COMPANY ORGANISATION

Syllabus **COMPANY ORGANISATION - Allied**

Unit I: Formation of Companies – Promotion – Incorporation – Capital Subscription – Commencement

Unit II: Company Management – ShareHolders – Directors – Managing Directors – Manager – Their appointments – Duties - Rights & Liabilities.

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Unit V: Meeting of Directors – Meeting of Debenture holders – Meeting of Creditors.

***As per the Companies Act 2013**

COMPANY - INTRODUCTION

Meaning of a company

The term Company is derived from the Latin word "Companis", 'Com' means together and 'panis' means bread. Originally, it refers to an association of persons who took their meals together. The term Company refers to an association of persons formed to attain a common purpose. A company means a group of persons associated together for the attainment of social or economic common end. It is a group of individuals associated for the common objective which may be business for profit or for some charitable purpose.

The word 'Company' Ordinarily means an association of a number of individuals formed for some common purpose.

The word company may be described to mean a voluntary association of persons who have come together for carrying some business and sharing the profits therefrom. The capital of a company is contributed by a group of persons called shareholders and it is managed by Board of Directors.

A company is a voluntary association of persons formed for some common purpose with capital divisible into parts, known as shares and with a limited liability. It is an artificial person created by the law with a perpetual succession and a common seal.

Definition:

Section 3 (1) (i) of the Companies Act 1956, defines a company as follows: " A company formed and registered under this Act or an existing company". Section 3 (1) (ii) defines that an existing company means a company formed and registered under any of the previous company law"

section 2(20) of the Companies Act,2013, defines a company as a company incorporated under this Act or under any previous company law.

Lindly L.J. defines a company 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 and who share the profit or loss arising therefrom. The common stock so contributed is denoted in money and the capital of the company. The persons who contribute or to whom it belongs, are members. The proportion of capital to which each member is entitled to his share. Shares are always transferable although the right to transfer them is often more or less restricted".

"A company is an artificial person created by law having a separate entity and a common seal" - L..H.Haney.

According to Palmer, the term Company is defined as follows:

"A corporation is not like a partnership or a family, a mere collection or an aggregation of individuals. In the contemplation of law, it is a person distinct from its members or shareholders, meta physical entity or fiction of law with legal but no physical existence.......... It is a mere abstraction of law.......... It is, at law, a different person altogether from the subscribers to the Memorandum of Association".

Features or characteristics of a company:

From the above definition one can derive the following points.

1. Separate legal entity:

This means that a company has a legal entity distinct from and independent of its members. A company is an artificial person created by law. It has an independent corporate existence. Company and members are two distinct entities. A shareholder of a company is separate person and his company is separate. Any of its members can enter into contract with it in the same manner like human beings. The shareholders can not be held liable for the acts of the company. The company's money and property belong to the company and not to the shareholders.

The creditors of the company can recover their amount only from the company and the property of the company. They can not sue individual members. Like this, a member can not claim any ownership rights in the assets of the company either individually or jointly during the existence of the company or in its winding up.

Case Law : Salmon Vs Salomon

It was held that once the company was incorporated under the Act, it had separate legal entity independent of its members. The existence of a company is quite independent and distinct from its members.

2. Limited liability:

One of the important advantages of company is that the liability of its members is limited. Generally the liability of members in a company is limited. But in the case of unlimited companies, the liability is unlimited. The liability of members in a company limited by shares is only to the unpaid value of the shares subscribed by them. No personal property of the members can be made use of for the satisfaction of the company's debt beyond the limit of the shareholding or guarantee money. If a share holder has paid the full nominal value of shares held by him, his liability is nil. In a company limited by guarantee, the liability is only to the amount which is agreed by the members at the time of formation of the company. The liability of the member arises in the event of the company's being wound up.

3. Perpetual succession and a common seal:

Perpetual succession means that a company's existence persists irrespective of the change in the composition of its members. It means that inspite of a change in the membership of the company, its continuity is not affected. It lends stability and long life to a company as compared to other forms of business organisation. A company is an artificial person with a perpetual succession and a common seal. It is created by law and can be put an end only by law. The company never dies unless it is wound up according to the provisions of the Companies Act, 1956. It is a common saying that "law creates a company and it alone can dissolve the company. Members may come and go but the company can go on for ever. It means that it is not affected by death, retirement or insolvency of any of his members. As observed by Gower, "Members may come and go but the company can go on for ever". Even if all the members die, it shall not affect the privileges, immunities, estates and possession of the company.

A company is an artificial person. So, it can not sign documents for itself. Therefore, the law has provided for the use of a common seal. The common seal, with the name of the company engraved on it, issued as a substitute for its signature. It acts as the official signature of the company. A document not bearing the common seal of the company is not authentic and has no legal importance. All contracts enter into by the directors must be under the seal of the company. Any document bearing the common seal of the company will be legally binding on the company. The main aim is to exclude personal liability.

4. Transferability of shares:

The Articles of Association of a company authorises a company to allow its shareholders to transfer their shares and debenture. The shares of a public limited company are freely transferrable. It means that the members may sell their shares in the open market and realise the amount invested by them without seeking any permission from the company or other members. But the shares of a private company can be transferred with certain restrictions.

5. Separate property:

A company is an artificial person distinct from its members. It can purchase or sell its property in its own name. The property of the company is the property of the company only and it is not the property of the members. The ownership of the property lies in the hands of the company only and not in the hands of its shareholders. The property of the company is to be used for the company's business and not for the personal benefit of its shareholders. A shareholder does not have insurable interest in the property of the company.

6. Voluntary Association for profits:

A company is a voluntary association of persons who have a common motive. The profit earned by the company are distributed amongst the shareholders in the form of dividend per share. A company can not be formed to carry on any activity against the public policy and having no profit motive. The initiative is being taken by promoters who are willing to contribute to the common fund in order to achieve their common goal.

7. Large membership:

The share capital of a company is raised by any number of persons. In the case of a private company the maximum number of member is 200 and in a public company is unlimited.

8. Incorporated Association:

A company is an incorporated association under the Indian Companies Act. It comes in to existence only after registration under the Companies Act.

To form a public company atleast 7 persons and for a private company atleast 2 persons are required. These members will subscribe their names to the Memorandum of Association and also company with other legal requirements of the Act in respect of registration to form and incorporate a company, with or without limited liability [Sec. 12 (1)].

Brief History upto 1956:

The Companies Act in India passed from time and their amendments have been modelled on the English Companies Acts. The first company legislation in India was passed in 1850 and it provided for registration of joint stock companies. This was passed on the lines of the English Companies Act of 1844.

Then came the Companies Act 1866 which was based on the English Companies Act of 1862. During the period 1882-1913, the following amendments were passed in India:

i) Companies (Amendment) Act, 1887
ii) Companies (Memorandum of Association) Act, 1895
iii) Companies (Branch Registers) Act, 1900
iv) Companies (Amendment) Act 1910

In 1913, the Indian Companies Act was passed. Some minor amendments were made in 1914, 1915, 1920, 1926 and 1932.

From 1937 to 1951, there have been minor amendments in the Act almost every year.

On 25th October 1950, the Government of India appointed a committee of 12 members representing various interests under the chairmanship of Mr. H.C. Bhabha, to consider and report on the required amendments in the Indian Companies Act, 1913.

The Companies Act, 1956:

The Companies Act, 1956 constitutes the law relating to companies in India. It came into force with effect from 1st April 1956. The Companies Act, 1956 is based on the recommendations of the Bhabha committee which submitted it report in 1952. It contains 658 sections and 15 schedules and marks a distinct improvement on the Act of 1913.

The Companies Act, 2013:

The Act came into force from April 1, 2014. This Act may be called the Companies Act,2013 and it extends to the whole of India. It has 183 sections. This Act has introduce the concept of Key Managerial Personnel. A company which has a paid up capital of rupees ten crores or more must appoint key managerial personnel.

The Board of Directors must include atleast one woman director. This Act made it compulsory to have one-third of its Board of directors must be independent directors for listed companies.

As per the Act, a company must constitute Corporate Social Responsibility (CSR) Committee of the Board in large companies. Such companies must spend atleast two percent of their profits in every financial year towards social corporate responsibility.

This Act has introduced new category of company known as One Person Company (OPC).

As per the Companies Act, 2013, the maximum number of members to a private company is increased from 50 to 200.

Differences between Company and Partnership:

1) **Regulating Act:**

A company is regulated by the Companies Act, 1956, now the Companies Act,2013 while a partnership is governed by the India Partnership, Act 1932.

2) **Mode of creation:**

A company comes into existence after the registration under the Companies Act 2013 or previous Companies Act. Registration is not compulsory in the case of partnership.

3) **Liability:**

The liability of the members in a company is limited to the face value of shares held by them. But the liability of partners is unlimited. That is, every partner is jointly and severally liable for the debts and dues of firm.

4) **Legal status:**

A company is distinct legal entity while a partnership is not a separate legal entity different from partners.

5) Number of Members:

In case of private company minimum number of members is 2 and the maximum number of members is 200. In case of public company, the minimum number of members is 7 and the maximum number of members is unlimited.

In case of partnership business, the minimum number of partners is 2 and the maximum number of members in case of banking business is 10 and other business is 20.

6) Management:

The company is managed by the Board of directors, the elected representatives of shareholders whereas in the case of partnership business, it is managed by all partners. Every partner has right to take part in the management.

7) Transfer of interest:

Share of public company is freely transferable where as in case of partnership, partners can not transfer their shares in the firm without the consent of other partners.

8) Authority of members:

A shareholder is not an agent of the company whereas a partner is an agent of the partnership business.

9) Restriction on powers:

In a company, restrictions in the articles are effective as there is constructive notice of Memorandum and Articles. But in the case of a partnership, restrictions on a partner's authority contained in the partnership deed are of no avail against outsiders.

10) Property:

In the case of a company, property belongs to the company and not to the individual members whereas the property of a partnership business belongs to individual partners.

11) Filing of documents:

A company has to file certain documents with the Registrar of companies within the stipulated period while, it is not required in case of partnership business.

12) Maintenance of Books:

A company has to maintain books of accounts as per the

Companies Act, 1956. But in case of partnership business, there is no such statutory provision.

13) Dissolution:

A company is wound up according to the provisions of the Companies Act 1956 while a partnership may be dissolved at any time by any partner. It will automatically be dissolved by the death or insolvency of a partner.

14) Insolvency:

Insolvency of a company does not make the members insolvent whereas insolvency of a partnership business means insolvency of all the partners.

15) Secrecy:

In case of company secrecy can not be maintained as its documents are open to public. But in case of a partnership business. Secrecy can be maintained as its documents are not open to public.

16) Borrowing powers:

A company has implied power to borrow loan whereas a partnership business has no implied power to borrow loan.

17) Issue of Debentures:

A company has the power to issue debentures whereas a partnership business has no power to issue debentures.

18) Financial Resources:

A company may get a large amount of financial resources whereas a partnership business has limited financial resources.

19) Contract:

A member of a company can enter into a contract with the same company whereas a partner of a firm can not enter into contract with the same partnership firm.

20) Powers:

A company's powers are defined by the Memorandum of Association whereas the powers of a partnership business are defined by the partnership deed.

21) Capital:

A private company shall have a minimum capital of Rupees of one lakh and public limited company shall have Rupees of five lakhs. But, in a partners hip business, there is no such restriction as to its minimum paid up capital.

Differences between a company and cooperative society:

Company	Cooperative society
1. Regulation Act:	
A company is governed by the Indian Companies Act, 1956 or Companies Act 2013.	A cooperative society is governed by the Cooperative Societies Act, 1912.
2. Purpose:	
The purpose of a company is to earn profit.	The purpose of a cooperative organisation is to render services.
3. Minimum members:	
The minimum number of members in a private is 2 and in a public company is 7.	The minimum number of members in a cooperative organisation is 25.
4. Maximum members:	
The maximum number of members in a private company is 200 and in a public company is unlimited.	The maximum number of members in a cooperative organisation is unlimited.
5. Voting right:	
The voting right in a company depends upon the number of shares held by each shareholder and equality does not prevail.	One member has one vote. All members are equal among members
6. Refund of share capital:	
A company can refund its share capital to its members only at the time of winding up.	A member can withdraw his share capital at any time.
7. Transfer of interest:	
A member can transfer his shares to any person.	A member cannot transfer his shares to any person but he can withdraw his shares.
8. Dividend:	
A high rate of dividend may be declared.	A low rate of dividend will be declared.
9. Tax concessions:	

A company is charged lesser amount of Tax. Tax compared to sole trader and partnership business.	A cooperative organisation is charged lesser amount of tax compared to a company business.
10. **Capital:**	
A company can raise large amount of capital by issuing various types of securities.	A cooperative society can not raise large amount of capital since it cannot issue various types of securities.

Kinds of Companies:

Companies may be classified on different basis:

Kinds of Companies

On the basis of incorporation | On the basis of liability | On the basis of Number of members

I. On the basis of incorporation:

On the basis of incorporation, companies may be classified into three groups

Companies - Incorporation

Chartered Companies | Statutory Companies | Registered Companies

1. Chartered Companies:

Chartered companies are those companies which are incorporated under a special charter granted by the King or Queen. It is governed by its charter. These companies are established by the royal charter or special sanction of the head of state. These companies are granted special powers and privileges. **Examples:** East India Company, Dutch East Indian Company and Bank of England. The East India Company was established by a royal charter of the Queen of England. A chartered companies have wide powers. In India this type of organisation **does not exist now.**

2. Statutory Companies:

These companies are created by a special Act of the legislature. **Example:** The Reserve Bank of india, State Bank of India, Industrial Finance Corporation, Unit Trust of India, LIC, IDBI, Food Corporation of India and State Trading Corporation. The objectives, powers and activities of these companies are determined by the special law under which these companies are formed. These are mostly concerned with public utilities. These are established not for profit but for providing service to the public. The Annual Report of a statutory company is to be placed before both Houses of parliament or before the State Assembly concerned. The audit of the accounts of statutory companies is conducted by the Auditor General of India.

3) Registered Companies:

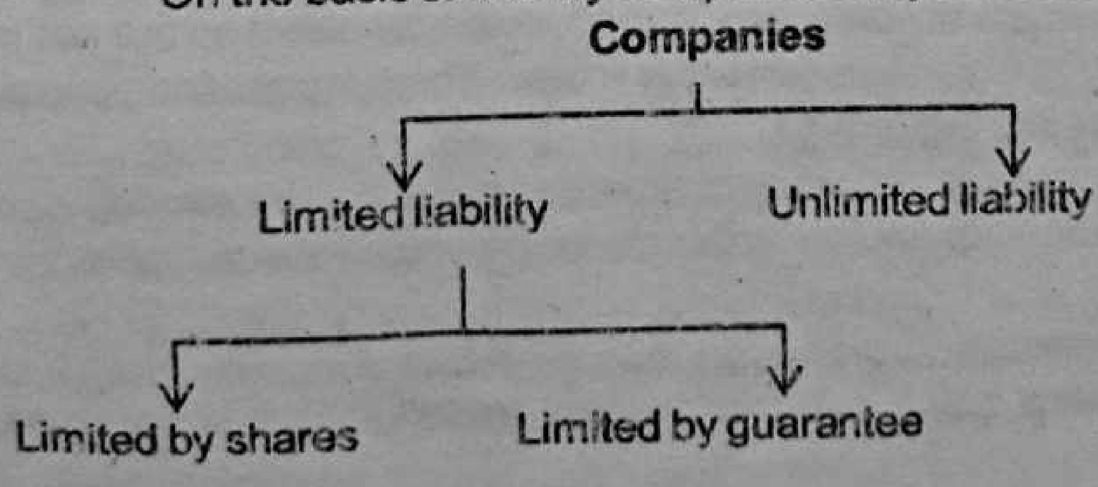
Registered Companies are those companies which are formed and registered under the provisions of Companies Act, 1956. The method of formation, management and liquidation are provided in the Companies Act, 1956. Registered companies are very common in India. **Examples:** Bombay Dyeing, TISCO, BSC etc.

These companies may be either newly formed companies or existing companies. Companies which are established under the Companies Act, 1956 are called newly formed companies. These companies derive their powers from the Companies Act, from the memorandum of Association. In general most of the companies formed in India are registered companies. Registered may be,

i) Limited by shares
ii) Limited by guarantee

II. On the basis of liability:

On the basis of liability companies may be classified as follows:



1) Limited liability companies:

Limited companies are those companies which are having limited liability. These type of companies are classified into two types:

i) Companies limited by shares

ii) Companies limited by guarantee

i) Companies limited by shares:

This is the most common type of company in India. These types of companies are those in which to the amount unpaid on the shares. A company in which the liability of its members is limited by the Memorandum of Association to the unpaid amount, on the shares held by them is termed as a company limited by shares . The companies limited by shares have a share capital. The capital is divided into shares. The shareholders pay share money at one time or by installments. The liability of members is restricted to the unpaid amount of the shares subscribed by them. For example, X has been allotted 100 shares of Rs. 10 each of the company. In case the company suffers losses, the liability of X will be to the extent of unpaid shares of the shares subscribed by them. The liability can be enforced during the existence of the company. If the shares are fully paid, the liability of the members is nil. The maximum liability of a member is limited to the face value of shares held by the shareholders.

A company limited by shares may again be divided into two groups:

i) Public company ii) Private company

Company limited by guarantee:

These companies are also formed under the Companies Act, 1956. The amount by which members undertake to pay is called guarantee money. The liability of members is limited only to the amount which is agreed by them at the time of formation of the company. The liability arises only at the time of winding up of the company. This company may or may not have share capital. These company are formed to render services but not to earn profits. The liability of its members is limited. These types of companies are again divided into two groups"

i) Companies limited by guarantee having a share capital.

ii) Companies limited by guarantee having no share capital.

Unlimited Companies:

A company which is formed without limited liability is known as unlimited company. Companies inwhich the liability of members is unlimited are known as unlimited companies. Every member is liable for the debts of the company. Like partnership the members are liable to bring their private assets to payoff the debts of the company. Though Indian Companies Act, 1956 permits the formation of such companies but these companies are rarely established in India. Unlimited can purchase its own shares.

An unlimited company may or may not have a share capital. If it has a share capital, it may be a public company or a private company. In an unlimited company, the articles shall state the number of members with which the company is to be registered.

III. On the basis of number of members:

On the basis of ownership, companies can be classified into three types:

1) Private company
2) Public company
3) One Person Company

On the basis of number of members

Private company | Public company | One person company

1) Private company:

A private company, is one inwhich by its articles,

i) restricts the right to transfer its shares.

ii) limits the number of its members to 200 not including its employee - members

iii) prohibits the issue of prospectus to subscribe for any share in or debentures of the company

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

According to Sec 3 (1) (iii), a private company means a company which has a minimum paid up capital of Rs. 1,00,000 or such higher amount as may be prescribed.

The minimum number of members in a private Company is two and the maximum is **two hundred.** As per the Companies Act, 2013, the maximum number of members is 200. It is a mixed form of partnership and public company. A private company must use the word ' Private Limited' after its name.

When two or more persons hold one or more shares jointly in the company, they shall be treated as a single member for the purpose of sec 3(i) (ii).

Every private company, existing on the date of commencement of the Companies (Amendment) Act, 2000, with a paid up capital of less than Rs. 1 lakh, shall within a period of 2 years from such commencement, (13th December, 2000) enhance its paid up capital to Rs. 1,00,000. Where a private company fails to enhance its paid up capital as specified above, such company shall be deemed to be a defunct company within the meaning of section 560 of the Companies Act, 1956 and its name shall be struck off from the Register of companies maintained by the Registrar of companies.

2) Public company:

According to section 3 (i) (iv), as amended by the companies (Amendment) Act 2000, a public company means a company which:

i) is not a private company.

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

iii) is a private company which is subsidiary of a company which is not a private company.

That is, A public company is one which is not a private company. It means that a public company does not

i) restrict the right to transfer its shares.
ii) limit the number of its members and
iii) prohibit the issue of prospectus

The minimum number of members in a public company is seven and the maximum is unlimited.

Every public company, existing on the commencement of the companies, (Amendment) Act 2000, with a paid up capital of less than Rs. 5,00,000 shall within a period of two years from such commencement enhance its paid up capital to Rs. 5,00,000.

3) One Person Company - OPC (Section 2 (62):

One Person Company means a company which has only one person as a member. That is, one person holds the entire capital of a company. It takes a few more dummy members (usually family members) to meet the statutory requirement of the minimum number of persons. It is also called as **family company.**

Example: A private company is incorporated with a share capital of Rs.4,00,000 divided into shares of Re.1 per share. Mr. A holds 3,99,990 shares and his spouse holds only 10 shares in that company. It is an example for one person company.

It is a separate entity as distinct from the majority of shareholders. This type of company is limited to only very small business. This type of company can have only one director. Companies Act, 2013 introduces a new type of company in the form of one person. It was first formulated by Jamshed.J. Irani Expert Committee.

Features of One Person Company:

i) It is incorporated as a private limited company

ii) It has only one member and one director.

iii) The words 'OPC' must be mentioned below the name of the company.

iv) The name of nominee should be provided in the event of death of sole director.

v) There is no need to conduct Annual General Meeting.

A single person is entitled to incorporate a maximum of 5 OPCs.

Conversion:

The one person company can get itself converted into private company or public company under the following circumstances:

i) Where the capital of one person company exceeds Rs.50 lakhs or

ii) Where the average annual turnover of one person company exceeds Rs. 2 crores or

iii) Where the balance sheet total of one person company exceeds rupees one crore on the close of the financial year.

IV. On the basis of ownership:

On the basis of ownership, companies may be classified into two types:

1. Government company:

A Government company is one in which atleast 51% of the paid up share capital is held by Central Government or State Government or both. The auditor of this company is appointed by the Central Government in consultation with the Comptroller and Auditor General of India.

Definition :

As per Sec.2(45) of the Companies Act,2013., a Government Company is one inwhich not less than 51% of the paid up share capital is held by the Central Government, or by any State Government, or Governments or partly by the Central Government and partly by one or more State Governments. The subsidiary of such a company is also a government Company.

Special provisions relating to Government Companies:

1. Under Section 620 of the Companies Act, these Companies are exempted from using the words "Private Ltd".
2. The auditor of a government company shall be appointed or reappointed by the Comptroller and Auditor General of India.
3. The Comptroller and Auditor General of India has the power to direct the manager of audit (Test audit or supplementary audit)
4. The Provisions of the Companies Act, are in general applicable to these companies unless otherwise notified or exempted by the Central Government.
5. A copy of the audit report is to be submitted to the Comptroller and Auditors General of India who shall have power to direct the manner in which the company's accounts shall be audited by the auditor.
6. Audit report is to be placed before the annual general meeting.
7. Where the Central Government is a member of a government company, the annual report is to laid before Houses of parliament together with a copy of the audit report and the comments or supplementary report of the Comptroller and Auditor General of India. The annual report is to be prepared within three months of its annual general meeting.
8. The Central Government is empowered to modify the Act in relation to government Companies.

2. Non-Government company:

A non Government company is one which is not a government company. The auditor of this company is appointed by the company. Audit report is to be submitted to the shareholders.

V. On the basis of control:

On the basis of control, companies may be classified into two types:

1. Holding companies:

A company is known as the holding company of another if it has control over that company. The following are the circumstances under which a company becomes holding company.

i) a company which controls composition of Board of directors of a company.

ii) a company which holds majority of shares in company and

iii) a company which is a subsidiary of another company.

Example: Company B is a subsidiary of Company of A. Company C is a subsidiary of Company of B. Now Company C is also a subsidiary of Company of A.

2. Subsidiary company:

A company is known as a subsidiary of another company when control is exercised by the holding company over the former, called subsidiary company.

When a company has control over another company it is known as a holding company. The company which is so controlled is known as a subsidiary company.

Section 4 (4) provides that a company shall be deemed to be holding company of another, if, but only if, that other is its subsidiary.

A company shall be deemed to be a subsidiary of another company only if any or more of the following conditions are satisfied.

i) Where the composition of its Board of directors is controlled by the other company.

ii) Where another company holds majority of the nominal value of the equity share capital of the company (More than 50 percent)

iii) Where one company is a subsidiary of another company that is another's subsidiary.

Example: Company Y is a subsidiary of Company X and Company Z is a subsidiary of Company Y. Accordingly, Company Z becomes a subsidiary of Company X. If Company A is a subsidiary of Company Z, Company A will become a subsidiary of Company Y and consequently also of Company X.

A holding company may have several direct subsidiary companies and several indirect subsidiary companies. That is why, F.R.M. Depaula calls subsidiary companies as "Children", "Grand Children" and "Great Grand Children". He calls the holding company as a parent company.

VI. Other classification:

1. Indian Companies:

Indian Companies are those companies which are registered in India. These companies may have their registered office in India.

2. Foreign company:

It means a company which is formed and registered outside India.

i) After 1st April 1956 established a place of business in India or

ii) Before 1st April 1956 established a place of business in India and continued to have the business in India on 1st April 1956.

As per section 591, a foreign company means a company which is incorporated outside India but has an established place of business in India.

3. One man company:

This is a company in which almost all the shares are subscribed by one single member. To fulfill the requirements of law, some dummy members may purchase one or two shares. The dummy members are the friends or relations or nominees of the principal shareholders.

The other members usually subscribe the memorandum for one share each. The person who holds the entire share capital, except a few shares held by his nominees, enjoys full control over the company and is thereby enabled to do his business with limited liability.

Example: Salomon & Co. Ltd.

4. Small Company [Section 2(85)]:

Small company means a company other than a public company

i) paid up capital of the company does not exceed Rs.50 lakhs or such higher amount as may be prescribed which shall not be more than rupees 5 crores. or

ii) turnover of which as per last profit and loss account does not exceed rupees 2 crore or such higher amount as may be prescribed which shall not be more then rupees 20 crore.

But this clause shall not apply to

i) a holding company or a subsidiary company,

ii) a company registered under section 8,

iii) a company or body corporate governed by any Special Act.

5. Illegal association (Section 464):

A company which has more than the prescribed number of members may be treated as illegal association. The object of this association is to earn profits and the liability is unlimited.

If the number of members in an association or partnership exceeds the statutory limit and it is not registered under the Companies Act, it is an illegal association and has no legal existence.

An association of more than 20 persons which exists for the purposes such as the promotion of art, charity, religion, science, etc. does not require registration.

Conditions of an illegal association:

Following conditions must be fulfilled

1) There must be an association which consists of not more than 100 members for the purpose of carrying on any business with the object of earning profit..

2) The association must have been formed for the purpose of carrying on business.

3) The association must have the object of acquisition of gain.

4) The association must not have been registered as a company under the Companies Act nor must it have been formed in pursuance of some other Indian Law.

Consequences of illegal association:

Following are the consequences of illegal association:

i) It is not recognised by Law. Therefore it has no legal existence.

ii) As it has no legal existence, it can not enter into a contract.

iii) It cannot sue to recover any debt or other property.

iv) It cannot be sued by a member or an outsider for it does not have contractual capacity.

v) It cannot enforce a contract.

vi) It cannot be dissolved through court.

vii) It cannot be wound up under the Act either at the instance of a creditor, a member or the association itself.

viii) Every member of such an association shall be personally liable for all liabilities incurred in such business and shall also be liable to a fine which may extend upto Rs. one lakh

Association not for profit :

Section 25 of the Act, permits the registration of associations not for profit with limited liability without using the word "Limited" or the words "Private Limited" to their names. These Companies need not use the word Limited or Private Limited at the end of the name of Public Company or Private Company as the case may be.

Conditions for granting License:

The Central Government may grant a license only when it is satisfied

(a) the association is about to be formed as a limited company to promote commerce, art, science, religion, charity, or any other useful object and that

(b) it intends to apply its profits, if any, or other income to promote its objects and to prohibit the payment of any dividend to its members.

On registration, it shall enjoy all the privileges and be subject of all the obligations of limited companies. The limited liability takes the form of a guarantee company in the case of such association.

Revocation of licence:

The licence may at any time be revoked by the Central Government. Upon revocation the Registrar shall enter the word 'Limited; or the words "Private Limited" at the end of the name upon the register of the body to which such licence was granted and the body shall cease to enjoy the exemptions granted by this section.

But before a licence is revoked, the Central Government shall give notice in writing of its intention to the body and shall afford it an opportunity of being heard in opposition to the revocation.

Companies which are formed as per section 25 of the Companies Act, may or may not have share capital. If it has share capital, then the requirement of minimum paid up share capital will not be applicable to these types of companies.

VII. Foreign collaboration and Multinational company:

i) Foreign collaboration:

Enterprises having equity participation of foreign units are known as foreign collaboration. It is the enterprise jointly owned, managed and controlled by Indians and foreigners. These enterprises are blessed with the vast resources of the country and abroad. It combines the financial resources and managerial and technological expertise of the two or more countries. The amount of profit is shared between Indian owner and the foreign partner.

ii) Multinational company:

A Multinational Corporations is a company that manages, owns and controls production facilities in several foreign countries.

Any business corporation inwhich ownership, management, production and marketing extend over several national jurisdictions is called a multinational corporation.

A Multinational Corporations is a company, firm or enterprise with its head quarters in a developed country and also operates in other countries, both developed and developing.

MNCs usually possess:

i) A larger pool of management talent
ii) A wider range of skills
iii) A better understanding of consumer behaviours / market trends
iv) Technological requirements and competitors more
v) A greater perspective of overall business environment and emerging dynamic change.

Multinational Corporations can contribute to

i) Efficiency
ii) Equity
iii) Participation
iv) Creativity
v) Stability
vi) Divining

Definition :

According to an international Labour organisation "the essential nature of the multinational enterprises lies in the fact that its managerial head quarters are located in one country (referred as home country) while the enterprise carries out operations in a number of other countries (referred as host countries)".

An Expert Group of the United Nations defined Multinational Corporations as "those enterprises which own or control production or service facilities outside the country inwhich they are based".

The president of IBM World Trade corporation defines a Multinational Corporations as a company that meets five criteria.

i) It operates in many countries at different levels of economic development.

ii) Its local subsidiaries are managed by nationals.

iii) It maintains complete industrial organisations including, Research and Development and manufacturing facilities in several countries.

iv) It has multinational Central management.

v) It has multinational Stock Ownership.

David E. Liliental defines the Multinational Corporations as "corporations which have their home in one country but operate and live under the laws and customs of other countries as well".

W.H Mareland defines MNCs as Multinational Corporations or Companies are those enterprises whose management, ownership and control are spread in more than one foreign country".

In India, the Foreign Exchange Regulation Act, 1973, provides a specific definition of MNC as follows.

"A corporation incorporated in a foreign country or territory shall be deemed to be a Multinational Corporation if such Corporation.

a) is a subsidiary or a branch or has place of business in two or more countries or territories.

b) carries on business or otherwise operates in two or more countries or territories.

James C. Baker defines the Multinational Corporations as a company.

i) Which has a direct investment base in several countries.

ii) Which generally derives from 20 percent to 50 percent or more of its net profits from foreign operations and

iii) Whose management makes policy decisions based on the alternatives available any where in the world.

Multinational Corporations may be called as "International Companies" or "Transnational Corporations" or international corporations, (or) global corporation.

Multinational Corporations act as agents of development:

Less developed countries can also take advantage of the expertise and superior technical know how of Multinational Corporations by entering into turnkey agreements. Turnkey agreements are those agreements whereby a foreign company undertakes to build a plant or help in exploiting their natural resources imparts training to local personnel, provides technical know how, starts production and then leaves the country for good by entrusting the entire operations to the local firm. In lieu of these services, the host country should pay a fixed fee or cost plus fee.

Features of Multinational Corporations :

Following are the features of Multinational Corporations

1) MNCs have managerial head quarters in home countries while they carry out operations in a number of other (host) countries.

2) A large part of capital assets of the parent company is owned by the citizens of the company's home country.

3) The absolute majority of the members of the Board of Directors are citizens of the home country.

4) MNCs are not just participants in export trade without foreign investments.

5) MNCs are predominantly large sized and exercise a great degree of economic dominance.

6) Multinational Corporations grow in a spontaneous manner. These corporations grow through creeping incrementalism.

7) Multinational Corporations operate on the basis of international owned assets.

8) Multinational Corporations acquire more power through the process of mergers and take over.

9) Multinational Corporations control production activity with

foreign direct investment in more than one developed and developing countries.

Producer Company:

It is a new form of organisation. According to sec. 581 (A) (1) of the Act, "Producer Company means a body corporate having objects or activities specified in Sec. 581 B and registered as producer company under this Act [Sec 581 A (1)].

Features :

Following are the features of producer company.

i) There must be a minimum of 10 members and there is no maximum limit.

ii) It is to be formed as a private company.

iii) It is not necessary to use the word "Private" as a part of the name of the company.

iv) Its equity may not be traded publicly.

On the basis of the recommendations of Alagh Committee, the companies (Amendment) Act, 2002 has been passed with the main purpose of facilitating formation of Cooperative business as Companies and to convert the existing business into companies.

Differences between a public company and a private company:

1. Minimum number:

The minimum number of members in a private company is two whereas in case of a public company is seven.

2. Maximum number:

The maximum number of members in a private company is two hundred whereas in case of a public company is unlimited.

3. Number of directors:

The minimum number of directors in a private company is two whereas in case of a public company is three.

4. Transferability of shares:

The shares in a public company are freely transferable whereas the shares in a private company are restricted by its articles.

5. Quorum:

The minimum number of members required to attend meeting is 2 in case of a private company whereas it is 5 members personally present in the case of a public company if the number of members is not more than 1,000 and 15 members upto 5000 members, 30 members when the number of its members exceed 5,000.

6. Special privileges:

A private company enjoys some special privileges. E.g: A private company can allot its shares before receiving minimum subscription. But a public company cannot enjoy such privileges.

7. Managerial remuneration:

The total managerial remuneration in a public company cannot exceed 11% of the net profits . But in case of a private company no such restriction is to be followed.

8. Issue of prospectus:

A private company need not issue prospectus to the public to subscribe to the capital whereas a public company must issue prospectus to the public.

9. Issue of further shares:

At the time of further issue of shares, a private company need not issue the shares to the existing shareholders, whereas a public company must issue the shares to the existing shareholders first and then to the public.

10. Statutory meeting:

A private company need not convene a statutory meeting whereas a public company must convene a statutory meeting.

11. Allotment of shares:

A private company may make allotment of shares to its shareholders even before receiving the minimum subscription, But a public company can may make allotment of shares to its shareholders after receiving the minimum subscription

12. Commencement of business:

A private company can commence its business after receiving the certificate of incorporation. A public company can commence its business after receiving the certificate to commence business.

14. Retirement of directors by rotation:

The directors of private company need not retire by rotation. But the directors of public company are liable to retire by rotation.

15. Qualification shares:

Directors of a private company need not have qualification shares. But the directors of a public company have to purchase qualification shares.

16. Use of the word "Limited":

A private company has to use the word Private limited whereas a public company has to use the word Limited.

Privileges of Private company:

A private company enjoys some privileges over the public company. In the words of Edward Manson, a private company is defined as "an incorporated partnership, combining the advantages of both elements the privacy of partnership and the permanence and origin of the corporate constitution. Private Companies can keep their affairs to themselves". They are given below:

1. Numbers of members:

The minimum number of members in a private company is two. The maximum number of its members is 200.

2.Numbers of Directors::

The minimum number of directors in a private company is two.

3. Statutory meeting:

A private company need not conduct statutory meeting. Therefore it is not necessary to file statutory report.

4. Allotment before minimum subscription:

A private company may make allotment of shares to its shareholders even before receiving minimum subscription.

5. Prospectus:

A private company need not issue prospectus to raise share capital.

6. Commencement of business:

A private company can commence its business after receiving the certificate of incorporation. It need not get certificate to commence business.

7. Index of members:

A private company need not keep an index of members.

8. Issue of deferred shares:

A private company is free to issue deferred shares with disproportionate rights.

9. Loan to directors:

A private company may grant loan to directors without getting permission from Government.

10. Qualification shares:

Directors of a private company need not have qualification shares.

11. Quorum of directors meeting:

In a private company the quorum of directors meeting is two.

12. Retirement of directors by rotation:

The directors of private company need not retire by rotation.

13. Consent of Directors:

In a private company, the director to be elected need not give his consent to the Registrar.

14. Kinds of shares:

A public company can issue two types of shares. But a Private Company can issue any kind of shares and with such voting rights as it may think fit.

15. Right issue:

A private company need not issue right shares to the existing shareholders.

16. Managing Directorship:

The Managing director of a private company can be the Managing director of more than 2 companies.

17. Minimum paid up capital:

The minimum paid up capital of a private company is Rs. one lakh.

18. Managerial Remuneration:

There is no limit for managerial remuneration.

Merits and Demerits of Joint stock company:

1. Financial strength:

The number of members is more when compared to partnership. This facilitates the collection of large amount of capital. It can offer various types of securities to meet the requirements of different kinds of investors.

2. Scope for expansion:

A company can raise finance depending upon its requirements.

Due to this benefit, a company can get the advantages of large scale production. It can easily expand its managerial capacities and financial resources.

3. Transferability of shares:

Shares of a public company are freely transferable. It provides necessary liquidity to the investments of the people. A shareholder can dispose of his shares at any time when the market conditions are favourable or when the shareholder is in need of money. Stock exchange provides a ready market for the purchases and sale of shares. The shares are also Quoted in a stock exchanges due to easy transferability and good marketability of shares and debentures, investors are interested to invest their investment in a company.

4. Limited liability:

The liability of members is limited. It means that the members are liable to pay only the unpaid amount of shares which have been subscribed by them. So every member may know well in advance regarding the amount of loss that may be borne by him. This limited liability encourages many persons to invest in shares of joint stock companies. It enables the company to raise more finance for expansion.

5. Management:

In company form of organisation, ownership is separate from management. A Joint-stock company is managed by Board of directors. Decisions are taken by a majority vote. The management of a company remains flexible. Due to the availability of large financial resources, a company can also employ professional management experts. The efficient management will help the company to expand and diversify its activities.

6. Stability:

A company is an artificial person created by law with a perpetual succession and a common seal. It is not affected by the personal affairs of the member. It can be put to an end by law only. It enjoys a perpetual life and a very stable existence which is essential to a business which takes a long time to establish. The life time of a company is permanent.

7. Lower Tax liability:

A company is charged lesser amount of tax when compared to sole trader and partnership business. The company is charged income tax at flat rate. There are many tax incentives given to corporate enterprises to reduce actual tax.

8. Diffused risk:

The risk of business is shared by all the shareholders of the company. Therefore, the risk is diffused.

9. Democratic Management:

Shareholders are the owners of a company. But the company is managed by Board of Directors. Board of Directors are the representatives of the shareholders. All the affairs of the company management are carried on under the control of the shareholders on democratic principles.

10. Expansion :

A Company can mobilise large resources. So there is a possibility of expansion in future.

Demerits:

1. Difficulty and cost of formation:

A company is required to fulfil a large number of legal formalities at the time of formation. It requires the services of specialised persons. This leads to increase the cost of formation.

2. Fraudulent management:

Companies may be incorporated by some dishonest promoters and directors who may exploit the company's property and assets for making personal profits. If they act in good faith and for the benefit of the company, then the company can earn huge profits. But integrity of management cannot be guaranteed for all companies. In some circumstances, promoters of companies play fraud in the formation of company. They gain experience at the cost of investor's funds.

3. Lack of personal touch:

In Joint stock company ownership is in the hands of shareholders and the management is vested in the hands of Board of Directors. Shareholders can not manage the business as they are large in number and widely scattered. The directors and paid officials may not take personal interest for the welfare of the company like shareholders.

4. Delay in decisions:

All decisions are taken only at meeting of the company. The meeting may be convened only when there is requisite quorum. The meeting may be held only after a specified time interval. This leads to delay in decision making.

5. Speculation:

The shares of a company are freely transferable. The shares are listed on the stock exchange to provide liquidity and marketability to the shares. But some unscrupulous speculators are tempted to speculate in the price of these shares.

6. Oppression minority interest:

Majority group always dominates over the minority group whose interests are never represented in the management.

7. Evils of large scale business:

The company form of organisation is a large scale enterprise. If there is a decline in sales, then the loss will be increased.

8. Expensive :

To get registration, a company has to follow many legal formalities. It involves heavy expenses. So it is expensive.

Conversion of Private company into a Public company:

A private company may be converted into public company. A private company may be converted into a public company in any of the following cases :

1) Conversion by Default :

As per sec 43, of the Companies Act 1956, if a private company fails to fulfill the legal requirements then it will be deemed to be a public company under the following circumstances.

i) Where 25% or more of the paid up capital of a private company is held by one or more bodies corporate.

ii) Where 25% or more of the paid up capital of a public company is held by the private company.

iii) where the annual turnover of the private company during the last three consecutive financial years exceeds Rs. 10 crore.

iv) Where a private company accepts deposits from the Public after an invitation is made by means of an advertisement, it shall become a public company.

3) Conversion by Own Choice:

A private company has the privilege to be converted into a public company by altering its Articles of Association. The private company is deemed to be a public company from the date of such alteration.

For example : An alteration in the Articles is made to permit a member of the private company to transfer his shares to any one he likes.

For this, it has to fulfill the following conditions:

1) Conversion by default :

Where a private company makes a default in complying with the statutory requirements as laid down in section 3(i) (iii) of the Act, if its membership exceeds 200, it permits free transfer of shares, issues prospectus for public subscription.

2) Conversion by choice (Sec. 14):

Section 14 lays down the method by which a private company may be converted into public company.

It has to follow the following procedure:

i) It has to pass a special resolution to alter its articles so as to eliminate the provisions relating to a private company.

ii) A copy of the special resolution, altering the articles, must be filed with the Registrar within 30 days.

iii) It has to increase the minimum number of members from 2 members to 7 members. Like this, the minimum number of directors must be increased to 3.

iv) It has to alter the regulations contained in the Articles which are inconsistent with those of a public company.

v) The company has to increase its paid up capital to atleast Rs. 5 lakhs, if its existing paid up capital was less than the prescribed minimum paid up capital of Rs. 5 lakhs for a public company.

vi) It has to delete the world 'private' from its name. If the change of name involves anything more than removing the word 'private', written approval of the Central Government must be obtained.

vii) The company shall case to be a private company from the date of the alteration.

viii) The conversion would not affect the identify of the company.

Statutory public company:

Private companies which are converted as a public company by operation of law are deemed to be statutory public companies. These companies are considered to be statutory public companies. Following are the privileges of these companies.

i) These companies can retain the special features of private companies.

ii) They need not raise the number of members to 7 if they are less than that.

iii) They can have 2 directors.

iv) The quorum of 5 members for a public company is not applicable to these companies.

v) The final accounts filed with the Registrar are not open to public inspection, if the Central Government directs so, and

vi) These companies need not file with the Registrar a statement in lieu of prospectus.

Conversion of a public company into a private company:

A public company may be converted into a private company. For this, following steps are to be followed:

i) A public company has to pass a special resolution to alter its articles so as to include in it the provisions relating to a private company (to limit the number of members to fifty, to restrict the transfer of shares, to prohibit the issue of prospectus)

ii) To alter the Articles of Association, the public company must obtain the sanction of the Central Government.

iii) A copy of the special resolution and a printed copy of the articles as altered shall be filed with the Registrar within one month of the date of receipt of order of approval of the Central Government.

iv) After the conversion, a public company becomes a private company. It shall add the word private in its name.

v) It has to reduce the number of its members to a maximum of 200 if the existing number is more than that.

FORMATION OF A COMPANY

Formation :

A company may be formed for any lawful purpose by

i) Seven or more persons, where the company to be formed is to be as a public company

ii) two or more persons, where the company to be formed is to be a private company.

iii) one person, where the company is to be formed is to be one person company, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

A company formed may be either

a) a company limited by shares or

b) a company limited by guarantee or

c) an unlimited company

A company is a legal entity. It has to follow legal procedures for its formation. Formation of a company means originating the idea of forming a company and taking necessary steps to form a company. The company is formed to brought up and even wound up after following legal formalities. A company has to follow certain legal steps. The process of forming a company can be divided into four stages.

1) Promotion
2) Registration or Incorporation
3) Capital Subscription
4) Commencement of business

In case of a private company, it has to follow the first 2 stages only. But in case of public company having a share capital, it has to go through all four stages mentioned above.

PROMOTION

Promotion of a Company:

Promotion is the first step in the formation of a company. The birth of a new business enterprise is similar to the birth of a human child. The gestation period for business enterprise varies according to nature and size of the business enterprise.

The term promotion refers to the aggregate of activities designed to bring into being an enterprise to operate a business. Promotion of a company refers to the sum total of the activities of all those who participate in the building of the enterprise upto the organisation of the company and completion of the plan to exploit the idea.

Definition:

According to Guthmann and Dougall, "Promotion starts with the conception of the idea from which the business is to evolve and continues down to the point at which the business is fully ready to begin operations in a going concern".

Gerstenberg has defined 'Promotion' as "the discovery of business opportunities and the subsequent organisation of funds, property and managerial ability into a business concern for the purpose of making profits therefrom".

Promotion may be defined "as the process of organising and planning the finance of a business enterprise under the corporate form" - L.H. Haney.

The Promoter:

The idea of carrying on a business which can be profitably undertaken is conceived either by a person or by a group of persons who are called promoters. A promoter may be an individual, a firm, an association of persons or even a company.

A promoter is an individual, a firm, a company, an institution or even a Government department, who conceived the idea of exploiting a business opportunity, examining the idea whether it is worth working, arrange men, money, material and machines and forming a profitable enterprise.

According to Guthmann and Dougall, "Promoter is the person who assembles the men, the money and materials into a going concern".

Justice Cockburn defines a promoter, as "one who undertakes to form a company with reference to a given projects and to set it going and who takes the necessary steps to accomplish that purpose"

In the words of Dr. Hoagland, "A successful promoter is a creator of wealth and an economic prophet"

The promoter not only forms the mental picture of the enterprise that is actually non-existent but also visualise the problems it might face after coming into existence. The promoter ensures that the unborn entity should have smooth and easy going when it is promoted.

The promoter identifies business opportunities.

The business opportunities may be :

i) The idea of exploiting certain untapped natural resources.
ii) An invention
iii) Novel selling techniques
iv) Manufacturing a product by new methods
v) Introducing product with new uses
vi) Introducing new type of packaging
vii) Capitalising a trading or commercial possibility.

Role/Functions of a Promoter:

Promotion is the first step of the formation of company. It includes the following functions:

1) Ideation
2) Preliminary investigation
3) Arranging factors of production
4) Arranging finance
5) Preparing preliminary documents
6) Preliminary contracts
7) Naming of the Company
8) Appointing bankers, brokers, solicitors and underwriters.
9) Obtaining licence.

1) Ideation:

It is the first and foremost function of the promoter. The promoter must have an idea about the form, size and object of the proposed company.

2) Preliminary investigation:

He has to make preliminary investigation about

i) the total demand for his company's product
ii) the availability of power labour, raw materials, etc.
iii) other facilities available to the business

3) Arranging factors of production:

Land, Labour, Capital and organisation are the factors of production. He has to make necessary arrangement for factors of production.

4) Arranging finance:

The promoter has to make arrangement of sufficient funds. Funds may be raised by issue of shares, debentures or borrowing from financial institutions or from commercial banks. Sometimes promoter has to make payment of certain expenses even before the amount is received from issue of shares. He has to meet this kind of expenses from his own resources.

5) Preparing Preliminary Documents:

To start a business, a company is to be incorporated. To get incorporation, a company has to file certain documents to the Registrar of Companies. Therefore, a promoter has to prepare the following documents:

i) Memorandum of Association
ii) Articles of Association
iii) Prospectus
iv) Declaration certificate from Directors.

6) Preliminary contracts:

A promoter has to make some preliminary contracts even before the incorporation of the company. Example: Making contract with underwriters, Brokers, Vendors, etc.

7) Naming of the Company:

The promoter has to decide the name of the company. He has to select two or three names and send it to the Registrar for his approval.

8) Appointment of bankers, brokers, solicitors, etc:

The promoter has to appoint bankers, brokers, solicitors, etc on behalf of the company.

9) Obtaining licence:

The promoter has to get licence to commence the business.

10) Promoter has to take necessary steps to obtain the certificate of incorporation.

11) Promoter has to arrange for minimum subscription.

Rights of Promoters:

Following are the rights of promoters:

1) Right of Indemnity.
2) Right to receive the Legitimate preliminary expenses.
3) Right to receive the remuneration.

Duties of Promoters:

1) To disclose the secret profit.
2) To disclose all the material facts.
3) To disclose private arrangements.
4) Promoter must make good to the company what he has obtained as a trustee.
5) Duty of promoter against the future allottees.

Liabilities of Promoter:

1) Liability to account in profit.
2) Liability for misstátement in the prospectus
3) Personal liability.
4) Liability at the time of winding up of the company.

Legal position of a promoter:

The promoter of a company is neither an agent nor a trustee of the company. The promoter is not an agent of the company because there is no company yet in existence. He is not an agent of the company because he cannot be act on behalf of shareholders as the company is yet to be incorporated. He can be considered as a trustee of the company as he safeguards the assets and properties of the organisation and makes contracts on behalf of the company.

The legal position of a promoter stands in a fiduciary position. From the fiduciary position of promoters, two points can be derived.

1) A promoter should not make any secret any profit of the company
2) A promoter is not allowed to make a profit from the sale of his

own assets and properties to the company unless all material facts disclosed before the sale.

Lord Black Burn observed in this connection. "Those who ac and use such extensive powers are not entitled to disregard the interes the corporation altogether. They must make a reasonable use of pow which they accept from the legislature, and consequently they do sta with regard to that corporation when formed in what is commonly calle fiduciary relation to some extent".

Problems in the promotion:

Promotion of a business involves the following problems:

1) Product Analysis and Market survey.
2) Choice of the form of ownership.
3) Financial planning
4) Location of Plant
5) Size of the Business unit.
6) Modern Machines and Equipments
7) Plant Layout
8) Internal organisations
9) Tax Planning
10) Launching the enterprise.

1) Product Analysis and Market Survey:

Product Analysis and Market Survey is the first and foremost problem to be considered before starting a new business enterprise. Consumer is the King. Market begins and ends with consumers. It is necessary for an enterprise to conduct a detailed analysis of the product concerned. After knowing the tastes, preference, choice of the consumers, an entrepreneur must produce the goods.

An entrepreneur or a promoter must conduct a market survey in order to know the saleability of the proposed product at a given price. He must ascertain the present demand for his product, nature of competition, available channels of distribution, etc.

2) Choice of Form of ownership:

On the basis of ownership, business organisation may be classified as follows:

i) Sole trader business
ii) Partnership business
iii) Joint stock company
iv) Co-operative organisation
v) Public enterprise

The Choice of suitable form of business organisation depends upon the following factors.

i) Nature of business
ii) Area of operation
iii) Volume of business
iv) Liability
v) Financial Requirement
vi) Continuity
vii) Tax Liability
viii) State Regulations
ix) Flexibility
x) Relationship between ownership and management.

The ownership form depends on the line of business because if the business is done on large scale, the company form of organisation is more suitable.

3) Financial Planning:

A proper financial planning is a must for all types of business enterprises. Financial planning results in the formulation of the financial plan. It primarily a statement estimating the amount of capital and determining its composition. Capital is needed for fixed capital as well as working capital.

4) Location of Plant:

The location of a plant is one of the most important decisions which an entrepreneur is supposed to take at the time of establishing a new enterprise. The object of maximising profits will be achieved only when various economies are available at the place of location. The following factors determine the location of industries:

i) Availability of raw materials
ii) Nearness to market

iii) Availability of labour
iv) Fuel and power
v) Transport facilities
vi) Soil and climate
vii) Momentum of an early start
viii) Government policy
ix) Financial policies
x) Decentralisation
xi) Political and economic policies
xii) Special advantages and concession
xiii) Tastes and preferences of people

5) Size of the Business Unit:

It is a very important step of launching a new enterprise, the entrepreneur will have to decide the size of the Business Unit. The requirement of capital depends upon the size of Business Unit. It is necessary for the entrepreneur to prepare both short term and long term forecast for sales.

6) Modern Machines and Equipments:

Before launching a new business enterprise it is necessary to decide the number of modern machines and equipments to be purchased. The machines and equipments should be ultra modern and automatic.

7) Plant Layout:

Plant Layout refers to the arrangement of the physical facilities including production centres for the manufacturer of a product. It involves maximum and effective utilisation of resources available in a factory. It involves maximum and effective utilisation of resources available in a factory. The Main objective of plant layout is to integrate machines, materials and men, the three pillars of a plant, for most economical production.

8) Internal Organisations:

A proper internal organisation structure is essential for the efficient working of the new business. It requires proper decision making and performance of various functions and duties in time. In small scale business, the owner or the proprietor can do all the essential duties. But in a large scale business, all the duties cannot be done by the owner himself. So there must be an internal organisation for efficient running and to maintain smooth relationship among the employees.

9) Tax Planning:

Tax policy of the Government will affect the profit or income of the new business. Therefore, Tax planning is an essential part of the overall planning for a new business.

10) Launching the enterprise:

After considering the above points, an entrepreneur can go ahead with the actual launching of the enterprise.

Stages of Promotion:

Promotion consists of the following Stages.

1) Discovery of an idea.
2) Detailed investigation
3) Assembling the requirement
4) Incorporation

1) Discovery of an idea:

This is the first stage in the promotion of a company. The promoter gets an idea to start some business. He makes a detailed investigation to find out whether it is worthwhile to commence the business. The idea may be to exploit a new area of natural resources or more profitable venture in the existing line of business. The promoter develops this idea with the help of technical experts in that field.

2) Detailed investigation:

The promoter makes a detailed investigation of his ideas with the assistance of many experts. On the basis of the reports from experts, the promoter is in a position to estimate the capital requirements of the proposed new company.

The promoter will estimate total demand for the product. He has to make a detailed investigation about

i) the total demand for his company's product

ii) The availability of power, labour, raw materials and machinery and

iii) other facilities available to the business.

3) Assembling the requirement:

If the promoter is satisfied regarding the profitability of the proposed concern, he starts the work of assembling. Assembling means getting the support and consent of some other persons.

The promoter has to assemble the requirements. The promoter has to

i) select the factory site

ii) decide about plant and Machinery

iii) make contract with suppliers

iv) acquire patent rights.

4) Financing the proposition:

The promoter prepares prospectus to present to the public and to underwriters to persuade them to finance the proposition.

The promoter has to decide the about the capital structure of the Company. The Capital structure consists of Borrowed capital and owned capital. Owned capital may be raised through issue of shares. Borrowed Capital may be raised through issue of debenture or acceptance of public deposits or borrowings from commercial banks or from financial institutions.

Promotion is an activity of discovering business opportunity, making preliminary investigation, assembling factors of production, completing preliminary legal formalities and forming the company as a profitable venture.

Types of promoters:

There are two types of promoters. They are

1) Professional promoters.

2) Occasional Promoters.

1) Professional Promoters:

Professional promoters are those persons whose main function is to promote a company and then to hand it over to the shareholders on some remuneration. The promoters have nothing to do with that company. This type of promoters are found in Western countries only.

2) Occasional promoters:

Occasional promoters are those persons who are interested to promote a company in which the promoters are interested. These type of promoters are also known as par hac vice promoters. Once the company is promoted, this type of promoters revert to their main business.

3) Promoter companies:-

Limited companies may do the functions of promoters. A company which is formed by a syndicate with the specific purpose of promoting some other company is known as promoter company. This promoter company is formed with the object of concealing the identity of promoters.

4) Financial promoters:

Sometimes investment bankers may initiate to promote a company. In such a case, investment bankers are known as Financial Promoters. They are also known as Investment promoters.

5) Entrepreneurs:

Entrepreneurs are also known as promoters. This type of promoters are found in India in large numbers. This type of promoters conceive the plans for a new enterprise and also take responsibility for its incorporation and management of the company.

6) Lawyers, Engineers and Manufacturers:

Sometimes, Lawyers, Engineers and Manufacturers are also interested to promote a company. They may also be included in the term promoters.

II stage

Incorporation of a Company or Registration of a company.

(Incorporation or registration is the second stage in the formation of a Company. Incorporation is the registration of the company as a body corporate under the Companies Act ... that for forming a public company atleast 7 persons and for forming a private company atleast 2 persons are required. It is the registration that brings a Company into existence. A company is properly constituted only when it is duly registered under the Act)

A company cannot be incorporated all of a sudden.(It has to fulfill certain legal requirements) A company has to follow the following procedures to get incorporation:

1) Name Approval:

A company has to get approval for the proposed name. The promoter of a company must select two or three names to get approval from the Registrar of Companies. The name selected should not be similar to or identical with that of any existing company. The name of the company must not be one which is considered undesirable by the Central Government. If the Registrar is satisfied, then he will give approval for the name of the company.

2) Licence Under Industries Development and Regulation Act, 1951.

A licence is to be obtained under Industries Development and Regulation Act 1951. The application is to be submitted only in case when the company's business falls under the scope of the Act.

3) Preparation of documents:

To get incorporation, the following documents have to be prepared.

i) Memorandum of Association:

A Memorandum of Association of a company is to be subscribed by seven (in case of public limited company) or by two (in case of private company) members of the company.

ii) Articles of Association:

The Articles of Association of a company is an agreement between a company and its shareholders. It is similarly signed by the subscribers. But when Table A is adopted, Articles of Association is not necessary. Both the Memorandum and the

Articles of Association must be stamped in the prescribed manner.

iii) A list of Directors with their names: Addresses and occupations, consent of directors to act as such. If no separate list is filed, the subscribers to the Memorandum are deemed to be the first directors.

If the directors are appointed by the Articles or named in the prospectus, their written consent to act as directors and also a written undertaking to take up and pay for the qualification shares.

iv) A power of Attorney in favour of one of the promoters or an advocate who is to carry out the legal formalities required for registration.

v) An undertaking by the directors to take and pay for qualification shares.

vi) Particulars of Directors, Managers, Secretary etc., where their names are included in the Articles of Association.

vii) Statutory declaration

vii) The address of the registered office of the company must be given within 30 days from the date of its incorporation

4) Filing of documents:

Documents to be submitted for registration:

The application for registration of a company must be accompanied by the following documents:

i) Memorandum of Association:

A copy of the printed Memorandum of Association must be stamped, signed and dated.

ii) Articles of Association:

A copy of the printed Articles of Association: must be stamped, signed and dated. Thee filing of Articles of Association with Registrar is optional in case of a public limited company whereas the filing of Articles of Association: with the Registrar is compulsory in case of private limited company.

iii) Copy of power of attorney:

General power of attorney on a judicial stamp paper of appropriate value as applicable in the state signed by all subscribers, infavour of one of them, or any other persons, for making alteration etc; on their behalf in the Memorandum and Articles of Association filed with the

Registrar of companies, if suggested by Registrar.

iv) Agreement:

The agreement which the company proposes to enter into with any individual for appointment as its managing director or whole time director or manager.

v) A written consent of directors:

A written consent of directors must be signed by each director along with a written undertaking by the directors to take the necessary qualification shares.

vi) Pre certification:

Form INC 22 and DIR 12 are required to be precertified by a company secretary or chartered accountant or cost accountant in whole time practice.

5. Payment of Registration and Filing fees:

At the time of registration, the prescribed registration fees and filing fee are to be paid to the Registrar's office, along with the important documents. The amount of registration fee payable varies with the amount of capital or with the number of Members. The amount of filing fees are to be paid for each document filed. The rates of fee structure are prescribed in Schedule X of the Companies Act.

6. Certificate of Incorporation or Registration Certificate:

After receiving the necessary documents and the requisite fees, the Registrar will scrutinise the documents. If the Registrar is satisfied with the filed documents and the required fees, he will register the name of the company in the Register of Companies. Then the Registrar will issue certificate for incorporation. The certificate will be issued by the Registrar under his hand and seal of his office. The date given by the Registrar in the certificate will be the date of incorporation of the company on which date the company will be considered to have come in existence as a separate legal entity. This is the birth certificate of the company. The date mentioned in the certificate is the date of incorporation of the company.

A certificate of incorporation given by the Registrar in respect of a company is a conclusive evidence that all the requirements of the Companies Act have been fulfilled with in respect of registration.

If the requirements of registration have been complied with, the Registrar has no power to refuse registration.

Where the documents are refused registration, the fee paid at the time of filing of documents with the Registrar is not refundable.

A certificate of incorporation given by the Registrar in respect of a company is a conclusive evidence that all the requirements of the Companies Act have been fulfilled with in respect of registration.

A Private company can commence business immediately upon incorporation. **A public limited company** can commence business only when it obtains **certificate of commencement of business.**

Effects of Incorporation:

The certificate of incorporation or Registration is the conclusive evidence of the fact that

i) the company is properly incorporated and duly registered.

ii) the terms of the Memorandum and Articles are within the Companies Act.

iii) all requirements of the Act in respect of registration have been complied with.

iv) a private company can start its business after getting the certificate of incorporation.

v) with the issue of certificate, the company takes birth with a separate legal entity.

vi) the company has the power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued.

The Registrar of companies is also required to issue a Corporate Identify Number (CIN) to each company registered on or after 1, November 2000.

Conclusiveness of Certificate of Incorporation :

The certificate of incorporation is the birth certificate of a company. It is conclusive evidence that all the requirements of the Companies Act have been complied with in respect of registration. From the date of issue of incorporation certificate, the company becomes distinct legal entity with perpetual succession and a common seal.

Companies Act lays down that a certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Act have been complied with in respect of registration and matters precedent and incidental here to and that the company is duly registered under this Act. When once the certificate of incorporation is given, nothing is to be inquired into as to the regularity of the prior proceedings.

However, if a company has been incorporated with illegal objects, the illegal objects would not become legal by the issue of the certificate.

Companies Act states that on registration, memorandum and articles of the company bind the company and its members to the same extent as if they respectively had been signed by the company and by the members.

If a company is born, the only method to put an end to it is by winding it up.

Floatation:

When a company has been registered and has received its certificate of incorporation it is ready for "floatation", that is to say, it can go ahead with raising capital sufficient to commence business and to carry it on satisfactorily.

III stage

Subscription stage or capital subscription:

A private company can commence business immediately after obtaining the certificate of incorporation. A public company can commence business only on the receipt of the certificate of commencement of Business. For this purpose, a public company has to go through capital subscription stage and commencement of business stage. In the subscription stage, the company makes necessary arrangements for raising the capital of the company. To make arrangements for raising the capital of the company, a meeting of the Board of directors will be convened. Usually the promoters are the first directors of the company. At the meeting, following business will take place.

i) Appointment of secretary and fixing the terms and conditions of his appointment. The first secretary is called as pro - tem secretary.

ii) Appointment of bankers, brokers, solicitors and auditor.

iii) Adoption of preliminary contracts.

iv) Adoption of underwriting contracts.

v) Adoption of the draft prospectus or statement in lieu of prospectus.

vi) Appointment of managing director or manager and other responsible officers of the company.

vii) Approval of the design of the common seal of the company.

viii) Listing of shares on the stock exchange.

To raise share capital from the public it has to issue prospectus. A public company has to comply with the "Guidelines for disclosure and investor protection, 2000" issued by SEBI. Section to makes it obligatory for every public company to take either of the following two steps.

i) Issue a prospectus in case public is to be invited to subscribe to its capital, or A copy of the prospectus must be filed with Registrar.

ii) Submit a statement in lieu of prospectus, in case capital has been arranged privately. It must be done at least 3 days before allotment.

IV Stage

Commencement of Business Stage :

A private company can commence its business after its incorporation. Section 149 of the Companies Act, 1956 exempts a private company from obtaining a certificate to commence business. But a public company has to obtain certificate to commence business. This certificate can be obtained only after "flotation of the company" To get certificate of commencement, the following conditions are to be fulfilled.

i) A prospectus or statement in lieu of prospectus must be filed with the Registrar of Companies.

ii) The company must allot the number of shares atleast to receive minimum subscription.

iii) The Directors must take the Qualification shares.

iv) A declaration by one of the directors or the secretary to the effect that all the conditions regarding the commencement of business have been complied with.

v) This certificate is to be received within one year from the date of incorporation.

If the certificate is not received within one year from the date of incorporation, the court may order the company to be wound up. To get certificate to commence business, a public company has to file the following documents.

i) Prospectus or statement in lieu of prospectus.
ii) Minimum subscription.
iii) Qualification shares.

i) Prospectus or statement in lieu of prospectus:

A public company must file a copy of prospectus with the Registrar of companies. A private company need not file a statement in lieu of prospectus.

ii) Minimum Subscription:

A public company can not make allotment of shares unless minimum subscription has been received. The company is required to file a declaration that the minimum subscription has been received in cash. This arrangement has been made in order to safeguard the interest of shareholders.

iii) Qualification shares:

To become a director of a public company, a person must acquire Qualification shares. Only a shareholder can become a director of the company. The company must make a declaration that the directors have subscribed their Qualification shares.

iv) Return of allotment:

The company is required to submit a return of allotment containing the names and addresses of shareholders and the number of shares allotted to each.

v) Declaration:

It has to make a declaration to the Stock Exchange about the number of shares to be allotted.

vi) Statutory declaration:

A statutory declaration by an Advocate or a Company Secretary or a Chartered Accountant that all the requirements of the Act and the rules thereunder have been complied with has to be filed.

The Registrar of Companies will verify the above documents and if he is satisfied then he will issue certificate to commence business. A company can start its business only after getting a certificate of commencement of business.

Failure to commence business:

A company has to commence its business within a year of its incorporation. If not, the court has the power to wind up a company.

Provisional Contracts:

Any contract made by a public company after incorporation but before the date of commencement of business shall be provisional only and shall not be binding on the company until the certificate of commencement is obtained.

Preliminary contracts or pre incorporation contracts:

Preliminary contracts are those contracts which are made by the promoters with different parties on behalf of the company yet to be registered. Preliminary contracts are not legally binding on the company as there is only one party in a contract because the company is yet to be incorporated. The company has no legal existence until it is incorporated. Contracts to purchase assets for the company is an example for preliminary contract.

Minimum Subscription:

'Minimum subscription is the minimum amount required by the company for its preliminary functions. A public company can allot its shares only when the company receives minimum subscription. If the minimum subscription is not received within the stipulated time, then the application money must be returned to the applicants. The amount of minimum subscription must be used for the following purposes:

i) Payment of preliminary expenses.

ii) Payment of assets purchased.

iii) Meeting working capital requirements.

iv) Repayment of money borrowed by the company in respect of any of the foregoing matters.

v) Meeting other expenses.

As per the guidelines issued by SEBI (11-6-92) Companies were required to raise minimum subscription of 90% in respect of each issue. As per the modification, the requirement of 90% Minimum subscription will not be mandatory in case of offer for sale of securities.* The existing guidelines of 90% Minimum subscription will continue to apply in all cases of public and right issue. The minimum subscription clause does not apply for private companies.

If the minimum subscription is not received, the entire application money collected shall be refunded to the applicants at the end of 90 days from the closure of issue. If there is any delay in refund of such amount by more than 10 days the company will pay interest at the rate of 15 percent per annum for the delayed period.

Important documents of the company:

The following are the main documents of the company:

1) Memorandum of Association
2) Articles of Association
3) Prospectus

1) Memorandum of Association:

Memorandum of Association is the most important basic document of the company. Memorandum of Association is the fundamental document of the company. The Memorandum of Association is the constitution of the company. It is the foundation upon which the whole structure of the company is build up. It defines the limitations of the power of the company. It is the charter of the company which defines its objectives and determines the boundary lines within which the company has to work. It is an agreement between the company and the outside world. That is, it establishes the relationship of the company with the outside world. It lays down the area of operation of the company. It is the foundation stone of the company upon which the future structure of the company will stand.

Every company must have its own Memorandum of Association. Therefore, it is a basic document of the company.

Definition:

According to section 2 (56) of the Companies Act, 2013, "Memorandum means the Memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous Companies Law or of this Act".

According to Lord Macmillan, "The Memorandum of Association sets out the constitution of company. It is, so to speak, the charter of the company and provides the foundation on which the structure of the company is built".

"It is a document of great importance in relation to the proposed company. Its importance lies in the fact that it contains the fundamental clauses which have often been described as the conditions of the company's incorporation" - Palmer.

Public Document:

Memorandum of Association is a the document which governs the relationship between the company and outsiders. Memorandum of Association is a public document. Therefore, any person who deals with the company is presumed to have sufficient knowledge of its contents. It is also open for public inspection. A company is bound to supply to a member of the company with a copy on payment of the prescribed fee.

Purposes of Memorandum of Association:

"Its purpose is to enable shareholder, creditors and those who deal with the company to know what is its permitted range of enterprise" - important version of the case law

Egyptian Salt and Soda Co-Ltd Vs Port said Salt Association Ltd.

The purpose of Memorandum is two fold.

1) It gives protection to shareholders to know the purposes for which their money is going to be used.

2) It gives protection to the persons who deal with the company. Those who deal with the company may understand the permitted range of the company, its powers and object.

Forms of Memorandum:

The Companies Act lays down that the Memorandum shall be according to the prescribed form or as near to it as the ... admit.

The prescribed forms of Memorandum of Association are as follows:

1) Table A Memorandum of Association of a company limited by shares.

2) Table B. Memorandum of Association of a company limited by guarantee and not having a share capital.

3) Table C Memorandum of Association of a company limited by guarantee and having a share capital.

4) Table D. Memorandum of Association of an unlimited company and not having share capital.

5) Table E. Memorandum of Association of an unlimited company and having share capital

Requisites of the Memorandum:

1. The Memorandum of Association must be printed and should be divided into paragraphs.

2. it must be signed by atleast two persons in case of private company. But in case of public company, it must be signed by atleast seven persons.

3. The address and occupation of each signatory together with the signature, address and occupation of the witness must be added.

Contents of Memorandum of Association:

According to Sec 4 of the Companies Act, 2013, the Memorandum of Association consists of the following clauses:

1) Name clause
2) Situation clause
3) Objects clause
4) Liability clause
5) Capital clause
6) Association clause.

1) Name Clause [Sec. 4(1) (a)] :

The name clause contains the name of the company. The Memorandum of Association of every company must state the name of the company. The company being a legal person must have a name to establish its identify. A company is free to adopt any name it likes. But the name should not be an undesirable to the Central Government. A name which is identical with or which closely resembles the name of an existing company may be considered undesirable by the Central Government While choosing the name of the company, the following points must be considered:

i) The name should not be identical to an existing company.

ii) The name should not indicate that the company is patronised by the Government.

iii) The name should not include the word co-operative.

iv) The name selected by the company should not be undesirable in the opinion of the Central Government.

v) The name of the company should be prominently affixed outside the premises of the company.

vi) The name must be engraved on common seal.

The name of the company should end with the word Limited. If it is a private company the name should end with the words "Private Limited". If it is a non trading concern, the word Limited need not to be used. The One Person Company shall use the word "OPC Limited" in its name. In case of public companies, the name should end with words 'Limited'.

A person may make an application to the Registrar of companies for reservation of name set out in the application as

i) the name of the proposed company or

ii) the name to which the company proposes to change its name

On the basis of information supplied by the company, the Registrar may reserve the name for a period of **sixty days** from the data of the application.

Certain names Prohibited by Statute:

A company can not adopt a name which attracts the provisions of the Emblems and name (Prevention of Improper use) Act, 1950. This Act Prohibits the use of the name and emblems of the United Nations and the World Health Organisation, the official seal and emblem of the Central and State Governments, the Indian National Flag, the name and pictorial representation of Mahatma Gandhi and the Prime Minister of India

Every Company shall paint or affix its name and the address of its

registered office outside every ... business of
company is conducted .

Alteration of name Clause:

By Special resolution:

A Company may change its name by a special resolut and the approval of the Central Government.

If through inadvertence or otherwise, a company on its fi registration or on its registration by a new name has be registered with a name which, in the opinion of the Central Governme is identical with or too closely resembles the name of an existi company, the company change its name by passing an ordina resolution and by obtaining the approval of the Central Governmen The company shall change its name within 12 months of i registration.

If through inadvertence or otherwise a company is registere by a name, which in the opinion of the Central Government is identica with or too nearly resembles the name of an existing company, it ca change its name by passing an ordinary resolution. But the approval o the Central Government is to be obtained.

2) **Situation Clause[Sec. 4(1) (b)]:**

It is also known as **Place clause** or **Domicile clause** or **Registered office clause**. In this clause, the State in which the company's registered office is located should be given. The registered office is the place

i) where all statutory books and documents of the company are kept.

ii) which is used for correspondence from Registrar of Companies.

Every Company shall have a registered office from the day on which it begins to carry on business or as from the 30th day after the date of its incorporation whichever is earlier.

All communications and notices to the company shall be addressed to its registered office.

The place of registered office can be intimated to the Registrar with 30 days of incorporation or commencement of business, whichever is earlier.

Alteration of Registered Office:

Alteration of registered office may involve.

1) Change of registered office within the City
2) Change of registered office within a State.
3) Change of registered office from one State to another.

Change of registered office within the City:

A resolution at Board meeting is to be passed and it is to be informed to the Registrar within 30 days from the date of change of registered office.

Change of registered office within a State:

The registered office of the company may be changed from one State to another. A special resolution is to be passed. A notice of such change is to be communicated to the Registrar within 30 days from the date of the change.

Change of Registered Office from one State to another State:

A special resolution is to be passed. A copy of the special resolution is to be filed with the Registrar of each State within 30 days. Confirmation from the Company Law Board is to be obtained.

3) Objects clause [Sec. 4(1) (c)]:

In this clause, the main objects and ancillary objects of the company are mentioned. Object clause determines the rights and powers of the company and also defines its sphere of activities. The objects stated in the clause must be legal and not against the public interest and policy.

The object clause defines the sphere of the company's activities, the aims that its formation seeks to achieve and the kinds of activities or business that it proposes to conduct. A company cannot conduct any business beyond the scope of object clause. If anything unauthorised by the objects clause is undertaken it is considered ultravires and void, and can not be ratified even by the shareholders.

This is the most important clause in the Memorandum because it not only shows the object or objects for which the company is formed but also determines the extent of the powers which the company can exercise in order to achieve the object or objects.

A new company or an existing company can not take up or commence any business other than its main objects or the business already carried on without passing a special resolution in the general meeting of the company.

The object clause offers protection to the shareholders by ensuring that the funds raised for undertaking are not going to be risked in any other undertaking.

While framing the object clause of a Company the following points should be kept in mind.

i) The objects of the Company must be not be illegal.

ii) The objects of the Company must not against the provisions of the Companies Act 1956. Section 77 Prohibits a Company to purchase its own shares.

iii) The objects must not be against public policy.

iv) The objects must be stated clearly and definitely.

v) The objects must be Quite elaborate.

vi) It must not be immoral.

Alteration of object Clause:

To alter the object clause of a company, following procedures are to be followed:

i) A special resolution should be passed at a general meeting.

ii) The Company shall file with the Central Government the special resolution within one month from the date of the resolution with a printed copy of the Memorandum as altered.

iii) The Registrar shall register the special resolution and certify the registration within 30 days from the date of the filing of the special resolution.

Liability Clause [Sec. 4(1) (d)]:

This clause states the liability of the members in the company. A company, which is limited by shares or guarantee, has limited liability. Liability of shareholders in a company is limited to the face value of the shares taken up by them. If the liability is limited by guarantee, it should be clearly specified. The members are liable to pay only the unpaid balance of their shares. He will no more be liable if once he has paid the full nominal value of the share. That is, his liability will be nil.

Alteration of Liability Clause:

A company limited by shares or guarantee can not change its Memorandum so as to alter the liability of the members unless all the Members agree in writing to such change. Any alteration in the memorandum of association compelling a member to take up more shares or which increases his liability, would be null and void.

Capital Clause [Sec. 4(1) (e)]:

This clause states the authorised capital of the proposed company. The capital clause states the amount of share capital with which the company is proposed to be registered and the division thereof into shares of fixed amount. This is known as the authorised or nominal capital of the company. This is the maximum amount of share capital that the company is authorised to raise under the Memorandum. Therefore, it is called authorised, Registered or Nominal Capital of the company. It should also state the types, numbers and denomination of shares to be issued. A limited company having share capital may issue two different types of shares namely equity shares and preference shares.

A company can not issue more shares than are authorised for the time being by the Memorandum.

This clause is to be omitted in the case of companies with unlimited liability and the companies limited by guarantee having no share capital.

Alteration of Share Capital:

A company may alter its share capital. It may

i) Increase nominal share capital by issuing new shares.

ii) Consolidate and divide all or any part of its share capital into shares of larger amount.

iii) Convert fully paid up shares into stock or vice versa.

iv) Sub divide its shares or any of them, into shares of smaller amount and

v) Cancel shares which have not been taken up and diminish the amount of its authorised capital by the amount of shares so cancelled.

Association Clause [Sec. 4(1)]:

This contains a declaration by the subscribers to the Memorandum. In case of a public company this declaration must be signed by atleast seven persons and in case of private company, it must be signed by at least two persons. It contains the names of signatories to the memorandum of association. Each subscriber must take atleast one share in the company. The subscribers declare that they agree to incorporate the company and agree to take the shares stated against their names.

Components of Share Capital:

i) Authorised share capital
ii) Issued share capital
iii) Subscribed share capital
iv) Called up share capital
v) Paid up share capital
vi) Uncalled share capital

1) Authorised Share Capital:

This is the nominal value of the shares which a company is authorised to issue by its Memorandum of Association. This is the maximum capital which a company will have during its lifetime unless it is increased. It is also known as Nominal Capital, and Registered Capital.

2) Issued Capital:

It is the nominal value of the shares which are offered to the public for subscription. The issued Capital is less than the authorised capital.

3) Subscribed Capital:

It is the amount of capital which is taken up by the public is called the subscribed capital. It is the part of the issued capital. When all the shares are subscribed by the public, then issued capital is equal to subscribed capital.

4) Called up Capital:

This is the part of the issued Capital which has been called up on the shares. For example, the face value of a share is Rs.10, The company demands the shareholders to pay Rs.8 per share. Here the called up capital per share is Rs.8.

5) Paid up Capital:

It is that part of the issued capital which has been paid up by the shareholders. It is equal to called up capital minus calls in arrears.

6) Uncalled Capital:

Uncalled Capital is the reminder of the issued capital which has not been called. The company may demand the amount at any time during the life time of the company.

7) Reserve Capital:

Reserve Capital is that part of the uncalled capital of a company which can be called only in the event of its winding up. Reserve Capital can not be turned into uncalled capital without the leave of the court. it is available only for the creditors. Therefore, it can not be reduced by way of Capital reduction.

Doctrine of Ultra Vires:

A company is incorporated for some specified objects, stated in its Memorandum of association. It can not do anything outside the power specified in its Memorandum.

A Company has the power to do all such things as are -

i) authorised by the Companies Act, 1956.

ii) essential to the attainment of its objects specified in the Memorandum.

Anything which is beyond the above powers are ultravires the company. Ultra means beyond and vires means powers. Hence Ultravires means that the doing of the act is beyond the legal power and authority of the company. When it is ultravire the company, it can not even be rectified by the shareholders.

The object of declaring such acts as ultravires is to protect the interests of shareholders and all others who deal with the company.

Types of ultra vires :

1) Ultravires the directors:

It is beyond the powers of the directors. If an act or transaction is ultra vires the directors, but within the scope of the company, then any irregularities may be ratified by the consent of the shareholders. Because, it is intravires the company.

Example : *Ashbury Railway Carriage Co.Vs. Riche.*

A company, floated in England, has in its objects to make and sell railway carriages. But the directors contracted to finance the construction of a railway track in Belgium. The Articles gave express power to the company to extend its business beyond the Memorandum by special resolution. The company in general body meeting passed a special resolution to ratify the act of directors.

It was held that the contract was Ultravires and therefore void and could not be ratified even by all the members of the company.

2) Ultravires the Articles:

If an act or transaction is ultravires the Articles, the company can ratify it by altering the Articles of Association of the company. To alter the Articles of Association a special resolution should be passed at the shareholder's meeting.

Any property acquired by a company under an ultravires transaction may be protected by the company against damage by third person.

3) Ultra vires the Memorandum of the company:

If any act made by the company is beyond the powers of Memorandum of Association, then it is called as ultra vires of the Memorandum of the company. Exceptions to the doctrine of ultra vires.

Following are the exceptions to the doctrine of ultra vires.

i) An act which is intravires the company but within the powers of the company, then it may be ratified by the shareholders.

ii) An act which is intravires the company but done in an irregular manner, then if may be validated by the consent of the shareholders.

iii) If an act of the company is ultra vires the articles of association, it can be ratified by altering the articles of association of the company.

iv) If any person borrows money from the company under an ultravires contract, then the company has the right to sue and recover the money from him.

v) There are certain acts, under the company law, which are deemed implied by within the powers of the company. Example : Borrowing powers of the company.

vi) If a director of a company makes payment of certain money under ultravires, then he can be compelled by the company to refund it.

Effects of ultra vires act :

i) Ultra vires an act will be wholly void. Hence, it can not bind the company.

ii) Any member of the company can get injunction from the court against the company to prevent it from doing ultra vires act.

iii) The directors of the company are personally liable if they had spent the fund of the company for ultra vires transaction.

iv) Ultra vires contracts are void abinitio. So any party who enter into ultra vires contract can not enforce the contract.

v) If a company has acquired any property under an ultra vires transaction. It has the right to hold that property.

Articles of Association:

A document which deals with administration of internal affairs of a company is known as Articles of Association. The Articles of Association are the rules and regulations of a company framed for the purpose of internal man management. The Articles of the company are the regulations or bye laws which govern the internal managemen of the company. It defines the duties, rights and powers of th management and Board of Directors. Every company is required t file Articles of Association along with the Memorandum of Associatio with the Registrar at the time of its registration. If the company do not file its own Articles of Association, then Table A attached to Companies Act shall become the Articles of Association of the company.

The Articles of Association are the internal regulations of the Company and are for the benefit of shareholders.

A public company limited by shares may not file a separate set of articles of association. But an unlimited company, a company limited by guarantee or a private company limited by shares must prepare their own articles which must be registered along with the Memorandum of the Company.

Definition of Articles of Association:

According to Section 2(5) of the Companies Act,2013 "Articles mean the Articles of Association of a company as originally framed, or as altered from time to time in pursuance of the previous Companies Law or of this Act".

According to Justice Charles worth: "The Articles of Association is a document regulating the rights of members of the company among themselves and the manner in which the business of the company shall be conducted".

When articles are proposed to be registered, they must be printed, divided into para graphs and numbered consecutively. Each subscriber to the memorandum must sign the articles in the presence of atleast one witness.

Importance of Articles of association.

To undertake the following activities. Articles of association must authorise.

i) To issue redeemable preference shares.

ii) To accept calls in advance from shareholders.

iii) To increase / to reduce share capital.

iv) To convert the company's fully paid up shares into stock and to reconvert that stock into fully paid up shares.

v) To consolidate / to subdivide the share of the company

The term expert means an engineer, values, accountant etc.

Contents of Articles of Association:

An Articles of Association may contain the following information:

i) The amount of share capital and different classes of shares.

ii) Rights of each class of shareholders.

iii) Details of contracts made with different persons.

iv) Procedure for making allotment of shares.

v) Procedure for issuing share certificate.

vi) Procedure for transfer of shares.

vii) Procedure for forfeiture and reissue of forfeited shares.

viii) Procedure for conducting meeting.

ix) Procedure for appointment of Managerial personnel.

x) Procedure for declaration and payment of dividend.

xi) Maintenance of statutory books.

xii) Procedure to alter share capital.

xiii) Procedure for winding up of the company.

xiv) The Procedure for holding and conducting of various meetings.

xv) Share warrants

xvi) Voting rights of members, voting and poll, proxies.

xvii) Conversion of shares into stock

xviii) Capitalisation of profits

Companies which must have their own Articles :

Companies Act lays down that the following companies may have their own articles.

i) Unlimited Companies

ii) Companies limited by guarantee

iii) Private Companies limited by shares

A Public Company may have its own Articles of Association. If it does not have its own Articles, it may adopt Table A.

Forms of Articles of Association:

The Companies Act lays down that the Articles of Association shall be according to the prescribed form or as near to it as the circumstances admit.

The prescribed forms of Articles of Association are specified in Schedule I which are given below.

1) Table F Articles of Association of a company limited by shares.

2) Table G. Articles of Association of a company limited by guarantee and having a share capital.

3) Table H. Articles of Association of a company limited by guarantee and not having a share capital.

4) Table I Articles of Association of an unlimited company and having share capital.

5) Table J. Articles of Association of an unlimited company and not having share capital

Alteration of Articles of Association (Section 14):

A company alter its articles at any time. Following points must be considered while altering the articles.

i) A special resolution must be passed

ii) A copy of the special resolution must be filed with the Registrar within 30 days from the date of the special resolution.

iii) The effect of the change must be incorporated in all copies of articles of association issued after the date of alteration.

iv) Approval of Central Government must be obtained in certain cases.

a) Any alteration which has the effect of converting a public company into private company.

b) any alteration relating to the appointment or reappointment of a managing or whole time director or of a director not liable to retire by rotation in the case of a public company.

c) any alteration resulting in an increase in the remuneration of any director including a manager or whole time director in the case of a public company .

Limitations as to alteration of Articles of Association:

i) Alteration of Articles must not be inconsistent with the Act.

ii) Alteration of Articles must not conflict with the Memorandum Association.

iii) Alteration must be legal.

iv) Alteration must be for the benefit of the company.

v) Alteration must not increase liability of members.

vi) Alteration by special resolution only.

vii) Alteration does not lead to breach of contract.

viii) Alteration must not result in expulsion of a member.

ix) Alteration may be with restorspective effect.

x) The Tribunal has no power to alter Articles.

Constructive notice of Memorandum and Articles:

Every outsider dealing with a company is deemed to have notice of the contents of the Memorandum of association and Articles of Association of the company. These documents are assumed to be public documents. This is known as **constructive notice of Memorandum and Articles of Association** Or **Doctrine of constructive Notice.** It is presumed the individuals dealing with the company have not only read these documents but that they have also understood their proper meaning. This notice operates only against the company. It operates only against the third party dealing with the company. It prevents the third party from alleging that he did not know that the constructive notice rendered a particular act ultravires the company.

If a person enters into a contract which is beyond the powers of the company, he can not acquire any rights under the contract against the company.

Example : If the articles provide that a Bill of exchange must be signed by two directors, a person dealing with the company must see that this is done. If he has a bill signed by only one director, he can not claim under it.

Case Law : Kotla Venkatswami Vs RamMurthi

According to the Articles of the company all the deed must be signed by the Managing Director, the secretary and another director of the company. The plaintiff accepted a deed which was signed only by a director and the secretary of the company.

It was held that the plaintiff (R) could not claim under this deed. The plantiff is supported to be aware of this provision. Ignorance of law is not an excuse.

Doctrine of Indoor Management:

The doctrine of Indoor Management was first enunciated by Lord Hatherley in the case of Royal British Bank Vs Turquand. It is basically an exception to the doctrine of constructive notice. The doctrine of Indoor Management seeks to protect outsiders against the company whereas the doctrine of constructive notice protects the company against outsiders. Persons dealing with limited liability companies are not bound to inquire into the regularity of the internal proceedings. It will not be affected by irregularities of which they had no notice. The outsiders dealing with the company are entitled to assume that as far as the internal affairs of the company are being carried on regularly. The outsiders need not inquire into the regularity of the internal proceedings as required by the Memorandum and Articles. This limitation of the constructive notice is known as

i) the doctrine of indoor Management (or)
ii) the rule in Royal British Bank V. Turguand (or)
iii) Just Turguand Rule.

Exceptions to the doctrine of Indoor Management:

The doctrine of indoor Management is subject to certain limitations. These limitations are the exceptions to this principle.

1) Knowledge of irregularity:

If a person dealing with the company is aware of the irregularity of the internal proceedings but deals with the company inspite of his notice, he can not claim the benefit of this doctrine.

Case Law : Howard Vs Paten Ivory Co.

2) Forgery :

The rule in the Turquand case does not protect a person where forgery is involved. A company can not be held liable for forgeries committed by its officers.

Case Law : Ruben Vs Great Fingall Consolidated Company

3) Negligence on the part of the outsider:

If an individual dealing with the company would have discovered irregularity if he had made proper inquiry, he can not claim the benefit under this doctrine.

Case Law : Underwood Vs Bank of Liverpool

In this case the sole director paid cheque drawn in the name of the company in his own account. The banker did not make any enquiry before crediting the cheque drawn in favour of the company in the account of the director.

It was held that the bank was not entitled to the benefit of the charge which had not in fact been authorised.

4) Acts void ab initio :

This rule does not apply to transactions which are void or illegal ab initio.

5) No Consultation of the documents:

The doctrine of indoor management is based on the principle of estoppel and a person who did not consult the company's documents (Memorandum of Association and Articles of Association) and consequently didn't act in reliance on those documents, can not be protected under the rule in Turquand's case.

6) Not applicable to officers:

This principle does not apply to the officers of the company. It is not the duty of the officers whether the regulations in the Articles have been observed.

Differences between Memorandum of Association and Articles of Association:

1) Compulsory:

The preparation and filing of Memorandum is compulsory whereas in case of Articles, if the company does not prepare the Articles. Table A of the Companies Act will apply.

2) Change:

Memorandum of Association can not be changed easily. But Articles of Association can be changed easily by passing a special resolution at the shareholder's meeting.

3) Contents:

Memorandum of Association contains the objectives and powers of the company whereas Articles of Association contains the rules and byelaws of the company for its internal administration.

4) Relationship:

Memorandum of Association establishes relationship of the company with outside world. Articles of Association establishes relationship between the company and the shareholders.

5) Importance:

Memorandum of Association is the basic and important documents of the company whereas Articles of Association is the subsidiary document of the company.

6) **Dependent:**

Memorandum of Association is dependent upon the Company Law whereas Articles of Association is dependent upon the Memorandum of Association .

7) **Necessity:**

The Memorandum of Association is a must for getting a company registered . But an Articles of Association is not a must for all companies.

8) **Limitation:**

A company can not do anything beyond the scope of the Memorandum.

Anything done beyond the scope of the Articles will not be void and it can be ratified by passing a special resolution.

9) **Supermacy:**

Memorandum of Association is not governed by the Articles of Association. It is supreme whereas the Articles of Association is governed by the Memorandum of Association.

10) **Nature :**

Memorandum of Association is the Principal document of the company whereas Articles of Association is the secondary document of the company.

11) **Uitravires:**

An Act Ultravires to Memorandum cannot be ratified by the company whereas an act Ultravires to Articles of Association can be ratified by shareholders.

Relationship between Memorandum of Association and Articles of Association:

Similarities:

1) The Articles of Association are subsidiary to the Memorandum of Association. The object of memorandum is to state the purpose for which the company has been established while the Articles provide the manner in which the business of the company is to be carried and its proceedings disposed of.

2) The Memorandum of Association must be read in conjunction with the Articles. The Articles may be supplement the Memorandum

but can not extend its scope.

3) The terms of memorandum can not be modified by the Articles of Association.

Legal effects of Memorandum and Articles:

The Articles bind the company to its members, the members to the company, the members to each other, but they do not bind the company to outsiders. Legal effects of Memorandum and Articles are discussed under the following heads:

1) Members bound to the Company
2) Company bound to the Members
3) Not binding on the company in relation to outsiders
4) Between members inter see.

1) Members bound to the Company:

Articles constitute a contract between the company and members and it is presumed that each member has signed the Articles of the company. So these documents bind the members to the company.

Accordingly, the company is entitled to sue its members for enforcement of the articles and to restrain breach of them.

2) Company bound to the Members:

Articles of Association of the Company bind the Company and the members. Any member can sue the Company to prevent any breach of the articles which would affect his rights as a member. He is entitled to an injunction to prevent the breach.

3) Not binding on the Company in relation to outsider:

The articles do not constitute a contract between the company and outsiders. Here outsiders refer to promoters, directors etc. For example where the articles provided for remuneration to be paid to promoters, it does not give any right of action to promoters against the company.

4) Between Members inter se:

Although there is no express agreement between the members of the company yet articles regulate their right inter se. The members cannot sue each other. That is, one member can sue other members through the medium of the company.

Prospectus

After getting the Certificate of incorporation, the promoters of the company will take steps to raise the necessary capital for the company. A public company may invite the public to subscribe to the capital of the company and for this purpose a prospectus has to be issued. But it is not essential for a public company to issue a prospectus. If the promoters are confident of raising the required capital privately from their relatives and friends, then they need not issue a prospectus. In such a situation, a statement in lieu of prospectus must be filed with the Registrar of Companies.

Prospectus is a document which invites deposits from the public or invites offers from the public for purchasing shares or debentures of a company. It is an invitation to the public for contribution to capital. Only public companies can issue prospectus. A Prospectus constitutes the basis of the contract between the company and the shareholders. A Prospectus brings to the notice of the public that a new company has been formed. A prospectus outlines in detail the terms and conditions on which the shares or debentures have been issued to the public. A company must get Minimum subscription within specified time from the date of issue for prospectus.

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

A Prospectus must be in writing. An oral invitation to subscribe for shares in, or debentures of, a company or deposit is not prospectus.

Definition:

Sec. 2 (70) defines a prospectus as "any document described or issued as a prospectus and includes any notice, circular, advertisement or other documents inviting deposits from the public or nviting offers from the public for the subscription or purchase of any hares in or debentures of, a body corporate". In simple words, a rospectus may be defined as an invitation to the public to subscribe to a mpany's shares or debentures. The word 'Prospectus' means a document ich invites deposits from the public or invites offers from the public to y shares or debentures of the company.

Objects of Prospectus:

The objects of a prospectus are as follows:

i) To bring to the notice of the public that a new company has been formed.

ii) To prevent an authentic record of the terms and allotment on which the public have been invited to buy its shares or debentures.

iii) To secure that the directors of the company accept responsibility of the statement in the prospectus.

To register the prospectus, a company must sent the following documents along with a copy of the prospectus.

i) Consent of the expert.

ii) Copy of material contracts.

iii) Copy of every contract relating to the appointment and remuneration of managerial personnel.

iv) A written consent of the persons named in the prospectus as auditor, legal advisor, attorney, solicitor, banker or broker of the company.

v) If a prospectus is issued in contravention of these provisions, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is a party to the issue of the prospectus shall be punishable with imprisonment for a term which may extend to three years or with a fine which shall not be less than fifty thousand rupees but which may extend to three lakhs rupees or with both.

Legal provisions relating to prospectus:

i) A prospectus can be issued after incorporation of the company.

ii) A prospectus must be dated.

iii) A prospectus must be Registered with the Registrar of the companies. If any default is made in issuing the prospectus within 90 days, the company and every officer responsible thereof shall be fined upto Rs.5,000.

iv) A prospectus must contain the matters which are stated in Schedule II.

v) A copy of prospectus must be accompanied with the consent of expert

vi) A prospectus must be issued within 90 days from the date of which a copy is filed with the Registrar of companies..

Features of Prospectus:

1) Issued after incorporation.
2) It must be dated.
3) It must be registered.
4) Consent of expert to be obtained.
5) Terms of contract can not be varied.
6) Every application form to be accompanied with a copy of prospectus.
7) Consequences of applying for shares in ficititious names to be prominently displayed.
8) Contents of the prospectus must be prepared as per Schedule II.

Contents of a prospectus:

A prospectus contains the following information:

i) Name and full address of the company.
ii) Full particulars about the signatories to the Memorandum of Association and the number of shares taken up by them.
iii) Main objects of the company.
iv) Assets of the company and share of shareholders in the profits of the company.
v) Names, addresses and occupations of members of the Board of Directors or Proposed Directors.
vi) Names, addresses, profession and remuneration of directors and Managers.
vii) Minimum subscription fixed by the company.
viii) Amount to be payable on application and allotment .
ix) The time of opening the subscription list.
x) Name and addresses of underwriters.
xi) Amount of preliminary expenses.
xii) Amount payable to promoters.
xiii) Names and addresses of auditors.
xiv) Particulars regarding voting rights at the meeting of the company.

xv) Details of premium or discount allowed on shares.

xvi) Method and restriction on the payment of dividend.

xvii) Other useful information regarding issue of shares and debentures.

Importance / purposes of the prospectus:

i) Prospectus contains the summary of the company's past history, if any, its present status and its future prospects.

ii) It informs the public about the company.

iii) It stimulates people to make an investment in the company.

iv) It shows business policies and programmes of the company.

v) It is an authentic record of terms and conditions on which the shares and debentures have been issued.

Shelf Prospectus:

As per Sec. 60 A of The Companies Act (Amendment) Act, 2000, self prospectus means a prospectus issued by any financial institution or bank for one or more issues of securities or class of securities specified in that prospectus.

Registration of Prospectus (Sec. 26):

A prospectus must be registered with the Registrar on behalf of a company. The registration must be made on or before the date of publication thereof. The copy of the prospectus must be accompanied with the following documents:

i) Consent of expert to the issue.

ii) A copy of every contract, appointing or fixing remuneration of a managing director or manager.

iii) A written statement by the persons making any report relating to the figures of any profits or losses or assets and liabilities of the company.

iv) The consent in writing of the persons such as the auditor, legal adviser, solicitor, banker or broker of the company.

Objects of registration of Prospectus:

Following are the objects of registration of prospectus.

i) to keep an authenticated record of the terms and condition of the issue of shares or debentures and

ii) to define the responsibility of the persons issuing the prospectus for statements made by them in the prospectus.

Statement in lieu of Prospectus:

All public companies either issue a prospectus or a statement in lieu of prospectus. The concept of statement in lieu of prospectus has been withdrawn in the Companies Act 2013. **(Provisions of the Companies Act 1956 - given)**

Where a public company does not invite public for its shares or where a public company does not issue prospectus for public subscription, then it will file a statement in lieu of prospectus with the Registrar of Companies. The statement of prospectus contains the information required to be disclosed by Schedule III of the Act. The statement in lieu of prospectus must be filed atleast 3 days before the allotment of shares. it should be signed by all directors with date.

Companies Act provides that a company having a share capital which does not issue a prospectus is required to deliver to the Registrar a statement in lieu of prospectus atleast three days before the allotment of shares. It shall be signed by each director or proposed director of the company or by his agent authorised in writing.

Circumstances:

A Statement in lieu of prospectus is used in the following cases:

i) When a private company is converted into public company.

ii) When the company is able raise capital without issuing prospectus to the public.

iii) When the company has not issued prospectus due to any reason.

iv) When the company has decided that it will not issue shares or debentures to public.

Legal provisions:

Following are the legal provisions relating to statement in lieu of prospectus.

i) It must be filed atleast 3 days before the allotment of share.

ii) It must be signed by every director.

iii) It should contain information like the prospectus.

iv) It should be prepared as per schedule III of the act.

v) If a public company allot share without filing statement in lieu of prospectus, then the company and every director responsible for it shall be fined upto Rs. 10,000.

vi) In case of misstatement in the prospectus, then every person who authorised the statement is punishable with imprisonment upto two years or with fine upto Rs. 50,000 or with both.

The concept of statement in lieu of prospectus is withdrawn under the companies Act, 2013.

Misstatement in the Prospectus:

A prospectus constitutes the basis of the contract between the company and the shareholders. A prospectus is an invitation to the public to subscribe to the shares or debentures of a company. As such a prospectus must give a full, accurate and a fair picture of the state of affairs and prospectus of the company and a heavy responsibility rests on those who issue it. The true nature of the company's venture should be disclosed.

It means that a prospectus should state everything correctly and accurately but at the same time it should not omit any relevant facts. A prospectus must tell the truth. it must not conceal any facts which ought to be disclosed. ***This is known as the golden rule*** as to the framing of the prospectus and was laid down ***Kindersley V.C. in New Brunswick etc. Co. Vs. Muggeridge.***

A prospectus containing false, misleading, ambiguous or fraudulent statement of material facts or suppressing material facts is termed as "misleading prospectus" or miss statement in prospectus".

The term 'untrue statement' or 'misstatement' includes not only false statements but also statement which produce a wrong impression of actual facts.

Consequences of misleading prospectus:

Misleading prospectus is one which contains false misleading information. The persons responsible for preparing false and misleading prospectus will face the following liability.

Liability for misstatement in prospectus

- **Civil liability**
  - **Against the Company**
  - **Against the directors**
- **Criminal liability**

1) Civil liability (Section 35):

In case, misleading prospectus amounts to misrepresentation, the aggrieved party can repudiate the contract and claim refund of his money. Damages can also be claimed from the persons found guilty. Civil liability may be

1) against the company
2) against the directors, promoters and experts.

emedies against the company:

The aggrieved party has the following remedies against the ompany.

i) Rescission of contract :

The person who purchased shares on the basis of the prospectus ntaining misstatements can rescind the contract. Where a prospectus ntains misleading statements whether innocent or fraudulent, the contract purchase shares becomes voidable at the option of the aggrieved party.

The right to rescind the contract is available if he proves the owing:

i) Prospectus was issued on behalf of the company.
ii) Prospectus must be untrue.
iii) Statement must be a material misrepresentation.
iv) The misrepresentation must have induced the shareholder to e the shares and he must have relied on the statement in applying for res.

v) Misrepresentation must be of facts and not of law.

vi) That he has taken action promptly to rescind the contract.

Right to rescission of contract will be lost under the following circumstances :

i) When a shareholder fails to take any action within a reasonable time after he comes to know of the untrue statement.

ii) A shareholder will not be entitled to exercise his right of rescission after the company goes into liquidation.

iii) When the shareholder expressly or impliedly ratifies or adopts the contract even after he comes to know of the untrue statement.

ii) Damages for fraud :

After rescinding the shares the affected party can claim damages against the company. If a material fact has been omitted from a prospectus the person who authorised the issue of prospectus is punishable with imprisonment which may extend to 2 years, or with fine which may extend to Rs.5,000 or with both.

In cases where misstatement in the prospectus amounts to fraud, injured party is also entitled to sue the company for damages provided he has rescinded the contract in time. This remedy is available even after the company has gone into liquidation. He can not both retain the shares and get damages against the Company.

The right to claim damages may be exercised either against the company or against the directors or promoters or others who authorised to issue of a prospectus.

If the action is directed against the directors or promoters, the subscriber need not rescind the contract.

If the action is directed against the company, the shareholder must rescind the contract. He cannot sue the company for damages while he remains a shareholder.

2) Remedies against the Directors, Promoters and Experts:

Any person who has purchased shares or debentures on the faith of the prospectus containing the untrue statement may sue:

i) Every director of the company at the time of issue of the prospectus.

ii) Every person whose name appeared in the prospectus as a proposed director.

iii) Every promoter
iv) Every person who authorised the issue of the prospectus
v) An expert referred to in sub section (5) of section26.

They may incur both civil and criminal liability on account of failure to disclose all material facts, or their wilful concealment or misrepresentation.

Defences available to directors, etc:

No person is liable for misrepresentation under section 36, if he proves that

i) he withdrew his consent before the issue of prospectus and that it was issued without his authority or

ii) the prospectus was issued without his knowledge or consent,

iii) after the issue of prospectus and before allotment, he withdrew his consent to the prospectus on becoming aware of any untrue statement in it, and gave reasonable public notice of the withdrawal his reasons for doing so, or

iv) he had reasonable ground to believe and did upto the time of the allotment of shares and debentures, as the case may be, believe that the statement was true, or

v) the statement was a correct and fair representation of the statement made by an expert and he had reasonable ground to believe that the person making the statement was competent to make it.

vi) if the statement is a copy of or extract from an official document or is made by an official person, it was a correct and fair copy of the document or a fair representation of the statement.

Defences available to an expert:

An expert may also be held liable under section 62 in respect of an untrue statement if any in the prospectus. However, such an expert shall not be liable if he proves that

i) having consented to the issue of the prospectus, he withdrew his consent in writing before delivery of a copy of the prospectus for registration (or)

ii) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he on becoming aware of untrue statements withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reasons therefor; or

iii) that, he was competent to make the statement and that he had reasonable ground to believe and did up to the time of allotment of shares or debentures, believe, that the statement was true.

However, he will not be liable if he can prove that :

i) the statement was immaterial or

ii) he had reasonable ground to believe and did believe upto the time of the issue of prospectus that the statement was true.

Experts are not liable for untrue statement in the prospectus unless their own statement is incorrect.

2) Criminal liability (section 34):

Where a prospectus contains any untrue statement every person who authorised the issue of the prospectus is punishable with imprisonment for a term which may extend to 2 years or with fine which may extend to Rs.5,000 or with both.

Every person who authorises the issue of such prospectus shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.

Shelf Prospectus : (Section 31)

The Companies Act, 2000 has introduced the new concept of 'Shelf prospectus by adding section 60A. Shelf Prospectus means a prospectus issued by financial institution or bank for one or more issue of securities or class of securities specified in that prospectus. The validity of such prospectus shall not exceed one year from the date of opening of the first offer of securities. A shelf prospectus with the Registrar at the stage of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus commencing from the date of opening of first offer.

COMPANY ADMINISTRATION

A company is an artificial person created by law. It does not have any physical existence. It exists only in the eyes of the law. So it can not act in its own position. It can act through some human agency. The success of any company depends upon its proper management and administration.

Shareholders:

A company is managed by Board of Directors. Board of Directors are the elected representatives of shareholders. Shareholders are the real owners of a company. They bear the highest risk. Shareholders have the right to share profits of the company. They have limited liability. They are entitled to receive dividend, bonus shares and right shares. They have voting rights. Shareholders have the right to control the affairs of the company.

At the time of winding up of the company, equity shareholders can share the surplus money if any after distribution of money to all liabilities.

But they can not manage the business effectively due to the following reasons.

i) The number of shareholders in a company is very large and therefore it is not possible for all the shareholders to participate in the management of the company.

ii) Shareholders are widely scattered. So, they can not come together to formulate the policies of the company.

iii) The shareholders may transfer their ownership of the company freely.

iv) All shareholders can not be expected to manage the company effectively and efficiently.

v) Business secrets can not be maintained as the number of shareholders are large in numbers.

Therefore, shareholders decided to entrust the management of the company to a small body known as Board of directors. The persons through whom the company acts and by whom the business of the company is conducted are known as directors. Only individuals can be appointed as directors. Natural persons can be appointed as directors. The persons who are incharge of the management of affairs of a company are called as directors. The directors of a company are collectively known as the **Board of Directors.** As per the Companies Act, the Board of Directors of a company shall be entitled to exercise all such powers and to do all such acts and things as the company is authorised to exercise and do. Directors are the brains of a company.

Directors - Meaning:

Directors are the persons elected by the shareholders to direct, conduct, manage or supervise the affairs of the company.

The persons who are incharge of the management of the affairs of a company are called as directors.

Director means a person who performs the duties of a director may be called as a director irrespective of the name by which he is called. A director is a person who is responsible for direction, control and management of the affairs of a company.

As per section 2(34) of the Companies Act 2013, "director means a director appointed to the Board of a company". A director

i) must be an individual

ii) must have qualification shares

iii) must be a person of sound mind.

iv) must not have any disqualifications.

v) must obtain Director Identification Number (DIN)

Definition:

Sec. 2(13) defines a director as any person occupying the position of director by whatever name called.

According to sec. 2(30) "A director is the officer of the company".

According to Sec. 303 of the Companies Act, 1956, any person, in accordance with whose directions or instructions, the Board of Directors of the company is accustomed to act, shall be deemed to be director of the company.

A director may be defined as a person having control over the direction, conduct, management, or superintendence of the affairs of a company.

Directors are the mainspring of a company. They frame general policy of the company, direct its affairs, appoint the company's ensure that they carry out their duties and advise the shareholders regarding distribution of profits.

Board of Directors - Meaning :

The directors of a company collectively are referred as the Board of Directors or Board. Sec 149

Eligibility to become a Director :

i) Only an individual can be appointed as a director [Sec. 149]. That is, no body corporate or association or firm can be appointed as a director of the company.

ii) It is obligatory for companies to ensure that directors have been allotted Director Identification Number (DIN) as required under Section 154 of the Act. The fresh appointment of any individual as director can not be made unless such an individual has been allotted DIN. Similarly, it requires that companies can not reappoint its director unless he has been allotted DIN.

iii) He must have qualification shares.

iv) He must be a person of sound mind.

v) He must not have any disqualifications.

Qualification of Directors:

The Companies Act imposes no share Qualification on the directors. But the Articles prescribe the qualification shares as per sec. 270 of the companies Act, 1956. Section 270 provides that

i) It must be disclosed in the prospectus.

ii) Each director must take his qualification shares within 2 months after his appointment.

iii) The nominal value of the Qualification shares must not exceed Rs. 5,000 or the nominal value of one share where it exceeds Rs. 5,000.

iv) Share warrants will not be included for this purpose.

Disqualifications of Directors:

As per Section 164 of the Companies Act, 2013, the following persons are not eligible to become the directors of a company.

i) A person of unsound mind

ii) An undischarged insolvent

iii) A person who has applied to be adjudicated as an insolvent and his application is pending.

iv) A person who has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence.

v) A person who has failed to pay calls for more than 6 months from the date fixed for the payment.

vi) A person who has not been allotted Director Identification Number under section 154.

vii) A person who is disqualified for appointment as director by an order of the Tribunal under sec. 203 on the ground of fraud or misfeasance in relation to the company.

viii) A person who is already a director of a public company which

a) has not filed the annual accounts for any continuous period of three financial years commencing on and after the first day of April 1999. (or)

b) has failed to repay its deposit or interest thereon due date, redeem its debentures on the date or pay dividend and such failure continues for one year or more.

ix) A private company may by its article provide for any disqualifications for appointment as director in addition to those specified under section 164 (1) and (2).

Number of Directorships (Section 165):

Section 165 of the Companies Act, 2013 prescribed the limits.

1) An individual can act as a director to a maximum of **20** companies at the same time including alternate director. The maximum number of **public companies** in which a person can be appointed as a director shall not exceed **ten**.

2) The members of the company may specify by special resolution any lesser number of companies in which a director of the company may act as directors.

[Section 149(4)].

vi) Every company shall have atleast one director who has stayed in India for a total period of not less than 182 days in the previous calendar year.

vi) Every public limited company shall have at least one woman director.

The company and independent directors shall abide by the provisions specified in Schedule IV of the Companies Act [Section 149(8)].

An independent director shall hold office for a term up to five consecutive years on the Board of Directors. He is eligible for reappoinment on passing of a special resolution at the meeting of the company. Only for two consecutive terms, the independent director can be appointed.

The appointment of independent director shall be approved by the company in general meeting [Section 152(2)].

Appointment of Directors :

Legal provisions relating to appointment of directors:

i) The person who is to be appointed as a director must have the Director Identification Number [Section 154].

ii) Every listed public company shall have atleast **one- third** of the total number of directors as **Independent directors.**

iii) Every company shall have atleast one director who has stayed in India for a total period of not less than 182 days in the previous calendar year.

iv) Every public limited company shall have at least one woman director.

v) A listed company may have one director elected by small shareholders.

vi) A person who is appointed as a director, has to give his consent to the Registrar of Companies within 30 days of his appointment [Section 152(5)].

Directors may be appointed in any one of the following ways:

1) First Directors (Sec.152):

If the Articles of Association permits, the first directors of a company are appointed by the promoters and their names are mentioned in the Articles. If the articles are not registered or if the names of the directors are not mentioned in the Articles, the number and names of the directors are determined in writing by the subscribers of the memorandum or a majority of them. If there is no provision in this respect, the subscriber of the memorandum who are individuals become directors of the company. They hold office until the directors are duly appointed at the first annual general meeting.

2) Subsequent directors - Appointment by company:

Sec. 152 states the appointment of subsequent directors. The shareholders are entitled to elect the subsequent directors at their meeting. In the case of a public company or a private company which is deemed to be a public company, two-third's of the directors must retire by rotation unless the articles provide for that [Section 152(6)]. This means that out of the total number of directors only one third can hold permanent directorships. However, the Articles may provide for the retirement of all directors at every annual general meeting. In the case of a private company, all directors can be permanent if the articles so provide.

At every subsequent annual general meeting, out of the total, two-thirds directors are liable to retire. Directors who retire by rotation at every annual general meeting shall be those who have been serving in the company for a long duration than others. At the annual general meeting that director retires by rotation, and the company may fill the vacancy by appointing the retiring director or some other person in his place. The retiring directors shall be eligible for reelection.

Reappointment:

These vacancies must be filled up at the same meeting. If not th meeting stands adjourned till the same day in the next week. At th adjourned meeting also, if the vacancy is not filled up, the retiring directo are deemed to have been reappointed at the adjourned meeting unless.

a) it is resolved not to fill the vacancy or

b) a resolution for his re-election is lost or

c) he has expressed in writing his unwillingness to continue or

d) he has incurred a disqualification

e) Section 162 is applicable to the case.

Position of Directors or Legal status of a Directors :

The Companies Act does not define the position of directors. Section 2 (13) defines a director as any person occupying the position of a director, by whatever name called. There has been considerable controversy regarding the exact legal position of directors. Directors have been described as trustees of the company as well as agents of the company by some, while still others call them managing partner's of a going concern. In the case Great Eastern Railway Vs Turner, it was held that the directors are mere trustees or agents of the company - trustees of the company's money and property ; agents in the transaction which they enter into on behalf of the company.

Bowen L.J. observed, " Directors are described sometimes as agents, sometimes as trustees and sometimes as managing partners. But each of these expressions is used not as exhaustive of their power and responsibilities, but as indicating useful point of view from which they may for the moment and for particulars purpose be considered".

Therefore, it is very difficult to pinpoint the legal position of the directors. They are called by various names such as agents, trustees, managing partners, etc.

1) Directors as Agents:

A company is an artificial person and it cannot act itself. It must act through agents, known as directors. The principle of Law of Agency will be applied here. In this case, the directors are the agents of the company. The relationship between a company and its directors is that of a principal and its agent. They run the business on behalf of the shareholders and may be termed as the agent of the company.

They directors are the agents of the company when they make contract on behalf of the company. The directors are not personally liable if they act within their powers. They should not make any contracts in their personal name. If they exceed the powers delegated to them they will be personally liable.

To bind the company, the directors must act in the name of the company and within the scope of their authority. If the directors enter into a contract which is beyond their powers but within the powers of the company, the company may ratify it.

Where the directors enter into a contract which is ultravires the company, the company cannot ratify it and neither the company nor the directors are liable on it. However, the directors may be held liable for breach of implied warranty of authority.

The directors can not be considered as agents of individual shareholders. It is not correct to say that directors are not agents of the company because agents are not elected but appointed. Directors render services without getting any remuneration. So directors are not agents in the true sense. Agents have no independent powers while the directors have independent powers on certain matters. An agent is one who acts according to the instructions of his principal but the directors are never so instructed. They frame policies and make decision.

2) Directors as Trustees:

The directors have been described as trustees of the company. This is because like trustees, directors in the performance of their duties stand in a fiduciary position in relation to the company. The courts expect from directors the same degree of integrity and standard of conduct as from a trustee.

Directors have been considered and treated as trustees.

1) of a company's money and property and

2) of the powers entrusted to them.

Directors are trustees of the company's money and property and they are bound to deal with capital under their control as a trust. They must act in good faith and exercise their powers in the interest of the company. They have to refund to the company any of its money or property which they have misused.

Directors are trustees of the powers entrusted to them in the sense that they must exercise their powers honestly and in the interest of the company and the shareholders and not in their own interest. Examples of such powers:

i) Power to make a call

ii) Power of receiving payment of call in advance

iii) The power of forfeiting shares

iv) The power of approving transfer of shares

v) The power of employing the funds of the company.

It is to be noted that directors occupy a fiduciary relationship only in relation to the company and not in relation to an individual shareholder. Directors are not trustees for any particular shareholder.

The directors are not trustees. A Trustee is the legal owner of trust property and contract in respect of it in his own name whereas a director never enters into a contract for himself but for his principal. They are not trustees of individual shareholders. Directors are not trustees in the legal sense of the term.

3) Directors as Employees:

The directors may be considered as the employees of the company because they work under a special contract of service with the company and are paid remuneration accordingly.

Generally directors are not the employees of the company because they act according to the provisions of the Companies Act and no shareholder can instruct them to act according to his will and pleasure. Moreover, directors are not entitled to the privileges and benefits granted to employees of a company.

4) Directors as Officers:

Directors are the officers of the company under the Companies Act. Under Section 2 (59) of the Companies Act, the directors are the officers of the company. They are liable to certain penalties if the provisions of the Companies Act are not strictly compiled with.

5) Directors as Managing Partners:

Directors are the elected representative of the shareholders. They have been considered as managing partners because

i) They are entrusted with management and control of the affairs of the company.

ii) They are usually important shareholders of the company.

They do all the proprietorial functions like allotting shares, making calls, forfeiting shares etc.

From the above discussion, it is clear that directors are neither the agents nor the trustees, nor managing partners nor officers nor employees of the company but they stand in a fiduciary position towards the company for the powers and company's property under their control. Directors are really commercial men managing a trading concern for the benefit of themselves and of all the shareholders in it.

REMOVAL OF DIRECTORS

Removal of directors is stated in Section 169 of the Companies Act, 2013:

Removal by shareholders :

Section 169 provides that a company may, by ordinary resolution, remove a director from his office before the expiry of his period of office. All directors can be removed under Section 169 whether they are subject to retirement or not in a public company. However, shareholders can not remove the following directors.

i) A director appointed by Tribunal under Section 242.
ii) A director of a private Company holding office for life on 1 April 1952.
iii) A director representing special interest.
iv) A director elected by proportional representation under section

v) Directors appointed by financial institutions.

vi) Directors appointed by Board for Industrial and Financial Construction.

The removal of director needs a resolution requiring special notice. Hence, the proposer has to send a notice to the company not less than 14 days before the meeting. The company inturn, has to send the proposed resolution to the concerned director and the members.

A vacancy created by the removal of a director under this section may be filled by the appointment of another director in his place at the meeting at which he is removed.

A director so apppointed shall hold office till the date up to which his predecessor would have held office if he had not been removed.

Rights of director to make representation:

i) The director concerned may also make a representation and require the company to circulate it among the members.

ii) The company shall state the fact of a representation having been received in the notice of the resolution given to its members and also send a copy of the representation to every member of the company, unless it is very late for it to do so.

iii) If a copy of representation has not been sent, then the director may require that the representation to be read out at the meeting.

iv) The removed director may get compensation or damages for the termination of his appointment.

Filling up of vacancy:

i) A vacancy created by removal of a director may be filled at the same meeting provided special notice of such intention has been given earlier.

ii) If the vacancy is not filled at the same meeting, it may be filled by the Board as if it is a casual vacancy.

iii) The director who has been removed director shall not be reappointed in any case.

A director so appointed shall hold office till the date up to which his predecessor would have hold office if he had not been removed.

Vacation of office by directors (Section 167) :

The office of a director shall become vacant if,

1) i) he incurs any of the disqualification specified in section 16

ii) he absent himself from all the meetings of the board of direc held during a period of 12 months with or without seeking lea of absence of the Board.

iii) he is convicted by a court of any offence involving moral turpitude and sentenced in respect thereof to imprisonmen for atleast 6 months.

iv) he acts in contravention of the provisions of section 184.

v) he fails to disclose his interest in any contract or arrangeme in which he is directly or indirectly interested

vi) he becomes disqualified by an order of a court or the Tribun

2) Where all the directors of a company vacate their offices und any of the disqualifications stated as above, the Central Government shall appoint the required number of directors wh shall hold office till the directors are appointed by the company the general meeting.

3) A private company may, by its Articles of Association , provide any other ground for the vacation of the office of a director in addition to the disqualifications stated in (1).

4) If a person functions as a director when he knows that the offi of director held by him has become vacant on account of the above disqualification, he shall be punishable with imprisonme for a term which may extend to one year or with fine which sh not be less than one lakh rupees but which may extend to five lakh rupees or with both.

A private company may, by its articles may specify any oth ground for the vacation of the office of a director in addition the above situations.

Powers, Duties and Liabilities of Directors:

Powers of Directors:

The directors' powers are normally sets out in the Articles. Once the Articles set out their powers, only they may exercise them. The shareholders of the company can not interfere and control the way in which the directors choose to act, provided they act within the scope of the authority conferred upon them. They may exercise their powers to the interest of the company. If the shareholders are not satisfied the powers of directors, they can alter the Articles but they can not themselves unlawfully seize and possess the powers.

Powers of directors may be studied under the following heads:

1) General Powers
2) Specific Powers
3) Powers exercisable with the consent of the general meeting.
4) Powers exercisable with the consent of the Central Government.

1) General Powers of Directors:

The Board of Directors may exercise all the powers and they may do all acts and things subject to the provisions of Act and Articles.

The general powers of the Board are specified in the Act and lays down that the board of directors of a company shall be entitled to exercise all such powers and undertake all such acts and things as the company is authorised to exercise and do. If they act within the powers delegated to them, then the shareholders can not interfere in the powers of directors.

However, the directors shall not exercise any power or do any acts or things which directed or required to be exercised or done by the company in general meeting.

2) **Specific Powers:**

1) As per Sec. 161 of the Companies Act, 1956 the Board has the power to fill a casual vacancy of directors.

2) As per Section 292, of the Act the Board has the powers which are to be exercised only at Board meeting by means of resolution.

1) Powers to be exercised only at meeting (Section 179):

The Board may exercise the following powers by means of resolution passed at the meeting of the Board.

i) the power to make calls on shareholders in respect of money unpaid on their shares.

ii) the power to issue debentures.

iii) the power to borrow money otherwise than on debentures.

iv) the power to invest the funds of the company.

v) the power to make loan.

In addition to the above, the Board has the following powers to be exercised at Board meeting:

i) Power to fill up casual vacancies in the office of the directors.

ii) Power to make donation to political parties.

iii) Power to make contributions to the National Defence fund or any other fund approved by the Central Government for the purpose of National Defence Fund.

iv) Disclosure of interest by a director

v) Power to receive notice of disclosure of director's shareholdings.

vi) Power to receive notice of disclosure of director's interest.

vii) Power to appoint or employ a person as Managing Director.

viii) Power to make declaration of solvency where it is proposed to windup the company voluntarily.

2) Powers to be exercised under Articles of Association:

Section 179 confers certain powers which can be exercised by Board of Directors subject to the conditions given in Articles. These powers can be exercised by the Board by means of resolutions passed at the Board meeting.

1) The power to allot shares
2) The power to make calls on shares
3) The power to forfeit shares
4) The power to approve the transfer of shares
5) The power to transmission of shares
6) The power to convene general meeting
7) The power to capitalise profits
8) The power to create reserve out of profits.

3) Restrictions on powers (or) powers exercisable with the consent of the general meeting (Section 180):

The Board of directors must not exercise the following powers without the consent of the company in general meeting.

i) To sell, lease or otherwise dispose of the whole, or substantially the whole, of the undertaking of the company.

ii) To remit or give time for repayment of any debt due to the company by a director.

iii) To invest, otherwise than in trust securities, the amount of compensation received by the company in respect of the compulsory acquisition of any undertaking or property of the company.

iv) To borrow moneys where the moneys to be borrowed together with the moneys already borrowed by the company will exceed the aggregate of the paid up capital of the company and its free reserves.

v) To contribute to charitable and other funds not directly relating to the business of the company or the welfare of its employees, amounts exceeding in any financial year Rs. 50,000 or 5% of the average net profits of the three preceding financial years, whichever is greater.

4) Powers exercisable with the consent of Central Government:

i) An amendment to any provision regarding appointment or reappointment of a managing or whole time director or non - rotational director of a public company.

ii) The appointment or reappointment of a managing or Whole time or increase in their remuneration.

iii) The making of loans to a director or providing guarantee to a loan taken by him or advanced by him.

iv) The making of loans or investments in excess of 30% of ... subscribed capital and free Reserves.

Other powers:

i) To fill up casual vacancies, to appoint alternate directors and to appoint additional directors subject to the provisions of Articles.

ii) To accord sanction to such contracts in which any directors or their relatives etc are interested.

iii) To recommend the rate of dividend to be declared subject to the approval by the shareholders.

iv) To appoint the first auditors of the company and to fill any casual vacancy in the office of the auditors.

The consent of all the directors must be obtained to appoint Managing Director or Manager and to invest in any shares and debentures of any other body corporate under sec. 372.

Duties:

i) A Board has to supervise, control and direct the managing director and manager.

ii) Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company.

iii) A director of a company shall act for the benefit of the company, its shareholders, its employees and the community.

v) A director of a company shall not assign his office and any assignment so made shall be void.

vi) Every director should pay the application and allotment money before the commencement of business.

vii) Every director must obtain the qualification shares, if so required.

viii) Every director must disclose his share holding in the company.

Generally, the duties of directors are divided into two. They are

1) statutory duties and 2) general duties.

MANAGING DIRECTOR

A Managing Director means a director who is entrusted with substantial powers of management which would not otherwise be exercisable by him.

Sec. 2(54) defines a managing director as "a director who, by virtue of any agreement with the company or of a resolution passed by the company in general meeting or by its board of directors or by its Memorandum or Articles of association, is entrusted with substantial powers of management which would not otherwise be exercisable by him, and includes a director occupying the position of a managing director by whatever name called". He occupies dual capacity.

The substantial power of management may be conferred upon a managing director by an agreement, memorandum, articles or resolutions of general meeting or the board of directors.

Substantial powers are as follows:

i) to affix the common seal of the company on any document or

ii) to draw or to endorse any cheque or any negotiable instrument or

iii) to sign a share certificate

iv) to look after the registration of the transfer of shares

A managing director occupies dual role (As a director and as a manager).
As a director, he can take part in the Board Meetings.
As a manager, he is responsible for routine management activities of the company.

Features:

Following are the features of a Managing Director:

i) Only a director can be appointed as a Managing Director. Holding of office as a director in the company is a pre requisite for the appointment of a person as managing director therein.

ii) A managing director can be appointed under
   a) an agreement between the company and the director.
   b) a resolution passed by the company in general meeting.
   c) a resolution passed by the Board of Directors.
   d) the memorandum of the company.
   e) the Articles of Association of the company.

iii) A managing director is entrusted with the substantial powers of Management.

iv) A director performing the functions of Managing Director is called Managing Director.

Legal Provisions (Sec.196):

i) No company shall appoint or employ at the same time a managing director and a manager.

ii) The period of a managing director or a manager or a whole time director should not exceed the term of five years at a time.

iii) The person so appointed must be between the age group of twenty one to seventy years.

iv) He should not be disqualified in any circumstances.

Number of managing directorship:

The maximum number of managing directorship of an individual is one. The object of this provision is that efficiency of a person who is managing a company should not be affected by his being in management of one company. However in the following circumstances, a person can be appointed as a managing director in more than one company.

i) A person can be a managing director of any number of private companies but he can not be a managing director of one public and one private company.

ii) A person can be appointed as managing director of two companies if his appointment is made or approved by a resolution passed at the meeting of Board of directors.

iii) A managing director may be appointed in more than two companies if permitted by an order of the Central Government. Statutory provisions relating to the appointment of whole time director are the same as that of provisions relating to appointment of managing director.

i) As per section 196, only individual can be appointed as a manager. That is, no firm or body corporate or association can be appointed as manager of a company.

ii) A person who is an undischarged insolvent or has at any time within the preceding five years been adjusted an insolvent cannot be appointed as manager.

iii) A person who is convicted by an Indian Court for an offence involving moral turpitude and sentenced for a period of more than six months.

Compulsory appointment of Managing Director or Whole Time Director:

Section 269, as amended by the Companies (Amendment) Act, 1988, provides that every public company having a paid up share capital of Rs. 5 crores or more shall have managing or wholetime director or manager.

Legal provisions relating to appointment of Whole Time Director:

1) When the appointment is in accordance with the conditions specified in schedule XIII, it does not require the approval of the Central Government. But, a return of appointment must be made within 90 days from the date of appointment.

2) If the appointment does not comply with the conditions specified in schedule XIII, approval of Central Government become necessary and application seeking approval must be made within 90 days.

3) The Central Government will not give approval to the application if it is satisfied that

i) the managing director is in its opinion, not a fit and proper person to be appointed as such or such appointment is not in the public interest

(or)

ii)the terms and conditions of the appointment of managing or whole time director or manager are not fair and reasonable.

4) The Central Government may give approval for a period lesser than the period for which the appointment is proposed to be made.

5) If the appointment of Managing or whole time director or manager is not approved by the Central Government, then the person appointed shall vacate his office on the date on which the decision of the Central Government is communicated to the company.

If he fails to vacate his office, he shall be punishable with fine which may extend to Rs. 5,000 for every day during which he fails to vacate such office.

Disqualifications of Managing Director:

No person shall be appointed as a Managing Director who

i) is an undischarged insolvent or has at any time been adjudged insolvent,

ii) suspends or has at any time suspended payment to its creditors or makes or has at any time made a composition with them (or)

iii)is or has at any time been convicted by a court of an offence involving moral turpitude.

Term of office (Sec. 196):

A company can not appoint its managing director for a term not exceeding 5 years at a time. This term may be extended by maximum period of 5 years on each occasion. It states that no reappointment shall be made earlier than one year before the expiry of his term.

The restriction regarding the term of appointment does not apply in case of a whole time director. Section 196 does not apply to a private company which is not a subsidiary of a public company.

Number of Managing Directorships (Sec. 316):

The maximum number of managing directorship of an individual can not exceed two. The object of this provision is that efficiency of a person who is managing a company should not be affected by his being in management of more than two companies.

But the Central Government may permit a person to be managing director of more than two companies. It may give sanction if it is satisfied that such appointment is necessary for the proper working of the company and such company function as a single unit and have a common managing director.

Differences between a Managing Director and a Director: impt

Managing Director	**Director**
1. *Appointment:* He is appointed among themselves and appointed either under an agreement or resolution or under the provisions of M/A or A/A.	He is elected among the share-holders in general meeting or nominated by third parties or by Central Government.
2. *Period:* The maximum period is 5 years.	The maximum period is 3 years.
3. *Qualification:* He must be a director.	He must be an individual share-holder.
4. *Maximum no. of companies:* He may be appointed in 1 or 2 companies.	He may be appointed in 15 companies.
5. *Powers:* He enjoys the substantial powers of management plus powers of directors.	He enjoys the powers of directors only.
6. *Status:* He is the chief executive of the company plus a director.	He occupies the position of agent, Managing partner, trustees etc.
7. *Remuneration:* He is entitled to get 5% of Net profits for one such director and 10% of Net profit if there is	He is entitled to get 1% of Net profit if he is assisted by managing director or manager

during which the contravention continues.

SECRETARY

A company secretary is one of the principal officers of the compa The English Companies Act 1948 provides that every company must h a secretary and that a sole director must not also a secretary. The Ind Companies Act, however did not make it compulsory till April 2, 1975 f Company Secretary, it is left to the Board of directors of a compan arrange for the carrying out of the secretarial work.

The word Secretary is derived from a Latin word 'Secreta which means a confidential officer. In early days, it was used in conne with the persons employed by kings, rulers or dignitaries for pers correspondence connected with their positions. Now a days, the busi executives, ministers and other authorities also began to em secretaries. The basic idea behind keeping a secretary is that there sh be a person. who can assist these authorities in carrying out the deta their works so that all matters could be handled in confidence and utmost efficiency.

Meaning:

The Secretary is a person who writes for other persons. He v letters, statements, proceedings and minutes of the company. entrusted with a work of a confidential nature. He has to maintain se of the work he deals with.

Features of a Secretary:

Following are the features of a secretary

1) The Secretary is a person. The Secretary must be an individual. That is, No firm or body corporate can be appointed as a secretary.

2) The Secretary should be able to perform the works of confidential nature.

3) The Secretary works for another person or an organisation.

Company Secretary:

As per section 2(1) (c) of the Companies Secretaries Act, 1980 "Company Secretary" means a person who is a member of the Institute of Company Secretaries of India constituted under the Act".

Secretary means any person who is performing the functions of a secretary is known as Secretary.

As per Section 2(45) of the Companies Act 1988, Secretary means a company Secretary and includes any other individual possessing the prescribed Qualifications and appointed to perform the duties which may be performed by a Secretary under this Act and any other ministerial or administrative duties. The above definition reveals that

i) Only an individual may be appointed as a Company Secretary. No firm or body Corporate can be appointed as Company Secretary.

ii) The Company Secretary should have requisite Qualification to be prescribed by the Central Government.

iii) The duties of the Secretary are ministerial or administrative and not managerial ones.

As per section 383A, states that every company with a paid up share capital of *rupees two crores* or more is under an obligation to appoint a whole time secretary. Only an individual possessing the prescribed qualifications can be appointed as a secretary of a company. No individual can hold the office of secretary in more than one such company.

A director may be appointed as secretary in addition to his post as director but where the Board of directors of a company has only two members, neither of them can be appointed as secretary.

COMPANY AUDITOR

Company audit is conducted in accordance with the provisions of the Companies Act, 1956. Company audit is the only safeguard for the shareholders against the enterprise being carried on in a business in which money being misapplied or misappropriated. To conduct company audit, a company must appoint qualified auditor.

Qualifications of an auditor:

According to Sec. 226 of the Companies Act, the prescribed qualifications are:

1. A person shall not be qualified for appointment as auditor unless he is a Chartered Accountant within the meaning of Chartered Accountants Act 1949.
2. A person who holds a certificate under the Restricted Auditors Certificate (Part B States) Rules 1956 he is also qualified to act as an auditor of the company.

i)An auditor must possess adequate educational qualifications for the profession of accounting.

ii) He is independent of all influences, controls and personal interest of the company.

A Chartered Accountant means a person who is a member of the Institute of Chartered Accountants of India.

Disqualifications

According to Sec, 226 (3) the following persons are debarred from being appointed as auditors of a company.

i) a body corporate

ii) an officer or employee of the company

iii) a person who is a partner or who is in the employment of an office or an employee of the company.

iv) a person who is indebted to the company for an amount exceeding one thousand rupees or who has given a guarantee.

v) a person who is a director or member of a private company.

vi) a person who is a director or the holder of shares exceeding five percent of the nominal value of subscribed capital of any body corporate

vii). If he is disqualified for appointment under any of the above clauses

According to Sec. 226(4), a person shall not be qualified for appointment as auditor of a company if he is statutorily disqualified for appointment as auditor of any body corporate which is

i)a subsidiary of that company (or)

ii) the holding company of that company (or)

iii) a subsidiary of that company's holding company

iv) if he would be so disqualified if that body corporate were a company

ESSENTIALS OF A VALID MEETING

In common parlance the word meeting means an act of coming face to face coming in company or company together.

A meeting may be defined as a lawful association or assemble of two or more persons by previous notice for transacting some business. Such gathering of the members of companies is known as company meeting.

Requisites of a valid meeting:

Company meetings and meetings of Board of Directors must be properly convened and duly constituted.

A general meeting of shareholders is to be valid when it is properly convened and legally constituted. The provisions of the Companies Act and the rules of Articles of Association are to be complied with.

A- meeting is said to be valid if the meeting is properly convened and constituted. A meeting is said to be properly convened when proper notice of the meeting is issued by a proper authority to all persons entitled to receive the notice. A meeting is said to be duly constituted when there is proper person in the chair to preside over it, and a requisite quorum of persons, entitled to attend and vote at the meeting. is present. Any irregularity in the procedure followed for convening and conducting a meeting will invalidate the proceedings of that meeting. Following are the requisites of a valid meeting:

1) The meeting must be duly convened by a proper authority.
2) A proper notice must be served in the prescribed manner.
3) A quorum must be present
4) Proper person in the chair.
5) Proxy
6) Voting and Poll

1). Proper authority:

The first essential requisite of a valid meeting is that it should be convened by proper authority. A meeting must be called or convened by a proper authority. Otherwise, it will not be a valid meeting.

Meetings of shareholders:

A general meeting of the shareholders of a company may be convened by the following:

By Board of Directors:

The proper authority to convene a general meeting of a company is the Board of Directors. The proper authority to convene a Board meeting is the chairman of the Board of Directors. This authority is exercised through the medium of a secretary. The directors may call a meeting of the shareholders by passing a resolution at a meeting of the Board. The resolution to call a general meeting must be passed at a valid Board's meeting.

By directors on the requisition of shareholders:

On the requisition of shareholders, directors may convene the meeting of shareholders within 45 days from the date of such requisition The requisition must be deposited at the registered office of the company.

By the Requisitionists: [Section 100 (4)]

If the Board fails to conduct extraordinary general meeting within 45 days from the date of deposit of requisition, then the requisitionists themselves may call the meeting within 3 months from the date of deposit of requisition.

By the Tribunal:

The Tribunal has the power to convene extra ordinary general meeting of the company. The Tribunal may order a meeting of the company either of is own motion or on the application of any director of the company or any member entitled to vote at that meeting.

Meetings of Directors:

Like other company meetings, Board meetings must be properly convened and constituted and must comply with the provisions of the Companies Act and the Articles of a company. The chairman of the Board has the power to convene the Board meeting.

2) Notice of Meetings:

Notice is an advance information of the meeting so as to give the person receiving it an opportunity to prepare himself for it. A meeting must be convened by a proper notice issued by the proper authority. It means that the notice convening the meeting must be properly drafted according to the Act. A general meeting can be attended by all the members and hence they are all entitled to a notice of every such meeting.

General rules:

i) The nature of meeting

i) The notice may take any reasonable form

ii) The notice must specify the date, time and place of meeting.

iii) The notice must state the nature of business to be transacted at the meeting.

iv) The length of notice must be according to rules prescribed by the Companies Act and the Articles of Association or a reasonable notice. As per section 101 (1) of the Companies Act 2013, the length of the notice of a general meeting is 21 days. The period of 21 days is calculated from the date of receipt of the notice. It excludes the day of service of the notice and the day on which the meeting is to be held.

As regards Board meetings, the Articles usually prescribe the length of notice required or the Board may frame its own rules in this respect. If the Articles are silent, the length of notice should be reasonable. Notice must be sent to every director.

v) The notice must be served in the manner prescribed in the rules.

vi) The notice must be served to all members who are entitled to receive it.

vii) In General, issue of a notice is obligatory. But where meetings are fixed to be held on a specified day of each week or month. Notice may take the form of reminders only.

Persons on whom notice is to be served:

Notice of every meeting of a company shall be given to

i) every member of the Company entitled to vote.

ii) the persons on whom the shares of any deceased or insolvent members may have devolved and

iii) the auditor's of the Company.

If notice is not given to every person entitled to receive notice, any resolution passed at the meeting will have no effect.

In case of a Board meeting, not less than seven days notice shall be sent to every director. If a director remains absent due to want of notice, the proceedings of the Board shall be invalid.

Mode of giving notice:

Notice of a meeting may be served on any member either personally or by sending it by post to him to his registered address. Deliberate omission to give notice to a single member may invalidate the meeting.

Fresh notice need not be given for holding an adjourned meeting. But fresh notice of the adjourned meeting must be given if the original meeting was adjourned sine die or was adjourned for 30 days or more or if fresh business is to be discussed.

3) Quorum for meeting:

The word Quorum is derived from Latin word. Quorum means the minimum number of members who must be present in order to constitute a meeting and transact business at the meeting.

Quorum means a certain number of members whose presence is necessary for the meeting of a company to commence its deliberations.

Any business transacted at a meeting without a Quorum is invalid. The Quorum is generally fixed by the Articles.

The main purpose of having a Quorum is to avoid decisions being taken at a meeting by a small minority which may not be acceptable by vast majority of members.

Quorum for a general body meeting:

If the Articles of a company do not provide for a longer Quorum.

2 members personally present in case of private company may be considered to be the quorum. In case of a public company, the quorum will be decided based on the number of members present on the date of the meeting.

Members Present	Quorum
Below 1000	5
More than 1000 – upto 5000	15
Above 5000	30

While calculating Quorum, following points are to be considered.

i) Proxy not to be counted
ii) Joint holders as single member
iii) Representative as members
iv) One member can not constitute a meeting.

If the quorum is not present within half an hour from the time appointed for holding the meeting of the company

a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine or

b) the meeting stands cancelled, if called by 100 requisitionists under section 100.

In case of the adjourned meeting if there is any change of day ,time or place of meeting, a company shall give not less than three days notice to the members either individually or by publishing an advertisement in the newspapers which is in circulation at the place where the registered office of the company is situated. If at the adjourned meeting also if the quorum is not present within half an hour, the members present shall be a quorum.

Quorum for a Board Meeting:

If the Quorum for the Board meeting is not prescribed by the Articles, the directors themselves may prescriba the Quorum. In the absence of any provisions relating to Quorum, Section 174 provides that Quorum. As per Section 174.

i) 1/3rd of its total strength minus any vacancies, (or)

ii) atleast two interested directors whichever is higher.

The participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum.

Where the number of interested directors exceeds or is equal to two-thirds of the total strength of the Board of Directors, the number of directors who are not onterested directors and present at the meeting , being not less than two, shall be the quorum during such time.

Where the meeting of the Board of Directors could not be held for want of quorum, then the meeting shall automatically stand adjourned to the same day at the same time and place in the next week. If that day is a national holiday, then the adjourned meeting shall be held on the succeeding day.

Rules or legal provisions:

i) For the purpose of ascertaining Quorum only members present in person are to be counted. Proxies should not be considered.

ii) In case of company, which is a member of another company, authorises a person by a resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person.

iii) Where the President of India or the Governor of a State holds shares in a company and appoints a person to act as his representative at a meeting of that company, then such person shall be deemed to be a member present in person.

iv) A member of the company present in two capacities, as an individual member and as a trustee may be counted as two members personally present for the purposes of Quorum.

v) Joint holders of shares are treated as single member for the purposes of counting of Quorum.

Exceptions:

Under the following circumstances one person may form a Quorum:

i) Where one member holds all the shares of a particular class.

that member alone can constitute a Quorum in a meeting of that class.

ii) As per Sec. 167 of the Companies Act, 1956 if the meeting is called by the Central Government then one member present in person or by proxy shall be deemed to constitute a Quorum in a meeting.

iii) As per Sec 168 of the Companies Act,1956 if an extraordinary meeting is to be convened by or ordered by the Company Law Board, then even one member of the company present in person or by proxy shall constitute the meeting.

iv) Where a general meeting is adjourned for lack of Quorum and at the adjourned meeting only one member is present in person shall constitute the meeting.

Consequences of Incomplete Quorum:

A meeting without Quorum is invalid. Following are the consequences of incomplete Quorum:

i) The meeting shall stand cancelled if it was called upon by the requisition of the members.

ii) The meeting shall stand adjourned to the same day in the next week at the same time and place.

iii) If the same day of the next week happens to be a public holiday.

a) In case of AGM, the meeting can be adjourned to any other day, time and place as the Board may determine.

b) All the General Meetings other than AGM can be adjourned even to a day which is a public holiday. But the AGM can be adjourned only to a working day.

4) Proper person in the Chair (Sec. 104)

The successful conduct of any meeting is largely depend upon the personality of the chairman. He is the chief authority in the meeting. He is the Presiding Officer of the meeting. A Chairman of a meeting is a person who presides over the meeting. A Chairman is necessary to conduct the proceedings at a meeting. Chairman is the person who has been designated or elected to preside over and conduct the proceedings of a meeting. He is the Presiding officer or the umpire of debate or the judge of admissibility and the upholder of order and decorum in a meeting. A Chairman is a member of the body over which he is to preside. Unless the Articles of a company otherwise provide, the members personally present at the meeting should elect one of themselves to be the Chairman of the meeting. He may be elected either by show of hands or by poll.

The members personally present at the meeting shall elect one of themselves to be the Chairman of the meeting.

If poll is demanded on the election of the chairman, then poll is to be conducted. The chairman elected as a result of the poll, will be the chairman for the rest of the meeting.

Powers and duties of Chairman:

The Chairman of a meeting derives his authority and powers from the meeting itself.

Powers of Chairman:

Following are the powers of Chairman.

1) To maintain order and decorum.
2) To decide points of order.
3) To decide priority of speaker
4) To maintain relevancy and order in debates.
5) To adjourn a meeting
6) To exercise a casting vote
7) To ascertain the sense of a meeting and declare the rule of voting
8) To sign and date the proceedings of the meeting.

1) To Maintain order and decorum.

The Chairman has the power to maintain order and decorum at a meeting. If his directions are not obeyed then the offending members may be expelled.

2) To decide points of order:

At the meeting, members may raise points of order. In such a circumstance the Chairman has the power to give a ruling on the interpretation of the rules and his ruling will be binding on all members.

3) To decide Priority of speakers:

At the meeting when more than one member express their desire to speak on the motion, the Chairman has the power to decide the priority of speakers.

4) To maintain relevancy and order in debates:

The Chairman has the power to maintain relevancy and order in debates.

5) To adjourn a meeting:

The Chairman has the power to adjourn a meeting under certain circumstances. e.g. When the number of members falls below Quorum.

6) To exercise a casting vote:

The Chairman has the right to caste a second vote to break a tie. The Articles of a company usually confer this right on the Chairman of a Company Meeting.

7) To ascertain the sense of a meeting and declare the rule of voting:

If opinion is divided on a motion, the Chairman has a right to ascertain the sense of the meeting by putting the motion to vote and declare the results thereof.

8) To sign and date the proceedings of the meeting:

The chairman has the power to sign and date the proceedings transacted at the meeting.

Duties of Chairman:

Following are the duties of a Chairman:

1) The Chairman must act at all times bonafide and in the interest of the company as a whole.

2) He has to see that the proceedings of the meeting are conducted according to rules.

i) Whether proper notice is given.

ii) Whether the rules as to Quorum are observed.

iii) Whether his own appointment is in order.

3) He must ensure that the proceedings at the meeting are properly and regularly conducted.

4) It is the duty of the Chairman to maintain order and decorum in the meeting.

meeting.

5) **Proxy (Section 105):**

Section 105 states that any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as his proxy to attend and vote on his behalf.

The term proxy has a double meaning. A proxy is an authority to represent and vote for another person at a meeting. It is also an instrument appointing a person as proxy. A proxy is an authorised agent of the member for the purpose of voting. A proxy is a personal representative of a shareholder at a meeting of the company.

The proxy may or may not be a member of the company but he has no right to speak at the meeting and shall not be entitled to vote except on a poll.

If the Articles do not otherwise provide

1) A proxy can vote only on a poll.

2) A member of a private company can not appoint more than one proxy to attend on the same occasion.

3) A member of a company not having a share capital can not appoint a proxy.

The instrument appointing a proxy shall be in writing and signed by the appointor.

6) Voting and Poll:

The word vote means an expression of a wish or opinion in an authorized formal way for or against any proposal. A motion has been discussed in the meeting by the members it is put to vote for ascertaining the sense of the house. Every member whose name appears in the register of members has a right to vote at a general meeting.

The members holding any equity share capital have the right to vote on every motion placed before the meeting. A shareholder's vote is a right of property.

Methods of Voting:

There are several methods of voting, namely

i) By acclamation
ii) By voice vote
iii) By show of hands
iv) By standing vote
v) By division
vi) By Ballot or Poll

i) By acclamation:

When members present in a meeting express their approval or disapproval of a motion by cheering or clapping of hands, it is known as voting by acclamation. This method should not be adopted if there is a sharp difference of opinion among members on any issue.

ii) By Voice vote:

This method of voting is also adopted when there is perfect or near unanimity on a motion.

iii) By Show of Hands:

According to this method, the Chairman calls upon those in favour and those against the motion to indicate their opinion inturn by raising hands. The Chairman of the meeting counts the votes infavour and against the motion, and then announces the result of voting. Under this method each member has one vote. But proxies are not allowed to vote under this method.

iv) By Standing Vote:

Under this method, Members infavour of and those against the motion stand up in their seats. The Chairman or secretary counts the number of members standing up for and against the motion respectively and then declares the result on the basis of the counts.

v) By Division:

The method of voting by division is generally adopted in the meetings of legislative bodies. The Chairman requests the members present to divide themselves into two blocks namely favouring the motion and against the motion. The Chairman counts the number of members in each bloc and then announces the result of the division.

vi) **By Ballot:**

Under this method, every member entitled to vote and present in person or by proxy records his vote on a ballot or voting paper and drops it in the ballot box provided for that purpose. Then the result will be announced on the basis of number of votes infavour and against the motion. This method ensures secrecy of voting. It is used for all political elections. This method of voting is suitable under the following circumstances:

i) When the issue under consideration is very important.

ii) When there is a sharp difference of opinion.

iii) If it is desirable that voters should be given an opportunity to cast their votes secretly.

Following companies are not required to transact business by postal ballot:

1) One person company
2) Companies having members upto 200.

Agenda:

The word 'Agenda' literally means things to be done or the programme or the list of the items of business to be transacted at the meeting. The agenda sets out the order in which the various items of business shall be considered at a meeting. But the sequence may be changed with the approval of the members, if necessary. It helps systematic transaction of business at the meeting without omission of any items of importance. It should be circulated amongst the members along with the notice of the meeting.

It is the duty of the secretary to prepare agenda in consultation with the Chairman of the company.

The agenda kept for the use of the chairman is usually prepared on loose sheets of paper, termed the 'Agenda Paper', leaving a wide margin on the right hand side so that the chairman and the secretary may make notes against each item of the agenda.

Resolutions:

A resolution may be defined as the formal expression of the decision of a meeting. A resolution refers to the proposal which is voted at the meeting and accepted by majority of the members present at the meeting. When a motion has been duly voted upon and passed by a majority, with or without amendment, it is called a resolution. Once the motion has been put to the members and they have voted infavour of the motion, then it becomes a resolution. A resolution represents the collective deci-

...the minutes.

Requisites of a valid resolution:

1. Proper notice must be given.
2. There must be quorum.
3. The meeting must be conducted by proper person in the chair.
4. The resolution must be within the powers of the company.
5. Sufficient time is to be allowed for discussion on the resolution.
6. There must sufficient majority of votes infavour of the resolution.

Kinds of resolutions:

There are three kinds of resolutions that may be passed in a company meeting.

1. Ordinary resolution.
2. Special resolution.
3. Resolution requiring special notice.

1. Ordinary resolution [Sec. 114 (1)]:

When a motion is passed by a simple majority of members at a meeting. It is called ordinary resolution. An ordinary resolution is one which requires a simple majority, that is, the votes in favour should exceed the votes against the resolution. When a motion is passed by a simple majority of the members voting at a general meeting, it is said to have been passed by a simple majority of members voting at a general meeting it is said to have been passed by an ordinary resolution. Simple majority means that the votes cast in favour of the resolution must be at least one more than 50 percent of the votes cast. Section 114 (1) states that a resolution shall be an ordinary resolution when the votes at a general meeting cast by members in its favour are more than the votes cast against it. Usually ordinary resolutions are required to transact ordinary business. Any business for which a special resolution is not required by law may be transacted by ordinary resolution. Ordinary resolutions are required to transact ordinary business. It is passed by a majority of 51% of members present in person or by proxy. These resolutions are passed to transact ordinary business such as to pass the annual accounts, to declare dividend, to appoint directors in the place of those retiring by rotation and to appoint auditors.

An ordinary resolution is sufficient in all the cases where a special resolution is not required to be passed either by the Articles of Association or by the Companies Act. An ordinary resolution is normally used for the ordinary business done in the annual general meeting.

Matters which can be decided by ordinary resolution:

All matters which are not required by the Companies Act or the company's Articles to be done by special resolution, are done by means of an ordinary resolution.

1. Adoption of Company's final accounts
2. Declaration of dividend.
3. Appointment of directors
4. Election of directors
5. Issue of shares at discount
6. Appointment of auditors and to fix their remuneration.
7. Alteration of share capital
8. Creation of Reserve Fund
9. Conversion of fully paid up shares into stock.
10. Sale of the whole or part of the company's property
11. Issue of shares at a discount.
12. Issue of bonus shares
13. Borrowing moneys in excess of the paid up capital and free reserve of the company

Minutes:

As per sec. 118 of the companies Act, 2013, every company is required to keep minutes containing a fair and correct summary of all proceedings of the meetings of members, Board of directors, Committees of the Board of directors.

Meaning:

Minutes has been defined as the written record of the business done at a meeting. A minute is a record of what the company and directors do in meeting. It is defined as a note to preserve the memory. Minutes is the official record of the business transacted at the meeting. Minutes mean a concise and accurate official record of the decisions taken at the meeting of the company. Minutes are the records of formal decisions of directors or shareholders and are prefixed by the word 'Resolved'. Minutes may be defined as the official record of the proceedings of the meetings of directors or shareholders of a company. It includes only the resolutions actually passed. It serves as a historical record. The minutes of a meeting are the permanent written record of the proceeding at the shareholder's and director's meetings. Once the minutes have been confirmed and signed by chairman, they can be produced as evidence of the proceedings in court of law. Only resolutions and decisions are recorded in the minutes.

Uses of Minutes:

Following are the minutes:

1. Minutes can be used as a permanent record of business trans-

acted with the decisions of the shareholders and directors at their respective meetings

2. Minutes can be used as an evidence of the proceedings in a court of law.

3. Minutes can be inspected by interested parties.

Types of Minutes:

There are two types of minutes:

1. Minutes of Narration.
2. Minutes of resolution.

1. Minutes of Narration:

Minutes recording events or items or business which require no formal resolution called Minutes of narration. E.g: counting the number of members present recording of facts like calling the meeting to order by the chairman, notice was read etc.

2. Minutes of resolution:

Minute recording formal resolution are referred to as minutes of resolution or minutes of decision. These may or may not be accompanied by a statement indicating the names of the mover and seconder.

Legal requirements:

Section 118(1) of the Companies Act 2013 deals with the legal provisions relating to minutes.

1. Every company should keep minutes of the proceedings of every meeting in the minutes books within 30 days of every meeting. Section 118(1)
2. The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat.
3. As per section 118 (4), the minutes of board meetings must contain

i) the names of the directors present at the meeting and

ii) in the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution.

But Minutes ...

Essentials of Good Minutes:

Following are the essentials of good minutes:

1) Minutes should be brief and precise.
2) Minutes should be in affirmative form and written in past tense.
3) Minutes should be complete in all aspects.
4) Minutes should state the kinds of the meeting.
5) Minutes should be prepared as early as possible.
6) Minutes should contain the exact words of all resolutions which have been passed.
7) Minutes should not contain any matter, which is defamatory, irrelevant or immaterial to the proceedings or detrimental to the interest of the organisation.
8) Minutes should be written according to the sequence of items on the agenda.
9) Pages of the minutes book should be numbered, initialled or signed and dated by the chairman of the meeting within the time limit.

Contents of minutes:

All minutes of general meetings and board meetings contain the following particulars:

i) The kind of meeting with date, time and place.

ii) The name of the person in chair and the names of directors, secretary, persons in attendance and the number of members.

iii) Reading and confirmation of the minutes of the last meeting and the fact of their being signed by the chairman.

iv) Name of absentees and their apologies.

v) Contractual transactions considered by the meeting and whether accepted or not.

vi) Appointments made and expenditure authorised.

vii) Any instructions given by the meeting to the secretary or other officers.

viii) Name of directors dissenting with any resolution passed at the Board meeting.

ix) Chairman's signature and date of verification of minutes as correct.

SPECIMEN FORM OF NOTICE OF FIRST BOARD MEETING

XYZ COMPANY LIMITED

TIRUNELVELI ....

....

Dated 11.3.2017

Mr. ....

(Director's Name)

....

(Address)

Dear Sir,

I am to inform you that the first meeting of the Board of Directors of the company will be held at the Registered Office of the company on 21st day, the March. 2017 at 10 A.M./P.M. Please make it convenient to attend.

A copy of the agenda is enclosed.

Yours faithfully,

....

Secretary.

Encl. Agenda

SPECIMEN FORM OF NOTICE OF SUBSEQUENT BOARD MEETING

XYZ COMPANY LIMITED

TIRUNELVELI

....

Dated ....

....

(Director's Name)

....

(Address)

Dear Sir,

I am to inform you that a meeting of the Board of Directors will be held at the Registered Office of the company on .... day, the .... 20 .... at .... A.M./P.M. Please make it convenient to attend.

A copy of the agenda is enclosed.

Yours faithfully,

....

Secretary.

Encl. Agenda

SPECIMEN NOTICE OF ANNUAL GENERAL MEETING

XYZ COMPANY LIMITED

CHENNAI.

....

NOTICE OF THE FOURTH ANNUAL GENERAL MEETING

Dated .... 20 ....

Notice is hereby given that the Fourth Annual General Meeting of shareholders of .... Company will be held on ...., the .... 20 .... at .... P.M. at the Registered Office of the company for the purpose of transacting the following business:

1. To receive, consider and adopt the Annual Accounts for the year ended .... 20 .... together with the Report of the Directors and Auditors thereon.
2. To declare a Dividend.
3. To appoint a Director in place of Mr. X who retires by rotation, and being eligible offers himself for reappointment.
4. To appoint a Director in place of Mr. Y who retires by rotation, and being eligible offers himself for reappointment.
5. To appoint Auditors and to fix their remuneration.

The retiring Auditors, Messrs. AB & Co., being eligible offer themselves for reappointment.

By order of the Board

For XYZ Company Limited

....

Secretary.

SPECIMEN NOTICE OF ANNUAL GENERAL MEETING

VMS & COMPANY LIMITED

Registered Office:

96, Crompet, CHENNAI - 11

NOTICE OF THE TWENTY FIRST ANNUAL GENERAL MEETING

Dated 05-06-2016

NOTICE is hereby given that the Twenty First Annual General Meeting of the shareholders of the Company will be held on Friday, 21st August 2016 at 11.00 a.m. at the Registered Office of the Company for the purpose of transacting the following business:

1. To receive, consider and adopt the Annual Accounts for the year ended 31 March 2016, together with the Reports of the Directors and Auditors thereon.
2. To declare a dividend.
3. To appoint a Director in place of Mr Arun who retires by rotation,and being eligible offers himself for re-appointment.
4. To appoint a Director in place of Mr X who retires by rotation,and being eligible offers himself for re-appointment.
5. To appoint Auditors and to fix their remuneration. The retiring Auditors, Messrs. SMM & Co., being eligible, offer themselves for reappointment.

By order of the Board

For VMS & Company Limited

Sd/-

Secretary

FORM OF PROXY

VMS & COMPANY LIMITED

Registered Office:

96, Crompet, CHENNAI - 11

PROXY FORM

I/We ________ of ________ in the district of ________ being a member/members of the above named company hereby appoint ________ of

_________ in the district of _________ or failing him, _________ of _________ in the district of _________ as my/our proxy to vote for me/us on my/our behalf at the Annual General Meeting/General Meeting (not being an annual general meeting) of the company to be held on the _________ day of _________ 20_________ and at any adjournment thereof.

Signed this _____day of _________ 20 _________

Signature _____________

Affix one Rupee Revenue Stamp

Address _____________

____

L. F. No _____________

No. of Shares _________

For Official Use

Received on ------

Signature verified

Secretary

AGENDA FOR THE ANNUAL GENERAL MEETING

(For use by the Chairman)

AGENDA FOR THE _________ ANNUAL GENERAL MEETING OF _____ COMPANY LIMITED TO BE HELD AT ____ ON __ AT _____ A.M.

1. Election of Chairman.
2. The secretary to read the notice of the meeting.
3. The secretary to read the Auditors' Report on the Accounts.
4. The chairman to move that the Directors Report and Accounts, as printed and circulated, be taken as read.
5. The chairman's speech.

The chairman to propose:

"That the Balance Sheet as at _____________ and the Profit &

Loss A/c for the year ending on that date, and the Directors' and Auditors' Reports thereon be and the same are hereby approved and adopted."

To Second the motion.

The chairman to invite shareholders' discussion on the motion. The chairman to put the motion to the meeting and declare the result.

6. The chairman to move:

"That the dividend of Rs ________________ per Equity Share on ________________ Equity Shares of the company, as recommendd by the directors be and the same is hereby delcared and the same be paid, after deduction of tax at source, to the shareholders whose names appear on the Register of Members as on ________________

To second the motion.

7. Vote of thanks.
8. To declare the meeting closed.

COMPANY MEETINGS

Meeting - Meaning :

A meeting may be defined as any gathering, assembly or coming together of two or more persons for the transaction of some lawful business of common concern. The Oxford Dictionary defines a meeting as "an assembly of number of people for entertainment, discussion or the like".

A company may be defined as assembly of people for a lawful purpose or the coming together of atleast two persons for the some reason.

A company meeting is one in which the affairs of a company are discussed. A company meeting may be defined as a concurrence or coming together of atleast a quorum of members in order to transact either the ordinary or special business of the company. A company must also hold meetings for its proper functioning.

Features of a Company Meeting:

Following are the features of a company meeting:

1) Two or more persons
2) Lawful Assembly
3) Previous notice
4) To transact a business

1) Two or more persons:

To constitute a valid meeting, there must be two or more persons. But, the articles may provide for a large number to constitute a valid quorum. However, there are some circumstances where one person can constitute a valid meeting.

i) where one person held all the shares of particular class, that person alone was held to constitute a valid meeting of that class of shareholders.

ii) where the rules permit, it is possible to appoint a committee of one and thus hold a meeting of one.

iii) where the Company Law Board calls an annual general meeting as per section 167 of the Companies Act, 1956 then one member of the company present in person shall constitute the meeting.

iv) where the Company Law Board calls a meeting under section 186 of the Companies Act, it can direct that one member present in person or by proxy shall constitute a valid meeting.

2) **Lawful meeting:**

The gathering must be for conducting a lawful business.

3) **Previous notice:**

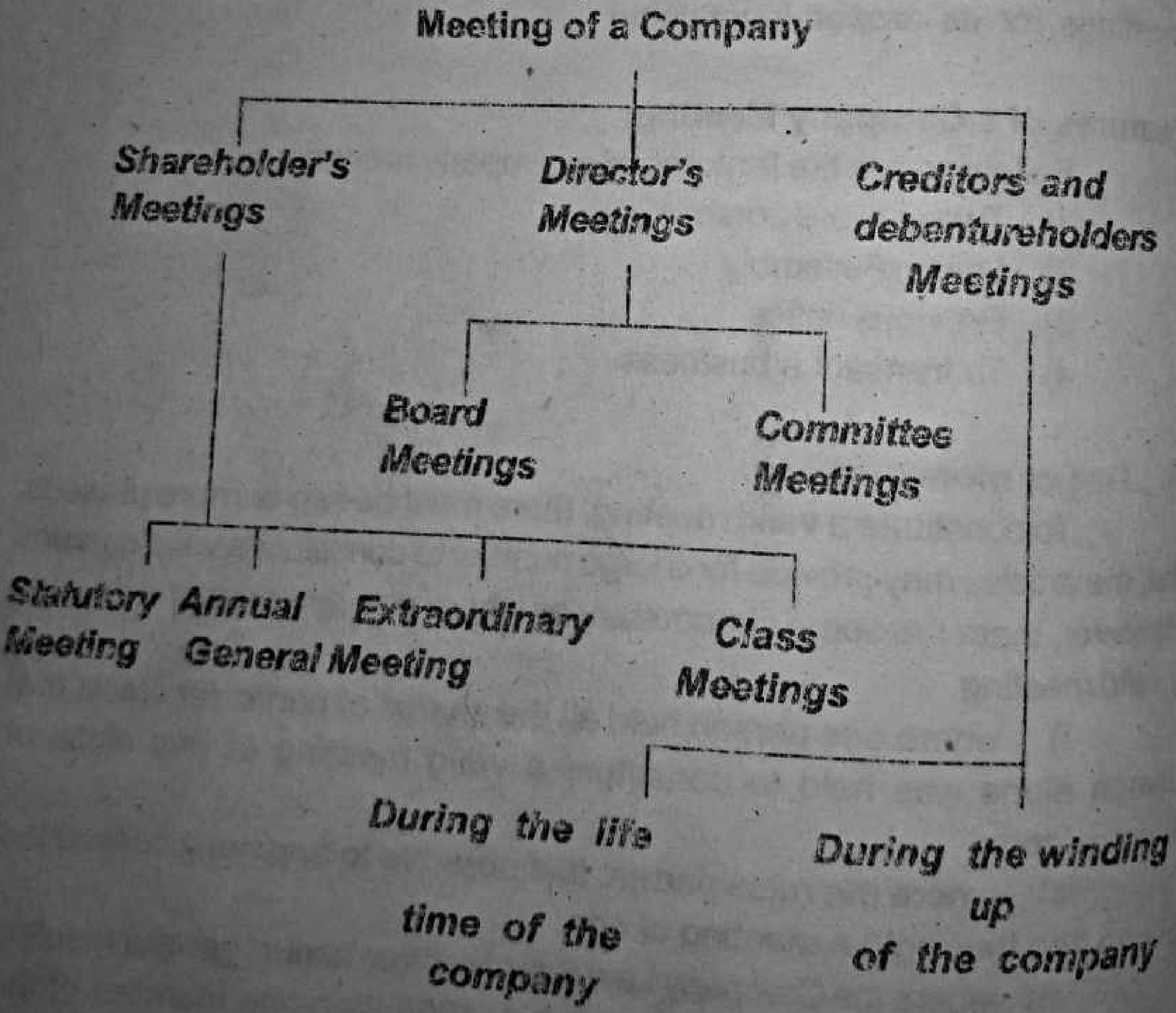
The meeting must be conducted after giving previous notice to its members who are entitled to attend the meeting.

4) **To transact a business:**

The purpose of the meeting must be to transact a business. Otherwise, it cannot be considered as a meeting.

Classification of Meetings of a Company :

Meetings of a company may be classified as follows.



The meetings of a company can be classified as below:

1. Meetings of shareholders
   - i) Statutory meeting
   - ii) Annual general meetings
   - iii) Extra ordinary general meetings
   - iv) Class meetings
2. Meetings of directors
   - i) Meetings of the board of directors
   - ii) Meetings of committees of directors
3. Meetings of debentureholders
4. Meetings of creditors
5. Meetings of contributories on the winding up of the company.

Shareholders' Meeting :

It is also known as member's meeting. Member's meetings are classified as follows.

1) Statutory Meeting
2) Annual General Meeting
3) Extraordinary Meeting
4) Class Meetings

Statutory Meeting:

This is the first meeting of the shareholders of a public company. It must be conducted after the commencement of business. It is held only once during the lifetime of a company. Usually, the statutory meeting is the first official general meeting of the company. Private companies are not required to hold this meeting.

Time Limit:

Statutory meeting is to be held within a period of not less than one month and within six months from the date on which the company is entitled to commence business. A statutory report along with the notice of the meeting must be forwarded to every member of the company atleast 21 days before the date of the meeting.

The following companies need not to hold statutory meeting:

- i) Private company
- ii) Company limited by guarantee having no share capital.
- iii) Unlimited liability company.

iv) A public company which was registered as a private company earlier.

v) A company which has been deemed as a public company under Sec. 43 A.

Following companies are required to hold statutory meeting:

i) Every public company limited by shares

ii) Every public company limited by guarantee and having a share capital

Objects and purposes of the meeting:

i) The main purpose of the meeting is to enable the members to know the financial position and prospects of the company.

ii) To enable the shareholders to discuss matters relating to the formation of the company.

iii) To know the results of the company's appeal for public subscriptions to its share capital.

iv) To get an idea of the assets and properties acquired or to be acquired by the company.

v) To approve the modification of the terms of any contract named in the prospectus.

Professor Palmer has defined the importance of statutory meeting in the following words: The object of the statutory meeting is to put the shareholders of the company at as early as possible, in possession of all the important facts relating to the new company.

Legal provisions regarding the statutory meeting: (Sec. 165)

1) Notice of the meeting:

The directors are required to send a notice of the meeting to all the shareholders of the company atleast 21 days before the date of the meeting stating that it is the statutory meeting of the company.

Notice of the meeting must be given to

i) every member of the company.

ii) legal representative of a deceased member.

iii) Official receiver/assignee.

iv) the auditors of the Company.

2) **Despatch of Statutory Report:**

Along with the notice of statutory meeting, a report known as statutory report should also be sent to all the members to whom the notice is sent.

3) **Contents of statutory report: (Sec. 165(3))**

i) Total number of shares issued
ii) Cash received
iii) Abstract of receipts and payments
iv) Directors and Auditors
v) Particulars of contracts
vi) Underwriting contracts
vii) Arrears on class
viii) Commission and Brokerage
ix) Preliminary expenses

4) Certification of the Report
5) Filing of the Report
6) Matters that can be discussed
7) Adjournment of the Statutory Meeting
8) Consequences of Default

Statutory Report:

A Report, which is sent along with the notice of the statutory meeting, to all the members of the Company is known as Statutory Report. This report is to be prepared as per the provisions of the Companies Act 1956. This report must be forwarded atleast 21 days before the date of the meeting.

Contents of the Statutory Report:

The Companies Act provides that the Statutory Report should contain the following particulars:

i) The total number of shares allotted, distinguishing those allotted as fully or partly paid up otherwise than in cash and stating in the case of shares partly paid up, the extent to which they are so paid up and in either case, the consideration for which they have been alloted.

ii) An abstract of the receipts and of the payments made there out upto a date within 7 days of the report.

iii) An account or estimate of the preliminary expenses of the company.

iv) the names, addresses and occupations of the directors of the company and of its auditors.

v) the particulars of any contract which is to be submitted to the meeting for its approval and its modifications effected or proposed, if any.

vi) the extent to which underwriting contracts, if any have not been carried out and the reasons therefor.

vii) the arrears due on calls from directors, managing director or manager.

viii) the particulars of any commission or brokerages paid or to be paid in connection with the issue or sale of shares to any director, managing director or manager.

The statutory report must be signed by at least two directors of the company. One of these directors must be a managing director. The certified copy of the Statutory report must be filed with the Registrar of Companies for registration.

If default is made in complying with the provisions of Sec. 165, of the Companies Act 1956, every director or any other officer of the company who is in default is punishable with fine which may extend to Rs 5,000.

Certification of Report:

The Statutory report must be certified as correct by not less than two directors; one of whom shall be the managing director, if any. The auditors of the company then shall certify it as correct regarding the shares allotted, cash received in respect of such shares and receipts and payments of the company.

Rights of shareholders at the Statutory Meeting:

Following are the rights that can be exercised at the Statutory Meeting:

1) Right to discuss the Statutory report
2) Right to adjourn the Meeting.

3) Right to inspect list of Members.
4) Right to appeal to the Court.

Annual General Meeting - Sec. 96:

Every company other than One Person Company shall in each year shall hold a general meeting as its annual general meeting. The annual general meeting is regarded as the most important of all company meetings. It is usually held once in a year. Annual General Meeting is the meeting of the shareholders to be held at the end of every year in addition to any other meetings. It is held to enable the members to discuss the affairs of the company on the basis of the annual report of directors and audited accounts. The purpose of this meeting is to give full information to members of progress made by the company during the year. The holding of the annual meeting is a statutory requirement which must be complied with. All Companies must hold annual General Meeting.

Objects or Purposes:

Following are the objects for which annual general meeting is to be held:

1) To consider and approve the annual accounts and Balance sheet and the auditor's Report thereon.
2) To consider and approve the Annual Reports of the Directors.
3) To declare dividend, if any.
4) To appoint directors in the place of those retiring by rotation.
5) To appoint the auditors and to fix their remuneration.

Importance of Annual General meeting:

Following are the importance of Annual general meeting :

i) It enables the company to exercise control over the affairs of the company.
ii) It enables the company to declare dividend.
iii) It enables to protect the interest of the shareholders.
iv) It enables the shareholders to review the performance of the company.
v) It gives an opportunity to the shareholders to refuse the reflection of a director whose action they disapprove.

Extraordinary Meeting (Sec. 100):

All general meetings of a company other than Statutory Meeting and Annual General meeting are called Extraordinary General Meeting. Clause 47 of Table A provides that all general meetings other than annual general meetings shall be called the extra ordinary general meetings. A Statutory meeting and annual General meetings of a company are called ordinary meetings. Any meetings other than these meetings are called Extraordinary meetings. Extra ordinary General Meeting is a general meeting which is held between two Annual General meetings. It is conducted in order to transact some urgent or special business which can not be postponed till the next annual general meeting. Every business transacted at these meetings is called special business. The Board may call an extraordinary general meeting whenever any approval of the members is required as per law for any special business.

Class Meetings:

In a company there may be different classes of shareholders. Class meetings are the meetings held by a particular class of shareholders. Separate meeting must be convened of each class when any proposals affecting their respective rights and privileges are put forward. This type of meetings can be attended only by class of shareholders only. The Articles of Association of the Company usually provide for the holding of class meetings. A special resolution is required to be passed for bringing about any change in the rights of any class of shareholders.

Meetings of Directors or Board Meeting (Section 173):

Meetings of directors are called Board Meeting. Wide powers have been vested in the Board in regard to management of companies. The directors are required to meet their meetings as frequently as possible. Directors are required to meet frequently at regular intervals to discuss and decide upon policy matters and to take decision on matters relating to the management of the company. Under these circumstances, directors must hold their meetings of the directors. These are known as Board Meetings. The meetings of Directors are known as Board Meeting.

Since the administration of the company lies in the hands of the Board, they should meet frequently for the proper conduct of the rules concerning how where and when they shall meet and how their meetings would be regulated. These rules are commonly known as standing orders.

Quorum for the Board meeting (Section 174):

Quorum for a Board meeting is

i) one third of the total strength of the Board. (or)

ii) atleast two disinterested directors whichever is higher.

However the Articles of Association may specify a different quorum. The quorum should consist of disinterested directors.

The participation of the directors by video conferencing or by other audio visual means shall also be counted for the purpose of quorum.

Total strength means the total strength of the Board of directors of the company after deducting there from the vacant posts of directors. Any fraction of a number shall be rounded off as one while calculating quorum.

Where at any time the number of interested directors exceeds or is equal to two-thirds of the total strength of the Board, the number of directors who are not interested directors and present at the meeting being not less than two, shall be the quorum during such time.

Interested director means involvement of a director in a transaction with a company in which he is a director. Such interested director must be disclosed to other directors and to all shareholders of the company in the

If a quorum is not maintained throughout the meeting then the proceedings of the meeting will be invalid. If a quorum is not present at a Board meeting, it will automatically adjourned to the same day in the next week and at the same time and place or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and at the same place.

Authority for Convening Board Meeting:

The Articles of Association of a company provide for the procedure and competent authority for convening Board Meetings. The Chairman of the Board has the power to convene Board Meeting. The meeting must be presided over by the Chairman. In his absence the meeting may be presided over by the Vice Chairman of the Board.

Business done at Board Meeting:

The following are the business to be transacted at the Board Meeting:

i) Issue of shares.
ii) Allotment of shares
iii) Calls on shares
iv) Forfeiture of shares
v) Transfer and Transmission of shares.
vi) Issue of duplicate share certificates.
vii) Convening meetings of members.
viii) Disposal of profits.
ix) Issue of debentures.
x) Preparation and filing of returns.
xi) Maintenance of Statutory books.
xii) Execution of contracts on behalf the company.
xiii) Investment of surplus funds of the company.

First Board Meeting:

At the first Board Meeting of a company, following business may be transacted.

1) Election of Chairman of the Meeting.
2) Appointment of Chairman of the Board of directors of the company.
3) Appointment of the Managing director.
4) Appointment of the Secretary.
5) Appointment of the bankers.
6) Appointment of the auditors.
7) Fixing a Quorum for the Board meeting.
8) Approval of Common seal of the company.
9) Application to stock exchanges for listing of shares.
10) Fixation of date of next meeting.

Resolution by circulation (Section 175):

Generally, decisions are taken by directors by passing resolutions on matters presented before them for consideration. A resolution may be passed either at a meeting of the Board or by circulation. If it is not possible to hold a Board Meeting, the Board may pass a resolution by circulation. For a resolution to be passed by circulation, it must be circulated in draft, together with the necessary papers to all directors entitled to receive notice of a meeting and must be approved by a majority of them.

Where not less than one-third of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board.

Certain Resolutions at Meetings only:

Following by means of resolutions passed at a meeting of the Board.

1) Power to make call on shares.
2) Power to authorise buy back of securities
3) Power to issue debentures of the company.
4) Power to borrow money otherwise than issue of debentures.
5) Power to invest the funds of the company and
6) Power to make loans.
7) Power to approve financial statements and the Board's report.
8) Power to diversify the business of the company
9) Power to approve amalgamation, merger or reconstruction
10) Any other matter which may be prescribed.

Agenda of Board Meetings:

It is customary to send a copy of the agenda along with the notice of the meeting. It is the duty of the secretary to prepare the agenda of a Board meeting in consultation with the Chairman of the Board of Directors. The agenda of first Board meeting contains many important items as this meeting has to deal with many matters arising out of incorporation and vital steps necessary for setting up and conduct of the company's business. The agenda of subsequent Board meetings includes some routine items of recurring nature as well as some special items which vary from meeting to meeting.

Committee meetings of Board:

The Board of Directors may form certain committees and delegates some of its powers to them. These committees should consists of only directors.

The Articles empower the directors to delegate their powers to small committees of the directors to investigate and report on various matters relating to the management and administration of the company.

(Regulation 77 of) Table A provides that the board may delegate any of its powers to committees consisting of such member or members of its body as it thinks fit. The committee so formed may consists of a single director.

Regulation 78 of Table A provides that a committee may elect a chairman of its meetings. If no such chairman is elected or if at any meeting the chairman is not present within five minutes of the time fixed for the meeting, the members present may choose one of their members to be chairman of the meeting.

Regulation 79 of Table A further provides that a committee may meet and adjourn as it thinks proper.

Committees may be by

1) Permanent committees
2) Adhoc Committees

Permanent Committees:

These committees are also known as standing committees. These committees do all the routine matters. e.g.: Share transfer committee, Works Committee.

Adhoc Committees:

Adhoc committees are formed to transact some special works. These committees do some special works. To transact the special business Adhoc committee meetings are held.

These committees must act according to the powers delegated to them and submit their report to the Board.

First Board Meeting:

The first meeting of Board of Directors is held just after the incorporation of the company. This meeting has much importance and needs special attention. Because many important matters are to be decided only at the first Board meeting. For example, Chairman of the Board and the company has to be elected, Auditors, Bankers and managing director of the company are appointed at the meeting. If it is a public company prospectus is to be prepared and approved at the first Board meeting.

Specimen Agenda of the First Board Meeting

Agenda

1) Election of the Chairman of the meeting.
2) To produce the certificate of Incorporation. the Memorandum and the Articles of Association.
3) Election of the Chairman of the company.
4) Appointment of first Directors.
5) Appointment of Managing Director, secretary, solicitors, Auditors and Bankers.
6) Adoption of the Company's seal.
7) Fixing a Quorum for the Board Meetings.
8) Consideration and approval of the draft of prospectus.
9) Fixing the date of the next Board meeting.
10) Any other business.

Specimen Agenda of subsequent Board Meeting:

Agenda

1) To read and approve the minutes of the last Board meeting.
2) To consider applications for transfer of shares.
3) To consider trading returns for the Quarter ended .... 2006.
4) Fixing the date of the next Board Meeting.
5) Any other business with the permission of the Chair.

Audit Committee (Sec 177):

1) The Board of Directors of every listed company shall constitute an Audit Committee.

2) The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority. Majority of members of Audit Committee including its chairperson shall be persons with ability to read and understand the financial statement.

3) Every Audit Committee of a company existing immediately before the commencement of this Act shall within one year of such commencement, be reconstituted in accordance with sub-section.

4) The Audit Committee may call for the comments of the auditors about the internal control systems, the scope of audit, including the observations of the auditors and review of financial statement.

5) The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.

6) Every listed company shall establish a vigil mechanism for directors and employees to report genuine concerns in such a manner as may be prescribed.

7) The vigil mechanism shall provide for adequate safeguards against victimization of persons who use such mechanism and make provision for direct access to the chairperson of the Audit committee in appropriate cases.

Functions of Audit Committe :

i) to recommend for appointement, remuneration and terms of appointment of auditors of the company.

ii) to rreview and monitor the auditor's independendence and performance and effectiveness of audit process

iii) examination of the financial statement and auditors report thereon.

iv) to approve or any subsequent modification of transactions of the company with related parties.

v) to scrutinise inter corporate loans and investments

vi) valuation of Undertakings or assets of the company, whenever it is necessary.

vii) evaluation of internal financial contents and risk management systems.

viii) monitoring the end use of funds raised through public offers and related matters.

Meetings of Creditors and Debentureholders:

The meetings of creditors are held by an order of court. The meetings of creditors may be held for the purposes of securing their support in effecting some scheme of compromise or arrangement or at the time of reorganisation, reconstruction or amalgamation or at the time of winding up. The court may order such meeting on the application of the company or any creditor or any member of the company. But in case of liquidation, an application is made by the liquidator.

Meetings of Debentureholders:

Meetings of Debentureholders are held in order to protect the interest of debentureholders. One of the most common purpose of debentureholder's meeting is to effect a modification or compromise of rights between the company and the debentureholders.

These meetings are held when the conditions of the issue of debentures are to be altered.. It may be called by the trustees or by the court. Debenture holders' meetings may also be held when a scheme of compromise or arrangement is proposed.

MEMBERSHIP IN A COMPANY

The term shareholders and members are commonly used as synonyms.

A member is a person whose name is entered in the register of members of a company.

The term member denotes a person who holds share in a company. The members or shareholders are the real owners of a company. The members or shareholders of a company are the persons who collectively constitute the company as a corporate entity.

A member is one of the company's owners whose name has been entered on the register of members.

As per Section 41 of the Companies Act, there are three classes of members.

1. The persons whose have subscribed to the members of the company.

2. Every other person who has agreed in writing to become a member of the company and whose name has been entered in the Register of members.

3. Every person holding equity share capital and whose names are recorded as beneficial owner in the depository records are considered as member of the concerned company.

A shareholder is a person who buys and holds shares in a company having a share capital. They become a member once their name is entered on the register of members. In case of companies limited by guarantee do not have a share capital and their members are not shareholders.

As per Section 88 of the Companies Act 2013, name of all preference shareholders will be entered in the Register of members. All the preference shareholders are considered as members in the company. Because all person whose name is entered in the register of members will be considered as member.

Differences between a shareholder and a member:

1. Meaning :

A member is a person whose name is entered in the register of members of a company whereas a shareholder is a person who owns the shares of a company.

2. Share warrant:

The holder of a share warrant is not a member whereas the holder of a share warrant is a shareholder.

3. Register of members:

A legal representative of a decreased member only when he applies for registration to the company and then his name is entered in the Register of members. A shareholder is a member even though his name does not appear in the register of members.

4. Memorandum:

A member is the person who signs the memorandum of association with the company whereas a person becomes a shareholder only when shares are allotted to him.

Who can become a member?

As per Sec.11 of the Indian Contract 1872, any person who is competent to contract may become a member of a company.

The Company Law doesn't prescribe any disqualification. The Memorandum of Association of a company may impose certain restrictions from acquiring membership in a company. The Articles of Association may provide the following persons can not become members of the company.

1. Minor:

A minor is not competent to become a member of a company. So, he can not enter into a valid contract. Therefore, he is disqualified to acquire membership. A minor may be allotted shares when the agreement in writing for a minor to become a member may be signed on behalf of the minor by his lawful guardian. On attaining majority, the minor can avoid the contract. He can be admitted only for the shares which are fully paid up.

2. Insolvent:

An insolvent can become a member of a company and is entitled to vote at the meetings of the company as long as his name appears in the register of members.

3. Lunatic:

A lunatic can not become a member of the company.

4. Partnership firm:

A partnership firm may hold shares in a company in the individual names of partners as joint holders. But shares can not be issued in the name of the firm, as it is not a legal person in the eyes of law.

5. Foreigners:

A foreigner may become a member of a company registered in India. At any time he becomes an alien enemy, his rights as a member of the company are suspended.

6. Company :

A company can become the member of another company in its own name if its Articles permit.

A company can not become a member of itself. That is, a company is prohibited to purchase it own shares. Like this, a subsidiary company can not buy the shares of its holding company.

How to become a Member?

A person may become a member of a company in any one of the following ways.

1. Membership by subscription:

If a person subscribes the memorandum of association of a company, he becomes a member by signing it. When the company is registered, their names are entered as a members in the register of members.

2. Membership by application and registration:

When a person applies for shares and shares are allotted to him, then he becomes a member of the company. It becomes a binding contract between the applicant and the company.

3. By transfer:

A person becomes a member of a company by way of transfer o shares and the transfer is recorded by the company in the register of members.

4. By transmission:

If a person gets shares by way of transmission is recorded by the company in the register of members, then he becomes a member of the company. Here, instrument of transfer is not necessary.

5. Membership by qualification shares:

If a person agrees to take the qualification shares of the company and pay for it then he becomes a member of the company. When a person agrees to become a director, of a company then he is deemed to have accepted to become a member of that company. As per the companies Act, if a person agrees to become a director of a public company, then should take atleast one share before his appointment. Such share is known as qualification shares.

6. By Beneficial ownership:

if a person becomes the beneficial owner of shares, then can be called as a member of the company. His name is registered in the record of the depository then he is deemed to be a member of the company.

5. Status:

All members may not be the shareholders whereas all shareholders whose name are entered in the register of members are the members of the company.

Shareholdor:

A person may be called as a member of a company if he owns the shares of a public or private company. The shareholders are the owners of the company. The legal representative of the deceased member is a shareholder. He can be called as a member only when his name is recorded in the register of members of the company. So, every shareholder is a member but every member is not a shareholder.

Cessation of Membership:

A member of a company may be terminated from membership by the following two ways.

1. Act of the parties

1. Act of the parties:

A member may cease to be from membership of a company, in any one or more of the following ways.

i) When he transfers his shares to another person

ii) When his shares are forfeited for non payment of calls.

iii) When the company sells his shares under some provisions in its Articles of Association.

iv) When a member rescinds the contract to take shares on the ground of mis representation in the prospectus or on the ground of irregular allotment.

v) When redeemable preference shares are redeemed.

vi) When a member surrender his shares and the surrender is accepted.

vii) When share warrants are issued in exchange of fully paid up shares.

2. Operation of Law:

Membership of a member in a company is terminated by the operation of law under the following circumstances.

i) When a person becomes insolvent, his membership in a company is terminated by way of removing the name of the insolvent from the Register of members of the company.

ii) When the shares are sold in execution of a decree of a Tribunal.

iii) When a company is wound up the membership of a member is terminated from the company. But he is liable as contributory and is also entitled to share in the surplus assets, if any.

Rights of members:

The rights of members are stated in the Companies Act and in the company's Memorandum and Articles of Association.

The members of a company enjoy several rights. They are the owners of the company. They have the right to appoint Board of Directors to manage the affairs of the company. Their rights can be grouped under the following three heads:

1) Statutory rights
2) Documentary rights
3) Legal rights

1) Statutory rights:

Statutory rights are the rights which are conferred upon the members by the Companies Act. These rights can not be taken away by the Articles of Association or Memorandum of Association. Some of the statutory rights are listed below.

i) Right to obtain copies of Memorandum and the Articles of Association on request and payment of fees.

ii) Right to receive notice of meetings, attend, to take part in the discussion and vote at the meetings.

iii) In case of public company, right to transfer the shares.

iv) Right to receive copies of annual return.

v) Right to inspect the register of members and register of debentureholder.

vi) Right to participate in appointment of directors and auditors of the company in the annual general meeting.

vii) Right to demand a poll or join in demand for a poll

viii) Right to appoint proxy and inspect proxy register.

ix) Right to appoint a representative to attend and vote at general meetings on its behalf.

x) Right to receive dividend when declared.

xi) Right to make an application to the Tribunal for ordering an investigation into the affairs of the company.

xii) Right to apply to the court for winding up of the company.

xiii) Right to apply to the National company Law Tribunal for relief in case of oppression and mismanagement under section 397 and 398

xiv) Right to share in surplus on winding up.

xv) Right to information

xvi) Shareholders preemption rights.

A member has the statutory right to obtain a copy of the following company documents.

2) Documentary Rights:

In addition to the statutory rights, there are certain documentary rights which can be conferred upon the shareholders by the memorandum of association and the articles of association.

3) Legal rights:

Legal rights are the rights which are given to the members by the general law.

Liability of members:

The liability of members of a company depends on the nature of the company.

Company Limited by shares:

The liability of the shareholders is limited to the unpaid amount on the shares in respect of which he is a member.

Company Limited by guarantee:

Each member is liable to contribute the amount guarantee by him to be paid in the event of the winding up of the company.

Company with unlimited liability:

The liability of members is extended in full for all the debts contracted by the company during the period he was a member.

Duties of members:

i) It is the duty of a member to pay the money for the unpaid amount of shares held by him.

ii) In case of companies limited by guarantee, it is the duty of a member to pay the amount due for the amount of guarantee given by the member.

iii) In case of companies with unlimited, liabilities, members are liable to pay all of its debts if it is wound up.

Register and index of members:

1. As per Sec 88 of the Companies Act, every company shall keep and maintain the following registers as may be prescribed namely

a) Register of members indicating separately for each class of equity and preference shares held by each member residing in or outside India.

b) Register of debentureholders and

c) Register of any other security holders.

2. Every register maintained includes an index of names included therein.

3. If the Articles of Association of the company authorises that foreign register may be kept in any country outside India. It contains the names and particulars of the members, debentures-holders, other securityholders or beneficial owners residing outside India.

4. If a company does not follow the provisions of Section 88 of the Companies Act 2013, then the company and every officer of the company who is in default shall be punishable with a fine of not less than Rupees fifty thousand but which may extend to Rupees three lakh and where the default further failure continues the fine may extend to one thousand for every day after the first during the failure continues.

Register of members (Sec 150):

1) Every company shall keep a register of its members and enter there in the following particulars:

a) name and address, and the occupation of each member

b) the shares held by each member and the amount paid, or agreed to be paid on those shares.

c) the date on which the name of each person was entered in the register as a member.

d) the date on which any person who ceased to be a member during the previous seven years so ceased to be a member, and beneficial owner or any other person may

a) take extracts from any register, or index or return without payment of any fee or

b) require a copy of any such register or entries there in or return on payment of such fees as may be prescribed.

If it is refused, then company and every officer of the company who is in default shall be liable to pay a penalty of Rs.1000 for every day subject to a maximum of Rs.1 lakh during which the refusal or default continues.

The Central Government may also direct an immediate inspection of the document, or direct that the extract required shall forthwith be allowed to be taken by the person requiring it.

Registers, etc., to be evidence:

The registers, their indices and copies of annual returns maintained under sections 88 and 94 shall be prima facie evidence of any matter directed or authorised to be inserted therein by or under this Act.

Power to close register:

A company may close register of members or debentureholders for a period not exceeding in the aggregate 45 days in each year but not exceeding 30 days at any one time. As per the requirements of stock exchange a company has to close its transfer books in a year at the time of the annual general meeting and to declare 'record dates' for the purpose of bonus issue, rights issue etc.

Not less than seven days previous notice of the closure of the register by advertisement is to be given in some newspapers circulating in the district in which the registered office of the company is situated.

The company and every officer of the company who is default shall be punishable with a fine of Rs.5,000 per day upto a maximum of Rs.1,00,000.

Power to rectify register:

As per Sec.111 of the Companies Act, the Company Law Board has the power to rectify register of members. Sec. 111 of the Act applies to private companies and Sec 111 A of the Act applies to other companies.

The Company Law Board may order the rectification of registers under the following circumstances.

i) Where a member's name is wrongfully removed from the register of members.

ii) Where a person induced to buy shares by personation.

iii) Where the allotment of shares is irregular.

iv) Where the allotment is not made within a reasonable period of time.

v) Where the shares are improperly registered.

vi) Where the company refuses or neglects to register a transfer.

vii) Where shares have been transferred to avoid liability.

viii) Where the shares have been improperly issued at discount.

ix) Where the shares have been improperly forfeited.