having status and personality distinct and separate from that of the members constituting it.

According to Section 2(20) of the Companies Act, 2013 Company means a company incorporated under this act or under any previous company law".

MOA is the constitution of the company and provides the foundation on which its structure is built. It is the principal document of the company and no company can be registered without it.

Articles of Association is the rules & regulations which are framed for internal management of the company.

OPC is promoted by one person, has separate legal entity. It can be registered as limited by shares or limited by guarantee. Small company is allowed in company act 2013. The paid up capital does not exceed Rs.50lakh or such high amount as will be prescribed which shall not be more than Rs. Five Crore.

Prospectus is a document containing detailed information about the company and an invitation to the public subscribing to the share capital and debentures. Promotion of a company is the first important stage where necessary steps are taken for brining the idea of a company into practice. It is process of planning and arranging various inputs required for running an enterprise.

1.23 SELF ASSESSMENT QUESTIONS

1. Define Company Act 1956.
2. Discuss various Amendments in the Company Act 1956.
3. Give brief introduction to Company Act 2013.
4. Explain the characteristics of Company Act 2013.
5. Discuss various administrative authorities.
6. Explain the formation of Joint stock Company.
7. What is Memorandum of Association?
8. What is Articles of Association?
9. What is Government Company?
10. What is one person company?
11. What is private company?
12. Define prospectus.
13. Define promoter.
14. Discuss various functions of promoter.
15. What are the contents of prospectus?

UNIT-2

COMPANY MANAGEMENT

AIMS AND OBJECTIVES

After going through this unit, you will be able to:

- Understand about public company and small company
- Define the procedure of Director's appointment
- Describe the circumstances leading to the disqualification of appointment as a director
- Understand duties of director
- Define Annual general meeting, Understand Quorum & Minutes of Meeting

CONTENTS

2.1 Public Company

2.2 Distinction between Private and Public Companies

2.3 Small Company

2.4 Holding and Subsidiary Companies

2.5 Unlimited Liability Companies

2.6 Who is a director?

2.7 Types of Director

2.8 Director Identification Number (DIN)

2.9 Appointment of Director

2.10 Qualification of a Director

2.11 Disqualifications of Directors

2.12 Removal of Directors

2.13 Resignation of Directors

2.14 Powers of Directors

2.15 Restrictions on Powers

2.16 Duties of Directors

2.17 Register of Members

2.1 PUBLIC COMPANY

Section 2(7) of the Companies Act defines a public company to mean a company which.

(i) It is not a Private Company

(ii) has a minimum paid up capital of Rs. 5 lakh or such higher capital, as may be prescribed.

Characteristics of Public Company

(i) It is formed with a minimum of seven members.

(ii) It invites general public to subscribe to its shares.

(iii) There is no restriction on their maximum number of shares.

(iv) The shares can easily be transferred.

(v) Before starting business, it must get certificate of commencement from Registrar of Companies.

Public Limited Company

As per section 3(1) (a), a public company may be formed for any lawful purpose by seven or more persons, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

A public company may be said to be an association consisting of not less than 7 members, which is registered under the Act. In principle, any member of the public who is willing to pay the price may acquire shares in or debentures of it. The securities of a public company may be quoted on a Stock Exchange. The number of members is not limited to two hundred. It may be noted that in case of a public company, the articles do not contain the restrictions provided in Sections 2(68) of the Act.

As per section 58(2), the securities or other interest of any member in a public company shall be freely transferable. However, any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.

The concept of free transferability of shares in public and private companies is very succinctly discussed in the case of Western Maharashtra Development Corporation Ltd. V. Bajaj Auto Ltd [2010J154 Com Cases 593 (Bom). It was held that the Companies

Act makes a clear distinction in regard to the transferability of shares relating to private and public companies. By definition, a "private company" is a company which restricts the right to transfer its shares. In the case of a public company, the Act provides that the shares or debentures and any interest therein, of a company, shall be freely transferable.

The provision contained in the law for the free transferability of shares in a public company is founded on the principle that members of the public must have the freedom to purchase and, every shareholder the freedom to transfer. The incorporation of acompany in the public, as distinguished from the private, realm leads to specific consequences and the imposition of obligations envisaged in law. Those who promote and manage public companies assume those obligations. Corresponding to those obligations are rights, which the law recognizes as inherent in the members of the public who subscribe to shares.

Types of Public Limited Companies

It is of further two types:

(1) Unlisted Public Companies: These types of companies do not invite general public to subscribe for its shares and securities and generally the directors, friends, their relatives and associates hold all the shares and securities in such companies. Unlisted companies are not required to comply with any requirements of the stock exchanges and SEBI, until and unless it proposes to offer its securities to the general public by way of public issue otherwise.

(2) Listed Public Companies: Section 2(52) of the Companies Act 2013 provides that a Company which has any of its securities listed on any recognized stock exchange isa listed company. These types of companies are having listing of its securities with one or more recognized stock exchanges in the country and are required to comply with the requirement of the Listing Agreement, Depository Rules and SEBI regulations as may be notified from time to time.

2.2 DISTINCTION BETWEEN PRIVATE AND PUBLIC COMPANIES

	Private Company	**Public Company**

1.	**Number of Members** To constitute a private company two members are a must. The number of members cannot exceed two hundred	A public company can be started by seven persons and there is no maximum limit for members.
2.	**Commencement of Business** The business can be started only after getting the certificate of commencement, earlier it could start work after incorporation.	The business can be started only after getting the certificate ofcommencement of business, This certificate is issued only when minimum number of shares have been subscribed by the public.
3.	**Transfer of Shares** The transfer of shares is generally restricted by the articles.	Transfer of shares is freely allowed, though some procedure for transfer has to be followed.
4.	**Issue of Prospectus** A private company cannot issue a prospectus giving public invitation for purchase of its shares or debentures.	A public company must issue a prospectus for inviting public for the purchase of its shares and debentures.
5.	**Statutory Meeting** A private company is not required to call a statutory meeting and to submit statutory report to the Registrar of Companies.	A statutory meeting must be heldwithin a prescribed period. A statutory report is also submitted to the Registrar of Companies.
6.	**Quorum Meeting** The quorum for a meeting of a private company is two.	Five members constitute the quorum.
7.	**Number of Directors** A minimum of two directors must be there.	A minimum of three directors must be there and the names and addresses of directors must be intimated to the Registrar of Companies along with the memorandum of association.
8.	**Filing of Documents** A private company need not send the list of directors, their consent, etc., to the Registrar of Companies.	The list of directors, their consent and a contract with them must be sent to the Registrar of Companies.
9.	**Usage of the word limited** In case of private company, the word 'Pvt. Limited must be used at the end of the name of the company.	Only the word 'Limited' is used with the name of a public company.

10.	**Paid up capital** It is registered with a minimum paid up capital of Rs. 1 lakh.	It is registered with a minimum paid up capital Rs. 5lakhs.

2.3 SMALL COMPANY

As recommended by the Dr. J.J. Irani Committee, the concept of small companies has been introduced in the Companies, Act, 2013. The recommendation of the Irani committee in this regard was as under:

"The Committee sees no reason why small companies should suffer the consequences of regulation that may be designed to ensure balancing of interests of stakeholders of large, widely held corporate. Company law should enable simplified decision making procedures by relieving such companies from select statutory internal and administrative procedures. Such companies should also be subjected to reduced financial reporting and audit requirements and simplified capital maintenance regimes. Essentially the regime for small companies should enable them to achieve transparency at a low cost through simplified requirements. Such a framework may be applied to small companies through exemptions, consolidated in the form of a Schedule to the Act."

Small company is a new form of private company under the Companies Act, 2013. A classification of company into a small company is based on its size i.e. paid up capital and turnover. In other words, such companies are small sized private companies.

The concept ofsmall company has been incorporated for the first time in the Companies Act, 2013. According to section 2(85) of the Companies Act, small company means a company, other than a public company:

(i) Paid up share capital of which does not exceed 50 lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or

(ii) Turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees.

PRIVILEGES OF SMALL COMPANY

Privileges and exemptions enjoyed by a small company or its advantages over other companies are as follows:

Sl. No.	Section	Nature of Privileges/ Exemptions
1.	2 (40)	The financial statement with respect to Small Company may not include the cash flow statement.
2.	67 (2)	Financial assistance can be given for purchase of or subscribing to its own shares or shares in its holding company.
3.	92 (1)	The annual return shall be signed by the company secretary; or where there is no company secretary, by the director of the company. In other words it need not be signed by the company secretary in practice.
4.	121 (1)	Need not prepare a report on Annual General Meeting.
5.	134 (3)(p)	Need not prepare a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.
6.	149 (1)	Small company need not have more than two directors in its Board.
7.	149 (4)	Need not appoint independent directors on its Board.
8.	152 (6)	A proportion of directors need not have to retire every year.
9.	164 (3)	Additional grounds for disqualification for appointment as a director may be specified in the articles.
10.	165 (1)	Restrictive provisions regarding total number of directorships which a person may hold in a public company do not include directorships held in One Person Company which are neither holding nor subsidiary company of a public company.
11.	167 (4)	Additional grounds for vacation of office of a director may be provided in the Articles.
12.	173 (5)	It is required to hold at least one meeting of the Board of Directors in each half of a calendar year and the gap between the two meetings should not be less than ninety days.
13.	190 (4)	The provisions relating to contract of employment with managing or

		whole-time directors does not apply to a Small Company.
14.	197 (1)	Total managerial remuneration payable by a small company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year may exceed eleven percent of the net profits.

As per Section 462(1), the Central Government may in public interest, by notification, direct that any of the provisions of this Act, shall not apply to such class or classes of companies, or shall apply to the class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification.

Therefore, the Central Government may grant further privileges/ exemptions to small companies by issuing a notification.

2.4 HOLDING AND SUBSIDIARY COMPANIES

Holding and subsidiary companies are relative terms. A company which controls another company is known as the 'holding company' and the company so controlled is called as 'subsidiary company'.

Holding Company. According to section 2(46) of the Companies Act, 2013, "holding company", in relation to one or more other companies, means a company of which such companies are subsidiary companies.

Subsidiary Company. According to section 2(87) of the Companies Act, a "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company:

(i) Controls the composition of the Board of Directors; or

(ii) Exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies. Total share capital means paid up equity share capital and paid up preference share capital.

However, such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation. For the purposes of this clause:

(a) A company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clauses (i) or sub-clause (ii) is of another subsidiary company of the holding company;
(b) The composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
(c) The expression "company" includes any body corporate;
(d) "Layer" in relation to a holding company means its subsidiary or subsidiaries.

The following illustration will make the definition of holding and subsidiary company clear. A company (say X) is a subsidiary of another company 'Y' and Y is X's holding company if:
(i) Y is a member of X and controls the composition of X's board of directors; or
(ii) Y holds more than half of Xs equity share capital or,
(iii) X is subsidiary of a third company (Z) which is itself a subsidiary of Y.

2.5 UNLIMITED LIABILITY COMPANIES:

A company with unlimited liability is one wherein the liability of the members is not limited. The members of such a company are personally liable for the debts of the company. In other words, the liability of the members of an unlimited liability company is not limited to their share in the company—it extends beyond that and encompasses the personal assets of its members. The liability of the members is valid for a period of one year after the company is wound up or any member disassociates from the company. There is a provision for the formation of such company in the Company Law, but a company with limited liability is more often the rule because the liability of its members is limited to the shares they hold in the company. Unlimited liability companies are, therefore, not very popular.

Such companies are rare in the business scenario today. In fact, it would not be wrong if such a company was described as an elaborate form of partnership—the difference being that the company is registered under the Indian Companies Act. If a company with unlimited liability wants to convert itself to one with limited liability, it

can do so provided it passes a special resolution to that effect and officially informs the Registrar of Companies. An unlimited liability company may or may not have share capital, but it must have a memorandum of association and articles of association. The company can sell its shares.

2.6 WHO IS A DIRECTOR?

Statutory definition of director

According to Section 2(34) of the Companies Act, 2013, "director" means adirector appointed to the Board of a company.

Definition based on Function

Sir George Jessel is of the same opinion when he observed in Re Forest of Dean Coal Mining Co.

It does not matter much what you call them so long as you understand what the true position is, which is that they are commercial men managing a trading concern forthe benefit of themselves and all other shareholders.”

The important factor to determine whether a person is or is not a director is to refer to the nature of the office and its duties. It does not matter by what name he is called. Thus "function is everything, name matters nothing."

Deemed Directors

A person in accordance with whose directions and instructions the Board of Directors of a company is accustomed to act shall be deemed to be a director of the company. Such persons have been addressed under English Law as 'Shadow Director'. The person in accordance with whose directions or instructions the BOD is accustomedto act need not necessarily be an individual. The person may even be a body corporate. However, no person shall be deemed to be a director of a company if the Board acts on the advice given by him in his professional capacity such as Solicitor, Chartered Accountants etc.

Only individuals to be Directors

Nobody corporate, association or firm shall be appointed director of a company and only an individual shall be so appointed (Section 149). It is because that the office of

a director is to some extentan office of trust. There should be somebody readily available who can be held responsible for the failure to carry out the obligations of such an office. It will be difficult to fix that responsibility if the director is a body corporate, association of persons or firm.

If all the members of a company are bodies corporate, it will be impossible to comply with this section, except when:

(a) The company's articles provide that no qualification shares are necessary so that outsiders may be appointed as directors of the company; or

(b) The members who are bodies corporate appoint their own nominees and transfer qualification shares to them.

Number of Directors

The Minimum and Maximum Number of Directors. Every public company must have at least 3 directors and every private company must have a minimum of 2 directors and every one person company must have 1 director. (Section 149).

The Act has prescribed the maximum number of directors as 15. However a company may appoint more than 15 directors after passing a special resolution.

Implication where number ofdirectors fall below statutory minimum. Since the provision ofminimum number of directors is mandatory and any business transaction after the fall of directors fall below the statutory minimum was held to be invalid.

Approval of Central Government

In the case of a public company any increase in the number of directors of more than 15, the shareholders can do so bypassing a special resolution in the general meeting.

Number of Directors

	Public Company	**Private Company**	**One Person Company**
Minimum Number of Directors	**3**	2	1
Maximum Number of Directors	15	15	15
For more than 15 directors	Pass a special	Pass a special	Pass a special

	resolution	resolution	resolution

Woman Director:

Under Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014, the following companies shall appoint alteast ONE WOMAN DIRECTOR

(i) Every listed company.

(ii) Every other public companies having a paid share capital of Rs.100 crores or more or turnover of Rs.300 crore or more.

2.7 TYPES OF DIRECTORS

Following are the categories of directors who constitute 'Board' of a company:

1. Ordinary Directors

Ordinary directors are also referred to as simple who attend Board meeting of a company and participate in the matters put before the Board. These directors are neither whole time directors nor managing directors.

2. Managing Director

"Managing director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

The power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management.

3. Whole-time/Executive Directors

Whole-time Director or Executive Director includes a director in the whole-time employment of the company.

4. Additional Directors

Additional Directors are appointed by the Board under section 161 of the Companies Act, 2013 between the two annual general meetings subject to the provisions of the Articles of Association of a company. Additional directors shall hold office only up to the date of the next annual general meeting of the company. Number of thedirectors and additional directors together shall not exceed the maximum strength fixed for the Board by the Articles.

5. Alternate Director

According to the provisions of section 161 of the Companies Act, 2013, anAlternate Director is a person appointed by the Board if so authorised by the Articles or by a resolution passed by the company in the general meeting to act for a director called "the original director" during his absence for a period of not less than three months from India. Generally, the alternate directors are appointed for a person who is Non-resident Indian or for foreign collaborators of a company.

6. Professional Directors

Any director possessing professional qualifications and do not have any pecuniary interest in the company are called as "Professional Directors". In big size companies, sometimes the board appoints professionals of different fields as directors to utilise their expertise in the management of the company.

7. Nominee Directors

The banks and financial institutions which grant financial assistance to a company generally impose a condition as to appointment of their representative on the Board of the concerned company. These nominated persons are called as nominee directors.

8. Independent Directors

Section 2 (47) defines "independent director" to mean an independent director referred to in section 149(5).

9. Small shareholders directors

Explanation to provision of section 152(l) provides that a small shareholder means a shareholder holding shares of nominal value of Rs.20,000 or less in a public company.

A shareholder holding any number of shares up to Rs.20,000 will be able to participate in the election of directors from the small shareholders.

Small shareholders may have a directors

Public company having:

(a) A paid up capital of 5 crore rupees or more,

(b) One thousand or more small shareholders may, have a director elected by such small shareholders in the manner as may be prescribed. Small shareholder means a shareholder holding shares of nominal value Rs.20,000 or less in such public company. [Section 152 (1)]

It is to be noted that the appointment of directors by small shareholders is optional and not mandatory.

As per Rule 7 of the Companies (Appointment and Qualification of Directors) Rules 2014

(i) A company may act suo moto to elect a small shareholders' directors.

(ii) It may also act upon the notice in writing of atleast 1/10 of small shareholders, proposing the name of a small shareholders.

(iii) The notice must be given 14 days before the meeting. The notice shall be accompanied by a statement signed by the person whose name is being proposed stating:

(a) his DIN (Director Identification Number);

(b) that he is not disqualified to become a director under the Act;

(c) his consent to act as a director of the company.

(iv) The notice must be signed by 100 small shareholders.

(v) In case of listing company, the election of small shareholders director will be through postal ballot.

(vi) The tenure of such a director shall be for a maximum period of 3 years and he shall not retire by rotation. On expiry of the tenure, such director shall not be eligible for re-appointment.

(vii) No such person shall hold office at the same time in more than 2 companies (It means he can be a normal director).

(viii) Such a person shall be treated as director for all other purposes except for appointment as whole time director or managing director.

Resident Director [Section 149(3)]. Every Company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty two days in the previous calendar year.

10. Executive and Non-executive Director

2.8 DIRECTOR IDENTIFICATION NUMBER (DIN)

As per Rule 9 of the Companies (Appointment and Qualification of Directors) Rules, 2014, every individual who is an existing Director or intends to be appointed as Director of a Company, is required to apply for Director Identification Number electronically in Form DIR-3 to the Central Government for allotment of a DIN. This application is to be made electronically. A provisional DIN is generated by the system, which remains valid for a period of 60 days.

Section 152(3) provides that no person shall be appointed as a director of acompany unless he has been allotted the Director Identification Number under section 154.

DIN is not required for directors of foreign company having branch offices in India, but DIN is required by foreign directors of Indian companies.

DIN is essential for every director including nominee directors and Government appointed directors. However, only those directors who are required to sign e-forms are required to obtain digital signature certificate (DSC). Other directors need not have DSC.

The concept of a Director Identification Number (DIN) has been introduced for the first time with the insertion of Sections 153 to 159 of Companies Act, 2013As such, all the existing and intending Directors have to obtain DIN within the prescribed time- frame as notified.

Under the government regarding companies, Director Identification Number is mandatory and compulsory for becoming the director of a Company. Any person desirous of becoming Director of a private or public company has to apply for the allotment of Permanent Din Number to the Central Government of India as per the Form

DIN-1. We have all kinds of support for making the allotment of DIN an easy affair for the clients. Thus avail our peerless Directors Identification Number Services and that alsoat a very nominal charge.

2.9 APPOINTMENT OF DIRECTORS

The success of a company depends to a great extent, upon the competence and honesty of its directors. It is therefore desirable that the administration of companies should be in right hands. The appointment of directors is accordingly regulated by the Act.

For being appointed as a director the person must comply with following provisions :

1. Otherwise expressly provided in the Act, every Director shall be appointed by the company in the General Meeting.
2. Every proposed Director shall have DIN.
3. Every proposed Director shall furnish DIN and a declaration that he is not disqualified to become a Director
4. Proposed Director shall give his consent in Form DIR.-12 to hold the office as director and such consent be filed with the Registrar in Form DIR-12 within 30 days of his appointment.

Directors may be appointed in the following ways:

1. By the Articles as regard first directors (Section 152).
2. By the Company at General Meeting (Sections 152 & 160).
3. By the principle of Proportional Representation (Section 163).
4. By the Board (Section 161).
5. By Third parties (Section 152).
6. By the Central Government.
7. By the Small Shareholders.
8. By the Tribunal in Sick Industries (i.e. special directors).

Now let us understand them one by one:

(1) Appointment of First Directions (Sec. 152)

(a) If directors are named in articles. Directors named in the articles shall be the first directors.

(b) If the directors are not named in the articles

In other words, if all the subscribers to the memorandum happen to be bodies corporate, none of the subscribers can be deemed to be directors and the company will have no directors until the first directors are appointed under section 152(2).

Formalities to be complied with for the appointment of the first Directors

At the time of appointing a director to a company, especially the first directors, the following formalities ought to be followed scrupulously-

- Check the availability of the DIN of the proposed director. In the case of absence of it, Form DIR 3 should be filled in up, and sent to the Central Government, for allotment of the DIN
- Observe the filing of DIR 8 in case of the first directors, along with the consent to act as the director of the specified company
- Information regarding the director's interests in other companies, firms or organizations, and also the names of his relatives for the purpose of Section 188 and 184 of the Companies Act shall be obtained. A general notice of the interests under Section 184shall also be provided in Form RD 1 prescribed under the Companies (Central Government's) General Rules &**Forms, 2013.**
- Particulars, regarding the directors, must be entered with respect to each director in the Register of Directors
- Particulars of the Directors' shareholding shall be entered in the Register of directors' shareholdings, **[Section 170]**
- Any other Agreement, which the company may propose to enter into with any individual, for appointment as its managing director or whole-time director or manager, will be filed with the registrar.

In case of one person company (OPC), an individual being member shall be deemed to be its first Director until the Director(s) are duly appointed by the member provide for any qualification shares, only those subscribers who hold such shares shall be deemed to

be directors.

When all subscribers to the memorandum are bodies corporate.

If all the subscribers to the memorandum happen to be bodies corporate, none of the subscribers can be deemed to be directors and the company will have no directors until the first directors are appointed under Section 152(2).

2. Appointment of directors at general meeting (Section 152(2))

Except for the first directors, the subsequent directors are appointed by the company in the general meeting. Section 152(2) provides that not less than two third of the total number of directors of a public company, or of a private company which is subsidiary ofa public company must be appointed by the company in general meeting. These directors must be subject to retirement by rotation. The remaining directors of such a company andthe directors generally of a purely private company must also be appointed by thecompany in general meeting. In other words, not more than one third of the total number of directors can act as non-retiring directors i.e. not subject to retirement by rotation.

The objectof Section 152(2) is to prevent the mischief of self perpetuating management.

(i) Retirement by Rotation (Section 152(6)):

2/3 of the directors liable to retire by rotation, only 1/3 shall retire at every annual general meeting. It follows that all such directors must retire in the course of 3 years, l/3rd retiring in each year.

If the number is not three or a multiple of three, then any fraction shall be rounded off as one.

A company has 9 directors. Out of 9, 3 directors can be appointed as permanent directors if the company so desires. The remaining 6 directors will be liable to retire by rotation. Out of 6 directors, directors shall retire, in each of 3 years.

The directors to retire by rotation at every annual general meeting must be those who have been longest in office since their last appointment. As between persons who become directors on the same day, those who are to retire will, subject to any agreement among themselves, be determined by lot.

Rotational director means a director retiring by rotation and does not include additional, alternate, debenture holders' or central government's nominee directors. Similarly, directors appointed by financial institutions in pursuance of the agreement entered into by these institutions with the company are not liable to retire by rotation.

Such nominee directors are also not to be taken into account for computing one-third numbers of directors liable to retire.

(ii) Where annual general meeting is not held

The directors cannot prolong' their tenure by not holding an annual general meeting in time. They would automatically retire from office on expiry of the maximum permissible period within which such meeting ought to have been held. To call annual general meeting is the duty of directors and by omitting to convene such meeting, they cannot take advantage of their own default.

(iii) Deemed Reappointment of a retiring director

At the annual general meeting at which a director retires, the company may fill up the vacancy by appointing the retiring director or some other person thereto. [Sec. 152(6)(e)]

Adjournment of meeting. If the place of the retiring director is not so filled, and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned. [Sec. 152(7)(a)]

Automatic Reappointment. If at the adjourned meeting also the vacancy is not filled, and the meeting has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been reappointed at the adjourned meeting. [Sec. 152(7) (b)]

(iv) No automatic reappointment

At an adjourned meeting, a retiring director shall not be deemed to be automatically reappointed in the following cases:

- Where a resolution for the reappointment of such director was put and lost.
- Where the retiring director has, in writing, expressed his unwillingness to continue, or
- Where he is not qualified or is disqualified for appointment, or
- Where a resolution (special or ordinary) is necessary for his appointment or

reappointment.

• Where it is resolved to fill two or more vacancies by a single resolution.

In case the vacancy is not filed at the AGM and the retiring director donot get automatically reappointed, the vacancy may be filled by the Board of directors.

(v) Fresh Appointment or Appointment of a director other than a retiring director (Section 160) and Rule 3 of Companies (Appointment and Qualification) Rules, 2014.

Section 160 provides the procedure of appointment of a person other than retiring director.

(i) Persons who can give notice for directorship

(a) A person who is not a retiring director can give notice in writing signifying his candidature

(b) A member (proposer) can give a notice of the candidature of any other person

(ii) Requirement of notice

A notice in writing signifying, his candidature must be left at the office of the company at least fourteen days before the date of the meeting along with a deposit of Rs. One lakh which shall be refunded to such person or as the case may be to such member, if the person succeeds in getting elected as a director. In other words, if such person is not elected as director, he or the member, as the case may be, will not be entitled to the refund of Rs. One lakh and it will be forfeited by the company.

(iii) Notice by the Company to members

The company shall inform the members at least seven days before the meeting about the candidature; It is not necessary for the company to serve individual noticesupon the members if the company advertises such candidature not less than seven days before the meeting, in at least two newspapers. One of the newspapers must be in Englishlanguage and the other in the regional language of the place where the registered office ofthe company is located. [Rule 13 of companies (Appointment and Rules, Qualification 2014]

Non compliance of procedure prescribed such as non-circulation of notice to

members, would render the appointment invalid.

(vi) Appointment of each director to be voted individually

Appointment of each director must be made through a separate resolution of the simple majority unless the meeting unanimously resolves otherwise.

(vii) Filing of Written Consent by directors

Section 152 requires a new director (i.e. other than a retiring director) to file his written consent to act as director within 30 days of his appointment.

3. Appointment of directors by proportional representation (Section 163)

Directors of a Company are generally appointed by simple majority. As a result, majority shareholders controlling 51% or more votes may elect all directors and a substantial minority, as high as 49%, may find no representation on the Board.

Section 163 intends to protect the interests of minority shareholders by giving them an opportunity to -place their nominees on the Board.

The articles of a company may provide that the appointment of not less than 2/3 of the total number of directors of a company shall be according to the principle of proportional representation. (Section 163)

Such appointment may be by:

(1) Single Transferable Vote.

Under it a quota of Votes is fixed.

Say 6000 votes are cast. The number of directors are 5.

Any one getting 1001 votes will be elected. The voter is asked to give ranking to all i.e., 1,2,3,4, 5.

1. Namita Gupta V Cachar Native Joint Stock Co. Ltd. (1999) Comp as 655.

Candidate getting 1001 gets elected excess of votes for the elected candidate are passed to the second ranking candidate so on.

(2) Cumulative Voting. In this method

Total No. of Votes = Number of shares X No. of Directors to be elected.

Say Number of Shares - 10,000

No. of Directors = 10

Total Votes = 10,000 x 10 = 10,0000

Such appointment shall be made once in three years and interim casual vacancies may be filled up according to section 161.

Directors elected on the principle of proportional representation cannot be removed under the provisions of section 169.

4. Appointment by directors

The directors are empowered to appoint—

(i) Additional directors

(ii) Alternate directors

(iii)Directors filling casual vacancy

(i) Additional directors.

The board of directors may appoint additional directors from time to time if so authorized by its articles. The number of directors and additional directors must not exceed the maximum strength fixed for the board by the articles. The additional directors shall hold office only upto the date of the next annual general meeting (Sec. 161).

It may be noted that without a power given by the Articles, the Board cannot appoint additional directors.

Powers of Additional Directors

Additional directors will enjoy the same powers and rights as other directors. The purpose of section 161 is to enable the board to appoint competent persons who may otherwise find it difficult to come in by election.

Appointment by Resolution only

An additional director can be appointed by passing a resolution at a Board meeting or by passing a resolution by circulation.

Term of office of an additional director

The additional director is entitled to hold office only upto the date next annual general meeting of the company.

If the annual general meeting of the company is not held, or cannot be held, the person appointed as additional director vacates his office on the last day on which the

annual general meeting should have been held in terms of section 96 of the Act.

Additional directors is not a retiring director.

An additional director holds office upto the next AGM i.e. he does not retire at next AGM. Hence he is not a retiring director.

Obligation to take qualification shares

An additional director is required to take the qualification shares, if the Articles of Association of the Company require holding of qualification shares.

(ii) Alternate directors

Condition for appointment of alternate director

An alternate director acts in the place of a director who is absent for more than three months from the State in which board meetings are held.

Term of Office

He cannot hold office for a period longer than that permissible to the original director in whose place he has been appointed. He must vacate office on the return of the original director.

The Department of Company Affairs has clarified that the alternate director vacates his office whether or not the original director attends the Board meeting on his return to the state.

Power to appoint

The board of directors may appoint an alternate director if authorized (i) by the articles or (ii) by a resolution of the company at general meeting.

Neither the shareholders of the company nor the original director can exercise the power to appoint alternate director. Moreover, an alternate director is neither an agent of the original director nor his proxy.

Moreover, an alternate director is not obliged to act as per instructions of the original Director.

Position of an alternate director

- An alternate director is subject to the same liabilities and supposed to perform the same duties as any other director.

- The alternate director merely fills a temporary vacancy in the office of director.
- An alternate director is not required to hold any qualification shares.
- Alternate directorship held by a person cannot be counted towards maximum number of directorship which a person can hold.

Consent

An alternate directors is required to file his consent with the Registrar within 30 days of his appointment.

(iii) Casual Vacancy

What is casual vacancy? A casual vacancy is a vacancy where the office of any director appointed in general meeting is vacated before the term of office expires in the normal course, such as death, resignation or insolvency. It means any vacancy other than one caused by retirement of a director by rotation or by efflux of time is a casual vacancy.

Power to fill casual vacancy is on the Board

A casual vacancy is to befilled only at a meeting of the Board and not by means of a resolution passed bycirculation.

Tenure of office A person, who is appointed as a director in a casual vacancy,shall vacate the office on the date when the original director in whose place he is appointed would have held office of if had not been vacated.

Consent

The director appointed to fill the casual vacancy must file his consent with the Registrar within 30 days of his appointments.

Vacancy created by resignation etc of a director appointed to fill casual vacancy

Where the casual vacancy filed by the board is again vacated, the resulting vacancy is not a casual vacancy and cannot be filed by the Board, as Section 161 applies only in case of casual vacancy in the office of any director appointed by the company in general meeting. However in such a case, the Board should appoint additional director if so authorized by articles.

5.Appointment by third parties

Section 152 permits one third of the total number of directors of a public company

and of a private company which is a subsidiary of a public company to be appointed by parties other than shareholders on a non-rotational basis.

The articles may give right to debentureholders, financial corporations or banking companies who have advanced loans to the company to nominate directors on the board of company.

The number of directors so nominated should not exceed one third of the total strength of the board.

They are not liable to retire by rotation.

6.Appointment by the Central Government

The Central Government has the power to appoint directors on an order passed by the NCLT to effectively safeguard the interest of the company or its shareholders or the public interest to prevent mismanagement or oppression. Such directors shall hold office for a period not exceeding three years on any one occasion.

The power can be exercised by the NCLT either on a reference made by the central government or on an application

(i) of not less than one hundred members of the company or

(ii) of members of the company not holding less than one tenth of the total voting power therein.

A director appointed by the Central Government shall not be :

- taken into account for purpose of reckoning 2/3 or any other proportion of the total number of directors.
- required to hold qualification shares.
- required to retire by rotation.
- not required to hold qualification shares

He shall keep the government informed of the affairs of the company to enable it to take appropriate action.

7.Appointment by Small Shareholders

The small shareholders, in case of a public company having

(i) paid up capital of Rs. 5 crore or more, and

(ii) having at least 1000 shareholders holding shares of nominal value of Rs.20,000 or less may elect at least one director to represent them on the Board.

A company may act:

(i) suo motu on its own-it is optional to appoint a small shareholder's director.

(ii) or it may act on the notice of not less than l/10th of the total number of Small Shareholders.

(iii) Such notice shall be given at least 14 days before the meeting.

(iv) The notice must be signed by 100 Small Shareholders.

(v) The tenure of office of the Small Shareholder director shall be 3 yrs.

(vi)Such director shall not be subject to retirement by rotation.

(vii)A person can't be a small shareholders director in more than 2 companies.

8. Appointment of Special directors by the Tribunal in case of Sick Industrial Companies

The NCLT can appoint one or more persons who possess knowledge, expertise in management and control of the affairs of any other company to be a special director on the Board of a Sick Industrial Company.

Any provision regarding share, qualification, age limit, number of directorship, removal from office etc. shall not apply to a special director appointed by NCLT.

Appointment of Directors to be voted individually (Section 162)

- At a general meeting of a company, a motion shall not be moved for the appointment of 2 or more persons as directors of the company by a single resolution, unless a resolution has first been agreed at meeting without any vote being cast against it.
- Resolution moved in contravention of section 162(1) shall be void whether any objection was taken or not.
- Motion for approving a person for appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

2.10 QUALIFICATIONS FOR DIRECTOR

The Companies Act does not lay down any specified academic qualification for appointment as a company director, not even qualification shares. So far as the Act is concerned, a director need not hold any shares and need not be a member of a company.

The articles of association generally require that the qualification of director shall be the holding of a specified number of shares known as qualification shares. A director must hold atleast on share in a company.

The articles, of a company generally provide for such qualification shares so that directors may have personal interest in the company.

Time limit of obtaining qualification shares

Unless he is already qualified, he must obtain the qualification shares within two months after his appointment as a director. Any provision in the articles of a company in so far as it requires a person to hold the quahfication shares before his appointment as a director or to obtain them within a shorter time than two months will be void. The date of appointment is the date when the result of a poll for the election was announced to the company by the scrutinizers and not the date when the poll was taken.

Amount of Share qualification

(i) The nominal value of qualification shares shall not exceed Rs.5,000

(ii) Where the nominal value of one shall exceed Rs.5000, share qualification shall be holding of one share only.

It may be noted that the bearer of share warrant is not deemed to be a holder of qualification shares.

Any provision requiring a director to hold as qualification shares more than this amount will be invalid. The holding of share warrant shall not be deemed to be the holding of qualification shares.

It is not essential for the director to buy his shares directly from the company. The director must hold these shares in his own right. Until the required number of shares are registered, in the name of the director, he is not qualified. Lodging of shares transfer form

is not the holding of shares.

Liabilities in respect of qualification shares

If the company is wound up during this period of two months, such director cannot be placed on the list of contributories in as much as there is no express or implied contract under which he would be bound to take the qualification shares.

Consequences of failure to hold qualification shares

(i) If a director fails to obtain within 2 months or at anytime thereafter ceases to hold the qualification shares, he automatically vacates office after the expiry of said 2 months and cannot act as a director and no notice of the director is required.

(ii) If a person acts as a director when he knows that the office of director held by him has become vacant, he shall be punishable with fine upto Rs.5000 per day for the period he acts as a director [Section 283 (2A)]

(iii) If a person acts as a director of a company without holding the qualification shares, he will be punishable with fine which may extend to Rs.500 for every day for the period he acts as a director (Section 272)

In a nut shell, if a person acts as a director after the expiry of said 2 months without taking qualification shares, he shall be liable to a cumulative fine upto Rs.5,500 (Rs.5,000 + Rs.500) for everyday for the period he acts as a director (Section 272 read with section 283).

Directors not required to hold qualification shares

The following directors are not required to hold qualification shares

(i) Technical Director, unless articles so provide,
(ii) Directors representing special interest,
(iii) Directors appointed by the central government,
(iv) The directors of an independent private company.

2.11 DISQUALIFICATIONS OF DIRECTORS (Sec. 164)

The circumstances in which a person cannot be appointed as a director of a company are enumerated in Section 164. According to this section, a person cannot be appointed as a director of a company, if

(I)U/S164(1):

(a) he has been found to be of unsound mindby a competent court and the finding is in force;

(b) he is an undischarged insolvent;

(c) he has applied to be adjudicated as an insolvent and his application is pending;

(d) he has been convicted of an offence involving moral turpitude and sentenced to imprisonment for not less than 6 months and a period of 5 years has not elapsed since the expiry of his sentence;

(e)he has not paid any call in respect of shares of the company held by him for a period of six months from the last day fixed for the payment;

(f) he has been disqualified by an order of the court or Tribunal of an offence in relation to promotion, formation or management of the company of fraud or misfeasance in relation to the company.

(g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceeding five years; or

(h) he has not complied with provisions u/s 152(3) (i.e he has not obtained DIN)

Such person is already a director of a company which :

(A) Has not filed the annual accounts and annual returns for any continuous threefinancial years commencing on and after the first day of April, 1999; or

(B) Has failed to repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividend and such failure continues for one year or more.

In addition to the disqualification mentioned above there is another disqualification namely, the person should not be a minor or under any disability but should be competent to contract.

Vacation of Office by Directors (Section 167)

(1) The office of a director shall become vacant in case :

(a) He incurs any of the qualifications specified in section 164;

(b) He absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;

(c) He acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;

(d) He fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184;

(e) He becomes disqualified by an order of a court or the Tribunals;

(f) He is convicted by a court of any offence, whether involving moral turpitude or otherwise; and sentenced in respect thereof to imprisonment for not less than six months:

Provided that the office shall be vacated by the director even if he has filed an appeal against the order of such court;

(g) He is removed in pursuance of the provisions of this Act;

(h) He having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

(2) If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications u/s 167(1), he shall be with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

(3) Where all the directors of a company vacate their offices under any of the disqualifications specified U/s 167(1), the promoter or in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

2.12 REMOVAL OF DIRECTORS

A director may be removed from his office;

(1) By the Shareholders (Sec. 169);

(2) By the Tribunal [Sec. 242].

(1) Removal byShareholders. Section 169 empowers the company to remove a director by ordinary resolution before the expiry of his period of office except in the following cases.

The following categories of directors cannot be removed by a company under

section 169 of the Act:

(a) a director appointed by the Tribunal under section 242;

(b) a nominee director of a public financial institution which is by its charter empowered to nominate a person as a director or to remove him notwithstanding any power contained in any other Act;

(c) a director coming within the purview of directors appointed according to the principle of proportional representation under section 163 of the Act.

While the shareholders have no power, apart from that given in the statute or the Articles, to intervene in the management of the company's affairs, this section is designed to enable them to control the directors by their removal.

Special notice

Special notice is required of any resolution to remove a director or to appoint somebody in his place at the meeting at which he is removed.

On receipt of such notice, the company will immediately send a copy thereof to the director concerned and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.

Reasons for Removal—Not Necessary

It is not necessary to give reasons in the special notice given to the company or in the company notice to the members or in the resolution proposed by the Board itself, for removal of a director.

The explanatory statement u/s 102 are also not necessary in respect of the resolution for removal of directors, because the company is acting in pursuance of a special notice received by it to move the resolution. It is in fact, not resolution proposed by the company.

Director's right to make representation (Sec. 169(4)).

The director concerned may also make any representation in writing and the copy of such representation may be sent by the company to every member. Where the copy of the representation is not sent to the members, in that case the director concerned may require the representation to be read at the meeting. Copies of such representations need

not be sent to members nor the same be read out at the meeting if the Central Government is satisfied on an application being made by the company or the aggrieved person that the right as to representation is being abused to secure publicity for defamatory matter. In such a case the director concerned may have to pay costs, though not a party to the proceedings.

Filling of vacancy (Sec. 169 (5),(6) &(7))

A vacancy created by the removal of a director as aforesaid can be filled up at the meeting at which he is removed provided special notice of the proposed appointment was also given. The director so appointed shall hold office till the date the director removed would otherwise have held office. If the vacancy is not filled, it shall be filled up as casual vacancy except that the director removed shall not be re-appointed.

Compensation (Sec.169(8))

A director so removed shall not be deprived of any compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director.

Section 169 is general and applies to all directors including permanent and life directors (subject to the exceptions above). The right under this section is a statutory right given to a company and the company can exercise this power wherever it finds a director unsatisfactory or otherwise undesirable. The articles need not specify the circumstances in which the power can be exercised.

(2) Removal by the Tribunal.

On an application to the Tribunal for prevention of oppression and mismanagement, the Tribunal may terminate, or set aside or modify any agreement between the company and the managing director or any other director or manager. (Sec. 242). On such termination, the director cannot serve the company in a managerial capacity for a period of five years from the date of the order of termination, without the permission of the Tribunal. The director on removal cannot sue the company for damagesor compensation for loss of office. [Consequences of termination u/s 243].

Assignment of office. A director cannot assign his office to anybody. If such assignment

is made it shall be void. (Sec. 166).

Removal of a non-rotational director of a Government company

Directors appointed by the State Government as a nominee director can be removed by such Government. The Government is entitled to revoke the nomination as a matter of right, which flows from the Articles of Association. Revoking of the appointment by the Government under the Articles is not the same thing as removal of a director by the company under section 169 of the Act. Hence, if the Government revokes the nomination, there is no circumvention of section 169.

Civil Court cannot interfere in the matters of removal of a director

The right to remove a director of the company is provided in the Companies Act and it itself provides a procedure for enforcement of such right. Civil Courts cannot interfere with such matters of internal management of the companies. [Khetan Industries Pvt. Ltd. v Manju Ravindra Prasad Khetan (1995) 16 CLA 169 (Bom)]

The Court should not be a party to removal of permanent directors (or of any director) of a company by exercising its discretion under section 98 and dispensing with the special notice as required in section 169, in the absence of concrete, precise and specific charges against these directors.

2.13 RESIGNATION OF DIRECTORS

Earlier neither the Companies Act, 1956 nor the Table A was containing provision regarding resignation by a director. Moreover, section 283 of the Companies Act, 1956 also did not include resignation as one of the grounds for the vacation of office of a director. However, now section 168 provides for resignation of a director of a company.

1. A director may resign by giving notice in writing to the Company and Board of directors

Rule 15 provides that in terms of Section 168(1) a director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same andthe company shall intimate the Registrar within 30 days in Form DIR-12 along with the fee as per the companies (Registration Offices and Fees) Rules, 2014 and post the information on its website, if any. Further that the company

shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company.

2. The resigning director may also forward a copy of the resignation to the Registrar along with the reasons for resignation

Rule 16 of the Companies (Appointment and Qualification of Directors) Rules, 2014 provides that where a director resigns from his office, he shall also within thirty days from the date of resignation, forward to the Registrar a copy of his resignation alongwith reasons for the resignation in Form DIR-11 along with the fees prescribed under the Companies (Registration Offices and Fees) Rules, 2014.

3.Effective date of resignation by the Director

Section 168(2) provides that the resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

4. Director shall be liable after his resignation for offences which occurred during his tenure

It has been provided that the director who has resigned shall be liable, even after his resignation, for the offences which occurred during his tenure.

5. Powers to appoint directors in case where all the directors resign from the company

Section 168(3) provides that where all the directors of a company resign from their offences, or vacate their offices under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.

6. Duty of the after resignation

After the resignation is received and the chairman of the Board has noted it, a letter informing of the receipt of the resignation should be sent to the director concerned. The Registrar of Companies shall be informed of the resignation of the director from the directorship by way of filing Form DIR-12 with the Registrar of Companies and the entry

of the date of cessation will be made in the Register of directors.

At the next Board meeting, the letter of resignation will be placed before the Board and that fact will be recorded in the minutes of the meeting. It is common to place on record appreciation of the services of the concerned director. General notice ofresignation of director is to be given to the public.

2.14 POWERS OF DIRECTORS

A company being an artificial person, acts through its directors. The directors represent the directing mind or will of the company and control what it does. All the powers of management of the affairs of the company are vested in the board of directors. The board thus becomes the working organ of the company. In their domain of power, there can be no interference, not even by shareholders. The directors enjoy such powersas are given to them by the Act, memorandum or articles. Sections 179 & 180 deal with the powers of the board and the restrictions thereon.

The powers which vest in the board can be classified under three different heads :

I.General Powers: Powers which can be exercised in accordance with the articles.

II. Powers: u/s 179(3). Powers which can be exercised only at board meetings.

III. Powers under Rule 8.

IV. Other Matters

Let us understand them one by one:

I. General Powers. The general powers of the Board of directors have been laid down in section 179 of the Companies Act, 1956. It empowers the board to exercise all such powers and do all such acts and things, as the company is authorized to exercise and do. In other words, the directors can do what the company is authorized to do unless there is any express restriction on their powers.

There are, however, two limitations upon their powers.

1. The Board shall not exercise those powers which under the Companies Act, 2013, or the memorandum of association or otherwise, are required to be exercised by the company in general meeting.

2. In exercising, all such powers or doing of any such act, the Board will be subject to the provisions of this or any other Act, the memorandum or the articles.

Do shareholders have right to intervene/Powers cannot be usurped.

The directors shall exercise their powers bonafide and in the interests of the company. But once specific powers of control and management have been granted by the company to its directors, the company cannot without justification impose its will at a general meeting. The shareholders cannot dictate to the directors the manner in which their executive authority is to be employed. Thus where the power to sell the assets of a company is vested in the board and the board thinks that it is not in the interests of the company to sell its assets, it is not bound to do so, notwithstanding a resolution to the contrary in general meeting. Similarly where the shareholders by resolution pressed the directors to forego a debt, it was held that the directors were entitled to enforce the payment of the debt.

"If powers of management are vested in the directors they and they alone can exercise those powers. The only way in which the general body of shareholders can control the exercise of the powers vested by articles in directors is by altering the articles,or, by refusing to re-elect the directors of whose action they disapprove. They cannot themselves usurp the powers, which by articles are vested in the directors, any more than the directors can usurp the powers vested by articles in the general body of shareholders."**Exceptions**

A company is an institution owned and controlled by its shareholders. As such the shareholders have an inherent and a residual executive power greater than the powers conferred upon directors. The powers of the directors are subject to the control by the shareholders at the general meeting. In the following exceptional cases the general meeting is competent to intervene in a matter delegated to board.

1. Directors acting malafide

The general body of shareholders can interfere where it is proved that the directors have acted from some improper motive or arbitrarily or capriciously. When the directors are themselves the wrongdoers against the company and have acted malafide or beyond

their powers, and their personal, interest is in conflict with their duty in such a way that they cannot or will not take steps to seek redress for the wrong done to the company, the majority of the shareholders must in such a case be entitled to take steps to redressthe wrong.

2.Board incompetent.

The general body of shareholders may exercise the powers vested in the board when there is no legally constituted Board which could function or if there is a board but that is unable or unwilling to act. The shareholders have to step in where all the directors are interested in a transaction.

3. Deadlock in the Board.

Where the directors are unable to act on account of a deadlock and the administration was at a standstill, the shareholders have the inherent power to take necessary steps to ensure the working of the company.

4.Residuary powers.

The residuary powers of a company reside in the general meeting of shareholders and the shareholders can always exercise such residuary powers.

II. Powers under section 179(3): Matters which shall always be considered at the meeting of the Board

There are specific provisions in the Act which require that certain matters, which are of importance to the company, shall always be considered at a meeting of the Board and accorded approval by resolution as per provisions of section 179(3) of the Companies Act, 2013, as given below:

(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 in 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.

It is also provided in the section that the Board may delegate by a resolution to a committee of directors, the managing director, manager or a principal officer of the company, any of the powers at items (d), (e) and (f).

III.Powers under Rule-8

Rule 8 of the Companies (Meeting of the Board and its powers) Rules, 2014 provides that in additions to be matters specified under section 179(3) the following powers shall the exercised only by means of resolutions passed at meeting of the Board, namely:

(i) to make political contributions;

(ii) to appoint or remove Key Managerial Personnel (KMP)

(iii) to take note of appointment(s) or removal(s) of one level below the Key Management Personnel;

(iv) to appoint internal auditors and secretarial auditors;

(v) to take note of the disclosure of director's interest and shareholding;

(vi) to buy, sell investments held by the company (other than trade investments), constituting five percent or more of the paid- up share capital and free reserves of the investee company;

(vii) to accept or accept or public deposits and related matters;

(viii)to review or change the terms and conditions of public deposits;

(ix) to approve quarterly, half yearly and annual financial statements or financial results as the case may be.

IV.Other matters

In addition to the items referred to above, there are various other matters, as illustrated below in the routine working of a company which are considered by the Board

at Board meetings:

(a) Issuance of shares.

(b) Allotment of shares and debentures.

(c) Appointment of Directors and Managing Director/Whole-time Director.

(d) Consideration of Annual Accounts.

(e) Approval of interim dividend and recommendation of final dividend.

(f) Appointment of sole selling/buying agents.

(g)Merger and amalgamation of companies.

(h) Capitalization of reserves and issuance of bonus shares.

(i) Appointment of auditors in casual vacancy caused otherwise than by resignation.

(j)Appointment of whole time secretary for issuance of compliance certificate.

(k) Further, where proposals are initiated by the Board and recommended for the consideration of the company in general meeting, all these matters are first considered at a meeting of the Board.

2.15 RESTRICTIONS ON POWERS (SECTION 180)

The Board of directors of a public company or of a private company which is a subsidiary of a public company shall not exercise the following powers except with the consent of the company in general meeting:

(a) Power to sell lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company.

In case of an improper sale or lease by the director, the title of the purchaser or lessee will not be affected provided he buys or takes it in good faith and with due care and caution; i.e. the title of a bonafide buyer or lessee shall be free from any defect.

No approval of general meeting is required if the ordinary business of the company consists of selling or leasing of properties.

(b) Power to remit or give time for repayment of any debt due to the company by a director.

However, no such consent is required for renewal or continuance of an advance made by a banking company to its director in the ordinary course of its business;

(c) Power to invest otherwise than in trust securities, the amount of compensation received by the company in respect of the compulsory acquisition

(i) of any undertaking

(ii) or premises or properties of the company;

It is worth mentioning that no consent of the shareholders is required if compensation received by the company is invested in trust securities specified under section 20 the Indian Trust Act.

(d)Power to borrow money, where the money to be borrowed together with the moneys already borrowed by the company will exceed the aggregate of the paid-up capital of the company and its free reserves. This however, will not include temporary loans obtained from the company's bankers in the ordinary course of business;

The resolution passed in the general meeting shall specify the total amount upto which moneys may be borrowed by the Board otherwise the resolution shall be void.

(e) Power to contribute to (Sec. 181):

(i) charitable funds

(ii)any other fund not directly relating to the business of the company

(iii)any other fund not directly relating to welfare of the employees

If the amount contributed in a financial year exceeds 5% of average net profit during 3 immediately preceding financial years, then a prior permission in the General Meeting is required.

2.16 DUTIES OF DIRECTORS

As directors possess immense powers they hold a key position in the company management. Law imposes certain duties upon them, in the interest of the public good and for the protection of those who invest money in the company. The duties of a director vary from company to company and within any one company the directors may and frequently do have different responsibilities. Breach of these duties or negligence in performing them on the part of a director entitles the company to sue him for any damage which has been suffered by the company as a result of the breach or negligence.

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

1. Fiduciary duties,
2. Duty of care and skill,
3. Duty to attend board meetings,
4. Duty not to delegate,
5. Duty to disclose interest and
6. Statutory duties.

1. Fiduciary duties. The directors occupy a fiduciary position and must therefore, exercise their powers in good faith and for the benefit of the company as a whole. Directors should not enter into engagements in which there is a possibility that the directors personal interest could conflict with those of the company which they are boundto protect.

Another consequence of the fiduciary position of a director is that he cannot make a secret profit by reason of opportunities acquired as a result of his position. Where a director makes profits by the use of confidential information, he is not entitled to retain it unless these profits are disclosed to and approved by the company.

The fiduciary duty so owed is owed to the company as a whole and not to any individual member of it.

Where a director is instructed to purchase some property for the company, and he purchases the same for himself and then sells it to the company at a profit, he is clearly liable to account for the profit so made.

2. Duty of care and skill.

Honesty alone is not enough. A director must perform his duties with reasonable care and skill i.e. with that amount of care which an ordinary man will be expected to take, if the business of the company was his own. A director will be liable for negligence in the carrying out of his duties, where a dividend was paid by directors after thecompany traded only for eight months without any investigation-of company's trading position such payment was improper and the directors must refund. However, a director cannot be held liable for mere error of judgment, if he acts honestly and with reasonable care.

The duty of care and skill will depend upon the nature and size of the company's business and the manner in which the work of the company is distributed between the directors and other officials of the company. The nature of the duties of a director to the

company were discussed by Romer J. in the famous case of Re. City Equitable Fire Insurance Co. Ltd wherein he observed:

"As a general proposition a director will not be held liable for negligence unless guilty of ...gross or culpable negligence in a business sense."

The learned judge laid down the following propositions relating to the duty of care and skill.

1. "A director need not exhibit in the performance of his duties a greater degree of skill thanmayreasonably be expected from a person of his knowledge and experience. A director of a life insurance company, for instance does not guarantee that he has the skill of an actuary or a physician.
2. A director is not bound to give continuous attention to the affairs of the company. His duties are of an intermittent nature to be performed at periodic board meetings and the meetings of any committee to which he is appointed. He is not bound to attend all such meetings though he ought to attend whenever he is reasonably able to do so.
3. In respect of all duties, that having regard to the exigencies of business and the articles of association, may properly be left to some other official, a director is, in the absence of grounds for suspicion, justified in trusting that official to perform such duties honestly.

To conclude in the words of Lindley M.R. "If directors act within their powers, if they act with such care as is to be reasonably expected of them, having regard to their knowledge and experience, and if they act honestly for the benefit of the company they represent, they discharge both their equitable as well as legal duty to the company.

3. Duty to attend board meetings.

Reasonable care requires that a director should give a reasonable amount ofattention to the affairs of the company. A director should attend the board meetings whenever he is able to do so, but he is not bound to attend all board meetings. Continuousnon-attendance may render a director liable for the acts of his co-directors. Section 164 provides that the office of director becomes vacant if he absents himself from (i) three consecutive meetings of the board or (ii) from all meetings of the board, for a continuous period of three months, whichever is longer, without obtaining leave of absence from the

board.

4. Duty not to delegate. As a rule, directors must perform their duties personally and should not delegate their office. The directors are bound by the maxim, "delegates nonpotest delegare. The rule is, however, subject to certain exceptions. The directors may delegate their duties if the Act or the articles specifically authorize them to do so.Secondly, having regard to the exigencies of the business, the directors may distribute thework among themselves and other officials of the company.

5.Duty to disclose interest.

As a director is an agent of the company, he must see that his interest and duty do not conflict. “For the proper exercise of the functions of a director, it is essential that he should be disinterested that is to say, he should be free from any conflicting interest.” It follows that the company can avoid a contract in which the director has an interest unless the prior sanction of the board has been taken.

According to section 184 of the Companies Act, a director who is interested in any transaction of the company, he is bound to disclose his interest to the board. The disclosure shall be made at the first meeting of the board held after he has become so interested. An interested director cannot take part in the discussion or vote on anycontract in which he is directly or indirectly interested [Sec, 2(49)].

6.Statutory duties.

Apart from the duties explained above, the directors have some specific duties laid down by the Companies Act.

Some of the important duties are enumerated below:

1. Duty not to allot shares until minimum subscription is raised. (Sections 39).
2. Duty to sign annual returns and the certificate attached thereto. (Sec. 92).
3. Duty to forward the statutory report to every member of the company.
4. Duty to call an annual general meeting every year within the proper time. (Sec. 96).
5. Duty to call an extraordinary general meeting on a valid requisition. (Sec. 100).
6. Duty to prepare profit and loss account and balance sheet and lay before the company with the director's report as to the state of the company's affairs. (Sections 128,129 and

134).

7. Duty to take share qualification.

2.17 REGISTER OF MEMBERS

Companies Act, 2013 requires companies to maintain register and index of members, register and index of debenture holders, but the 2013 Act requires company to maintain register and index of other securities also.

The particulars of Register of members and other details are prescribed in Companies (Management and Administration) Rules, 2014

Registers to be maintained:

Every company shall keep and maintain the following registers:

(a) ROM indicating separately for each class of equity and preference shares held by each member residing in or outside India;

(b) Register of Debenture-holder and

(c) Register of any other security holders.

(1) Every company shall from the date of its registration, keep and maintain a register of its members in one or more books in Form No. MGT-1.

In the case of existing companies, registered under the Companies Act, 1956, particulars shall be compiled within six months from the date of commencement of these rules.

(2) For Company not having share capital

(a) ROM shall contain following Particulars:

- Name of the member;
- Address (registered office address in case the member is a body corporate);
- e-mail address;
- Permanent Account Number or CIN;
- Unique Identification Number, if any;
- Father's/Mother's/Spouse's name;
- Occupation; Status;

- Nationality;

  In case member is a minor

  Name of the guardian and

  DOB of the member;

  Name and address of nominee;

(b) Date of becoming member;

(c) Date of cessation;

(d) Amount of guarantee, if any;

(e) Any other interest if any.

(f) Instructions, if any, given by the member with regard to sending of notices etc.

Every company which issues or allots debentures or any other security shall maintain a separate register of debenture holders or security holders, as the case may be, for each type of debentures or other securities in one or more books in Form No. MGT-2.

Maintenance of the Register of members etc. under section 88.

Every company shall maintain the registers in the following manner:

(1) Entries after allotment or transfer of shares, debentures or other securities:

The entries in the registers maintained under section 88 shall be made within seven days after the Board of Directors or its duly constituted committee approves the allotment or transfer of shares, debentures or any other securities, as the case may be.

(2) Register at R.O/other place:

- Registers shall be maintained at the registered office of the company
- Registers shall be maintained at other place- If

A special resolution is passed in a general meeting authorizing the keeping of the register at

- Any other place within the city, town or village in which the registered office is situated or
- Any other place in India in which more than l/10th of the total members entered in the register of members reside.

(3) Other entries in ROM or in respective registers:

Consequent upon any forfeiture, buy-back, reduction, sub-division, consolidation or cancellation of shares, issue of sweat equity shares, transmission of shares, shares issued under any scheme of arrangements, mergers, reconstitution or employees stock option schemeor any of such scheme provided under this Act or by issue of duplicate or new share certificates or new debenture or other security certificates, entry shall be made within seven days after approval by the Board or committee, in the register of members or in the respective registers, as the case may be

(4) Change in Status:

If any change occurs in the status of a member or debenture holder or any other security holder whether due to death or insolvency or change of name or due to transfer to Investor Education Protection Fund or due to any other reason, entries thereof explaining the change shall be made in the respective register.

(5) Reference of Order:

The necessary reference of order shall be indicated in the respective register -If

- Any rectification is made in the register by the company pursuant to any order passed by the competent authority under the Act,
- Any order is passed by any judicial or revenue authority or by Security and Exchange Board of India (SEBI) or Tribunal attaching the shares, debentures or other securities and giving directions for remittance of dividend or interest

(6) Particulars of pledge/charge/Lien/hypothecation created by promoter:

In case of companies whose securities are listed on a stock exchange in or outside India, the particulars of any pledge, charge, hen or hypothecation created by the promoters in respect of any securities of the company held by the promoter including the names of pledgee/pawnee and any revocation therein shall be entered in the register within fifteen days from such an event.

If promoters of any listed company, which has formed a joint venture company with another company have pledged or hypthoticated or created charge or lien in respect of any security of the listed company in connection with such joint venture company, the

particulars of such pledge, hypothecation, charge and lien shall be entered in the register members of the listed company within fifteen days from such an event.

Corresponding register and index:

Every register maintained shall include an index of the names included therein.

The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996 (22 of 1996), shall be deemed to be the corresponding register and index for the purpose of this act.

Index of names to be included in Register.

(1) Every register maintained under sub-section (1) of section 88 shall include an index of the names entered in the respective registers and the index shall, in respect of each folio, contain sufficient indication to enable the entries relating to that folio in the register to be readily found. The maintenance of index is not necessary in case the number of members is less than fifty.

(2) The company shall make the necessary entries in the index simultaneously with the allotment or transfer of any security in such Register.

Foreign Register:

A company may keep a part of the register, in any country outside India, if so authorized by its articles, in such manner as may be prescribed called "foreign register", containing the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India.

Foreign register of members, debenture holders, other security holders or beneficial owners residing outside India.

(1) A company which has share capital or which has issued debentures or any other security may, if so authorised by its articles, keep in any country outside India, a part of the register of members or as the case may be, of debenture holders or of any other security holders or of beneficial owners; resident in that country (hereafter in this rule referredto as theforeign register).

(2) The company shall file Form MGT-3 with the Registrar for

- Notice of the situation of the office within 30 days from the date of the opening of

any foreign register along with the fee as provided in Annexure B where such register is kept and

- Any change in the situation of such office or of its discontinuance, within 30 days from the date of such change or discontinuance.

(3) A foreign register shall be

- Deemed to be part of the company's ROM or of Register Of Debenture holder or of any other security holders or BO.
- Maintained in the same format as the Principal Register.
- Open to inspection and extracts may be taken there from and copies thereof may be required, in the same manner, mutatis mutandis, as is applicable to the principal register
- Closed but advertisement before closing the register shall be inserted in at least two newspapers circulating in the place where it is kept.

(4) If a foreign register is kept by a company in any country outside India, the decision of the appropriate authority in regard to the rectification of the register shall be binding.

(5) The company shall -

(a) Transmit to its registered office in India a copy of every entry in any foreign register within 15 days after the entry is made; and

(b) Keep at such office a duplicate register of every foreign register duly entered up from time to time.

(c) Every such duplicate register shall, for all the purposes of this act, be deemed to be part of the principal register.

2.18 SELF ASSESSMENT QUESTIONS

1. Distinction between a private and public company.
2. Describe the details about public company.
3. Who is a director? Discuss the role of director.
4. Discuss various types of Director.
5. Explain the appointment procedure of directors.
6. Discuss disqualifications for appointment of directors.

7. Discuss the duties of director.
8. Explain register of members.

UNIT-3

SHARE CAPITAL AND WINDING UP

Aims and Objectives

After going through this unit, you will be able to:-

- Understand Share Capital
- Describe kinds of share capital
- Define voting rights

CONTENTS

3.1 Introduction

3.2 Share Capital

3.3 Kinds of share capital

3.4 Voting Rights

3.5 Variation of Shareholders

3.16 Summary

3.17 Self Assessment Questions

3.1 INTRODUCTION

Capital is the money or wealth needed to produce goods and services. All businesses must have capital in order to purchase assets and maintain their operations. Business capital comes in two main forms such as equity and debt.

Business Capital refers to the financial assets needed for a business to produce the goods and services it offers to its customers. Capital is necessary for a business to maintain its operations. Some businesses sell equity on ownership portion of the company, in exchange for a financial investment.

Capital is one of the basic factors of production along with land and labour. It is the accumulated assets of business that can be used to generate income for the business. Capital includes all goods that are made or created by humans and used for producing goods and services. Capital can include physical assets, such as a production plant or financial assets such as an investment portfolio. Some treat the knowledge, skills and abilities that employees contribute to the generation of income as human capital.

3.2 SHARE CAPITAL

Meaning: The Joint Stock company is a big- form of business organization. The amount required by the company for its business activities is raised by the issue of shares. The amount organized is called "Share Capital" (or capital) of the company. It may he noted that a company limited by shares will have share capital. A company limited by guarantee or an unlimited company may not have any share capital.

The persons who buy the shares of company are called 'Shareholders'

3.3 KINDS OF SHARE CAPITAL

(i) Authorized, registered or nominal capital. This is the amount of capital with which the company intends to get itself registered. This is the amount of share capital which a company is authorized to issue. Nominal capital is divided into shares of a fixed amount. It must be set out in the memorandum of association. It can be increased or decreased by following .the prescribed procedure.

(ii) Issued capital. It is that part of the nominal capital which is actually issued by the company for public subscription. A company need not issue the entire authorized capital

at once. It goes on raising the capital as and when the need for additional funds is felt. The difference between the nominal and-the issued capital is known as **'unissued capital'** which can be issued to the public at a later date. Where the whole of authorized capital is offered to the public, the authorized and issued capital will be the same. Issued Capital cannot be more than the authorized capital. Issued capital includes the shares allotted to public, vendors, signatories to memorandum of association etc.

(iii) Subscribed capital. It is that amount of the nominal value of shares which have actually been taken up by the public. It is that part of the nominal capital which has actually been taken up by shareholders who have agreed to give consideration in kind or in cash for shares issued to them. Where shares issued for subscription are whollysubscribed for issued capital would mean the same thing as 'subscribed capital'.

iv) Unsubscribed capital. The difference between shares issued to public and shares subscribed by the public is termed as unsubscribed capital/ that part of issued capital which is not subscribed is also called as unsubscribed capital.

There is no unsubscribed capitalin this case.

(v) Called up capital. The amount due on the shares subscribed may be collected from the shareholders in installments at different intervals. Called up capital is that amount of the nominal value of shares subscribed for which the company has asked its shareholders to pay by means of calls or otherwise. If 10,000shares of Rs.100each, have been subscribed by the public, and the company has asked the shareholders to pay Rs.10on application, Rs.20on allotment and Rs.30on first call, then the called up capital of the company would be Rs.6,00,000 (i.e. 10,000x60).The remaining amount i.e.Rs.40per share on 10,000shares (i.e.Rs.4,00,000)would be the uncalled capitalof the company.

(vi)Paid up capital. That part of the called up capital which is actually paid up by the members is known as the paid up capital. In other words, paid up capital represents the total payments made by the shareholders to the company in response to the calls made by the company.

Paid up capital = Called up capital Less Calls-in-arrears

(v) Unpaid up capital: It is that part of the called up capital which is not being paid by

the shareholders.

(vi) Reserve Capital:- It is the capital which has not been called up by the company and it has decided, not to call the uncalled capital, except, on its winding up, by passing a special resolution.

So the reserve portion of the subscribed capital becomes reserve capital and it will be available only to the creditors in case of liquidation of the company.

(vii) Calls-IN-Arrears: When money is demanded from shareholders on allotment or on calls, the respective accounts are debited. Sometimes, some shareholders do not pay their dues on allotment and on calls within the fixed time. The amount which is not paid by defaulter shareholders is called call in arrears.

3.4 VOTING RIGHTS

The articles of a company gives the right to vote to its shareholders and prescribe the regulations and procedure for voting at the company's meetings. The shareholders of a company are entitled to attend the company's general meetings and have the right to vote therein subject to the provisions of sections 43 and sub section 2 of section 50- (i) every member of company limited by shares and holding equity share capital thereinshall have right to vote on every resolution place before the company and his voting right on a poll shall be in proportion to his share in the paid up equity share capital of the company.

Shares with differential voting rights:

Any company, whether private or public, will now have to comply with the below requirements.

- The shares have to be 'equity' class.
- The company cannot convert its existing share capital to a differential voting class but has to be fresh issuance of shares.
- Issuance requires prior shareholders approval through ordinary resolution and the Articles of Association shall authorize issue of such shares. Also, there is a limit that such shares should not exceed 26% of the total post-issue paid up equity share capital. Further the Company should not have defaulted in filing financial

statements and annual returns for 3 financial years. The Company should not have any subsisting default in the payment of

-a declared dividend to its shareholders or

-repayment of its matured deposits or

-redemption of its preference shares or debentures that have become due for redemption or

-Payment of interest on deposits or debentures

- Besides this, the Rules require that the Company should not have defaulted on

  - Repayment of loans from banks and public financial institutions or interest thereon

  - Payment of dividend on preference shares

  - Payment of statutory dues for employees

  - Depositing moneys into the Investor Education and Protection Fund.

3.5 VARIATION OF SHAREHOLDERS

1. Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class, -

a. If provision with respect to such variation is contained in the memorandum or articles of the company; or

b. In the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class.

Provided that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

2. Where the holders of not less than ten percent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they

may apply to the Tribunal to have the variation cancelled and where any such application is made, the variation shall not have effect unless and until it is confirmed by theTribunal.

Provided that an application under this section shall be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

3. The decision of the Tribunal on any application under sub-section (2) shall be binding on the shareholders.

4. The company shall, within thirty days of the date of the order of the Tribunal, file a copy thereof with the Registrar.

5. Where any default is made in complying with the provisions of this section, the company shall be punishable with, fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company 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 twenty-five thousand rupees but which may extend to five lakh rupees or with both.

UNIT-4 CORPORATE MEETING

Aims and Objectives

After going through this unit, you will be able to:-

- Understand the term corporate meeting
- Describe kinds of Corporate meeting
- Define validity of a meeting
- Conceptualize the concept of Quorum, Chairman and Minutes of a meeting

CONTENTS

4.1 Meaning and Definition of Meeting

4.2 Kinds of Meeting:

(a) Shareholders meeting (b) Board of directors meeting

(c) Creditors meeting (d) Debenture holders meeting

4.3 Board of Directors Meeting

4.4 Validity of Meeting

4.5 Convening Authority

4.6 Notice of Meeting

4.7 Quorum

4.8 Chairman

4.9 Minutes

4.10 Summary

4.11 Self Assessment Questions

4.1 MEETINGS

Meaning and Definition:

A ‘meeting’ is said to take place when two or more than two persons meet. For a meeting to take place, it is essential that two or more than two persons are present because a meeting implies that one person meets another person or persons; but it does not really define the 'meeting' of a company. A get-together of two or more than two persons does not necessarily constitute a 'meeting'. A 'meeting' may be defined as the gathering together of two or more persons by previous notice or by mutual agreement for discussion and transaction of some business.

In the context of a 'company meeting', a 'meeting' is a get-together of the company's members, shareholders, directors and debenture-holders with a previous noticeand a time and place previously defined.

The definitions of a 'meetings' are as follows.

-“Any gathering, assembly or coming together of two or more persons for the transaction of some lawful business of common concern is called 'meeting". **— RK. Ghosh**

-“A concurrence or coming together of atleast a quorum of members by previous notice or mutual agreement for transacting business for a common interest is a 'meeting**.**

From what has been said above, it can be concluded that a meeting is the coming together of two or more persons, or a quorum of members of a company by a prior notice and mutual agreement at an agreed place and time for transacting some lawful business of the company.

Characteristics of a Company Meeting

From the above definitions, the following characteristics of a meeting are highlighted:

(i) A company's meeting—except where it is otherwise specified—is a get-together of two or more persons who are members of the company.

(ii) The members of the company get together for discussing and taking a decision on some lawful business of the company.

(iii) Before a meeting is held, the members are given a notice about the meeting.

(iv) A meeting is held at a specific place and time.

(v) A company's meeting is held according to the provisions of the Companies Act.

4.2 KINDS OF MEETINGS

There are four kinds of meetings such as

A. Shareholders meeting

B.Board of directors meeting

C.Creditors meeting

D.Debenture holders meeting

A. Shareholder's Meeting

A company's shareholders are its de facto owners; but, since they are scattered over a wide area and are too many in number, they are not in a position to run the affairs of the company—which is why there is the Board of Directors to manage the company's business. To ensure that the shareholders are informed of the company's affairs, periodic meetings of the shareholders are called. These are the general meetings of a company, and are referred to as 'company meetings'.

To protect the interests of the shareholders, various provisions have been made in the Companies Act, 2013, so that a company's shareholders can participate in the decision-making of the company. Shareholders' meetings may be of the following kinds:

A.1. Annual General Meeting

A.2. Extraordinary General Meeting

A.3. Class meeting

The Companies Act, 1956 contained provision relating statutory meeting and Statutory Report under Section 165 of that but this section has been omitted in the Companies Act, 2013 and, therefore, there is no provision for statutory meeting of the companies under the New Act of 2013.

(A1)Annual General Meeting

Meaning: Every company must hold in each year, in addition to any other meetings, a general meeting of its member, which is called the company's 'annual general meeting'. In

the normal course, such meeting is called by the company only. But in some special circumstances, in exercise of the powers vested in it may also call a company's annual general meeting. According to Section 96, every company shall call its annual general meeting once every year, and the notice of such meeting being called must clearly state that it is the company's annual general meeting.

Objects and Importance of the Meeting: The main object of calling the annual general meeting is that, at least once in a year, the company's members get together and have an opportunity to collectively examine the affairs of the company. Thus, from the point of view of the shareholders, the annual general meeting of the company is specially important because, besides other things, the company declares the dividend that is payable to its shareholders, which is of primary interest to all its members. The directors and the auditors report is also presented to the members, which gives them all information about the company's activities in the preceding year. In this manner, the members are apprised of the company's performance and its profits or losses. The members are free to move any resolution which relates to them in the meeting. It is mandatory for the company to present its final accounts in the annual general meeting, and any member can ask any question to the chairman of the meeting.

Business transacted in Annual General Meeting: The annual general meeting of a company provides a forum for the shareholders to come together and review the working of the company for the preceding year. Under Section 102 of the 2013 Act, the business to be transacted at the annual general meeting of a company has been classified into two heads, namely; (a) General/Ordinary Business and (b) Special Business.

(1) General/Ordinary Business: The general or ordinary business of the meeting constitutes the following:

(i) To discuss the final accounts and profit and loss account of the company, and the 'directors' and auditors' report for the previous year.

(ii) To declare the dividend for the year.

(iii)To appoint new directors to replace those who retire by rotation.

(iv) To appoint auditors.

(2)Special Business: Any other business besides what is normally transacted in the meeting is called 'special business'. The approval of the general meeting of any special business of a company must necessarily be there. Such business may include:

(i) the appointment, renewal of appointment and remuneration of directors.

(ii)increasing the company's share capital.

(iii)altering the company's articles of association.

When some special business has to be transacted in the annual general meeting, the notice for the meeting must contain a statement of the important aspects of such business, including in particular, the interest if any of every director and the manager. If such business involves another company, and a director (including other key managerial personnel) of the company holds 20 per cent or more share capital of such other company, it must be specifically clarified in the notice. In case a resolution is to be passed, the notice for the meeting must specify the time and place where any documents relating to the resolution can be inspected.

Statutory Provisions Regarding the Annual General Meeting

The statutory provisions regarding the annual general meeting of a company are as follows:

(1) Time Interval for Calling the Meeting: Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next.

In case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year, if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation. The Registrar may, for any special reason, extend the time within which any general meeting (not being the first annual general meeting) shall be held by a period not exceeding three

months.

(2) Notice and Place of Meeting: The general meeting of a company may be called by giving not less than twenty-one days' notice in writing. It may be called after giving a shorter notice in case the consent of all members entitled to vote at such meeting is obtained.

The annual general meeting of a company must be called for a time during the business hours, on a day which is not a public holiday, and must be held either at the company's registered office or at some other place within the city, town or village in which the registered office of the company is situated.

A public company may, by its articles, fix the time for its annual general meetings, and may also fix the time and place for its subsequent annual general meetings by passing a resolution to that effect in one annual general meeting. Likewise, a private company may also, by a resolution agreed to by all members, fix the time and place for its annual general meeting.

(3) Consequences of not holding the Annual General Meeting: The consequences of not holding the annual general meeting are as follows:

(i) Tribunal Calling Meeting: If default is made in holding an annual general meeting in accordance with Section 96, the Tribunal may, notwithstanding with the provisions of the Act or the articles of the company, call or direct the calling of a general meeting of the company on an application being made by any member of the company. The directions that may be given by the Tribunal may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.**— Section 98**

An Annual general meeting held in pursuance of the directions of the Tribunal shall be deemed to be an annual general meeting of the Company under the Act.

(ii)Penalty: In case a company on its own or on the direction of the Tribunal defaults in calling such meeting, the company and every officer of the company who is in default, shall be punishable with fine which may extend to one lakh rupees. In case the default continues, an additional fine of rupees five thousand may be imposed for each day the

default continues.

(A.2) Extraordinary General Meeting

Besides the statutory and the annual general meetings, any meeting of the company's shareholders called for whatever purpose is an 'extraordinary general meeting'.In other words, an extraordinary general meeting of a company is any meeting of its shareholders which is called during the period between its two consecutive annual general meetings.

When an Extraordinary General Meeting may be Called

The need to call an extraordinary general meeting of a company arises when any such matter has to be decided which cannot wait till the next annual general meeting of the company is to be held. An extraordinary general meeting of a company may be calledin the following circumstances:

(i) To make an alteration in the company's memorandum or articles of association.

(ii)To issue fresh debentures.

(iii) To increase, reduce or reorganise the company's share capital.

(iv) Any other urgent matter

Who may Call such Meetings

An extraordinary general meeting of a company may be called: (1) by the directors, (2) by the directors on requisition of the members, (3) by the requisitionists themselves and (4) by the National Company Law Tribunal.

(1) By the Directors: In case it is authorized by the company's articles, the directors may, convene an extraordinary general meeting by passing a resolution to that effect in the Board's meeting. According to Rule 48 of Table A, the Board may, whenever it thinks fit, call an extraordinary general meeting. Such meeting is called by the directors to do any special and necessary act which must be done before the next annual general meeting of the company,

In case any such meeting is called by the directors, it is necessary to give a 21 -day notice for the meeting. It is also necessary to state the purpose for which the meeting is being called. If the purpose of the meeting is to seek the support of members for some

resolution, the notice for the meeting must specify the time and place where the members can examine such resolution.

Although it is necessary to give a 21-day notice for an extraordinary general meeting of the company, it is possible, under the following circumstances, to call such meeting by a notice which is less than the prescribed 21-days. These circumstances are:

(i) When the members of a company with share capital who are entitled to vote and hold 95 per cent of the company's capital agree that a meeting be called.

(ii) When 95 per cent of the members of a company without share capital agree to hold such meeting.

(2) By the Directors on Requisition of Members: In case the directors do not call a general meeting of the company as required under the provisions of the Act, the members mentioned hereunder can bind the directors to call an extraordinary general meeting.

(i) In case of a company having a share capital, members who hold ten per cent of the company's paid-up share capital and have the right to vote.

(ii) In case of a company that does not have share capital, ten per cent of the members who have the right to vote.

When two or more than two persons are the joint owners of a share or shares of a company, the consent of one or more than one such persons shall be deemed to be the consent of all the joint holders of shares.

When the above-mentioned members of a company demand that an extraordinary meeting of the company be held, it becomes mandatory for the directors to call such meeting. The requisition notice must state the issues for discussing which the demand for the extraordinary general meeting is being made. The demand notice must bear the signatures of the members making such demand, and the notice must be delivered to the company's registered office. After a valid requisition for such meeting has been delivered, the Board of Directors shall initiate the procedure to call such meeting within twenty-one days of the receipt of the requisition and the meeting should actually be held within 45 days from the date of the requisition. **—Section 100**

(3) By the Requisitionists Themselves: If the directors fail to call the meeting within a

forementioned time limits, the requisitionists may themselves convene a meeting within three months from the date of the deposit of the requisition. A meeting called by the requisitionists. must be called in the same manner as a meeting called by the Board of Directors. Any reasonable expenses incurred by the requisitionists by reason of theBoard's failure to call a meeting shall be repaid to the requisitionists by the company, andthe company shall retain such amount out of any sums due or to become due by way of fees or other remuneration of the directors who were in default.

(4) By National Company Law Tribunal: If, for any reason, it is impractical to call a meeting of a company other than an annual general meeting, the National Company Law Tribunal may, either of its own motion or on the application of any director of the company, or of any member of the company who would be entitled to vote, order a meeting of the company to be held in such manner as the Tribunal thinks fit and givesuch directions as it thinks expedient in relation to the calling of such meeting. The directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting. **—Section 98**

(A.3) CLASS MEETINGS

When a company issues different classes of shares, it calls a meeting of that class of shareholders. Such meeting of a type of shareholders is called a 'class meeting'. These meetings are called to alter or define the rights and obligations of a class of shareholders—for example, to convert one class of shares to another, like a class meeting of the shareholders needs to be called to convert preference shares into equity shares. Only those members of a company who hold the class of shares for which the meeting is called may participate in such meetings. The articles of a company normally define the conditions and the provisions for calling class meetings. The rights and obligations of any class of shareholders can only be altered up to the limits defined in the company's articlesand memorandum of association. In other words, any alteration about any class of shares can only be made according to the conditions under which the shares were issued. If any alteration is to be made in such rights and obligations of a class of shareholders, it can only be done in a meeting of that class of shareholders by the members of the class

passing a special resolution to that effect, i.e. the resolution must be passed by a majority of three-fourths of the members of that class.

According to Section 48, where the share capital of a company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or with the sanction of a special resolution passed at a separate meeting of the holders of issued shares of that class.

Any default in complying with the provisions of Section 48 of the Companies Act, 2013 shall render the company liable to punishment with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term whichmay extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees or with both.

4.3. Board of Directors' Meetings

A company, being an 'artificial person', performs all its actions through its directors. In fact, it is the directors who manage the affairs of a company. A company's policy, its management and other important issues are decided in the meetings of its Board of Directors. It is, therefore, necessary that meetings of the company's Board of Directors are held to take decisions relating to its policy and management. Except for the issues on which the decision-making right rests with the shareholders, all matters of the company are dealt with in the meetings of its Board of Directors.

The meetings of a company's directors can be categorised as:

(i) Meetings of the Board of Directors, and (ii) Meetings of Directors' Committees.

C. Creditors Meetings (Sec-230)

The meeting of the creditors is usually called when the company wants to make any compromise or arrangement with the creditors or any class of them. In fact, these meetings are not the meetings of the company as they are called by the creditors.

Purpose of Meeting

1. To enter into a compromise or arrangement proposed between a company and its creditors, or any class or them.

2. To seek approval of creditors for amalgamation or reconstruction of a company.

3. To seek consent of the creditors for winding up of a company.

D. Debenture holders Meetings

The company may call the meeting of debenture holders to consider, (i) any variation in the conditions of their security, (ii) any alteration in their rights. The company may also hold debenture holders meeting for issuing new debentures or effecting a change in the rate of interest on the existing debentures. The rules andprocedure of these meetings are usually stated on the reverse of debenture trust deed.

4.4 VALIDITY OF MEETING

Any meeting of the shareholders of a company is only valid if it is held in a proper manner. For any valid business to be conducted in a company's meetings, it is very important that the meetings have the requisites of a valid meeting and are held according to the provisions of law. It is important to point out here that not only the proceedings of a meeting held contrary to the provisions of law will be invalid, all decisions taken in such meetings shall also be void. The Companies Act, defines the provisions that need to be followed by every public company, or a private company which is subsidiary of a public company, in convening and conducting the company's meetings. Besides this, it is also necessary for a company to follow the guidelines laid down in its articles. The main requisites of a valid meeting are as under:

4.5 CONVENING AUTHORITY:

The first requisite of a valid meeting is that it should be called by an authorized officer of the company. The authority to call a general meeting of the shareholders is vested in the company's Board of Directors, which can call such meeting by passing a resolution to that effect. In case a company's general meeting of its shareholders is not called by the Board of Directors of the company, the National Company Law Tribunal, on an application being made by any member of the company, may direct the company tohold its general meeting. It is important to note here that the resolution to call a general

meeting must also be passed by a valid meeting of the company's Board of Directors, otherwise the notice for the meeting shall not be valid and all proceedings of the meeting so called shall be void.

4.6 NOTICE OF MEETING

The next requisite of a valid meeting is that all members of the company should be given a proper notice of the meeting being called. The requirements of a proper notice are as follows:

(i) Duration of Notice: According to Section 101 of the Act, a general meeting of a company may be called by giving not less than twenty-one days' notice in writing. Such notice is necessary whether it is the company's annual general or its extraordinary general meeting. The duration of notice, i.e. twenty-one days', shall not include the day when the notice is received by the members (or when it deemed to be received) and the day the meeting is to be held.

In the following circumstance, a meeting may be called by giving a notice which is of shorter duration:

(a) In case of an annual general meeting, if consent is accorded to such shorter notice by all members of the company who are entitled to vote.

(b) In case of any other meeting, if consent is accorded to such notice by members holding 95 per cent of the paid-up share capital of the company (and having the right to vote) if the company has share capital, or in case of a company not having a share-capital,by members holding not less than 95 per cent of the total voting power exercisable at the meeting.

(ii)Procedure to Send Notice: A notice may either be delivered in person or sent to the members' registered address. If a member has no registered address in India, the notice must be sent to the address he has given to the company for communication. In case any member has requested the company to send him such notice under certificate of posting or by registered post and has deposited the necessary amount with the company to do so, the company shall send the notice according to the member's instructions.

In case the company does not have the registered addresses of some of its member,

it can fulfill its obligation of serving a notice on such members by giving an advertisement in a newspaper which has a wide circulation in the region where the company's head office is situated. With such advertisement in the newspaper the notice would be deemed to have been served on all its members.

In the case of joint holders of the company's shares, a notice served to person whose name appears first as a joint holder in the company's register of members shall be deemed to be an adequate notice.

(iii)Subject-matter of Notice: Every notice issued for a meeting of the company must clearly state the date, day, place and time of the meeting; it must also give a description of the business to be transacted at the meeting. The agenda of a meeting is sent to the members participating in it so that before they attend the meeting they can deliberate on the subject matter to be dealt with in the meeting and decide their course of action. Incase some special business is to be transacted by the meeting, then an 'explanatory statement' with regard to the important facts concerning such business must be attached with the notice. Further, in case any director or manager of the company has any personalinterest in the business to be transacted, it should be described in the notice. In the notice of a meeting of a company having share-capital, it should be statedthat the member is entitled to nominate a proxy (in case it is permitted by the provisions of the Act and the company's articles) and that the proxy nominated need not necessarily be a member of the company. The proxy form should also be enclosed with the notice of the meeting. Thenotice for a meeting must be served to every member of the company. If any member is not given an appropriate notice, he is entitled to challenge the legality of the meeting. But, in case the decisions taken in the meeting do not adversely affect the interests of the member who has not been given notice, the meeting shall be deemed to be valid.

(iv)On Whom to Serve a Notice?: According to Section 101 of the Act, notice of every meeting of the company shall be given to: .

(a) every member of the company (in the case of a meeting of the Board of Directors, to every director).

(b)the legal representative of a deceased member.

(c) the official liquidator in the case of an insolvent member.

(d) the auditor or auditors of the company.

(v)Notice of the Meetings of Directors: According to Section 173, the notice of every meeting of the Board of Directors of a company shall be given in writing to every director in India and to every other director who is outside India for the time being at his usual address in India. The notice must state the date, time and place of the meeting. It is always a good practice to send such notice to the directors before it is due. It is also to be noted that a company's articles may also state that the meeting of the company's Board of Directors shall be held once a month or after any specified period. In such case, it is not necessary to send any notice. But notwithstanding such provision, a notice is normally sent to all directors for any meeting of the Board.

4.7 QUORUM:

Another requisite of a valid meeting is the presence of the required quorum of members. By quorum is meant the minimum number of members who must be present for a meeting to be valid. Such number of members—or a quorum, as it called—is pre- defined in the company's articles. It may be more, but cannot be less, than what is deemed to be a valid legal limit. Only such members who have the right to vote can constitute a quorum.

Unless there is a provision to the contrary in the company's articles which provides for a larger number of members to constitute a quorum, in the case of a public company, the presence of five members; and, in the case of a private company, the presence of two members is considered to constitute the quorum of a meeting. While counting the quorum of a meeting, the physical presence of such members who have the right to vote is necessary. Proxies are not counted to be a part of the quorum. Besides that, the presence of more than one joint shareholder is deemed to represent only one member.

It is important to note here that the presence of the required number of members is essential before the proceedings of any meeting can start. After the proceedings of a meeting have started, such presence is not mandatory. In this connection, it was held in the case of Hartley Baird Ltd.that, in case the required quorum of members is present at

the start of a meeting, and some member or members leave after the proceedings have started, it would not have any effect on the validity of the meeting and any decision taken at the meeting would be a valid decision.

In case the required quorum is not present within half-an-hour of the commencement of the company's meeting, and the meeting is called on the demand of the members, the meeting, would be deemed to be over. In other circumstances, the meeting would be deemed to be adjourned, and would be held at the same place and at the same time after one week, or at any other place or time as decided by the Board of Directors. In case, even if at the next such meeting, the required quorum is not present after half-an-hour of the commencement of the meeting, the number of members present at themeeting would be deemed to constitute the quorum.

Quorum of Meetings of Directors:

The quorum of the meetings of a company's directors is normally specified in the company's articles. In case it is not so specified, the quorum for a meeting of the Board of Directors of a company shall be one-third of its total strength (any fraction in that one-third being rounded off as one), or two directors, whichever is higher. For example, if a company has eight directors, one-third (which is 2 2/3) would be deemed to be 3.

4.8 CHAIRMAN:

The fourth requisite of a valid meeting is that there must be a chairperson to preside over the meeting and to conduct its proceedings. Unless there is a provision to thecontrary in the company's articles, the members personally present at the meeting shall elect one of themselves to be the chairman of the meeting by a show of hands.

If a poll is demanded on the election of the chairman, it shall be taken forthwith in accordance with the provisions of the Act, and the chairman elected on a show of hands shall exercise all the powers of the chairman under the said provisions. —**Section 104**

In case the articles of a company so provide, the chairman of the company's meetings may be appointed permanently. Normally, the functions of permanent chairman are performed by the company's managing director. In case the chairman does not arrive at any meeting within fifteen minutes of its start, the vice-chairman takes over. When

there is no vice-chairman, or the vice-chairman is also absent, the members present may elect a chairman to preside over the meeting in the normal manner, who will then conduct the proceedings of the meeting.

It is the chairman who maintains the meeting's discipline and conducts the proceedings. The chairman makes the proposal for any resolution, calls for a vote on such resolution and declares the result of such vote. The minutes of any meeting also must bear the signature of the chairman.

The chairman of any meeting is responsible to settle any dispute or controversy that might arise between the members. Unless the requisite quorum is not there, or all matters related to the meeting have been disposed of, or the members present in the meeting so demand, the chairman does not have the right to end or adjourn the meeting.If the chairman adjourns the meeting without any reason, the members present may elect another chairman and continue the proceedings. Besides this, the chairman does not have the right o terminate any discussion on any matter that is going on in a meeting; he only has the right to stop any member from taking too much time in speaking in the meeting.

It is important to note here that, unless the articles of a company provide otherwise, the chairman has the right to cast the deciding vote in case the votes for and against a motion are equal, and thereby accept or reject the motion being discussed.

4.9 MINUTES

By 'minutes' is meant a record that is kept of the proceedings of any meeting. Under Section 118 of the Act, the provisions governing the minutes of a meeting are as follows:

(i) Every company must record the minutes of every meeting by making entries in a 'minutes book' kept for the purpose within thirty days of the conclusion of every meeting.

(ii) The minutes of meetings of members of a company and its Board of Directors must be kept in separate books with their pages consecutively numbered. Each page of every such book must be initialed or signed, and the last page must be dated and signed by the chairman of the said meeting. In the case of minutes of proceedings of a general meeting, the minutes must be signed and dated by the chairman within thirty days and, in the case

of the minutes of the Board of Directors or a committee thereof, the minutes must be signed by the chairman of the said meeting or the chairman of the next succeeding meeting.

(iii) In the case of a meeting of the Board of Directors, the minutes must also contain the names of the directors dissenting from or not concurring in any resolution.

(iv) The chairman of the meeting shall exercise an absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes.

(v) Minutes of meetings kept in accordance with the provisions of Section 118 shall be evidence of the proceedings recorded therein.

(vi) Where minutes of the proceedings of any meeting have been kept with the above provisions, the meeting shall be deemed to have been duly called and held.

(vii) The books containing the minutes of the proceedings of any general meeting of a company are kept at the registered office of the company, and must be open, during business hours, to the inspection of any member without charge, subject to such reasonable restrictions as the company may impose by its articles, so that not less than two hours in each day are allowed for inspection. Any member of the company shall be entitled to be furnished, within seven days of making such request with a copy of any minutes on the payment of such sum as may be prescribed.

4.10 SUMMARY

A public company must have a minimum paid up capital of Rs. 5 lakhs. Aminimum of seven persons can start a public company and there is no limit on maximum members. Public company has to invite public to subscribe shares. It can start its businessonly after getting a certificate of commencement of business.

A company not having any limit on the liability of its members is termed as unlimited company. In such a company the liability of each member extends to the whole amount of the company’s debts and liabilities. But he will be entitled to claim contribution from other members.

Small company means a company other than a public company paid up share capital of which does not exceed 50 lakhs rupees or such higher amount as may be

prescribed which shall not be more than five crore rupees.

According to Companies Act 2013, “director” means a director appointed to the board of a company.

The word ‘meeting’ implies the coming together of a certain number of members for transacting the business in the agenda for which a previous notice has been given. Quorum means the minimum number of directors which must be present to make the proceedings of the board valid. The Chairman of the meeting is a person who presides the meeting. The Chairman can be explained as the umpire of debate, the Judge of admissibility and upholder of order and decorum.

4.11 SELF ASSESSMENT QUESTIONS

1. Discuss AGM.
2. Discuss the requisites of a valid meeting.
3. Write note on notice of meeting.
4. Write note on Quorum.
5. Discuss the minutes of meeting.
6. Discuss about Chairman of Meeting.