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UNIT 3 COMPANY MANAGEMENT

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UNIT 4 BORROWING POWERS AND CHARGES ON ASSETS

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BLOCK-I JOINT STOCK COMPANY

UNIT 1 INTRODUCTION AND EVOLUTION OF COMPANY

Introduction and evolution of Company Law in Indian Context: Company – Definition, types, features, Privileges of private company, Conversion of private company into public company. Incorporation of company, Promoters, Preliminary or pre incorporation contracts, Certificate of incorporation, Prospectus, Commencement of business, Doctrine of Indoor management. Concept of lifting of corporate veil. Comparison between private and public company.

COMPANY MEANING

A company means an association of individual formed for some common purpose. But it is a voluntary association of persons. It has capital divisible into parts, known as shares, an artificial person created by a process of law and it has a perpetual succession and a common seal.

Definition

According to **Prof. Lindley**, company is defined as, "An association of many persons who contribute money or money's worth to a common stock, and employ it in some common trade or business (i.e., for a common purpose), and who share the profit or loss (as the case may be) arising therefore. The common stock so contributed is denoted in money and it the capital of the company. The persons who contribute it, or to whom it belongs, are members. The proportion of capital to which each member is entitled is his share. Shares are always transferable although the right to transfer them is often more or less restricted".

Characteristics of a Company

1. Separate Legal Entity

A company formed and registered under the companies act is a distinct legal entity. It is a creation of law and is sometimes called artificial person having invisible and intangible. It is a fiction of law with legal, but no natural or physical existence.

Case of Salomon Vs Salomon Co Ltd: S Sold his boots business to a newly formed company for $30, 000. His wife, one daughter and four sons took up one share of $ 1 each. S took 23, 000 shares of $ 1 each and $ 10, 000 debentures in the company. The debentures gave S a chargeover the assets of the company as the consideration for the transfer of the business. Subsequentlywhen the company was wound up, its assets were found to be worth $6, 000 and its liabilities amounted to $ 17, 000 of which $ 10, 000 were due to S (secured by debentures) and $ 7, 000 due to unsecured creditors.

The unsecured creditors claimed that S and the company were one and the same person and that the company was a mere agent for S and hence they should be paid in priority to S. Held, the company was, in the eyes of the law, a separate person independent from S and was not his agent. S, though virtually the holder of all the shares in the company, was also a secured creditor and was entitled to repayment in priority to the unsecured creditors.

2. Perpetual Succession

A company is an artificial person, as such it never dies. Its life does not depend on the life of its members. It may not affected by insolvency, mental disorder or retirement of its members. It is created by law and can be put an end to only by the process of law. Even the earthquake, flood or hydrogen bomb cannot destroy it. It continues to exist even if all its human members are dead. Unlike a natural person a company never dies. It is an entity with a perpetual succession. Its existence is not affected by the death, lunacy and insolvency of its members.

3. Limited Liability

In a company limited by shares, the liability of members is limited to the unpaid value of the shares. If the face value of a share in a company is Rs.10 and a member has already paid Rs.7 per share, he can be called upto to pay not more than Rs.3 per share during the lifetime of the company.

In a company limited by guarantee, the liability of members is limited to such amount as the members may undertake to contribute to the assets of the company in the event of its being wound up.

4. Common seal

A company is a juristic person with a perpetual succession and a common seal. Since the company has no physical existence, it must act through its agents and all such contracts entered into by its agents must be under the seal of the company. The common seal acts as the official signature of the company. Every company mush has a seal with its name engraved on it.

5. Transferability of shares

The capital of a company is divided into parts, called shares. These shares are, subject to certain conditions, freely transferable so that no shareholder is permanently or necessarily wedded to the company. When the joint stock companies were established, the great object was that the shares should be capable of being easily transferred.

6. Capacity to sue and be sued

A company can sue and be sued in its corporate name. It may also inflict or suffer wrongs. It can in fact do or have done to it most of the things which may be done by or to a human being. On incorporation, a company acquires separate and independent legal personality. As a legal person, it can sue and be sued in its name.

7. Separate Property

A company, as already observed, is a legal person distinct from its members. It is therefore capable of owing, enjoying and disposing of property in its own name. Although, the capital and assets of the company are contributed by its shareholders, they are not the privateand joint owners of the property of the company. The property of the company is not the property of the shareholders; it is the property of the company.

LIFTING THE CORPORATE VEIL

A company is a legal person distinct from its members. This principle may be referred to as 'the veil of incorporation'. The effect of this principle is that there is a veil between the company and its members i.e., the company has a corporate personality which is distinct from its members.

But over a period, the abuses of this corporate personality became apparent.

The corporate veil is lifted in the following cases;

- Determination of the character
- Where company is a mere cloak or sham
- Where the company is acting as an agent of the shareholders
- Protection of revenue

Statutory exception

1. **Number of members below statutory minimum**

Sec.45, if a company carries on business for more than 6 months after the number of its members has been reduced below 7 in case of a public company or 2 in case of private company, every person who knows this fact and is a member during the time that the company so carries on business after the six months, is severally liable for the whole of the debts of the company contracted during that time, i.e., after six months. It may be noted that in such a case the continuing members (i.e., those who continue to be members after six months).

a. Can be sued and not those who have withdrawn from the membership;
b. Shall be liable only if they are aware of the fact of the member falling below the statutory minimum.

2. **Failure to refund application money**

Sec.69 (5), the directors of a company are jointly and severally liable to repay the application money with interest if the company fails to refund the application money of those applicants who have not been allotted shares, within 130 days of the date of issue of the prospectus.

3. **Misdescription of company's name**

Sec.147 (4) where an officer or agent of a company does any act or enters into a contract without fully or properly mentioning the company's name and the address of its registered office, he shall be personally liable. Thus where a bill of exchange, hundi or promissory note is signed by an officer of a company or any other person on its behalf, without mentioning this fact that he

is signing on behalf of the company; he is personally liable to the holder of the instrument unless the company has already paid the amount.

4. **Fraudulent Trading**

Sometimes in the course of the winding up of a company it may appear that some business of the company has been carried on with intent to defraud creditors of the company, or any other person or for any fraudulent purpose. In such a case, the court may declare that any persons who were knowingly parties to the carrying on of the business in this way are personallyliable without any limitations of liability for all or any of the debts or other liabilities of the company as the court may direct. The court may do so on the application of the official liquidator, or the liquidator or any creditor or contributory of the company.

5. **Holding and Subsidiary Companies**

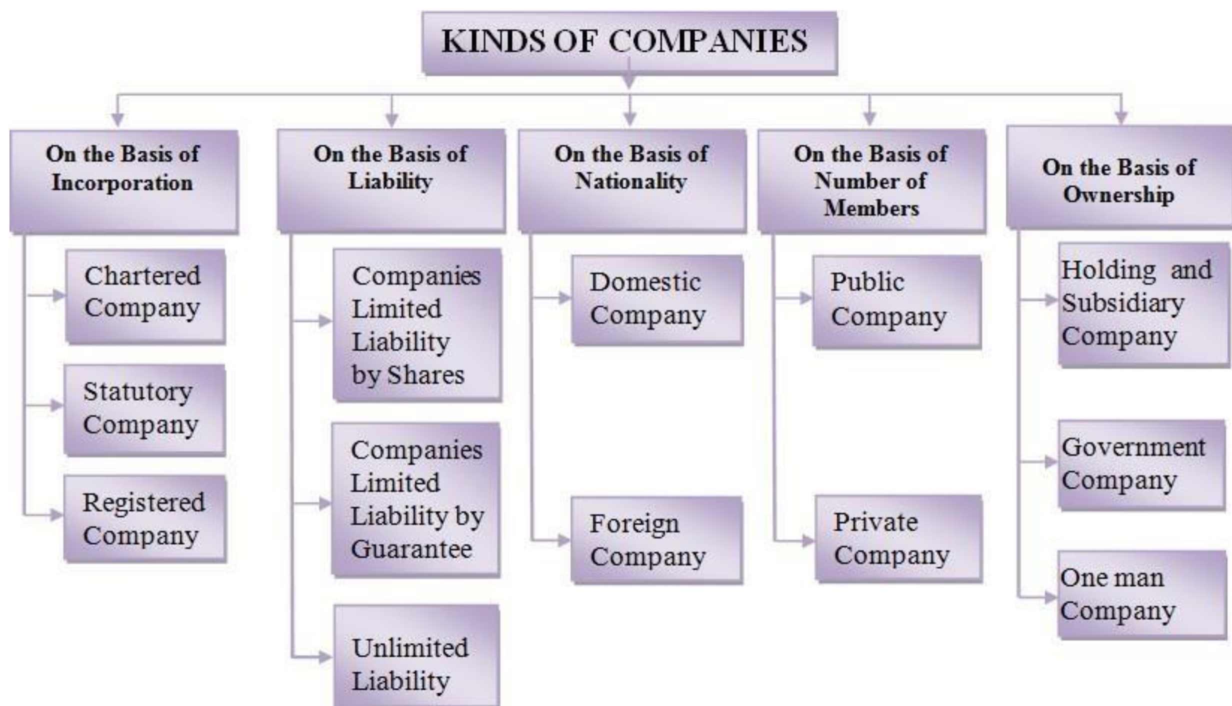
In the eyes of the law, the holding company and its subsidiaries (for definition of holding and subsidiary companies) are separate legal entities. But in the following two cases, a subsidiary company may lose its separate identity to a certain extent:

i) Where at the end of its financial year, a company has subsidiaries, it must lay before its members in general meeting not only its own accounts, but also a set of group accounts showing the profit or loss earned or suffered by the holding company and its subsidiaries collectively and their collective state of affairs at theend of the year.

ii) The court may, on the facts of a case, treat a subsidiary company as merely a branch or department of one large undertaking owned by the holdingcompany.

KINDS OF COMPANIES

Joint Stock Companies can be classified on the basis of corporation, nature of liability, extent of public interest, ownership, nationality etc. let us examine briefly the different kinds of companies.



I. On the Basis of Incorporation

Any company is to be incorporated under an Act. The provision of the particular Act under which it is established governs it working. Companies of this kind are of three types. Theyare;

a. Statutory Companies

These are the companies which are created special act of the Parliament or State Legislature, **e.g.,** the Reserve Bank of India, the State bank of India, the Life Insurance Corporation, etc. these are mostly concerned with public utilities, e.g., railways, tramways, electricity companies and enterprise of national importance.

b. Registered Companies

Companies which are registered under the Companies Act, 1956, or were registered under any of the earlier companies Acts are called registered companies. A vast majority of companies we come across belong to this category. Tata Motors Limited, Reliance Telecommunication Limited, EID Parry Limited, etc belong to this category.

c. Chartered Companies

Companies established as a result of a charter granted by the King or Queen of a country is known as chartered companies. The charter issued, governs their functioning. In other words, The Crown, in the exercise of the royal prorogated has power to create a corporation by the grant of a charter to persons assenting to be incorporated. **Example** – Bank of England, East India Company, etc.

II. On the Basis of Liability

On the basis of the extent of liabilities of the shareholders such companies are divided into three categories.

a. Companies Limited by Share

Where the liability of the members of a company is limited to the amount unpaid on the shares such a company is known as a company limited by shares. If the shares are fully paid, the liability of the members holding such shares is nil.

b. Companies Limited by Guarantee

In a company limited by guarantee the liability of a shareholder is limited to the amount he has voluntarily undertake to contribute to meet any deficiency at the time of its winding up. Such a company may or may not have a share capital. If it has a share capital a member's liability is limited to the amount remaining unpaid on his share plus the amount guaranteed by him. This type of company is started with the object of promoting science, arts, sports, charity, etc. it is clear that its objective is not profit earning. It gets subscription from its members and donations and endowments from philanthropists.

c. Unlimited Liability

A company without limited liability is known as an unlimited liability. In case of such a company, every member is liable for the debts of the company, as in an ordinary partnership, is proportion to his interest in the company. In other words, their liability extends to their private properties also in the event of winding up. Unlimited companies are almost non- existent.

III. On the Basis of Nationality

They are of two types' viz., domestic companies and foreign companies.

a. Domestic Company

Companies registered under the Companies Act, 1956, or under earlier Acts are considered domestic companies.

b. Foreign Company

Foreign company means a company incorporated outside India but having a place of business of India. It has to furnish to the authorities the full address of the registered or principal office of the company or a list of its directors or names and addresses of the residents in India authorized to receive notices, documents, etc.

IV. On the Basis of Number of Members

a. Private Company

A private company means a company which by its articles

i. restricts the rights to transfer its shares

ii. Limits the number of its members minimum 2 and maximum number of members fifty (excluding the employees)

iii. Prohibits any invitation to the public to subscribe for any shares or debentures of the company. The name of the company must end with the words 'private limited'.

b. Public Company

The public is invited to subscribe to the shares of the company usually by issuing a prospectus. Shares are easily transferable. A public company must have at least 7 persons to form and no maximum limit as to its number of shareholders or members. The name must end with the word 'limited'.

V. On the Basis of Control / Ownership

a. Holding Company and Subsidiary Company

A company is known as the holding company of another company if it has control over that other company. A company becomes a holding company of another

i) if it can appoint or remove all or majority of the directors of the latter company or

ii) if it holds more than 50% of the equity share capital of the latter or

iii) if it can exercise more than 50% of the total voting power of the latter.

A company is known as a Subsidiary of another company when control is exercised by the latter (called holding company). Over the former called a subsidiary company.

b. Government Companies

A Government company is one in which not less than 51% of the paid up capital is held by the Central Government or by any one or more State Governments or partly by the Central Governments and partly by one or more State Governments. Examples: Bharath Heavy Electricals Limited, Steel Authority of India Limited, etc.

A subsidiary of a Government company is also treated as a Government company. A Government company also enjoys a separate corporate existence. It should not be identified with the Government and its employees are not Government employees.

c. One man company

These are companies in which one man holds virtually the whole of the share capital with a few extra members holding the remainder who may be his relations or nominees.

DISTINCTION BETWEEN PUBLIC COMPANY AND PRIVATE COMPANY

S. No.	PUBLIC COMPANY	PRIVATE COMPANY
1.	**Minimum No. of Members**: 7 persons	2 persons
2.	**Maximum No. of Members**: No limits	Not more than fifty members excluding past and present employees
3.	**Name of the Company:** The company name must be ended with 'Limited'.	'Private Limited' must be added at the end of the name.
4.	**Article of Association:** Can have its own Articles or can adopt Table A of the Companies Act, 1956.	Prepare own AOA.
5.	**Commencement of Business**: Shall not commence business unless granted the certificate of commencement of business	Commence business as soon as it is incorporated
6.	**Invitation to public**: May invite public to subscribe to its share/debentures by issuing prospectus	Cannot extend such invitation to the public
7.	**Transferability of shares**: No restriction on transfer of shares	Restrict the right of members to transfer the shares by its articles
8.	**Qualification Shares:** The directors should acquire the prescribed qualification shares	Need not acquire qualification shares
9.	**Quorum:** Minimum number of members should be present in a meeting is five	Two number of members should be present in a meeting
10.	**Issue of Prospectus:** A public limited company can issue prospectus	A private company is prohibited from issuing prospectus
11.	**Issue of subsequent shares:** Public company's new shares are offered first to the existing shareholders	Rights issue does not arise
12.	**Issue of share warrants:** It can issue share warrants	A private company cannot issue share warrant
13.	**Number of directors**: At least three directors	At least two directors
14.	**Statutory meetings**: Compulsory	No such obligations
15.	**Managerial remuneration**: Cannot exceed 11% of the net profit	No such restriction

DISTINCTION BETWEEN PARTNERSHIP FIRM AND JOINT STOCK COMPANY

S. No.	BASIS OF DIFFERENCE	PARTNERSHIP FIRM	JOINT STOCK COMPANY
1.	The Acts	Partnership firm is governed by the Indian Partnership Act, 1932	Companies are governed mainly by the provisions of the Companies Act, 1956
2.	Registration	Registration is optional	Registration is compulsory
3.	Number of members	Minimum of 2 persons and Maximum number is restricted to 10 in the case of Banking business and to 20 in other types of businesses	Minimum number of members Public – 7 persons Private – 2 persons Maximum number of members Public – unlimited Private – 50 excluding members or employees
4.	Legal status	No separate legal existence	It is an artificial person created by law
5.	Liability	Liability of a partner is joint, several and unlimited	Limited to the unpaid amount of shares held
6.	Transfer of shares	A partner cannot transfer his interest in the firm without the consent ofall other partners	Shares are fully transferable
7.	Management	Management of a firm is carried on by all or by any of them acting for all	Board of directors elected by the members carry out the management
8.	Stability	A partnership firm is not stable, it can be affected by death, insanity or insolvency of any one or all its partners	A company is stable as it is totally unaffected by any such contingencies
9.	Procedural complexities	Both for formation and dissolution, the procedures are simple	Both the formation and winding up are subject to many legal formalities
10.	Financial resources	The capital contribution as well as the finance that can be raised tend to be limited	The scope for mobilizing larger resources is very wide
11.	Membership	In a partnership only individuals can become its members	In a company, an institution can also become a member by purchasing its shares

12.	Nature	Partnership is the relation between persons who have agreed to share the profits or losses of a business	A company is an artificial person
13.	Mutual relationship of the members	In the partnership, each partner is an of agent of the others	The members of the company are not its agents or representatives
14.	Audit	Audit of accounts is not except uncertain circumstances	It is essential for every company to get its accounts annually audited bychartered accountant
15.	Dissolution	Partnership can be mutually dissolved at time	Legal formalities for winding up are many

PROMOTION AND FORMATION OF COMPANY

PROMOTION OF COMPANY

The term, 'promotion' refers to the process by which the idea of forming a company takes a definite shape resulting in its incorporation. It is in fact the first stage in the formation of company.

PROMOTER

It is the promoter who gets the idea of starting a company and undertakes all the preliminary work necessary for its formation. In other words, the promoter of a company is a person who does the necessary preliminary work incidental to the formation of the company.

Definition

Palmer explains the significance of the term promoter in the following words. "A Promoter starts a scheme of forming a company, gets together the Board of Directors, retains bankers and solicitors, prepares or gets prepared memorandum and articles of association, provides the preliminary expenses, drafts the prospectus; in a word undertakes to form a company with reference to a given project and takes the necessary steps to get it going".

Functions of a promoter

1. He settles the company's name and ascertains that it will be accepted by the Registrar of Companies.
2. He also settles the details of the company's Memorandum and Articles, the nomination of directors, solicitors, bankers, brokers, auditors and secretary and the registered office of the company.
3. He arranges for the printing of the Memorandum and Articles, the registration of the company, the issue of prospectus, if a public issue is necessary.

Duties of promoters

- Involved in business activities
- Instruct the solicitors to prepare necessary documents
- Secure the services of directors
- Provide registration fees
- Arranging for advertisement, circulation of prospectus, investment of capital.

Remuneration of Promoters

A promoter has no right to get compensation from the company for his services in promoting the company unless there is a contract to that effect. But in practice, a promoter takes remuneration for his services in one of the following ways;

a. He may sell his own property to the company for cash or fully paid shares at a profit provided he makes a disclosure to this effect
b. He may be given an option to buy a certain number of shares in the company at par
c. He may take a commission on the shares sold
d. He may take some shares of the company
e. He may be paid a lump sum by the company

Anyremuneration paid to the promoters must be disclosed in the prospectus, if it is paid within the preceding 2 years from the date of the prospectus.

INCORPORATION / FORMATION OF COMPANY

For registering the company with the registrar of companies, the promoter has to initiate a number of steps as outlined below;

1. Approval for the proposed name

A company can choose any name but it should not closely resemble the name of an existing company. Hence the promoter has to get the approval from the registrar for the proposed name of the company.

2. Filing of Documents

The promoter has to get prepared the following documents and file them with the registrar of companies of the State in which the registered office of the company is situated.

i) Memorandum of Association

This document which is of fundamental importance defines the scope of activities of the company. It should contain the name, the place where the registered office is situated, authorized capital and the objects of the business. It should be printed and duly stamped, signed and witnessed. A minimum of two persons in the case of a private limited company and seven in the case of a public limited company must sign the document.

ii) Article of Association

This contains the regulations connected with the internal management of the company. This document must also be duly stamped and signed by the signatories to the

memorandum and witnessed.

ii) **Original letter of approval**

Original letter of approval of name be obtained from the Registrar and be filed.

iv) **A list of directors**

A list of directors who have consented to be its directors must be filed.

v) **Written consent to act as directors**

The directors have to give their consent in writing to act as its directors. Theyshould also undertake to take the necessary qualification shares and pay for them.

vi) **Notice of the address of the registered office**

vii) **Statutory declaration**

A declaration stating that all the requirements of law relating to registration have been complied with is to be filed. This declaration must be given by an Advocate of the Supreme Court or High Court, or by a Chartered Accountant who is engaged in the formation of the company or by a person named in the Articles as a director or secretary of the company.

viii) The registrar will scrutinize all the documents and if he finds them in order, he will issue the certificate of incorporation

This certificate is a conclusive evidence of the fact that the company has been duly registered. A private limited company can commence business on getting the certificate of incorporation, but a public company has to take some more steps for getting another certificate known as certificate for commencement of business.

3. Issue of Prospectus

The Board of directors should arrange for drafting a prospectus when it wants to approach the public for securing capital. A prospectus contains all essential points which would induce the investing public to apply for shares in the company. A copy of the prospectus must bedelivered to the Registrar before issuing to the public.

4. Minimum Subscription

A company can proceed to allot shares only if minimum subscription specified in the prospectus has been collected in cash.

5. Statement in Lieu of Prospectus

Where the promoters raise the entire capital through private arrangement, there is noneed to issue a prospectus. However, a statement in lieu of prospectus, the contents of which are similar to a prospectus, must be prepared and filed with the Registrar at least three days before allotment.

6. Filing of further documents

The following documents are also to be filed with the Registrar;

i) A declaration that the minimum subscription stated in the prospectus has been collected in cash

ii) A declaration stating that each director has paid in cash for the application and

allotment on the shares taken up by them

ii) A declaration that no money has become refundable to applicants because of its failure to obtain permission for shares or debentures to be dealt in on any recognized stock exchange

iv) A statutory declaration by the secretary or one of its directors stating that the above requirements have been complied with.

If the Registrar is satisfied that these documents are in order, he will issue a certificate entitling the company to commence business. It is only on getting this certificate; a public limited company can start its business.

Certificate of Incorporation

On registration, the Registrar will issue a certificate of incorporation whereby he certifies that the company is incorporated. For the date of incorporation mentioned in the certificate, the company becomes a legal person separate from its shareholders and secures a perpetual succession. Hence it is the birth certificate of the company.

Certificate of commencement of business

A private company may commence its business immediately on incorporation but a public company cannot commences business immediately after incorporation, unless it has obtained a certificate of commencement of business from the Registrar.

MEMORANDUM OF ASSOCIATION (MOA)

MOA is one of the core documents, which has to be filed with the Registrar of companies at the time of incorporation of a company. It is a document, which sets out the constitution of the company and is really the fundamental conditions upon which alone the company is allowed to be incorporated.

In other words, it contains the fundamental conditions upon which alone the company is allowed to be incorporated. It defines the activities the company is permitted to undertake. Any act done which is outside the scope outlined in its memorandum is ultra vires (beyond the power of) the company and is not binding on it.

Contents of Memorandum

1. Name Clause

A company may be registered with any name it likes. But a name, which in the opinion of the Central Government is undesirable, and in particular which is identical or which too nearly resembles the name of an existing company shall register no company. Every public company must write the word 'limited' after its name and every private company must write the word 'private limited' after its name.

Rules regarding name

i) undesirable name to be avoided

ii) identical name to be avoided

iii) injunction if identical name adopted

iv) limited or private limited as the last word or words

v) prohibition of use of certain names

vi) restriction on use of certain key words as part of name

2. Registered Office Clause

This clause states the name of the state where the registered office of the company is to situate. The registered office clause is important for two reasons. First, it ascertains the domicile and nationality of a company. Second, it is place where various registers relating to the company must be kept and to which all communications and notice must be sent.

3. Object Clause

The object clause is the most important clause in the memorandum of association of a company. It is not merely a record of what is contemplated by the subscribers. But it serves a two-fold purpose; 1) it gives an idea to the prospective shareholders the purpose for which their money will be utilized; 2) it enables the persons dealing with the company to ascertain its powers.

4. Liability Clause

This clause states that the liability of the members of the company is limited. In the case of a company limited by shares, the members are liable only to the amount unpaid on the shares taken by him. In the case of a company limited by guarantee, the members are liable to the amount undertaken to be contributed by them to the assets of the company in the event of its being wound up.

5. Capital Clause

The memorandum of a company limited by shares must state the authorized or nominal share capital, the different kinds of shares, and the nominal value of each share. The chief point to consider in regard to this clause is what funds are necessary to set the business going or, if it is proposed by an existing concern, what sum is needed to pay its price and what, in addition, is wanted to keep the business going.

6. Association Clause or Subscription Clause

This clause provides that those who have agreed to subscribe to the memorandum must signify their willingness to associate and form a company. The memorandum has to be signed by each subscriber in the presence of at least one witness who must attest the signature. Each subscriber must write opposite his name the number of shares he shall take.

Alteration of Memorandum of Association

For the purpose of alteration, the provisions of the Memorandum can be divided into two categories;

i) The provisions which must be included in the memorandum, these are called

'conditions'. These cannot be altered except in the mode, and to the extent, for which express provision is made in the companies act, 1956.

ii) Other provisions. Such provisions including those relating to the appointment of managing director or manager may be altered in the same manner as the articles of the company i.e., by a special resolution unless otherwise provided by the companies act, 1956.

Alteration of Memorandum

1. Change of name

By Special Resolution

A company may change its name by a special resolution and with approval of the Central Government signified in writing in case of deletion or addition of the word "private" on the conversion of a public company into a private company or vice versa.

By ordinary Resolution

If a company registered by a name which, in the opinion of the Central Government, is identical with or too nearly resembles, the company may change its name by ordinary resolution with the previous approval of the Central Government within 12 months.

The company has to get fresh certificate of incorporation.

Secretary procedure for change of name

a. He should make an application with fees of Rs.500 by means of DD or a treasury challan to know the availability of the changed name.
b. Once the Registrar informs the changed name availability, the Board meeting should decide to convene a general meeting to pass a special resolution.
c. Copy of special resolution signed by the chairman should be filed with the registrar with 30 days of passing the resolution.
d. A copy of the notice should be send to the recognized stock exchange if it is listed companies.
e. 6 copies of the altered memorandum of association should send to the stock exchange.
f. Apply to the registrar for a fresh certificate of incorporation

2. Change of registered office

a. Change Of Registered Office From One Place To Another Place In The Same City, Town Or Village
    - With the confirmation of the Regional Director of the Zone the change of place of its registered office can be done. This change has to be informed within 30 days to the Registrar with supportive documents.
b. Change Of Registered Office From One State To Another
    - The company has to pass special resolution and with the previous approval from the Central Government.
    - Copy of special resolution signed by the chairman should be filed with the registrar with 30 days of passing the resolution.

- A copy of the notice should be send to the recognized stock exchange if it is listed companies.
- 6 copies of the altered memorandum of association should send to the stock exchange.

3. Alteration of Objects

Object clause is the most important clause in the MOA. It can be altered by passing special resolution so as to enable it –

i) To carry on its business more economically or more efficiently

ii) To attain its main purpose by new or improved means

iii) To enlarge or change the local area of its operation

iv) To carry on some business which under existing circumstances may conveniently or advantageously be combined with the objects specified in the memorandum

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

vi) To sell or dispose of the whole, or any of the undertaking

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

The altered copy along with minutes should be send within 30 from the date of filing of such documents.

4. Change in liability clause

A company limited by shares or guarantee cannot change the Memorandum so as to impose any additional liability on the members or to compel them to buy additional shares of thecompany unless all the members agree in writing to such change either before or after the change.

5. Change in capital clause

Change in the capital clause which may involve increase, reduction or reorganization of capital, will be done by passing ordinary or special resolution as required by the circumstances.

DOCTRINE OF ULTRA VIRES

An act ultra vires the company - A company has the power to do all such things as are –

1. Authorized to be done by the companies act,
2. Essential to the attainment of its objects specified in the memorandum,
3. Reasonable and fairly incidental to its objects.

A company has power to carry out the objects set out in the memorandum and also everything which is reasonably necessary to enable it to carry out those objects. Any activities not expressly authorized by the memorandum are ultra vires to the company. Otherwise, the term ultra vires means that the doing of the act is beyond the legal power and authority of the company. If an act is ultra vires the company i.e., it is outside the scope of the scope of the company's objects, it is wholly void and inoperative and will not be binding on the company. Even the whole body of shareholders cannot ratify it.

ARTICLES OF ASSOCIATION

'Articles' means the Articles of Association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act. The articlesof association are the rules and regulations of a company frame d for the purpose of internal management of its affairs. The articles are framed for carrying out the aims and objects of the Memorandum of Association.

Contents of Articles of Association

1. Adoption of preliminary contracts
2. number and value of shares
3. allotment of shares
4. calls on shares
5. lien on shares
6. transfer and transmission of shares
7. forfeiture of shares
8. alternation of shares
9. shares certificate
10. conversion of shares into stock
11. voting rights and proxies
12. meetings
13. directors, their appointment etc
14. borrowing powers
15. accounts and audit
16. dividends and reserves
17. winding up
18. issue of redeemable preference shares, if any

In the case of companies with the liability limited by guarantee, the articles must also state the number of members with which the company is to be registered. It must also state the extent of liability in the event of winding up. In the case of a private company the articles must also contain the following provisions;

a. restricting the right to transfer shares, if any
b. limiting the number of its members to 50 excluding the past and present employee members
c. prohibiting any invitation to the public to subscribe for any shares in or debentures of the company.
d. prohibiting any acceptance of deposits from the persons other than the directors, members or their relatives.

MEMORANDUM AND ARTICLES – DISTINCTION

1. Content and Scope

MOA is the charter of the company and defines the scope of its activities. AOA of the company is a document, which regulates the internal management of the company.

2. Relationship between company, members and outsiders

MOA defines the relationship of the company with the outside world, whereas AOA deals with the right of the members of the company intense and also establishes the relationship ofthe company with the members.

3. Alteration

MOA cannot be altered except in the manner and to the extent provided by the Act, whereas the AOA being only the bylaws of the company can be altered by a special resolution.

4. Supremacy

Memorandum is a supreme document of the company, whereas articles are subordinate to the memorandum.

5. Ultra-vires Acts

A company cannot depart from the provision contained in the memorandum, and if it does, it would be ultra-vires the company, anything done against the provisions of Articles, but which is ultra-vires the Memorandum, can be ratified.

DOCTRINE OF CONSTRUCTIVE NOTICE

The Memorandum and Articles of association of every company are required to the register with the registrar of companies. On registration they become public documents and are open for public inspection on payment. Everyone dealing with the company, whether a shareholder or an outsider, is presumed to have read the two documents. This deemed knowledge of the two documents their contents is known as the constructive notice memorandum and articles.

DOCTRINE OF INDOOR MANAGEMENT

The outsiders dealing with the company are entitled to assume that as far as the internal proceedings of the company are concerned, everything has been regular done. They are presumed to have read these documents and to see that the proposed dealing is not inconsistent therewith, but they are bound to do more; they need not inquire into regularity of the internal

proceedings as required by the memorandum and the articles. They can presume that all is being done regularly. This limitation of the doctrine of constructive notice is known as the "doctrine of indoor management".

EXCEPTIONS

1. Knowledge of Irregularity

Where a person dealing with a company has actual or constructive notice of the irregularity as regards internal management, he can't claim the benefit under the rule of indoor management.

Example: Howard V. Patent Ivory Company. The directors of a company could borrow any amount up to $ 1, 000 without the approval of the shareholders in general meetings. But for any amount beyond $ 1, 000 they had to obtain the consent of the shareholders in the General Manager.

The directors themselves lent to the company an amount in excess of the borrowing powers of the company without the consent of the shareholders in General manager. Hence the company was liable to them only for $ 1, 000.

2. Negligence

Where a person dealing with a company could discover the irregularity if he had made proper inquiries he can't claim the benefit of the rule of indoor management.

Example: Anand Bihari Lal V. Dinshaw and Company, In this case accepted of a company property its accountants. Held, the transfer was void as such as transaction was apparently beyond the scope of the accounting authority.

3. Forgery

The indoor management does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgery committed by its officers.

4. Acts outside the scope of apparent authority

If an officer of a company enters into a contract with a third party and if the act of the officer is beyond the scope of his authority, the company is not bound.

PROSPECTUS

Sec.2 (36) defines "Any documents described as a prospectus and include any notice circular, advertisement or documents inviting deposits from the public or inviting offer from the public for the purchase of any shares in or debentures of a body corporate.

Formalities in issuing a prospectus

- Every company is issued by or on behalf of a company must be dated; this date is regarded as a date of its publication
- It should be signed by every director \ agent delivered to registrar on or before the date of application
- The prospectus issued to the public should mention copy of prospectus along with specified with document filed with registrar.
- Authorized form securities exchange board of India
- A prospectus must contain the necessary information to enable the public to decide whether or not to subscribe for its shares.

Contents of a prospectus

1. **General Information**
    - Name and address of registered office of the company
    - Details of letter of intent \ industrial license
    - Name of stock exchange where listed

- Date of opening, closing of the issue
- Name, address of lead manager, bankers to the issue, brokers to the issue
- Underwriting arrangement

2. **Capital Structure of the company**
    - Authorized, issued, subscribed, paid up capital of the company should be mentioned
    - Size of the issue
3. **Details of the issues**
    - Object of the issues
    - Tax benefits available to the company
    - Rights of the information holders AND Terms of payment
    - Authority for the issues and details of resolution passed for the issues
4. **Details about the company management**
    - History, main objects, present business of the company
    - Subsidiaries of the company
    - Promoters and their background
    - Name, address occupation of manager, managing director's relationship with the company
5. **Details about the Project**
    - Cost of the project and means of financing
    - Location of the project
    - Plant & machinery for the projects
    - Infrastructure facilities for raw materials
    - Expected date of trail production and commercial production
    - Schedule of implementation of the projects
6. **Financial Information**
    - A report from the auditors on profit and losses of the company
    - Asset and liabilities of the company
    - Rate of dividend paid by the company
7. **Statutory and other Information**
    - Minimum subscription as laid down in the SEBI guidelines
    - Underwriting Commission and brokerage
    - Fees payable to the lead manager
    - Date of listing on stock exchanges
8. **Other Information**
    - In respect of any issue made by the company and other listed companies under

the same management, the following details;

- Name of the company, year of issue, types of issue, amount of issue and date of completion of the projects
- Procedure and time schedule for allotment and issue of certificates
- Management perception of risk factors
- Procedure for making application and availability of forms, prospectus and mode of payment
- Changes in directors and auditors in the last 3 years.

Liability for Misstatements in Prospectus

A. Civil Liability

A person who has been induced to subscribe for shares in a company on the strength of misstatement or omission in the prospectus may have a remedy either against the company or against the promoters or directors.

Remedies against the company

a. Recession of contract

Where a person has purchased the shares of a company on the faith of a prospectus which contained misleading, but no necessarily fraudulent statement, he can seek rescission of the contract.

b. Claim for damages

The shareholders have to return the shares to the company and the claim the money with interest from the company.

Remedies against the directors \ promoters

Any person who has purchase shares \ debentures on the faith of the prospectus containing untrue statement may sue directors, promoters and experts

a. Damages for deceit \ fraud

Any persons induced to invest in the company by fraudulent statement in a prospectus can sue the company and persons responsible for damages. The share should be first surrenderedto the company before the company is sued for damages.

b. Compensation

The above persons shall be liable to compensation to every person who subscribes for any shares \ debentures for any loss or damages sustained by him by reason of any untrue statement included therein.

B. Criminal Liability

Every person who authorizes the issue of prospectus shall be punishable for untrue statements with imprisonment for a term which may extend to 2 years or with fine extend up to Rs.50, 000.

References

1. P.M.S.Abdul Gaffoor and S. Thothadri, Company Law, Vijay Nichole Imprints Private Limited, 2e(2016).
2. V.Balachandran and S. Thothadri, Legal Aspects of Business, Tata Mc Graw Hill Education Private Limited, (2012).
3. P.Saravanavel S.Sumathi, Legal Systems in Business, Himalaya Publishing House,(2011).

Question Bank

PART- A

1. Define Company.
2. Define Corporate Veil.
3. Tell about Statutory Company
4. Describe about Foreign company.
5. Apply the duties of promoters for organization.
6. Express Certification of Incorporation.
7. Recognize Doctrine of Ultra Vires.
8. Record about Doctrine of Indoor Management.
9. Interpret the Statement in lieu of prospectus.
10. Record about Doctrine of Indoor Management.

PART- B

1. State the circumstances under which Corporate veil could be lifted.
2. Discriminate private limited company and public limited company.
3. Categorize the different kinds of companies.
4. Explain how companies are formed in India.
5. Discuss about promoter and his functions.
6. Explain the essential characteristics of registered company.
7. Differentiate joint stock company and partnership firm on various basis.
8. What is meant by Memorandum of Association? Describe the contents Memorandum of Association.
9. Explain Articles of Association and explain the contents of the Articles of Association.
10. Define Prospectus. Reiterate the contents of prospectus.

BLOCK-2 SHARE CAPITAL AND DEBENTURES

UNIT 2 SHARE CAPITAL AND DEBENTURES

Memorandum of association, Articles of association and difference between them. Meaning, kinds, alteration and reduction of share capital. Share certificate, Share warrant, Transfer and transmission of shares. Member Vs. Shareholder, Who can be a member, Modes of acquiring membership, Cessation of membership. Rights & liability of a member and register of members.

Meaning of Shares

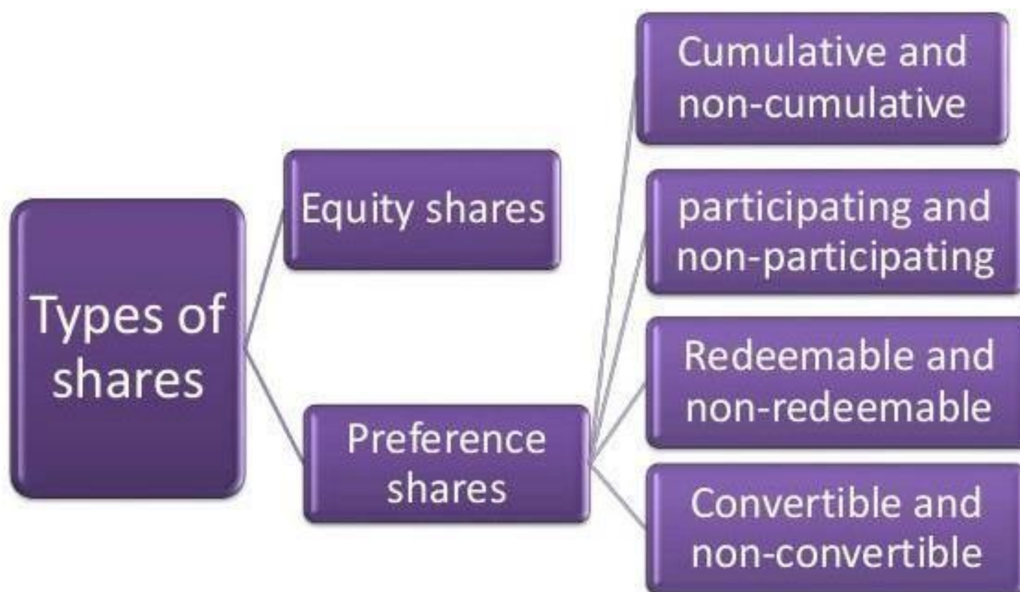
The capital of a company is divided into units of a fixed denomination. Share refers to only such a unit. It is therefore clear that a share is a fractional part of the company's share capital. Otherwise, share capital means the capital raised by a company by the issue of shares.

Definition of Shares

According to section 2 (46) of the companies act, a share means a share in the share capital of the company and includes stock, except where a distinction between stock and shares isexpress or implied. A share indicates certain rights and liabilities.

Kinds of Shares

KINDS OF SHARES



According to the Companies Act, 1956 a company can issue only types of shares viz.,

1. Preference Shares and 2. Equity Shares

I. PREFERENCE SHARES

The term preference shares focus certain preferential rights over other types of shares.

They are,

i) A preferential right to get a fixed rate of dividend during the life of the company. It means that only after payment of dividend to preference shareholders, the surplus, if any, can be used for paying dividend to equity shareholders.

ii) A preferential right to the return of share capital at the time of winding up of the company. This means that when the company goes into liquidation, after discharging debts due to outsiders, the surplus assets must first be used for returning the share capital contributed by the preference shareholders. The remaining surplus alone will be enjoyed by equity shareholders.

Preference shareholders must carry both these preferential rights. However, preference shareholders have certain disabilities. For instance, they do not normally enjoy voting rights. However they get the right to vote.

1. On any resolution affecting their rights
2. On all resolution when dividend has not been paid to them for certain period as prescribed in the Act.

Kinds of Preference Shares

Preference shares are of different types based on differing rights. They are briefly described below;

1. Cumulative Preference Shares

In case dividend is not declared, because of inadequate profit, the right to dividend for that year does not lapse in the case of cumulative preference shares. Dividends not declared and paid get accumulative so that they may be paid out of profits of subsequent years of arrears of dividend before any dividend is paid to equity shareholders.

Preference shares are always cumulative, unless the contrary is expressly stated in the Articles of Association.

2. Non Cumulative Preference Shares

In the case of non cumulative preference shares if dividend is not paid in any particular

year, it lapses. Dividend is not allowed to accumulate and such unpaid dividend will not be paid in subsequent years even though sufficient profits are earned.

3. Participating Preference Shares

In addition to the fixed rate of dividend, these shares carry a further right to participate with equity shareholders in the surplus profits which remain after paying a certain rate of dividend to equity shareholders. Thus they get two kinds of dividend, one fixed rate and the other changing every year depending on the level of excess profits.

Similarly such preference shares have a right to participate in the surplus assets of the company on its winding up after paying in full the preference and equity share capital.

The right to participate in the surplus profits or surplus asset at the time of winding up is available to preference shareholders only if it is specially expressed in the articles. In other words preference shares are presumed to be non-participating unless specifically stated otherwise in the articles.

4. Non Participating Preference Shares

These shares are entitled to only a fixed rate of dividend. They do not participate either in the surplus or in the surplus assets. In such a case, the entire surplus goes to equity shareholders.

If the articles are silent with regard to this right to participate in the surplus profit or surplus assets, the preference shares will be considered to be only of non-participating type.

5. Convertible Preference Shares

Where preference shares entitle their shareholders to convert their preference shares into equity shares within a specified period, they are known as convertible preference shares.

6. Non-Convertible Preference Shares

Where preference shares cannot be converted into equity shares, they are called non-convertible preference shares. Once issued as preference shares, they continue to be only preference share throughout the life time of the company without any change in their characteristics.

If the Articles are silent regarding this right to convert, the preference share will be considered to be only non-convertible preference shares.

7. Redeemable Preference Shares

If the Articles of Association authorize, a company can issue redeemable preference shares. It means, that the capital raised by means of these shares can be returned after a specified period or at any time at its options after giving notice as per terms of issue. These shares can be

redeemed either out of profits or out of the proceeds of a fresh issue of shares. Redeemable preference shares can be redeemed if they are fully paid-up. A company cannot convert existing preference shares into redeemable preference shares.

8. Irredeemable Preference Shares

Any preference share that cannot be redeemed during the lifetime of the company is known as irredeemable preference shares.

II. EQUITY SHARES

Equity shares are those, which are not preference shares. They were also known as ordinary shares. They are entitled to get dividend only after the fixed rate of dividend is paid to preference shareholders. Similarly at the time of winding up of the company, only after returningpreference shares capital in full, and if there is any surplus, it will be paid to equity shareholders.

The rate of dividend varies from year to year depending on the profits earned by the company. The larger the profits the higher may be the dividend for equity shareholders. In the case of reputed companies, rate of dividend paid to equity shareholders is far higher than the fixed rate paid to preference shareholders. However, when there is no profit in any year, equity shareholders' dividend for that year will not be paid as arrears of dividend in subsequent year even though profits may be very large. Equity shareholders are entitled to vote on all resolutions.

VOTING RIGHTS

Equity shareholders' rights

An equity shareholder of a company limited by shares has a right to vote on every resolution placed before the company. His voting right on a poll is in proportion to his share of the paid-up equity capital of the company. The right of vote is an individual right in respect of which a member has a right to sue. He has a right to say, "whether I vote with the majority or with the minority, you shall record my vote: that is a right belonging to my interest in the company, and if you will not, I shall institute legal proceedings to compel you".

Preference shareholders' rights

A preference shareholder has a right to vote on those resolutions which directly affect his rights. Any resolution for winding up the company or for the repayment or reduction of its share capital is deemed directly to affect the rights of the preference shareholders. But holders of cumulative preference shares have a right to vote on all resolutions of the company at any meeting if their dividends remained unpaid for an aggregate period ofat least 2 years preceding

the date of commencement of meeting. In the case of non-cumulative preference shares, they have a right to vote on all resolutions of the company at any meeting, if their dividends remain unpaid for 2 financial years immediately preceding the meeting or for any 3 years during a period of 6 years ending with the financial year preceding the meeting.

ISSUE OF SHARES AT PAR, PREMIUM AND DISCOUNT

Issue of Shares

Issue of Shares is the process in which companies allot new shares to shareholders. Shareholders can be either individuals or corporate. The company follows the rules prescribed by Companies Act 2013 while issuing the shares. The process of creating new shares is known as Allocation or allotment. A company may issue shares at their face value or at a price other than the face value.

Issue of Shares at Par

When shares are issued at a price equal to their face value it is termed as shares issued at par. When company issues the shares, it has to fix the price of per share. If the face value and issue price per share will equal, then it is called that shares have been issued at par.

For example, if face value of a share is Rs.10 and company issue a share at Rs. 10, here both value are equal, then it is said that issue of shares at par.

Issue price will not always be equal to the face value per share. If issue price is more than face value, then it is said that issue of shares at premium. If issue price is less than face value, then it is said that issue of shares at discount.

Issue Of Shares At A Premium

If Shares are issued at a price, which is more than the face value of shares, it is said that the shares have been issued at a premium. For example, if face value of a share is Rs.10 and company issue a share at Rs. 12, here issue price (Rs.12) is more than the face value (Rs.10), then Rs.2 (12-10 = 2) is the amount of premium and it is said that issue of shares at premium.

The Company Act 1956 does not place any restriction on issue of shares at a premium but the amount received, as premium has to be placed in a separate account called Securities Premium Account.

Under Section 78 of the Company Act 1956, the amount of security premium may be used only for the following purposes:

i. To write off the preliminary expenses of the company.

ii. To write off the expenses, commission or discount allowed on issued of shares or debentures of the company.

iii. To provide for the premium payable on redemption of redeemable preference shares or debentures of the company.

iv. To issue fully paid bonus shares to the shareholders of the company.

v. In purchasing its own shares (buy back).

Issue of Shares At A Discount

When Shares are issued at a price lower than their face value, they are said to have been issued at a discount. For example, if a share of Rs 100 is issued at Rs 95, then Rs 5 (i.e. Rs 100—95) is the amount of discount. It is a loss to the company.

It should be noted that the issue of share below the market price but above face value is not termed as 'Issue of Share at Discount' Issue of Share at Discount is always below the nominal value of shares.

As a general rule, a company cannot ordinarily issue shares at a discount, except in case of 'reissue of forfeited shares' and in accordance with the provisions of Companies Act.

But according to Section 79 of company act 1956, a company is permitted to issue shares at discount provided the following conditions are satisfied:

i. The issue of shares at a discount is authorised by a resolution passed by the company in its general meeting and sanctioned by the Central Government.

ii. The resolution must specify the maximum rate of discount at which the shares are to be issued but the rate of discount must not exceed 10 per cent of the nominal value of shares. The rate of discount can be more than 10 per cent if the Government is convinced that a higher rate is called for under special circumstances of a case.

iii. At least one year must have elapsed since the company was entitled to commence the business.

iv. The shares are of a class, which has already been issued.

v. The shares are issued within two months from the date of sanction received from the Government.

PARTLY PAID SHARES

Whenever a Company issues shares to investors then those shares can either be fully paid or partly paid. A partly paid share is a share in a company which has only partial been paid compared to the par value. This is with the understanding that as the company requires more funds, calls will be made from time to time until the shares are fully paid. The amounts may be specified in the

prospectus or unspecified and the shareholder is liable when a call is made by the company until the shares are fully paid.

In case of partly paid shares, the Company has the right to demand from the shareholder the remaining payment on the partly paid shares as and when required by it.

In the case of partly paid-up shares, the dividend is payable either on the nominal, called-up or the paid-up amount of shares, depending on the provisions in this regard that there may be in the articles of the company.

BONUS SHARES

- Bonus shares are free additional shares allotted and given to the existing shareholders without receiving any additional payment from them, based on the number of shares that a shareholder owns.
- Bonus shares are company's accumulated earnings which are not given out in the form of dividends, but are converted into free shares.
- Bonus shares are issued in certain proportion. Example 1:2
- Bonus shares are allotted by capitalizing the reserves and surplus.
- Issue of bonus shares results in the conversion of the company's profits into share capital. Therefore it is termed as "Capitalization of Company's Profits."It does not affect the Total Capital Structure of the Company.

Objective of Bonus shares

To distribute accumulated earnings without paying dividends, to improve the creditworthiness of the company.

Advantages of issue of Bonus shares

- It makes available capital to carry a larger business
- Helps the company to get rid of market influences
- Working capital not affected
- Increases creditworthiness of the company
- Abnormally high rate of dividend can be reduced
- Restrict entry to new entrepreneurs
- Balance sheet of the company reveal a realistic picture

Disadvantages of issue of Bonus shares

- Drastic fall in the rate of dividend
- Fall in market price
- Reserves and other funds decline
- Leaves lesser security to investors.

RIGHT SHARES

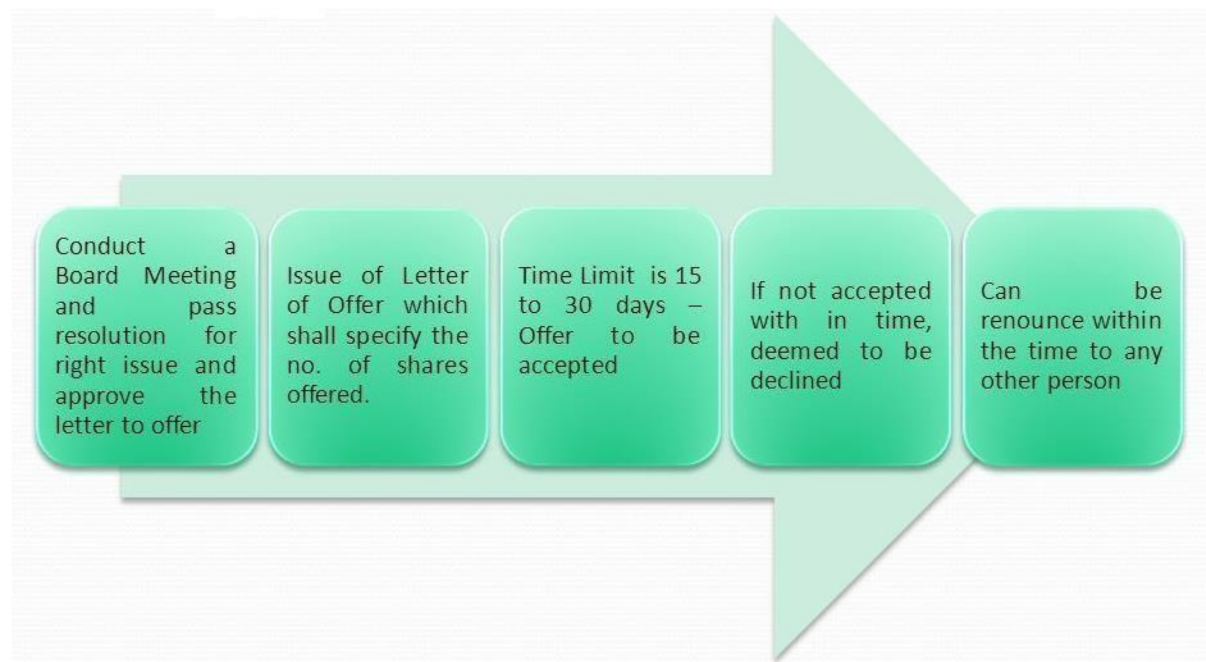
Right shares are the shares that are issued by a company for its existing shareholders. The existing shareholders have their right to subscribe to these shares unless some special rights reserve them for some other persons.

Issue of right shares

A rights issue is a way by which a listed company can raise additional capital. However, instead of going to the public, the company gives its existing shareholders the right to subscribe to newly issued shares in proportion to their existing holdings.

Every right issue share will be issued for 3 existing shares. They can choose to buy the right shares: This is what the company expects from the existing shareholders. If more existing shareholders buy the right shares, they will raise more capital.

Right Issue Procedure



Advantages of Right Shares

- Control is maintained

- Less floatation cost
- Expenses saved
- No misuse by directors

Disadvantages of Right Shares

- Shareholders lose if fail to exercise their right
- If shareholding concentrated in hands of FI.

SWEAT EQUITY SHARES

"Sweat Equity Shares" means such equity shares are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions.

Sweat equity is the type of investment that measures time and effort put into a project. It is the ownership interest or increased value that results from the owner's hard work. In start-ups, sweat equity may be the biggest contribution of founders who may not have the cash to contribute.

DEBENTURE

Meaning of Debentures:

According to Sec. 2 (12) of the companies Act, 1956, debentures include "debenture stock, bonds and any other securities of a company".

Debentures are debt instruments issued by a joint stock company. Amounts collected by way of debentures form part of the loan capital of a company. They are repayable after a fixed period. Debenture holders get interest on their debentures. They are creditors of the company. They do not get dividend. Only shareholders get dividend.

Characteristics of Debentures

1. Debentures are debt instruments.

2. They generally carry fixed rate of interest.

3. They are normally repayable at the end of a fixed period. Repayment of debenture or cancellation of debenture liability in the books of the company is known as redemption of debentures.

4. They can be issued at par, premium or at discount depending on the reputation of the company.

5. They can either be placed privately or offered for public subscription.

6. They may or may not be listed in the stock exchange.

7. If offered for public subscription, they should be rated by a credit rating agency approved by SEBI, prior to listing.

8. Interest is payable on debentures at a fixed rate irrespective of the profit earned by the business.

9. Debentures may be issued with or without the security of assets of the company.

10. In the event of winding up of the company the debenture holders are treated as creditors and given priority in repayment of their money.

11. Debenture holders normally do not have representation in the Board of the company.

Types of Debentures

Debentures are classified as follows

1. On the Basis of Repayment

a. **Redeemable Debentures:** These debentures are paid off or redeemed after the prescribed period.

b. **Irredeemable or Perpetual Debentures:** These debentures are permanent debentures of a company. They are paid back only in the event of winding up of a company.

2. On the Basis of Transferability

a. **Registered Debentures:** These are debentures for which the company maintains record of debenture holders. Therefore when such debentures are sold or transferred it should be intimated to the company for making change in the register of debenture holders.

b. **Bearer Debentures:** These debentures are transferable by mere delivery. There is no need or registration of transfer with the company.

3. On the Basis of Security

a. **Simple or Naked Debentures:** These are debentures not secured by any asset of the company. If the company goes into liquidation these debentures are treated as unsecured creditors.

b. **Mortgage Debentures:** Mortgage debentures are issued on the security of certain assets of the company. They can be secured by fixed assets or floating assets of the company.

4. On the basis of Conversion

a. **Convertible Debentures:** These debentures are issued with an option to debenture holders to convert them into shares after a fixed period. Convertible debentures are either partially convertible debentures or fully convertible debentures.

b. Non Convertible Debentures: These are debentures issued without conversion option. The total amount of the debenture will be redeemed by the issuing company at the end of the specific period.

5. On the Basis of Pre-Mature Redemption Rights:

a. Debenture with "Call" option: A callable debenture is one in which the issuing company has the option of redeeming the security before the specified redemption date at a pre-determined price.

b. Debenture with "Put" option: This is a debenture in which the holder has the option of getting it redeemed before maturity.

6. On the Basis of Coupon Rate (interest rate)

a. Fixed Rate Debentures: Most of the time debentures are issued with a prefixed rate interest. These debentures are called fixed interest debentures

b. Floating rate Debentures: Floating rate as the names suggests keeps changing.

c. Zero Coupon Bonds: These are debentures issued with no interest specified. They are issued at a substantial discount to compensate the investors. These bonds are known as deep discount bonds.

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2. V.Balachandran and S. Thothadri, Legal Aspects of Business, Tata Mc Graw Hill Education Private Limited, (2012).
3. P.Saravanavel S.Sumathi, Legal Systems in Business, Himalaya Publishing House,(2011).

Question Bank

PART – A

1. Define and recall the meaning of Shares.
2. Tell the issue of shares at par with example.
3. Underline the objective of bonus shares.
4. Identify the disadvantages of bonus shares.
5. Recognize the concept issue of shares.
6. State any four purposes for which shares are issued at premium.
7. Report on Right Issue of Shares.
8. List the advantages of Rights Issue Share.
9. Describe Convertible and Non-Convertible Shares.
10. Relate the voting rights for equity shareholders.

PART – B

1. Revise and explain issue of shares at par, premium and discount.
2. Report on different kinds of shares.
3. Classify the kinds of preference shares.
4. Inspect on partly paid-up shares and Sweat equity shares.
5. Categorize the different types of debentures.
6. Discuss about Right Shares along with its procedure.
7. Explain the voting rights of equity and Preference shareholders.
8. Describe about Bonus shares with its objectives, advantages and disadvantages.

BLOCK-3 COMPANY MANAGEMENT

UNIT 3 COMPANY MANAGEMENT

Company Management: Types of meeting, Essential and legal rules for a valid meeting, Voting rights and proxies. Principle of majority rule and its exceptions and protection of minority. Types and circulation of resolution, minutes of meeting and adjournment of meeting. Meaning, types, appointment, retirement, removal, powers and liabilities of directors. Directors identification number.

MEANING

A director includes any person occupying the position of director by whatever name called. Only an individual can be appointed a director.

POSITION OF DIRECTORS

1. **Directors as agents**

When the directors enter into contract with third parties sign documents for and on behalf of the company etc, they act as the agent of the company. They bind the company be their acts.

2. **Directors as Trustees**

They are in the position of trustees, when they manage the assets and properties of the company. Similarly when they exercise the powers entrusted to them they are in the same position. It means that they should safeguard the interest of the company and should never abuse the powers for promoting their personal ends.

3. **Directors as Officers**

Directors also act as officers of the company. When they have to manage the affairs of the company, they are in the position to Chief Executive Officers. Thus the directors combine in themselves the roles of agents, trustees and officers.

QUALIFICATION OF DIRECTORS

1. Only individuals can be appointed as directors of the company.
2. They must have contractual capacity
3. They must possess qualification shares, if laid down in the Articles. In such a case the qualification must be acquired within two months of their appointment as directors. The nominal value of qualification share should not exceed Rs.5,000 or one share where its nominal value exceeds Rs.5,000.

DISQUALIFICATION OF DIRECTORS

The following persons are disqualified for appointment as directors of a company;

1. A person of unsound mind
2. An undischarged insolvent
3. Any person who has applied for being adjudged an insolvent

4. Any person who had been sentenced with imprisonment for an offence involving moral turpitude for a period exceeding 6 months and a period of 5 years has not elapsed since the date of expiry of the sentence
5. A person who has not paid the call money and the calls in arrear are outstanding for more than 6 months
6. Any person disqualified by a court for appointment as director for having committed fraud in management

APPOINTMENT OF DIRECTORS

First directors are usually named in the Articles if the Articles are silent, the signatories to the memorandum shall be deemed to be the first directors of the company.

a. Appointment of Directors by the Company

Subsequent directors are elected by shareholders at the AGM. If a company adopts the principle of retirement by rotation, one-third of the directors must retire by rotation. The retiring directors are eligible for reappointment.

b. Appointment by Board of Directors

The Board can appoint additional directors. They can fill up casual vacancy caused by death, resignations, etc. they can also appoint alternate director. If empowered by Articles, the Board may appoint an alternate director during his absence for a period of the less than 3 months from the date in which meetings of the Board are ordinarily held.

c. Appointment by Third Parties

If authorized by the Articles, third parties such as vendor of the business, banking or financial institutions which have advanced loans to the companies, can appoint their nominees on the Board.

d. Appointment by Central Government

The Central Government can also appoint directors on an order passed by the Company Law Board or on the application of not less than 100 members of the company or of members holding 10% of the total voting power.

NUMBER OF DIRECTORSHIP

A person can hold office as director in not more than 15 companies at the same time. In calculating the number of directorships, the directorship of independent private limited companies, non-profit associations, and alternate directorships excluded.

Every public company must have at least 3 directors and every private company must have at least 2 directors.

REMOVAL OF DIRECTORS

A director of a company can be removed from office by the company by an ordinary resolution before the expiry of his term, when such a director has acted in fraudulent manner or abused his fiduciary position.

The Central Government can remove a director under certain circumstances.

The Company Law Tribunal may also order for removal of a director where an application has been made to it on charges of oppression and mismanagement of the company

affairs.

VACATION OF OFFICE

A director must vacate his office in the following circumstances;

i. When he is found to be of unsound mind by a competent court
ii. If he is adjudged an insolvent
iii. If he fails to obtain his qualification shares within the prescribed time or ceases to hold at any time thereafter
iv. If he is convicted of an offence involving moral turpitude and sentenced to imprisonment for not less than 6 months
v. If he fails to pay any call money within 6 months
vi. If he absents himself from three consecutive Board meetings or from all meetings of the Board for a continuous period of three months whichever is longer without obtaining leave of absence from the Board
vii. If he becomes disqualified by an order of the Court
viii. If he fails to disclose to the Board his interest in any contract entered into by the company.

POWER OF DIRECTORS

According to sec.292, the powers are mentioned below;

1. **General Powers**

The board of directors of a company is entitled to exercise all such powers and to do all such acts and things as the company is authorized to do. However the Board shall not do any act which is to be done by the company in general meeting.

2. **Statutory Powers**

By means of resolutions passed at the Board meetings, the following powers can be exercised by the directors.

i. To make calls
ii. To issue debentures
iii. To borrow money otherwise than on debentures
iv. To make loans

3. **Other powers to be exercised at Board Meetings**

i. To fill up casual vacancy in the office of directors
ii. To appoint additional directors, if authorized by the articles
iii. To appoint an alternate director if authorized by the articles
iv. To accord sanction to contracts in which any director or his relative is interested
v. To recommend a certain rate of dividend to be declared at the annual general

meeting

vi. To make investments in the companies in the same group
vii. To appoint the first auditors of the company
viii. To fill up the casual vacancy of the office of an auditor not caused byresignation

4. **Restrictions on the powers of directors**

The following powers cannot be exercised by the Board without the consent of the shareholders in the general meeting.

i. To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company
ii. To extent time for repayment of any debt due by a director
iii. To borrow money where the money to be borrowed together with that already borrowed is in excess of the aggregate of the paid up capital and free reserves
iv. To contribute to charitable funds in excess of the prescribed limit

DUTIES OF DIRECTORS

1. Fiduciary Obligation

Since the company is an artificial person, it acts through the agency of natural persons who are known as directors. Though the directors have powers, they have to do it for the benefit of the company. Accordingly they must display good faith in all dealings or acting on behalf of the company.

2. Duty to Care

The directors should work very careful and honesty so that the company will get more profits. Directors must act honesty in the performance of his duties.

3. Duty to attend the Board Meeting

Board meetings are the appropriate places for the decisions and policy making of the company. If the does not attend the meetings, it shows his negligence. If he absents for three consecutive meetings, then he shall be removed from the company. It is the dutyof the directors to attend the board meetings regularly.

4. Duty not to delegate

The directors must perform their duties personally. The powers of the company are delegated to the directors. Therefore he cannot delegate his powers to others persons.

5. Duty to disclose interest

Every director who is in any way whether directly or indirectly concerned or interested in arrangement or proposed contract or arrangement, entered into or on behalf of the company shall disclose the nature of his concern or interest at a meeting of the board of directors.

6. Statutory Duties

Some of the important duties laid down in the Companies Act are listed below;

a. To sign a prospectus and deliver it to the Registrar before its issued to the public
b. To see that all moneys received from applicants for shares are kept in a

scheduled bank

c. Not to allot shares before receiving minimum subscription
d. To forward a statutory report to all its members at least 21 days before the date of the meeting
e. To hold the meetings at least once in three months
f. If a director is interested in a contract, to disclose the nature of his interest
g. To call for annual general meeting every year
h. To file all statutory returns with prescribed authorities
i. To take steps for filing declaration of solvency in the case of voluntary winding up

LIABILITY OF DIRECTORS

A. liability to outsiders

The directors are personally liable to third parties of contract in the following cases;

- They contract with outsiders in their personal capacity
- They contract as agents of an undisclosed principal.
- They enter into a contract on behalf of prospective company
- When the contract is ultra vires the company
- When they fail to repay application money
- When they make misstatement in prospectus
- When they make irregular

B. Liability to Company

The directors shall be liable to the company for the following;

- Where they have acted ultra vires the company
- When they have acted negligently
- Where there is a breach of trust
- Directors are liable to the company for misfeasance

C. Criminal Liability of Directors

Directors may incur criminal liability for the following activities;

a. Misstatement in the prospectus
b. Failure to file return of allotment
c. Failure to issue share certificates within the prescribed period
d. Failure to pay dividend within 42 days from the date of declaration
e. Failure to lay before the AGM audited profit and loss account and balance sheet
f. Failure to file copies of special resolution with the Registrar within 30 days of passing the resolution
g. Failure to furnish the necessary information to the company's auditors
h. Destruction of important document
i. Holding the office of directors in more than 15 companies excluding private companies.

MANAGING DIRECTOR

Meaning

Managing Director is a director who is entrusted with substantial powers of management, which would not be otherwise available to him. Routine administrative work is not included in the term “Substantial Powers of management”. A managing director is appointed

a) As result of an agreement entered into with the company or
b) As a result of a provision contained in the memorandum or articles or
c) In pursuance of a resolution passed wither by the Board or by the company in general meeting

Some of the important points worth noting regarding managing director are given below

1. Without the approval of Central Government no change can be effected in the terms of appointment of a managing director
2. A managing director cannot be appointed for a period exceeding 5 years at a time
3. A person cannot act as a managing director of more than 2 companies at a time
4. The remuneration should not exceed 5% of the annual net profits if there is one managing director. If there is more than one such director, 10% for all of them together. This can be paid by way of monthly payment or at a specified percentage of netprofits or by both ways.

MANAGER

Manager and managing director have similar functions to perform. The important difference between the two is that while a managing director must be a director, a manager need not be a director. Only an individual can be appointed as a manager.

Subject to the superintendence, control and direction of the Board of directors, a manager is entrusted with the management of the whole or substantially the whole of the affairs of the company.

1. A company cannot have more than one manager
2. The powers of a manager are wider than those of a managing director, because the manager may be entrusted with the management of whole of the affairs of the company.
3. Maximum remuneration payable to a manager cannot exceed 5% of the annual net profits
4. Manager cannot be appointed for a period exceeding 5 years at a time

MANAGERIAL REMUNERATION

Managerial remuneration may take the form of monthly payments (salary), or a specified percentage of net profits or a commission, etc. this expression shall include the value of perquisites. The total managerial remuneration payable by a public limited company to its director or manager must not exceed 11% of the net profits of the company for that financial year. Remuneration to a managing director or whole time director may be paid not exceeding 5% of the net profits and if there is more than one such director, 10% for all of them together.

In a year of no profits or inadequate profits, such managerial remuneration shall be governed by the provisions of Schedule XIII of the Companies Act, 1956.

Otherwise, the remuneration payable to directors is usually determined by the Articles of Association or a resolution passed by the company in its general meeting. The total managerial remuneration payable to directly managing director, or manager and whole-time director should not exceed 11% of the net profit and if profit is inadequate, a sum not exceeding Rs.50, 000 per annum, this will applicable for public company and there is no restriction for private company.

COMPANY SECRETARY

DEFINITION

According to the Companies Act, 1956, "a company secretary means company secretary as defined under the Companies Secretaries Act and includes any other individual possessing the prescribed qualifications and appointed to perform the duties by a secretary under this Act or any other ministerial or administrative duties".

According to the Company Secretaries Act, 1980 a company secretary is a person who is a member of the Institute of Companies Secretaries of India.

FUNCTIONS AND DUTIES OF COMPANY SECRETARIES

1. As a head of the Secretarial department, the secretary controls and supervises the activities of the department under his control. As a principal officer of the company, he signs documents requiring authentication. He performs all such acts as authorized by the Board.
2. The secretary arranges for the Board meeting, in consultation with the Chairman of the Board, fixes a day, time and place of the meeting and prepares agenda and issues notice of meetings.
3. He ensures that the actions of the Board do not infringe the provisions of the Companies Act and are beyond the scope of Memorandum and Articles of Association
4. The secretary functions in the best interest of the shareholders. He has to deal with the shareholders with tact. He performs all legal formalities connected with the conduct of general meetings of shareholders and records the proceedings of the minutes in the Minute boo. He should ensure that all correspondence with shareholders is dealt with promptly and their queries answered carefully keeping in view the statutoryprovisions in this regard.
5. His functions in relation to issue of allotment letters, share certificates, dividend warrants, share transfers, forfeiture of shares and a host of other things are also important
6. As a chief officer closely connected with the Board, he has to co-ordinate the work of different departments
7. He has to liaise between staff and directors, management and labour and other persons dealing with the company efficiently and effectively
8. He has to inspire confidence in their staff and win their co-operation

STATUTORY DUTIES

1. To sign any document requiring authentication under any statute
2. To arrange for filing statement in lieu of prospectus
3. To deliver share or debenture certificate within 3 months of allotment or within 2

months of registration of transfer

4. To file notice of situation of the registered office of the company
5. To make a statutorydeclaration for getting the certificate of commencement of business and file it with the Registrar
6. To sign the annual return
7. To send notices of general meetings to every member of the company
8. To prepare minutes of everygeneral and Board meetings or meeting of everycommittee of the Board within 30 days
9. To maintain a number of statutory books such as register of members, register of debenture holders, etc

GENERAL DUTIES

1. To discharge his duties most diligently and honestly and not to act beyond the scope of his authorities
2. To maintain secrecy of confidential matters

WOMEN DIRECTORS

Woman Director – Companies Act 2013

As per the Companies Act, 2013, it is mandatory to appoint at least one woman director as a board member in certain types of companies. The penalty for non-compliance of provision extends to a fine of Rs.10,000 with a further fine of Rs.1000 per day if the contravention continues.

Criteria

A company, whether a public company or a private concern, will be required to mandatorily appoint at least one woman director if it fulfils any of the following criteria:

1. It is a listed company whose securities are listed on any stock exchange.
2. It is a company having paid-up capital of Rupees one hundred crore or more, and a turnover of Rupees three hundred crores or more.

Procedure for Appointment of Woman Director

A Woman Director can be appointed during the time of company registration or after incorporation by the Board Members and the Shareholders.

Director Identification Number

Any person who wishes to hold the position of Director in an Indian company must first obtain Director Identification Number (DIN) which is a unique identification number for each director. A Woman Director must first obtain DIN to become Director of a Company. In case a Woman Director is being appointed during the company incorporation process itself, DIN will be generated along with the incorporation certificate. No person can hold or acquire more than one DIN.

Consent to Act as Director

In case of appointment of Woman Director in existing company, consent in Form DIR-2 given by the Woman Director is to be filed with the Registrar of Companies within 30 days of her appointment.

Roles of Women Directors

Women director has to play the role like any other director. Women can take up a role of Nominee Director who will be nominated by a party in the company to take care of its interest. Also, Women can take up a role of Independent Director who is not liable to retire by rotation.

Women Directors can hold a maximum of twenty directorships that includes the sub-limit of ten public companies. Any contravention on this part shall be subjected to a fine ranging between Rs.5000-Rs.25000.

Vacancy in the Position of a Women Director

A Woman Director may leave the company on any reasons such as resignation, removal, automatic vacation or retirement by rotation before the expiry of her term as a Director. The Board of Directors must fulfil this vacancy known as intermittent vacancy within a period of three months.

A company can also have more than one woman director and the vacancy caused by one of them will not be considered as an intermittent vacancy, as the company still satisfied the Companies Act of 2013 with respect to Women Directors.

Alternative Director

In case of absence of a Woman Director for a period of not less than three months, the board must appoint an alternative director to ensure the smooth functioning of the company. The alternative director shall leave the firm after the return of the woman Director. In case of more than one woman director, it is optional for the company to appoint an alternative director.

Term of Women Director

A woman director can hold the position of Director until her next Annual General Meeting from the date of appointment. She is also entitled to seek for reappointment at the general meeting. The tenure of women director is liable to retirement by rotation similar to other directors. Like any other director, a Woman Director can also tender her resignation any time before the expiry of her term by giving a notice to the company.

INDEPENDENT DIRECTORS

Independent Director – Companies Act 2013. An independent director is a non-executive director who does not have any kind of relationship with the company that may affect the independence of his/her judgment.

Companies Which Are Required To Appoint Independent Directors

I. LISTED PUBLIC COMPANY

Every listed public company shall have

- At least one-third of a total number of directors as independent directors.

- Any fraction contained in that one-third shall be rounded off as one.

II. UNLISTED PUBLIC COMPANY

The Central Government may prescribe the minimum number of independent directors in case of any class(es) of public companies.

As per Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following classes of companies shall have at least 2 directors as independent directors.

- Public Companies with paid-up share capital of Rs. 10 crores or more.
- Public Companies with turnover of Rs. 100 crores or more.
- Public Companies with aggregate outstanding loans, debentures, and deposits, exceeding Rs. 50 crores.

Role of an Independent Director

Independent Director acts as a guide, coach, and mentor to the Company. The role includes improving corporate credibility and governance standards by working as a watchdog and help in managing risk. Independent directors are responsible for ensuring better governance by actively involving in various committees set up by company

The independent directors are required because they perform the following important role :

1. Facilitate withstanding and countering pressures from owners;
2. Fulfil a useful role in succession planning;
3. On issues such as strategy, performance, risk management, resources, key appointments and standards of conduct he must support in gaining independent judgment to bear on the board's deliberations
4. While evaluating the performance of board and management of the company bring an objective view
5. Scrutinizing, monitoring and reporting management's performance regarding goals and objectives agreed in the board meetings
6. Safeguard the interests of all stakeholders, particularly the minority shareholders;
7. Balance the conflicting interest of the stakeholders;
8. Satisfying themselves that financial controls and systems of risk management are in operation and check on the integrity of financial information
9. In situations of conflict between management and shareholder's interest, aim towards the solutions which are in the best interest of the company
10. Establishing the suitable levels of remuneration of
    - Executive directors,
    - Key managerial personnel
    - Senior management

Duties of an Independent Director

The Independent Directors shall :

1. Undertake appropriate induction and regularly update and refresh their skills, knowledge, and familiarity with the company
2. Attempt to attend company's general meetings
3. Attempt to attend BOD's meetings and board committees meeting being a member
4. Have adequate knowledge about the company and the external environment in which it operates
5. Report matters concerning the unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy
6. Acting within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees
7. Not to unfairly obstruct the functioning of the company or committee of the board
8. Participate in the board's committee being chairpersons or members of that committee
9. Not to disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the board or required by law
10. Ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use.

DIRECTOR IDENTIFICATION NUMBER

DIN is a unique Director identification number allotted by the Central Government to any person intending to be a Director or an existing director of a company.

It is an 8-digit unique identification number which has a lifetime validity. Through DIN, details of the directors are maintained in a database.

DIN is specific to a person, which means even if he is a director in 2 or more companies, he has to obtain only 1 DIN. And if he leaves a company and joins some other, the same DIN would work in the other company as well.

DIN is used - whenever a return, an application or any information related to a company will be submitted under any law, the director signing such return, application or information will mention his DIN underneath his signature.

DIN is applied as follows with relevant forms:

1. SPICe Form:

Application for allotment of DINs to the proposed first Directors in respect of New companies shall be made in SPICe form only.

2. DIR-3 Form:

Any person intending to become a director in an already existing company shall have to make an application in e-form DIR-3 for allotment of DIN.

3. DIR-6 Form:

Any changes in the particulars of the directors shall be filed in form DIR-6

Documents to be attached with the forms

1. For SPICe Form:

Attach Proof of Identity and Address Proof. DIN would be allocated to an applicant only after approval of the form.

2. Form DIR-3:

a. Attachments:

Photograph, Identity proof, Residence proof, Verification (Name, father's name, present address, date of birth, text of declaration and physical signature of the applicant)

In case of foreign nationals, they are required to submit their passport as an identity proof.

b. Documents to be attested by a CA or CS or CMA

Photograph, identity proof and residence proof must be attested by a Chartered Accountant or a Company Secretary or a Cost Accountant, in whole time practice.

In case of foreign nationals, their documents can be attested by Consulate of the Indian Embassy and Foreign Public Notary.

After uploading DIR-3 and the supporting documents, the applicant will pay the fee in the next window screen. It has to be paid through net banking, credit card or NEFT. Manual(offline) payment is not allowed.

c. Generation of DIN

Once the application fee is paid and the application is submitted, the system will generate an application number. Central Government will process the application and decide the approval/ rejection.

If the DIN application is approved, the central government will communicate the DIN to the applicant within 1 month.

If DIN application is rejected, it will e-mail the reason of rejection to the applicant and will also put the reason on the website. The applicant will get 15 days to rectify the reason. If he rectifies such reasons and is able to satisfy the central government, he will beallotted DIN otherwise central government will label the application INVALID.

d. Intimating DIN to company

Within one month of receiving DIN from the central government, the director has to intimate about his DIN to all companies where he is a director.

The company will intimate RoC about DIN within 15 days from the date when the director intimates his DIN to the company.

Failure of the director to intimate DIN to the company or failure of the company to intimate RoC about DIN will result in penalties.

3. Form DIR-6

For changing any details mentioned in the DIR-3 form/ SPICe with respect to Directors, then Form DIR-6 has to be submitted online. With the form, the attested supporting document is also required to be submitted.

Reasons For Surrendering Or Cancelling The DIN

The Central government may cancel the DIN due to the following reasons:

1. If a duplicate DIN has been issued to the director
2. DIN was obtained by fraudulent means
3. On the death of the concerned person
4. The person has been declared unsound mind by the court
5. The person has been adjudicated as insolvent

The director can also surrender the DIN in Form DIR-5. With the form, he has to submit a declaration that he has never been appointed as a director in the company and the said DIN has never been used for filing any document with any authority. Upon verifying the e-records, the central government will de-activate the DIN.

Note that, once a person is appointed as a director in any company as per the Companies Act 2013, he cannot relinquish his DIN in the future. Even if he doesn't remain a director anymore in that company or in any other company, his DIN will exist as it is.

OTHER KEY MANAGERIAL PERSONNEL

Key Managerial Personnel refers to a group of people who are in charge of maintaining the operations of the company. Accounting Standard 18(AS-18) states that Key Managerial Personnel (KMP) are people who have authority and responsibility for planning, directing and controlling the activities of the reporting enterprise. Chief Executive Office, Chief Financial Officer, Company Secretary, Whole Time Director are the Key Managerial Personnel.

Key Managerial Personnel under Companies Act, 2013

Under Section 2 of the Companies Act 2013, Key Managerial Personnel in reference to a company are as follows:

- Chief Executive Officer/Managing Director
- Company Secretary
- Whole Time Director
- Chief Financial Officer

Chief Executive Officer/Managing Director

The managing director or chief executive officer is responsible for running the whole company. Also, the managing director has authority over all operations and has the most power in a managerial hierarchy.

He is also responsible for innovating and growing the company to a larger scale. In many countries, a managing director is also called a Chief Executive Officer (CEO).

Company Secretary

A company secretary is a senior level employee in a company who is responsible for the looking after the efficient administration of the company. The company secretary takes care of all the compliances with statutory and regulatory requirements.

He also ensures that the targets and instructions of the board are successfully implemented. However, in some countries, a company secretary is also called a corporate secretary.

Whole Time Director

A Whole Time Director is simply a director who devotes the whole of his working hours to the company. He is different from independent directors in the sense that he has a significant stake in the company and is part of the daily operation. A managing director may also be a whole time director.

Chief Financial Officer

Chief Financial Officer (CFO) is a senior level executive responsible for handling the financial status of the company. The CFO keeps tabs on cash flow operations, does financial planning, and creates contingency plans for possible financial crises.

RELATED PARTY TRANSACTIONS

A related party is a party related to a body corporate/ company in any other way other than by the companies' own transactions. It means that a special relationship persists between the partieseven before the transaction takes place. Section 2(76) of the Companies Act, 2013 ("the Act"), defines a related party with reference to a company, to mean:

a. director or a key managerial person or their relatives or
b. a firm, private company in which the partner, director/ manager or his relative is a partner or
c. a private company or a public company in which a director or manager is a director and holds along with his relatives, more than 2% of its paid-up share capital.

The definition also includes a. anybody corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager and b. any person on whose advice, directions or instructions a director or manager is accustomed to act as related party transactions.

The provisions of related party transactions are applicable to private and public companies.

Related party transactions

S. No	Transactions as per Companies Act requiring approval of the Board by resolution	Transactions as per The Companies (Meetings of Board and its powers) Rules 2014 requiring approval by the company

1	**Goods and Material:** Sale, purchase or supply	Sale/Purchase/Supply of goods/material directly or through an agent covering 10% or more of turnover OR one hundred Crores
2	**Property:** Selling or buying or leasing	Sale/Purchase of property directly or through an agent that is 10% or more of net worth OR one hundred Crores (whichever is
3	**Agent** for (1) and (2) above	Availing or rendering of services directly or through an agent which is 10% or more of turnover OR fifty Crores (whichever is
(All the above limits are to be taken on all transactions done on a financial year basis)		
4	**Others:** • Availing of or rendering of services • Underwriting of securities or derivatives • Related partys' appointment to place of profit or office* in the company/subsidiary/associate • If the: • Director or • individual other than director/firm/private company/body corporate receive from the company an amount over and above the remuneration (In case of directors)and anything by way of remuneration for others	• Related party's appointment to place of profit or office in the company/subsidiary/associate where the remuneration exceeds two and a half lakhs • Underwriting of securities or derivatives when remuneration exceeds 1% of the net worth

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3. P.Saravanavel S.Sumathi, Legal Systems in Business, Himalaya Publishing House,(2011).

Question Bank

PART – A

1. Memorize the meaning of Director.
2. List the positions of directors.
3. Summarize the qualification of directors.
4. Label the authorities who can appoint the directors.
5. Recognize the number of directorships for person and company
6. Sketch the situations under which managing director is appointed.
7. Relate the functions of manager in company.
8. Tell the meaning of company secretary.
9. Recognize any three roles of independent director.
10. Recall DIN.

PART – B

1. Discuss about powers and duties of directors.
2. Identify how directors are appointed and removed in company.
3. Express the position of directors in company and on what basis they are qualified and disqualified.
4. Explain about liability of directors.
5. Recall the functions, duties along with statutory duties of company secretary
6. Reiterate the role and remuneration of managing director in company.
7. Review the role of women directors in company.
8. Report on Director Identification Number.
9. Describe the roles and duties of an independent director.
10. Interpret about Chief Executive Officer, Company Secretary, Whole Time Director, Chief Financial Officer.

BLOCK-4 MEETING AND RESOLUTION

UNIT 4 BORROWING POWERS AND CHARGES ON ASSETS

Borrowing Powers and charges on Assets: Extent, types and methods of borrowing. Concept of ultra-vires and intra-vires borrowings. Creation and types of charges on assets. Concept of crystallization of floating charge. Priorities and differences between fixed and floating charges. Registration of charges and its legality. Consequences of non-registration of charges.

MEETINGS

Meaning

A meeting is a gathering of people to present or exchange information, plan joint activities, make decisions, or carryout actions already agreed upon. In other words, as assembly of relevant persons validly convened through proper notice for transacting business mentioned in an agenda is known as a meeting.

A company as a legal entity is capable of acting in its own name. but since it has no physical existence, it has always to act only through its members or directors of a company. Only when act as a body at the respective meetings through resolution, the company is perceived to be acting. Hence the meetings are very important for transacting and implementation of businesspolitics.

REQUISITES OF A VALID MEETING

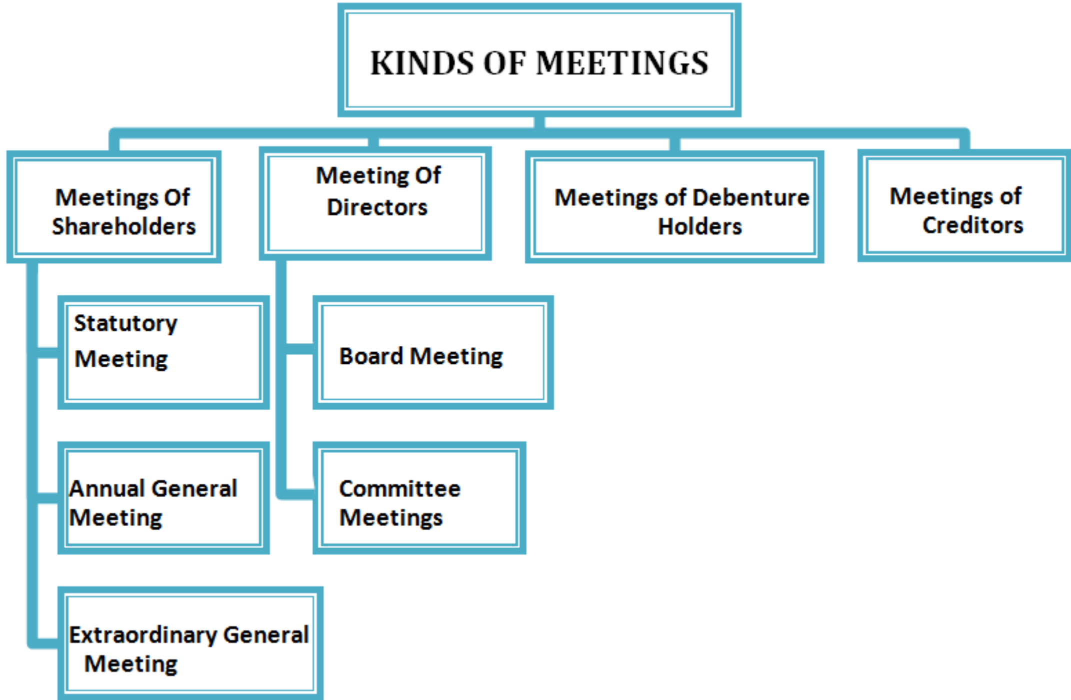
A meeting is any kind, to be valid, must satisfy the following conditions.

1. It must be properly convened. That is, it should be called by the proper authority entitled to call the meeting. The proper authority to convene the meeting is the Board of directors, shareholders or the Company Law Board
2. It must be legally constituted. This means that the meeting should have a proper chairman; quorum must be present
3. It should be conducted according to the provisions of the Act and the Articles
4. It should be properly conducted

Notice of Meeting

Notice of Meeting of a Company. A Notice of Meeting of a Company is a document informing the members or directors of a company about an upcoming meeting. This document specifies the date, time and place of the meeting and the general nature of the business to be transacted at the meeting.

KINDS OF MEETINGS



MEETINGS OF SHAREHOLDERS

1. STATUTORY MEETING

The first meeting of the shareholders of a public limited company which is mandatory as per the Companies Act is known as statutory meeting. Every public limited company limited by shares and limited by Guarantee Company must compulsorily hold this meeting within 6 months and not earlier than one month from the date on which the company is entitled to commence business. This is held only once in the life time of the company.

The object of the meeting is to afford an opportunity to the shareholders to know important details of company formation, the success of its capital issue, properties that have been acquired, etc. Along with the notice convening the meeting, a report called statutory report must also be sent to all members at least 21 days before the date of the meeting.

This meeting provides an opportunity to members to discuss various matters relating to the contents of statutory report. They can also effect any modification to the contracts mentioned in the prospectus.

Content of Statutory Report

1. Details of shares issued for cash and those issued for consideration other than cash
2. Total amount of receipts and payments upto a date within 7 days of the report
3. An account or an estimate of the preliminary expenses
4. Particulars of contracts for approval and proposed modification
5. Details of underwriting contract not carried out and the reasons therefor
6. Particulars of commission or brokerage paid or to be paid to directors on issue of shares or debentures
7. Particulars about directors, managing directors, manager and secretary
8. Particulars of calls due from directors, managing director, etc

The statutory report must be certified as correct by at least two directors, one of whom must be a Managing Director. As far cash received on shares allotted and other receipts and payments they must be certified by an auditor. A certified copy of the statutory report must be filled with the Registrar. Members can inspect the list of members and the number of shares held by them.

Consequence of default

If any default is made in holding the statutory meeting within the prescribed time or in filing the statutory report to the Registrar, every director or other officer in default is punishable with a fine upto Rs.5,000.

Further, the court can order even winding up of the company on a petition filed by a member of the company. Such is the significance of the statutory meeting.

2. ANNUAL GENERAL MEETING (AGM)

Every company is required to hold an annual general meeting in addition to any other meetings. The first AGM must be held within a period of 18 months from the date of its incorporation. Subsequently the interval between two AGM must not be more than 15 months.

The ordinary businesses at these meetings are:

i. Consideration and adoption of the annual accounts and the reports of the directors and auditors
ii. Declaration of dividend
iii. Appointment of directors in place of those retiring
iv. Appointment of auditors and fixing remuneration to them

Special Business

All other businesses transacted at this meeting are called special businesses. Examples

of special business; Removal of Director, issue of rights or bonus shares, election of a person other than a retiring person as a director, etc

Consequences of Default

If a company fails to hold an AGM, the company and every officer who is in default shall be punishable with a fine upto Rs.50,000 and in the case of continuing default, with a further fine of Rs.2,500 per day during which the default continues.

Importance of AGM

The shareholders get an opportunity to review the performance of the company to discuss the affairs of the company and to take steps necessary for protecting their interests.

3. EXTRAORDINARY GENERAL MEETING

Any meeting other than the statutory meeting and the AGM of the company is called extraordinary general meeting. It is convened for transacting any urgent or special business which cannot be postponed till the next AGM. An extraordinary general meeting may be convened by the Board of directors on its own, or on the requisition of the members subject to certain conditions.

Extraordinary General Meeting convened by the requisitionists

If the Board of directors fails to call the meeting within 21 days and the meeting is not held within 45 days of requisition, the requisitionists themselves may call the meeting within three months from the date of requisition.

Extraordinary General Meeting by Company Law Board

If it is not possible for the members to convene an extraordinary meeting, the Company Law Board either on its own motion or on the application of any director or member may call such a meeting.

4. MEETINGS OF THE BOARD OF DIRECTORS

Meetings of directors are called Board meetings. They are very important because all important matters relating to the company and its policies are decided there at.

Provisions regarding Board Meetings

The Board meeting must be held at least once in every three calendar months. At least four such meetings should be held in every year. The notice of every Board meeting must be given by writing to every director. Who is present in India at his usual address. The quorum for the Board meeting shall be one third of the total strength of the Board (any fraction being

rounded off as one) or two directors whichever is higher.

The Board is entitled to exercise all such powers and to do all such acts as the company is authorized to do. However, the Companies Act imposes certain restrictions on the powers of the Board.

5. MEETINGS OF COMMITTEE OF DIRECTORS

Since it is not possible for the Board to devote time to carry on investigation on different matters, the Board may delegate their powers to committees, if the Articles of Association so provides. The Board is empowered to delegate for example the following powers to any committee of directors.

a) The power to borrow money, otherwise than on demand
b) The power to invest the funds of the company
c) The power to make loans, etc

6. MEETINGS OF DEBENTURE HOLDERS

Such meetings are convened when the company wants to change the terms of security or to modify the rights, or to change the rate of interest payable, etc

7. MEETINGS OF CREDITORS

Meetings of creditors are held when the company proposes to make a scheme of arrangements with its creditors.

OTHER ASPECTS TO BE REMEMBERED DURING THE MEETINGS

A. PROXIES

The term 'Proxy' may refer to a person who is authorized by a member for the purpose of attending the meeting. It also means the instrument by which the proxy is authorized. The following points relating to proxies are worth nothing;

- ✓ Members of a company having a share capital have a right to appoint proxies.
- ✓ Proxy need not be a member of the company
- ✓ Proxy can attend a meeting but he has no right to speak
- ✓ Proxy cannot vote except on a poll
- ✓ A member can appoint more than one proxy
- ✓ The proxy form must be in writing, duly signed by the appointer and stamped. It must be lodged at the company's office 48 hours before the commencement of the meeting.

B.QUORUM

The word 'Quorum' means the minimum number of members required to be personally present at a meeting for validly transacting any business. Usually the quorum is fixed by the Articles.

The quorum shall be two members personally present in the case of a private company and five in case of public company. The quorum for the Board meeting shall be one third of the strength or two directors whichever is higher. However, the Articles may provide a larger number.

For calculating quorum, proxies should not be counted and only members present in person must be considered. Quorum should be present throughout the meeting. The importance of quorum can be understood if it is noted that any resolution passed in the absence of a quorum is not valid. Similarly, if quorum is not present, the meeting itself stands adjourned.

B. AGENDAOF MEETING

Agenda means the list of business to be transacted at the meeting. It is generally prepared by the secretary in consultation with the chairman.

C. MINUTES OF MEETING

The term minutes refers to accurate official record of decisions taken at various company meetings. Every company must keep the minutes containing summary of all proceedings of general and Board meeting in books. Minutes should be brief and factual. It should be so accurate as not to give for misinterpretation. It should be free from superfluous words.

The following particulars should be present in the minutes;

i. Nature of the meeting
ii. Date, time and place of the meeting
iii. Names of Chairman, directors, secretary and number of members attending
iv. Business of the meeting in the order set out in the agenda
v. Approval of the minutes of the last meeting
vi. Resolution passed in the meeting
vii. Chairman's signature with date

COMMITTEE

Meaning

A group of people appointed for a specific function by a larger group and typically consisting of members of that group. These persons are delegated to consider, investigate, take action on, or report on some issues.

The Committee will also examine the feasibility of a mechanism through which the government could settle cases involving violations under the Companies Act.

Requirement of establishing the Committee as per the Companies Act 2013

- **For the ease of the Board of Directors**

  At times it is practically difficult to organize board meetings that suit the convenience and other commitments of each director. By having smaller committees, the convenience and commitments of the director also get addressed effectively.

- **For Good Corporate governance**

  The Board in order to achieve the desired results has to concentrate more on selected team members on particular business dealings and issues. For maintaining the Corporate social responsibility, shareholders as well as stakeholder's relationship, the Committee is required for specialized companies.

Types of Committees as per the Companies Act, 2013

As per Companies Act 2013, Mandatory Committees required to be formed for the Companies are as follows-

1. AUDIT COMMITTEE

Applicability of the Audit Committee

- Every listed Company
- Every other Public company-
  - ✓ Having **Paid up capital of Rs.100 crores or more**; or
  - ✓ Which have, in aggregate, outstanding **loans or borrowings or debentures or deposits exceeding Rs.50 Crores.**

Composition of the Audit Committee

The Audit Committee shall comprise of

- A minimum of 3 directors with a majority of directors being Independent Directors.
- Additionally, the members of the Audit Committee shall be a person of integrity and with an ability to understand the financial statement.

Function performed by the Audit Committee

1. To give recommendation for the appointment, remuneration, and terms of appointment of the auditor of the company.
2. At the Annual General Meeting, Chairman of the Audit Committee shall be present to answer shareholder queries.
3. While considering the Auditor's report, the Auditor of a company and the KMP (Key Managerial Personnel) shall have a right to heard in the meeting of the audit committee but shall not have the right to vote.
4. To establish a Vigil Mechanism Policy: Every listed company and a company which has-
5. Accepted deposits from the public; –
6. The company has borrowed money from Bank and PFI's in excess of Rs. 50 crores

2. NOMINATION AND REMUNERATION COMMITTEE

Applicability of the Nomination and Remuneration Committee

- Every listed Company
- Every other Public company-
  - ✓ Having **Paid up capital of Rs.100 crores or more**; or
  - ✓ Which have, in aggregate, outstanding **loans or borrowings or debentures or deposits exceeding Rs.50 Crores.**

Composition of the Nomination and Remuneration Committee

- The Nomination and Remuneration Committee shall comprise of 3 or more non-executive directors, out of it more than half the directors shall be an Independent director.

- The chairman of the company can be appointed as a member of the Nomination and Remuneration Committee but shall not chair the committee.

Functions performed by the Nomination and Remuneration Committee

- Identify the person who is qualified to be a director and can be appointed in the senior management of the company in accordance with the criteria laid down by the Board of the director.
- Can recommends to the board, the appointment and removal of the person
- Shall specify the approach for the effective mechanism of the company
- Can evaluate the performance of the Board and The Individual Director.

3. Stake-holder Relationship Committee

Applicability of the Stake-holder Relationship Committee

A company having more than 1000 Members, Debenture Holders, Deposit Holder or Security Holders are required to constitute a Stake-holder Committee.

Composition of the Stake-holder Relationship Committee

- Constitute a chairperson who shall be a **non-executive director** and
- Other members as may be recommended by the Board

Functions performed by the Stakeholder relationship Committee

- Transfer/transmission of shares.
- Split-up/sub-division and consolidation of shares.
- Issue of new and duplicate **share** certificates.
- Registration of Power of Attorneys, Probates, Letter of transmission or other documents
- Consider and resolve the stakeholder’s grievances.

4. CSR (CORPORATE SOCIAL RESPONSIBILITY)COMMITTEE

Purposes, Resources and General Considerations of CSR Committee

The Corporate Social Responsibility Committee (the "Committee") is appointed by the Board of Directors (the "Board") to promote a culture that emphasizes and sets high standards for corporate social responsibility and reviews corporate performance against those standards.

The Committee will consider the impact of the Corporation's businesses, operations and programs from a social responsibility perspective, taking into account the interests of shareholders, clients, employees, communities and regulators.

Composition, Meetings and Procedures of CSR Committee

- The Committee will consist of **3 or more Directors**, each of whom shall have been determined to be independent in accordance with the Corporation's Corporate Governance Guidelines. **Committee members** and the **Committee Chairman** will be appointed annually by the Board on the recommendation of the Corporate Governance and Nominating Committee and serve at the pleasure of the Board.
- The Committee may form **subcommittees** for any purpose and may delegate to such subcommittees or to members of the Corporation's management such powers and authority as it deems appropriate.
- The Committee shall meet as frequently as necessary to fulfil its duties and responsibilities, but not less than 3 times per year.
- A meeting of the Committee may be called by its Chairman or any two members.
- Minutes of its meetings will be approved by the Committee and maintained by the Corporation on behalf of the Committee. The Committee will report its activities to the Board.

Responsibilities and Duties of CSR Committee

The Committee shall provide oversight of the Corporation's operations and programs regarding:

- employee community involvement
- public policy, advocacy, and political contributions
- environmental management and corporate social responsibility of suppliers

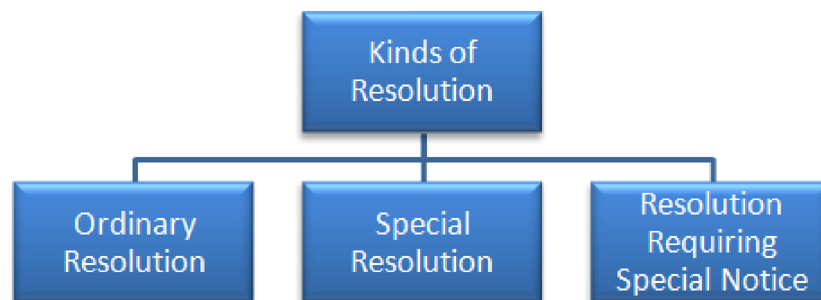
- human rights, as reflected in the Corporation's policies and actions toward employees, suppliers, clients and communities

- Corporation's operations and initiatives that can create a positive or negative impact from a social responsibility perspective.

RESOLUTION

When a proposal place before the meeting is passed by the meeting, it becomes a resolution. A resolution thus reflects the decision of the majority. In other words, the decisions of the company are made by resolutions of its members passed at meetings of members. A proposal and accepted by the members becomes resolution.

KINDS OF RESOLUTION



1. ORDINARY RESOLUTION

Any resolution passed by a simple majority is an ordinary resolution. Simple majority means that 51 percent or more of the votes have been cast in favour of the resolution.

When ordinary resolution is necessary?

a) Adoption of audited accounts, director's report and auditor's report

b) Appointment of auditors

c) Election of directors in place of those retiring

d) Declaration of dividend

e) Issuing shares at a discount

f) Removing a director before the expiry of his term

g) Appointing a director in the place of removed director

2. SPECIAL RESOLUTION

Special resolution is one which is required for transacting any special business. It has to be passed by a three-fourths majority. In other words, the votes cast in favour of the resolution must exceed three times the votes cast against it.

The notice calling the meeting should specify the intention to pass the resolution as a special resolution. Notice must be given at least 21 days before the date of the meeting.

When special resolution is required?

a) Altering the objects clause of the Memorandum

b) Changing the place of the registered office from one State to another

c) Altering the Articles of Association

d) Reducing the Share Capital

e) Making loans to other companies under the same management

f) Paying interest out of capital in certain cases

g) Voluntary winding up of the company

3. RESOLUTION REQUIRING SPECIAL NOTICE

This type of resolution does not belong to a separate category. However, the mover of the proposed resolution must give a special notice of 14 days to the company. On receipt of this resolution, the company in turn has to give notice to the members at least 7 days before the date of the meeting. Where it is not practicable, it can publish it in a newspaper.

Items requiring special notice

a) Appointing an auditor other than a retiring auditor

b) Passing a resolution that a retiring auditor should not be appointed

c) Removing a director before the expiry of his term

d) Appointing a director in place of the removed director

VOTING AND POLL VOTING

Voting means expressing one's statement either for or against a proposed resolution, called motion. In a company meeting voting can be by way of acclamation of

voice, show of hands and poll.

1. VOTING BY ACCLAMATION OF VOICE

Those favouring the motion are requested to say ‘yes’ or those who are against it are requested to say ‘no’. The intention of the members is ascertained by the volume of sound.

2. VOTING BY SHOW OF HANDS

Members favouring a resolution are asked to raise their hands and the number is counted. Similar procedure is adopted to count the number of members who are against it. Thus the resolution is declared passed or lost.

3. VOTING BY POLL

en dissatisfied with the result of voting by show of hands, a poll may be demanded. Here each member records his vote on a voting card for or against the resolution. The voting rights of a member are in proportion to his share of the paid up equity capital of thecompany. Either the chairman on his own motion or on demand by prescribed number of members present in person or by proxies can order poll. Proxy is allowed to vote in a poll.

References

1. P.M.S.Abdul Gaffoor and S. Thothadri, Company Law, Vijay Nichole Imprints Private Limited, 2e(2016).
2. V.Balachandran and S. Thothadri, Legal Aspects of Business, Tata Mc Graw Hill Education Private Limited, (2012).
3. P.Saravanavel S.Sumathi, Legal Systems in Business, Himalaya Publishing House,(2011).

Question Bank

PART – A

1. Recall the meaning of Meeting
2. Memorize the requisites of a valid meeting.
3. List the kinds of meetings.
4. Explain proxy.
5. List the four contents of statutory meetings.
6. Underline the meaning of quorum.
7. Discuss about minutes of meeting.
8. Tell about agenda of meeting.
9. Reiterate when ordinary resolution is necessary.
10. Express the ways of voting in company

PART – B

1. Categorize the different types of meetings
2. Explain statutory meeting and statutory report with its contents.
3. Review the need and objective of Annual general meeting.
4. Discuss about Extra-ordinary General Meeting, Meeting of BOD and Committee of Directors.

5. Express the applicability, composition, functions of Audit committee.
6. Report on applicability, composition, functions of Nomination and Remuneration committee
7. Review on Corporate Social Responsibility Committee.
8. Inspect the applicability, composition, functions of Stake-holder's relationship committee.
9. Classify different kinds of resolution passed in a company.
10. Summarize other aspects of meeting such as quorum, proxy, agenda, minutes and notice of meeting.

References

4. P.M.S.Abdul Gaffoor and S. Thothadri, Company Law, Vijay Nichole Imprints Private Limited, 2e(2016).
5. V.Balachandran and S. Thothadri, Legal Aspects of Business, Tata Mc Graw Hill Education Private Limited, (2012).
6. P.Saravanavel S.Sumathi, Legal Systems in Business, Himalaya Publishing House,(2011).

BLOCK- 5 WINDING UP OF COMAPNY

UNIT-5

- Winding Up:
- Meaning and modes of winding up.
- Winding up by Court, voluntary winding up and winding up subject Of supervision of court.
- Winding up of unregistered companies.

WINDING UP OF THE COMPANIES

MEANING

Winding up of a company is a process of putting to an end to the life of a company. It is a proceeding by means of which a company is dissolved and in the course of such dissolution its assets are collected, its members, if necessary pay off its debts out of assets of the company or from contribution. If any surplus is left, it is distributed among the members in accordance with their rights.

DEFINITION

According to Prof. Gower, winding up of a company is the process whereby its life is ended and its property administered for the benefit of its creditors and members. An administrator, called liquidator, is appointed and he takes control of the company, collects its assets, pay its debts and finally distributes any surplus among the members in accordance with their rights.

MODES OF WINDING UP

I. COMPULSORY WINDING UP BY THE COURT

A company may be wound up by an order of the court. This is called compulsory winding up. Sec.433 lays down the following grounds for the winding up of a company bythe court;

1. If the company has by a special resolution resolved that it may be wound up by the court.

2. If the company makes a default in delivering the statutory report to the registrar or in holding the statutory meeting, the court may order winding up of the company either on the petition of the registrar or on the petition of the contributory

3. Where a company does not commence its business within a year from its incorporation, or suspends its business for a whole year, the court may order for its winding up.

4. Where the number of members is reduced below 7 in the case of a public company and below 2

in case of a private company, the court may order the winding up of the company.

5. he court may order for the winding up of a company if it is unable to pay its debts.

6. The last ground on which the court can order the winding up of a company is when the court is of the opinion that is just and equitable that the company should be wound up.

Petition for winding up

The following persons can file a petition

1. The company
2. Any creditors or creditor including any contingent prospective creditor or creditors
3. Any contributory or contributories
4. All or any of the aforesaid parties, together or separately
5. The Registrar
6. Any person authorized by the Central Government under section 243

II. VOLUNTARY WINDING UP

The object of a voluntary winding up is that the company and its creditors are left to settle their affairs without going to the court, but they may apply to the court for any directions or orders if and when necessary. This form of winding up is by far the most common and the most popular form.

TYPES OF VOLUNTARY WINDING UP

i. Members voluntary winding up

Section 488 provides that where it is proposed to wind up a company voluntarily, the directors or a majority of them, may, at a meeting of the Board, make a declaration verified by an affidavit that the company has no debts or that it will be able to pay its debts in full within a period not exceeding 3 years from the commencement of winding up as may be specified in the declaration. Where such a declaration is duly made and delivered, the winding up following shall be called members voluntary winding up.

ii. Creditors Voluntary winding up

Where the declaration of solvency is not made the winding up is referred to as creditors' voluntary winding up. The provisions for creditors' voluntary winding up are similar to those applicable to the members' voluntary winding up except that in the former, it is the creditors who appoint the liquidator, fix the remuneration and generally conduct the winding up.

DISTINCTION BETWEEN MEMBERS & CREDITORS VOLUNTARY WINDING UP

S. No.	MEMBER'S VOLUNTARY WINDING UP	CREDITORS VOLUNTARY WINDING UP
1	Only meeting of members is called	Meeting of the members and creditors is Called.
2	No committee of inspection is appointed	Committee of inspection is appointed
3	Declaration of solvency is made by the directors	No such declaration is made
4	The liquidator is appointed and remuneration is fixed by the company itself	The liquidator is appointed by the creditors and remuneration is fixed by the committees of inspection
5	Such winding up takes place only when the company is in a position to pay its debts	Such winding up takes place only when the company is not in a position to pay its debts

III. WINDING UP SUBJECT TO SUPERVISION OF COURT

At any time after a company has passed a resolution for voluntary winding up the court may make an order that the voluntary winding up will continue, but subject to the supervision of the court and with such liberty for creditors, contributories and others to apply to the court on such terms and conditions as the court thinks fit. A petition for the continuance of a voluntary winding up subject to the supervision of the court must be deemed to be a petition for windingup by the court. The court may appoint or remove a liquidator on the application of the Registrar.

LIQUIDATOR

An administrator, called liquidator, is appointed and he takes control of the company, collects its assets, pay its debts and finally distributes any surplus among the members in accordance with their rights.

Sec.449, on winding up order made, the official liquidator by virtue of his office becomes the liquidator of the company.

Fees to the Central Government sec.451 (2), where the official liquidator becomes or acts as liquidator, there shall be paid to the central government out of the assets of the company such fees as may be prescribed.

Provisional Liquidator sec.450

The court may appoint official liquidator as liquidator provisionally. He has same powers and duties as liquidator in a winding up. Appointment of a provisional liquidator is a drastic measure. Should not be restored to except in special circumstances i.e., in cases of urgency.

Duties of Liquidator

1. Proceedings in winding up sec.451 (1)
2. reports Sec.455 (1)
3. Additional reports
4. custody of company property sec.456
5. exercise and control of liquidators power sec.460
6. directors from the court
7. proper books sec.461
8. appointment of committee of inspection sec.464
9. pending liquidation sec.551

Powers of liquidator

Powers of liquidator in winding up are divisible into 3 main groups;

1. With the sanction of the court sec.457 (1)
2. without the sanction of the court sec.457 (2)
3. with the leave of the court in case of onerous contracts sec.535

Liabilities of liquidator

Liquidator of company liable for negligence

1. If he distributes its assets without making due provision for liabilities or contingent claims of which he has notice
2. it he applies the company's assets in paying a doubtful claim without taking proper legal advice or direction from the court
3. if there is breach of any of his statutory duties, in such case he is liable in damages to a creditor or a contributory for injury to him

A liquidator is a trustee for the company's funds and property in his hand for the creditors. Liquidator is not trustee for the property in the assets invested in the company and when he makes contracts he does so in the company's name.

National Company Law Appellate Tribunal

The National Company Law Tribunal is a quasi-judicial body in India that adjudicates issues relating to Indian companies. The tribunal was established under the Companies Act 2013 and was constituted on 1 June 2016 by the government of India on law relating to the insolvency and the winding up of companies. The tribunal has sixteen benches.

All proceedings under the Companies Act, including proceedings relating to arbitration, compromise, arrangements, reconstructions and the winding up of companies shall be disposed off by the National Company Law Tribunal.

The NCLT bench is chaired by a Judicial member who is supposed to be a retired or a serving High Court Judge and a Technical member who must be from the Indian Corporate Law Service, ICLS Cadre.

The National Company Law Tribunal is the adjudicating authority for the insolvency resolution process of companies and limited liability partnerships under the Insolvency and Bankruptcy Code, 2016.

No criminal court shall have jurisdiction (the official powers to take legal decisions and judgements) to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force

Also no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.

The National Company Law Tribunal has the power under the Companies Act to adjudicate (make a formal judgement on a disputed matter) proceedings:

1. Initiated before the Company Law Board under the previous act (the Companies Act 1956).
2. Pending before the Board for Industrial and Financial Reconstruction, including those pending under the Sick Industrial Companies (Special Provisions) Act, 1985.
3. Pending before the Appellate Authority for Industrial and Financial Reconstruction.
4. Pertaining to claims of oppression and mismanagement of a company, winding up of companies and all other powers prescribed under the Companies Act.

References

1. P.M.S.Abdul Gaffoor and S. Thothadri, Company Law, Vijay Nichole Imprints Private Limited, 2e(2016).
2. V.Balachandran and S. Thothadri, Legal Aspects of Business, Tata Mc Graw Hill Education Private Limited, (2012).
3. P.Saravanavel S.Sumathi, Legal Systems in Business, Himalaya Publishing House,(2011).

QUESTION BANK

PART – A

1. Underline the meaning of Winding up of the company.
2. List the modes of winding up of the company.
3. Label the petition for winding up of the company.
4. Tell about liquidator.
5. Highlight about voluntary winding up of a company.
6. State the various types of voluntary winding up of a company
7. Recognize creditor’s voluntary winding up of a company
8. Identify any two distinctions between members and creditors voluntary winding up of a company.
9. Label Provisional Liquidator.
10. Summarize the powers of liquidator.

PART -B

1. Discuss the legal provision on winding up subject to the Supervision of Court.
2. State the legal provisions relating to Members Voluntary Winding Up of the company.
3. Describe about winding up of the company and explain about the various modes of winding up.
4. Explain the circumstances under which compulsory winding up shall be declared by the court of law.
5. Differentiate between members and creditors voluntary winding up of a company.
6. Summarize the procedure to be followed for winding up the company by the creditors.
7. Express the meaning of liquidator? Explain his powers, duties and liabilities.
8. Inspect the circumstances prompting winding up and consequences of Voluntary winding up.
9. Categorize the differ rent types of voluntary winding up of the company
10. Report on National Company Law Appellate Tribunal.