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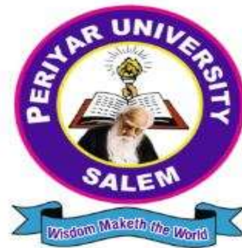

CORE PAPER: COMPANY LAW

(Candidates admitted from 2024 onwards)

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UNIT-I COMPANY LAW

Introduction to Company Law
.Company Act 2013-Definition of a company, Characteristics of company-Lifting or piercing the corporate veil-Company Distinguished form partnership and Limited Liabilities partnerships-classification of companies-Based on Incorporation, Liabilities ,Number of members, control.

Self-Learning Material Development – STAGE – 1

Unit Module Structuring

- An overview of Company Act - Meaning and Definition
- Characteristics of company
- Distinguished form partnership and Limited Liabilities partnerships
- classification of companies
- Based on Incorporation, Liabilities ,Number of members, control

1.1 INTRODUCTION TO COMPANY LAW

1.1.1 INTRODUCTION:

The companies' act 1956 had been enacted with the object to consolidate and amend the law relating to the companies and the act has been in force for about fifty-five years and had been amended several times. The banking companies and public sector undertakings have also been registered companies. The companies act is the basic statute that is responsible for the incorporation, regulation, privileges, and restrictions applicable to corporate sector. Therefore, this act has been the growth engine of the country's economy. Companies Act, 2013 is an act parliament of India which regulates incorporation of a company, responsibilities of a company, its directors, and dissolution of a company. The 2013 Act is divided into 29 chapters containing 470 clauses as against 658 sections in the companies Act, 1956 and has 7 schedules. The act has replaced the companies' act 1956 after receiving the assent of the president of India on 29th august 2013. Company:

1.1.2 MEANING OF COMPANY:

Meaning: The term "company" derived from the Latin word "companies" where "com" means "together" and "panis" means "bread". It refers to an association of persons formed to attain a common purpose. "Company" means a voluntary association of individuals formed for the purpose of attaining a common social or economic end. Joint Stock Companies: A joint stock company is one of the forms of business organization. A company literally means a group of persons associated for any common object such as business, charity, sports and research. In this lesson, the term company is used in its legal sense, i.e., a company incorporated under the companies' act 1956. This type of organization is characterized by the fact that ownership and management are separate.

1.1.3 DEFINITION OF COMPANY:

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

A company is required by law to keep a prescribed set of account books and it has to observe the regulations carefully. 10. Periodic audit of company's accounts is compulsory by a practicing chartered accountant, who is appointed by the shareholders on the recommendation of Board of directors, at the AGM.

1.2 CHARACTERISTIC FEATURES OF A COMPANY:

- **Corporate Body:** A company needs to be registered under the Companies Act, 2013. Any other organization incorporated with the Registrar of

Companies, and subsequently not registered cannot be considered as a company.

- **Separate Legal Entity:** A company exists as a separate legal entity which is different from its shareholders and members. Due to this feature, shareholders can enter into a contract with the company and can also sue the company and be sued by the company.
- **Limited Liability:** As the company exists as a separate entity, members of the company are not liable for the debts of the company. Liability of members of a company is limited to the extent of the shares that are held by them or by the extent of the guarantee amount
- **Transferability of Shares:** Shareholders of a public limited company can transfer their shares as per the rules laid down in the articles of association. However, in case of a private limited company, there might be some restrictions on the transfer of shares.
- **Common Seal:** The firm is an artificial entity or a person, and therefore cannot sign its name by itself. It creates the necessity of a common seal that can be used for representing the decisions made on behalf of the company.
- **Perpetual Succession:** The Company being an artificial person established by law perpetuates to exist regardless of the differences in its membership. In simple words, a company is an artificial person. Therefore, it does not have any restrictions on age. The factors like death, insolvency, retirement or the insanity of one or all of the members do not impact the company status.
- **Number of Members:** As per the Companies Act, 2013**,** the minimum number of members required to start a public limited company is seven while for a private limited company, it is two. The maximum number of members for a public limited company can be unlimited while it is restricted to 200 for a private limited company.

1.3 LIFTING OF CORPORATE VEIL (PIERCING THE CORPORATE VEIL

By a fiction of law, a company is seen as a distinct entity separate from its members, but in reality, it is an association of persons who in fact the beneficial owners of the company and its corporate property. This fiction is created by a veil and is called the Corporate veil.

Lifting or piercing of corporate veil means ignoring the fact that a company is a separate legal entity and has a separate identity. This concept disregards the separate identity of the company and looks behind the true owners or real persons who are in control of the company.

Whenever and wherever a fraudulent or dishonest use is made of the legal entity, the individuals will not be allowed to hide behind the curtain of corporate personality. The appropriate authority will break this shell of the company and sue the individuals who have done or committed such a crime or offense. This lifting of the curtain is called a Lifting of the Corporate veil.

❖ STATUTORY GROUNDS FOR LIFTING OF THE CORPORATE VEIL:

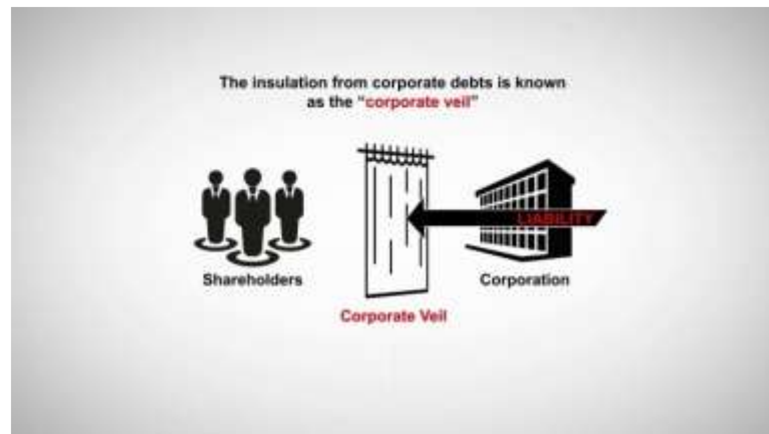
1. Misstatement in the Company's Prospectus: Companies provide their securities for sale by publishing their prospectus. The prospectus established under Section 26 of the Companies Act, 2013 mentions significant notes regarding the firm. If a person tries to give wrongful, inaccurate, or misleading information in the prospectus of the company, he is accountable for imprisonment, penalty, or both mentioned under Sections 26 (9), 34, and 35 of the Act, relying on the facts and situations.
2. **No Refund as to Money of Application:** As per Section 39 (3) of the Companies Act, in instances where the company's directors fail to refund the "application money" without interest within 120 days in case the corporation fails to allot shares, they will be severally and jointly liable to refund the money in addition to an interest of 6% per annum, from the date of passing of 130 days.
3. **Reduction of Membership below the Prescribed Limit:** In case the minimum number of a company's membership goes below 2 (private companies), or below 7 (public companies), the corporation can further its operation for a time interval of 6 months while such members are decreased, and each individual who is a 'member' at that time, being aware of the fact that the quantity has been negatively affected. In instances where the grace period comprising 6 months has passed, the corporation alongside its members will be accountable and can be claimed for the amount they generated out of the 6 months, or it might be severally sued.

4. **Misperception of Company's Name**: As per Section 12, an officer pertaining to a company signing any promissory note, bill of trade, or check wherein the corporation's title is not provided in the suggested or, he can personally be accountable to the receiver of the bill of trade, check, etc., unless it is rightly provided by the company.
5. **For Investigation of the Company's Ownership:** As per Section 216, the "Central Government" may choose certain inspectors to scrutinize and check on the company's membership so as to find out the actual people financially involved in the corporation and those who are influencing its policies. Therefore, the Central Government might lift the concerned veil.
6. **Inducing Persons to Invest Money in the Company:** As per Section 36, someone who makes fraudulent, false, inaccurate, or misleading promises or representations to another person or conceals appropriate information from a person so as to induce him to perform or enter into

   (A)An agreement to underwrite subscribes to, acquire or dispose of securities,

   (B) An agreement to assure profits to any such party on the basis of the return of securities or on the advances in the values of the securities,

   (C)An agreement to obtain credit from any banking or financial institution. In various instances such as these, the corporate veil might be ignored so as to find out the actual party who is guilty and hold him liable.
7. **To furnish False Statements:** As per Section 448, if a person makes false representations in a mandatory return, certificate, prospectus, report, financial statement, or other documents, or conceals any appropriate or pertinent truth, he will be liable under Section 447. The Corporate Veil ought to be pierced so as to discover the actual guilty member who authorizes those documents to be released in the company's name.
8. **In the Case of ultra vires Acts:** All the companies are required to operate according to their MoA, AoA, and the Companies Act of 2013. Any act performed beyond the scope of either of these is held to be "ultra vires" or outside the certified jurisdiction. Penalties may be laid if the operations of a company are found to be illegitimate. The directors and other officers of a company will personally be accountable for all the activities performed on their behalf if they are ultra-vires.



1.4 COMPANY DISTINGUISHED FORM LIMITED LIABILITIES PARTNERSHIPS AND PARTNERSHIP

LIMITED LIABILITY PARTNERSHIP (LLP)

LLP stands for Limited Liability Partnership. It is an alternative corporate business form that provides the benefits of limited liability of a company along with the flexibility of a partnership.

An LLP is a legal entity and is liable to the full extent of its assets but the liability of a partner is limited to their contribution in the LLP. In LLP, one partner will not be liable for the wrongdoing of another partner. The partner will be held responsible only for his own actions.LLP is called a hybrid between company and partnership as it incorporates properties of both the organization structures.

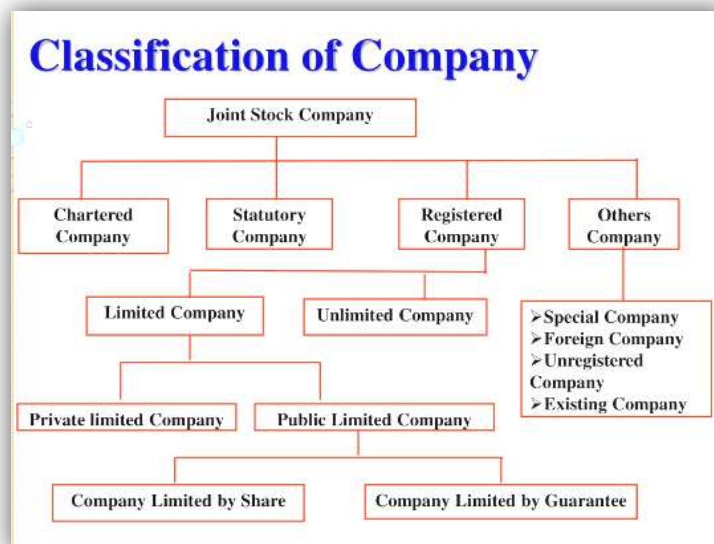
PARTNERSHIP

A partnership is one of the oldest forms of business structures and is very popular in India. It is relatively easy to set up with a minimum set of rules and regulations.

LLP	PARTNERSHIP
Definition	
LLP is a business form that offers the combined benefits of a partnership and a company	Revenue reserve is created to meet unforeseen events in a business organization
Applicable Act	
Limited Liability Partnership Act, 2008	Indian Partnership Act, 1932
Partners Liability	
In LLP partners have limited liability	Partners liability is to the amount of capital invested
Need for registration	
Mandatory to be registered	Registration is optional
Do they have any legal status?	
LLP has a legal status	There is no separate legal status for partnership
How to name a firm?	
Must suffix LLP after the name of the firm	Can be any name as decided by partners
Agreement Document	
LLP Agreement	Partnership Deed
Maximum Partners allowed	
No such limit	Maximum 100 partners allowed
Is there any perpetual succession?	
Perpetual succession is possible as partners may come and go in an LLP	Perpetual succession is not possible in partnership

A partnership is considered to be an agreement between two or more individuals to pool their respective capital and resources, combine them for contributing to the business. It may be run by all or any one of them on behalf of others.The partners also agree to share the profits and losses as per rules of Deed. Let us now look at some of the significant points of differences between above two popular forms of business.

1.5 CLASSIFICATION OF COMPANIES



❖ CLASSIFICATION OF COMPANIES ACCORDING TO MODE OF INCORPORATION

a) Chartered Company: Companies that are formed by the Royal Charter or on any special order granted by the King or Queen are called as Chartered Companies. Such companies enjoy exclusive powers and privileges and can be set up only in the countries having a system of Kingship. This type of company is not found in India nowadays.

Examples: The Bank of England, The East India Company.

b) Statutory company: Statutory company is formed under a special Act passed by Parliament or by the State legislature. The powers of such a company are defined by the Act constituting it. This company is not required to have a Memorandum of Association and need not use the word 'Limited' against its name. The audit of such a company is to be conducted under the supervision of C& AG (Comptroller and Auditor General of India).

Examples: The Reserves bank of India, The Life Insurance Corporation of India

c) Registered or incorporated company: A company that is registered under the Companies Act is known as a Registered Company. Nowadays registered companies are most common in practice.

Examples: Steel Authority of India Ltd, Maruti Udyog Ltd., and Reliance Industries.

❖ CLASSIFICATION OF COMPANIES ACCORDING TO LIABILITY OF MEMBERS

a) **Company limited by shares**: A company in which the liability of the members is limited to the face value of the shares held by them is known as Company limited by shares. If a member has paid the full face value of the shares held by him, he does not owe any further liability to the company. But in the case of partly paid shares, the liability of members is limited to the unpaid amount on the shares held by them.

b) **Company Limited by guarantee**: In this type of company, the liability of members is limited to an amount as they agree to contribute to the assets of the company in the case of winding up of the company. This amount is known as the 'guarantee' and it is also stated in the Memorandum of Association. The amount which was guaranteed by the members can only be called up at the time of winding up of the company. This type of company is normally formed to promote education, art, science, culture, and sports. Not for profit Companies: Sec 25 companies are generally formed to promote charity and philanthropy or any other useful public objectives and have to invest profit or other income from it to further promote these aims, unlike a regular company where shareholders and owners make profits or receive dividends.

c) **Unlimited liability:** In this company, the liability of every member is unlimited and extends to his personal property. The members are personally liable to pay the debts of the company as per their share of interest. Sec 12-C of the Companies Act, 1956 provides the incorporation of a company having an unlimited liability of its members.

❖ CLASSIFICATION OF COMPANIES ACCORDING TO OWNERSHIP AND CONTROL

a) **Holding company**: Any company that directly or indirectly holds more than half of the equity share capital of another company or controls the composition of the Board of Directors of some other company. A company can become a holding company of another company in the following ways:

i) By holding more than 50 % of the issued equity capital of the company ii) By holding more than 50% of the voting rights in the company iii) By holding the right to appoint the majority of the directors of the company.

b) Subsidiary company: The subsidiary company is the one in which another company holds more than 51% of the nominal value of its equity share capital or more than 51 % of its voting power or control the majority composition of its Board of Directors or is the subsidiary of another subsidiary company.

c) Government Company: A Government company is the one in which 51 % or more of the paid-up share capital is held by the Central or State Governments. A company can be partly or fully owned by the Government. Government Companies are incorporated under the Companies Act, 1956. Normally, public enterprises which undertake industrial and commercial activities are incorporated as Government companies. Examples: Hindustan Shipyard, Hindustan Aeronautics Limited, Steel Authority of India Limited (SAIL), Bharat Heavy Electricals Limited (BHEL)

❖ CLASSIFICATION OF COMPANIES ON THE BASIS OF NATIONALITY OR JURISDICTION

a) Indian Company: A company that is incorporated in India is known as an Indian Company. It should be registered under the provisions of the Indian Companies Act, 1956. Its registered office should be in India though it may carry on the business outside India.

b) Foreign Company: A company which is incorporated outside India but carries on the business in India through its branches is known as Foreign Company. The Companies Act 1956 provides the same provisions for foreign companies carrying on business in India. In case 51 % or more of the paid-up capital of a foreign company is held by one or more citizens or/and one or more corporate bodies incorporated in India, such a company should comply with the formalities prescribed as regards to the business carried on in India, as if it were a company incorporated in India. A foreign company must file the following documents within the 30 days of its incorporation in India: i) Certified copies of its MOA(Memorandum of

Association) and AOA (Articles of Association) ii) full address of its registered office iii) full particulars of its directors and secretary iv) Name and address of its authorized representative in India v) full address of its principal place of business in India .

c) Multinational company: Multinational company is the company which has production and marketing facilities in several countries. A multinational company can operate in different countries through branches, franchises, joint ventures, and subsidiary companies.

Examples: IBM, Pepsi, Nestle, Siemens

❖ CLASSIFICATION OF COMPANIES ON THE BASIS OF TRANSFERABILITY OF SHARES

a) Private Company: A private company means which has a paid-up capital of Rs 1 lakh or higher paid-up capital as prescribed and which by its Articles of Association: (a) restricts the right of members to transfer its shares; (b) has a minimum of 2 and a maximum of 200 members, excluding the present and past employees; (c) does not invite the public to subscribe to its shares or debentures (d) does not invite or accept deposits from persons other than its members, directors, or their relatives. The minimum number of members to form a private company is two and a private company must use the word "Private Limited" or "Pvt. Ltd." in its name. Earlier the definition had prescribed a minimum paid-up share capital of Rs. 1 lakh for private companies, but an amendment in 2005 removed this requirement. Private companies can now have a minimum paid-up capital of any amount.

b) Public company: A public company means a company which (a) is not a private company: (b) has a minimum of 7 members and no limit on the maximum members (c) has a paid-up capital of Rs 5 lakh or higher paid-up capital as may be prescribed (d) has no restriction on transfer of securities (e) a private company which is a subsidiary of a public company This article provides Companies Act, 2013 notes with case laws**.** The Companies Act was an Act of the Parliament of India, which enabled companies to be formed by registration, and set out the responsibilities of companies, their directors and secretaries. A company is a "legal" person.

A company thus has legal rights and obligations in the same way that a natural person does. A Company Act deals with everything from the incorporation of a company to its winding up.

1.6 Check Your Progress – Quiz – 1

1. Companies Act 1956 was repealed by:
   a) Companies Act' 2002
   b) Companies Act' 2010
   c) Companies Act' 2013
   d) Companies Act' 2013

2. When did the Companies Act 2013 came into force?
   a) 5th August 2013
   b) 10th August 2013
   c) 15th August 2013
   d) 20th August 2013

3. Companies Act' 2013 consists of ______ sections.
   a) 250
   b) 270
   c) 360
   d) 470

4. Which new type of company was introduced in Companies Act 2013?
   a) One Person Company (OPC)
   b) Associate Company
   c) Small Company
   d) All of the above

5. Which of the following is the feature of a registered company?
   a) Transferability of shares

b) Perpetual succession
c) Limited liability
d) All of the above

6. Registration of a company is:
a) Optional
b) Compulsory
c) Compulsory for Pvt companies only
d) Compulsory for public companies only

7. Minimum number of members in case of private company is:
a) 2 (Two)
b) 7 (Seven)
c) 50 (Fifty)
d) 200 (Two hundred)

8. Minimum number of members in case of public company is:
a) 2 (Two)
b) 7 (Seven)
c) 50 (Fifty)
d) 200 (Two hundred)

9. Maximum number of members in case of public company is:
a) 2 (Two)
b) 7 (Seven)
c) 50 (Fifty)
d) No Limit

10. MOA of a company defines it:
a) Scope of operation
b) Borrowing powers
c) Capital
d) Nature of business

11. A company incorporated by the act of the parliament is:
    a) Statutory Company
    b) Private Company
    c) Chartered Company
    d) Government Company

12. Which of the following is not file to the registrar at the time of incorporation?
    a) Memorandum of Association (MOA)
    b) Articles of Association (AOA)
    c) Statutory declaration of Compliance
    d) Prospectus

13. East India Company was an example of:
    a) Public Company
    b) Private Company
    c) Foreign Company
    d) Chartered Company

1.7 Unit Summary

The Company Act of 2013 serves as the cornerstone of corporate governance in India, offering a comprehensive framework for the formation, operation, and dissolution of companies. It begins by defining a company as a legal entity with distinctive features such as limited liability and perpetual succession. These characteristics set companies apart from other forms of business entities and underscore their importance in modern economic activities. Additionally, the Act addresses the concept of "lifting" or "piercing" the corporate veil, which allows courts to hold company directors or shareholders personally liable in certain circumstances, such as fraudulent behavior or evasion of legal obligations.

Furthermore, the Company Act distinguishes companies from partnerships and Limited Liability Partnerships (LLPs), highlighting the differences in their legal structures and liabilities. While partnerships involve shared responsibilities and unlimited liabilities for partners, companies offer limited liability protection to their shareholders, shielding them from personal financial risks beyond their investment in the company. LLPs, on the other hand, combine elements of both partnerships and companies, providing partners with limited liability while allowing them to participate in the management of the business.

Moreover, the Act provides a framework for the classification of companies based on various criteria such as mode of incorporation, liabilities, number of members, and control mechanisms. This classification system facilitates regulatory oversight and ensures compliance with legal requirements, thereby promoting transparency and accountability in the corporate sector. By establishing clear guidelines for the formation and operation of different types of companies, the Company Act of 2013 aims to foster a conducive environment for business growth and investment while safeguarding the interests of stakeholders and the broader economy.

1.8 Glossary

“Act” or “CA,2013” or “CA”	means the Companies Act, 2013, to the extent notified, from time to time, and includes any re-enactment thereof, with all schedules and tables there under, as notified, with effect from the date of such notification in the official gazette of India including all rules, notifications, circulars, clarifications and orders issued thereunder including certain provisions of the Companies Act, 1956, as and where specified, and “Section” shall mean a section of the said Act
Board	implies the Board of Directors of the Company
Company	Implies Tayo Rolls limited
Directors	implies the directors on the Board
ED	implies Executive Director of the Company
MD	implies the Managing Director of the Company
Policy	implies this Policy on appointment and removal of

	Directors as framed by the Committee; Policy on remuneration for directors, key managerial personnel and other employees; Process and criteria for annual performance evaluation of the Board, its Committees and Directors, as applicable

1.9 Self-Assessment

Essay type questions

1. .Define company law and explain its characteristics.
2. .What are the different kinds of company?
3. What are the different between private and public company.
4. Write a classification of company.
5. Explain Lifting for corporate veil

1.10 Case Study

Mr. A has developed a shopping mall in Sydney at the request of Mr. B, who is a municipal corporator. Mr. C has developed an agreement to pay AUD 2, 50,000. Mr. A accepted the agreement of Mr. C. Is it an agreement or a contract? Give justification of your answer.

This given case scenario is under the consideration. That means the promises executes the work at the desire or under the promisor's direction. In this case, Mr. A has developed a shopping mall in Sydney in accordance with the request of Mr. B, who is a municipal corporater. An agreement has been made by Mr. C to pay AUD 2, 50,000 and Mr. A has accepted the proposal of Mr. C.

In this case, Mr. Morgan has developed a market under the direction of the municipal corporate. The market was allotted to various individuals; Mr. Chapel was one of them. Mr. Chapel has made an agreement that he will pay commission to Mr. Morgan for the land allotment in the market. However, after this agreement Mr. Chapel was not able to pay money to

Mr. Morgan. For this reason, Mr. Morgan filed a case against Mr. Chapel. It has been found from the case study that, Mr. A had developed a shopping mall in Sydney due to the request of corporate C. Mr. C agreed to pay AUD 2, 50,000 to A. In the above case C is stranger between A and B. Hence; there is no valid consideration between A and C. Therefore, it can be stated that there is no valid lawful consideration.

1.11 Task

- Write an essay (500-700 words) on the definition of a company as per the Companies Act 2013. Include a detailed explanation of the key characteristics of a company, such as separate legal entity, perpetual succession, limited liability, transferability of shares, and common seal.
- Develop a multiple-choice quiz with 15-20 questions covering the topics from the syllabus, such as the definition and characteristics of a company, lifting the corporate veil, distinctions between company types, and the classifications of companies. Provide explanations for the correct answers to reinforce learning.

1.12 E – Contents

S.No	Topic	E-Content Link
1.	Company Act 2013	https://www.mca.gov.in/MinistryV2/companiesact.html
2.	Definition of a Company	https://www.icsi.edu/media/webmodules/publications/Company_Law.pdf
3.	Characteristics of a Company	https://www.legalserviceindia.com/legal/article-124-characteristics-of-company.html
4.	Lifting or Piercing the Corporate Veil	https://blog.ipleaders.in/piercing-corporate-veil/
5.	Company Distinguished from Partnership and LLP	https://taxguru.in/company-law/difference-company-partnership-llp.html
6.	Classification of Companies	https://www.legalraasta.com/blog/classification-of-companies/
7.	E-Book	https://books.google.com/books/about/Company_Law.html?id=

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1.13 Reference

1. https://www.mca.gov.in/content/mca/global/en/acts-rules/companies-Act/companies-act-2013.html
2. https://vakilsearch.com/blog/explain-procedure-formation-company/
3. https://www.investopedia.com/terms/w/windingup.asp

UNIT – II FORMATION OF COMPANY

FORMATION OF COMPANY
Formation of a company-Promoter-Incorporation Document-filing-Memorandum of Association-Contents-Alteration-Legal Effects-Articles Of Association-Certification of Incorporation-Prospectus-Content-kinds-Liabilites-Sharecapital-Kinds-Issue-Alteration-Dividend-Debentures.

Self-Learning Material Development – STAGE – 1

Unit Module Structuring

- An overview of Formation of a company - Meaning and Definition
- Promoter
- Incorporation
- Document-filing-Memorandum of Association-Contents
- Articles Of Association
- Certification of Incorporation
- Prospectus
- Content-kinds
- Liabilities
- Share capital, Kinds, Issue, Alteration.
- Dividend and Debentures.

2.1 FORMATION OF COMPANY:

A company is an association of both natural and artificial person incorporated under the existing law of a country. Any seven or more persons, or where the company to be formed will be private company, any two or more persons, or one person, where the company to be formed is to be one person company that is to say, a private company, associated for any lawful purpose may, by subscribing their names to a MOA and otherwise complying with the requirements of the companies Act, in respect of registration, form an incorporated company, with or without limited

liability [sec3 of the Act] The formation of a company is a lengthy process indeed. The following are the stages involved in the formation of a company. Four major stages involved in formation of a company of the above four stages, the first two stages i.e., promotion and incorporation are common for both private company and public company not having share capital. Immediately after obtaining the certificate of incorporation, these companies can commence business. But the public mentioned above before commencement.

1. Promotion
2. Incorporation
3. Capital subscription
4. Commencement of business.

1. PROMOTION

This is the first stage in the promotion of a company. Promotion may be defined as, " the discovery of a business opportunities and the subsequent organization of funds, property and managerial ability into a business concern for the purpose of making profits therefrom". Promoters: the promoters are the ones who take steps for formation of a company. Promoters are the persons, who conceive the idea or visualize a project and then take steps to execute the idea in to a reality. In the words of Bowen L.J, "The term promoter is a term, not of law, but of business, usefully summing up in a single word by which a company is generally brought into existence"

2. INCORPORATION

The promoter will now make arrangement for the incorporation or the registration of the company. In order to register the joint stock company the following documents must be prepared and filed with the Registrar of joint stock companies.

a) Memorandum of Association: The Memorandum of Association is the most important document of the company. It contains the name of the company and the State in which the registered office is to be situated. The object of the company clearly stated in the Memorandum. The capital of the company and its division of the various kinds of shares are stated.

b) Articles of Association. The Articles of Association contains the rules and regulations for the internal management of the company. It states the rights and duties of the members of the company and also the powers of directors and officers. It determines the relations between the company and its shareholders, and also among the shareholders of the company. In case of public limited company preparing and filing of Articles is not compulsory and the Articles stated in the Table "A" of the companies Act shall apply automatically. But a private limited company must prepare and file with the Registrar compulsorily.

In case of public limited company preparing and filing of Articles is not compulsory and the Articles stated in the Table "A" of the companies Act shall apply automatically. But a private limited company must prepare and file with the Registrar compulsorily.

c) List of Directors The list of contains the Names, addresses and occupation of the persons who have agreed to act as the first directors of the company.

d) **The consent of the Directors** Persons who have agreed to act as directors must give in writing that they agree to act as Directors of the company. This written document must be file with the Registrar of the company. Promoters should p ay the necessary filing and registration fees. The documents will be verified by the Registrar. If he satisfied with all the documents submitted to him, the Registrar will enter the Name of the company in the Registrar of the company and will issue a "Certificate of Incorporation".

3. CAPITAL SUBSCRIPTION:

After the completion of the above stages, a private company and public company not having share capital can commence its business. But a public company having share capital has to pass through two more stages and one among them is capital subscription. During this stage, the company takes the following steps: i) completes the formalities to raise necessary capital ii) The company's banker is to be appointed for collecting the applications from the investors. iii) Directors have to pass a formal resolution for making allotment. iv) Allotment letters are to be sent

the allottees. v) Return of allotment is to be filed with the registrar. vi) If minimum subscription is not obtained, the company cannot make any allotment.

4. COMMENCEMENT OF BUSINESS

i) To make an application to the registrar of companies for the issue of a certificate of commencement of business.

ii) The declaration that all the legal conditions required to be fulfilled for obtaining the certificate have been duly filled.

iii) To collect the certificate of commencement of business from the registrar of companies office.

2.2 MEMORANDUM OF ASSOCIATION

Meaning:

The Memorandum of Association is a fundamental document of a company, and this is one of the important documents to be submitted at the time of registration of a company. So the first step in the formation of a company is to prepare MOA. Memorandum of Association of a company is often simply called memorandum.

Definition: According to sec 2(56),

"Memorandum" means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this act. Contents of Memorandum of association [section 4]

1.Name clause:

The name of the company should be stated. A company is free to select any names it likes. But the name should not be identified or similar to that of a company already registered. A Company should not select a name which the Government considers undesirable. The name of the company must not contain the words like Government, Municipal, etc. According to the Act, the word "limited" should be stated at the end of the name of the public limited company. In case of private limited company the words "Private limited" should be stated at the end of the name.

2. **Situation Clause**:

Every company must have registered office to which all communication can be sent. Registered office means a place w here the common seal, statutory books, etc... are kept. The state in which the registered office of the company is to be situated must be mentioned in this clause.

3. **Objective Clause**:

The objects for which the company is to be formed are stated here. The objects of the company should be clearly stated. A company cannot carry on any business not mentioned in the memorandum. Memorandum of Association determines the extent of the activities of the business. The objects clause should be carefully drafted as it is difficult and costly to alter. The objects stated in the Memorandum must be legal. It should include all the object s or activities which the company likes to undertake at present and future

4. **Liability Clause:** The liability clause states the nature of the liability of the members. The companies liability may be Limited or unlimited. If the company is to be incorporated wit h limited liability, it should be stated in the liability clause. If the company is unlimited, this clause need not be stated in the liability clause. If the company is limited by guarantee, it should specify the amount which the members to be contribute to the company at time of winding up.

5. **Capital Clause:** The amount of capital which the company is to be registered is stated in this clause. This capital is called authorized capital, nominal capital or registered capital. At the same time the various divisions of the shares and the number of shares must be stated. A company cannot issue shares more than the number stated in this clause. 6. Association Clause The subscribers must clearly state their desire to form themselves into a company in pursuance of the memorandum. They should also state the number shares taken by each one of them. The memorandum must be signed by at least seven persons in the case of a public limited company and in case of private limited company at least two persons. The signatories are called subscribers. The memorandum must be printed and divided into paragraphs numbered properly. It should be filed with the Registrar along with other documents.

2.3 ARTICLES OF ASSOCIATION

The memorandum of Association is an important document of a company. It is called the charter as it contains the rights, privileges and powers of the company. It is regarded as the construction of the company. Alteration of memorandum is costly and difficult. So it must be drafted with the help of an expert lawyer. A company should follow strictly the procedure laid down in the Indian companies act for altering the Memorandum. The following procedure must be adopted for changing the contents of the Memorandum.

1. **Name clause**

   The name of the company can be changed by passing special resolution. The change must be approved by the Central Government. A new certificate of incorporation mu t be obtained from the registrar. Change of name would not affect the rights or obligations of the company and also those of the third parties dealing with the company.

2. **Situation clause**

   If a company wants to change its registered office from one place to another place within the same city or town, it can do so. There is no need for a resolution. But such a change should be notified to the register within 28 days of such a change. If the registered office is to be changed from one place to another place within same state, it can be done by passing a special resolution. The company should give public notice about the change of register office within 28 days of such change. If the registered changed from one state to another a special resolution should be passed. The change must be confirmed by the court

3. **Objects clause** A special resolution should be passed to change the object clause. Notice should be given to every debenture holder and ever y other person likely to be affected by a change in the objects. The court should confirm the alteration of the objects, if such a change is necessary to enable the companies. Changes may be in the following things, to carry on its more economically or efficiently, to obtain its main purpose by ne w or improved means, to change the area of its operations. To carry on some other business, etc After the change in objects is confirmed by the court, a certified copy of the court's order And also a printed copy of

the memorandum as altered must be filed with the Registrar within 3 months of the date of court's order.

4. **Capital Clause** A company can alter its share capital if permitted by the articles. It can increase its share capital and convert shares into stock and vice versa. It can consolidate existing s hares into higher face value. (i.e. 10 shares of Rs.10 each may be consolidated into one share of Rs.100 each) or may divide existing shares into shares of smaller value (i.e. one share of Rs.100/- may be divided into ten shares of Rs.10 each). This change can be made by passing an ordinary resolution. Details of alteration must be made intimated to the registrar within 30 days.

Meaning:

Every company is required to file the articles of association along with the memorandum of association with the registrar, at the time of its registration. AOA are the rules, regulations, and byelaws for governing the internal affairs of the company. The may be described as the internal regulation mechanism of the company. Definition: Section 2 (5) of the companies act defines, Articles means the Articles of Association of a company as originally framed or as altered from time to time in pursuance of any previous companies acts. Section 5 of the companies act, 2013, deals with articles of association.

❖ CONTENTS OF ARTICLES OF ASSOCIATION

Articles generally contain provision relating to the following matters:

i) The exclusion, whole or in part of Table A;

ii) Allotment of shares;

iii) Lien on shares

iv) Calls on shares;

v) Forfeiture shares;

vi) Issue of share certificates;

vii) Issue of share warrants;

viii) Transfer of shares;

ix) Transmission of shares;

x) Alteration of share capital;

xi) Borrowing power of the company;

xii) Rules regarding meetings;

xiii) Voting rights of members;

xiv) Notice to members;

xv) Dividends and reserves;

xvi) Accounts and audit;

xvii) Directors, their appointment and remuneration;

xviii) Fixing limits of the number of directors;

xix) Payment of interest out of capital;

xx) Common seal; and

xxi) Winding up.

❖ ALTERATION OF THE ARTICLES OF ASSOCIATION

It is costly and difficult to alter the articles of association. The Articles can be changed by passing a resolution, if the following conditions are satisfied;

i) The alteration is not against the law of the country

ii) The alteration is not against the provisions of the memorandum

iii) It is not done to defraud the minority shareholders, and

iv) It is done in the interest of the company.

However, in a few cases Articles cannot be altered without the previous permission of the Central Government. For example the remuneration of any director cannot be increased without the previous sanction of the Government. It should be noted that confirmation by the court is not needed to alter the Articles.

❖ DIFFERENCE BETWEEN MEMORANDUM AND ARTICLES OF ASSOCIATION

MOA	AOA
1. Defines the limits & object of the company .	1. Internal regulation of the company subsidiary to memorandum.
2. MOA must be registered at the time of incorporation	2. The articles may or may not be registered.
3. Defines the regulation between company and outsiders.	3. Govern internal relationship between the company and members.

4. Strict restrictions, alteration only with sanction of central govt/ tribunal	4. It can be altered by special resolution.
5. Subordinate to the act only. .	5.Subordinate to the act & to the memorandum

❖ CERTIFICATE OF COMMENCEME NT OF BUSINESS

Private limited Companies can commence business soon after receiving 'Certificate of Incorporation '. But a public limited company cannot commence its business after receiving this certificate. It should secure another certificate called Certificate of commencement of business. So the next step in the formation of a public limited company is to obtain a certificate of commencement of business from the Registrar. A public limited company after securing registration must make necessary arrangements for securing capital for the business. It must request the public to purchase the shares of the company. It prepares and issue a document is called 'Prospectus'. It explains the prospectus of the company and induces people to apply for the shares of the company. The prospectus must be filed with the Registrar of joint stock companies. If prospectus is not prepared, a statement in lieu of prospectus must be filed. If the Registrar is satisfied that the company has fulfilled the conditions relating to commencement of business, he will issue a "certificate of commencement of Business". A public limited company will now be entitled to commence business.

2.4 CERTIFICATE OF INCORPORAT ION

After filed all the documents with the Registrar and the nominal fee s are paid and the registrar is satisfied that the all requirements of the Act regarding the registration have been complied with, he will register the documents and retain them. He will then issue a certificate known as "Certificate of Incorporation" and enter the name in the Register kept in his office. This certificate brings the company into existence as a legal person.

INTRODUCTION

The word ‘Company’ has a strict legal meaning according to the provisions of the Companies Act of 2013, a company refers to a company formed and registered under the Companies Act. In common law, a company is a “legal person” or a “legal entity” which is separate and capable of surviving beyond the lives of its members.

Incorporation of a company refers to the setting up of a company according to the provisions laid out in the Companies Act of 2013. This article deals with the process of incorporation of a Company, the advantages that an incorporated company would have over the Non-Incorporated Companies and also the disadvantages of Incorporation of a Company.

ADVANTAGES OF INCORPORATION OF A COMPANY

The advantages mentioned below are only enjoyed by the companies which are incorporated according to the provisions laid out in the Companies Act of 2013. Non incorporated companies do not enjoy these benefits.

(i). Separate Legal Identity

Once a business is incorporated, it becomes a separate legal identity. An incorporated company, unlike a partnership firm which has no identity of its own, has a separate legal identity of its own which is independent of its shareholders and its members. The companies can thus own properties in their name, become signatories to contracts etc.According to Section 34(2) of the Companies Act, 2013, upon the issue of the certificate of incorporation (which will be talked about later in the article), the subscribers to the memorandum and other persons, who may from time to time be the members of the company, shall be a body corporate capable of exercising all the functions of an incorporated company having perpetual succession. Thus the company becomes a body corporate which is capable of immediately functioning as an incorporated individual.

(ii). Perpetual Succession

The term perpetual succession means that the longevity of the company does not depend on its members or their financial status. Even if all the members of the company go bankrupt or all of them die, the company will not dissolve on its own unless it is made to dissolve on grounds which are laid out in the act.

(iii). Transferable Shares

According to Section 82 of the Companies Act of 2013, the shares of a company are deemed to be movable and transferrable in the manner provided by the articles of the company. This enables the member to sell his shares in the open market and to get back his investment without having to withdraw money from the company. This provides liquidity to the investor and the stability of the company. In a partnership, on the other hand, a partner cannot transfer his share in the capital of the firm except with the unanimous consent of all the partners.

(iv). Capacity to Sue

An incorporated company is also vested with the power of suing individuals and other companies in its name.

Flexibility

Every company has complete independence to form policies suited to their organisation provided they do not violate general principles of law and equity.

Limited Liability

The company being a separate entity, leading its own existence, its members are not liable for its debts. The liability of the members is limited to his or her share in the company and the liability ends there. No one is bound to pay more than what he has put in.

❖ DISADVANTAGES OF INCORPORATION OF A COMPANY

Lifting the Corporate Veil

Under this concept, the court disregards the status of a company as a separate legal entity if the members of the company try to take advantage of this status. The intentions of the persons behind the veil are completely exposed. They are made personally liable for using the company as a vehicle for undesirable purposes. This can be done where the only purpose of incorporation of a company was to evade taxes, where the company was brought forth for fraudulent purposes etc.

The corporate veil can also be lifted when the members of the company go against the statutory provisions. For example, in cases where a business is carried on beyond six months after the knowledge that the membership of the

company has gone below the statutory requirement, the members of the company will be held liable.

Paperwork and Expenses

Incorporation of a company is both, an expensive affair in monetary terms and a cumbersome process because of the paperwork that it requires.

Company is not Citizen

A company, though a legal person, is not a citizen. It can have the benefit of only such fundamental rights as are guaranteed to every "person" whether a citizen or not. A company, however, does have a nationality, domicile and residence. A company incorporated in a particular country possesses the nationality of that particular country, but unlike a particular person, it cannot change its nationality.

❖ PROSPECTUS

A legal disclosure document containing information about an investment offering to the public.A prospectus is a legal disclosure document that provides information about an investment offering to the public, and that is required to be filed with the Securities and Exchange Commission (SEC) or local regulator. The prospectus contains information about the company, its management team, recent financial performance, and other related information that investors would like to know.

Investors use the legal document to determine the growth and profitability prospects of the selling company to decide whether they will take part in the offering or not. In the U.S., the legal name of the public filing is an S-1.

❖ **PROSPECTUS FOR A STOCK OR BOND ISSUE**

When a company is issuing stocks or bonds, it publishes a prospectus to provide investors with all the information that they need to make an informed decision. The issuer provides both a preliminary and a final prospectus. A preliminary prospectus is the initial offering document that provides details about the proposed transaction. The final prospectus is offered when the offering's been finalized and is being offered to the public for subscription.

Information in the final prospectus includes the number of shares issued, offering price, company's financial data, risk factors, use of the proceeds, the dividend policy, and other relevant information. This information helps an investor make an informed decision on whether to invest in the company.

❖ PROSPECTUS FOR MUTUAL FUNDS

A mutual fund prospectus is a legal disclosure document that the SEC requires mutual funds to file and make available to interested investors. The details provided in the document include the fund's objectives, risks, performance, distribution policy, executive team, investment strategies, etc.

A mutual fund may provide a summary prospectus, which is a few pages long and contains important information that investors require. It may also issue a statutory prospectus, which is long and extremely detailed, to provide investors with as much information as they may need to make a buying decision. Mutual funds are required to give investors the document after the purchase of shares. Investors can also access the information on the fund's website.

❖ **COMPONENTS OF A PROSPECTUS**

The following are the components of a prospectus Image of Facebook's S-1.:

The information in this prospectus is not complete and may be changed. This prospectus is not an offer to sell these securities and neither we nor the selling stockholders are soliciting offers to buy these securities in any jurisdiction where the offer or sale is not permitted.

PROSPECTUS (Subject to Completion)
Issued December 19, 2013

70,000,000 Shares

facebook

Class A Common Stock

Facebook, Inc. is offering 27,004,761 shares of its Class A common stock and the selling stockholders are offering 42,995,239 shares of Class A common stock. We will not receive any proceeds from the sale of shares by the selling stockholders.

We have two classes of common stock, Class A common stock and Class B common stock. The rights of the holders of Class A common stock and Class B common stock are identical, except voting and conversion rights. Each share of Class A common stock is entitled to one vote. Each share of Class B common stock is entitled to ten votes and is convertible at any time into one share of Class A common stock. The holders of our outstanding shares of Class B common stock will hold approximately 75.4% of the voting power of our outstanding capital stock following this offering, and our Chairman and CEO, Mark Zuckerberg, will hold or have the ability to control approximately 62.8% of the voting power of our outstanding capital stock following this offering.

Our Class A common stock is listed on the NASDAQ Global Select Market under the symbol "FB." On December 18, 2013, the reported closing sale price of our Class A common stock on the NASDAQ Global Select Market was $55.57 per share.

Investing in our Class A common stock involves risks. See " Risk Factors " beginning on page 4.

PRICE $ A SHARE

	Price to Public	Underwriting Discounts and Commissions (1)	Proceeds to Facebook	Proceeds to Selling Stockholders
Per share	$	$	$	$
Total	$	$	$	$

(1) See "Underwriting."

The Securities and Exchange Commission and state regulators have not approved or disapproved of these securities, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The underwriters expect to deliver the shares of Class A common stock to purchasers on , 2013.

J.P. MORGAN BofA MERRILL LYNCH MORGAN STANLEY BARCLAYS

BNP PARIBAS CITIGROUP RBC CAPITAL MARKETS

CREDIT SUISSE HSBC STANDARD CHARTERED PIPER JAFFRAY

, 2013

1. Overview and history of the company

The prospectus gives an overview of the company since its creation. It provides a chronology of events that have occurred over the years, such as those that have helped the company experience growth. It also includes information about the founders, company registration, and initial service offerings. This section may also include an overview of the company's strategy and what management believes is its competitive advantage or "unique selling proposition" (USP).

2. Services/products offered by the company

The services/products section lists the core economic activities undertaken by the company. The company provides information about the services

and products provided to customers, and any additions to its operations over the years.

3. Management profile

A prospectus also includes information about the company's executive management. It outlines the management team's experience and education qualifications that make them a good fit for the company. Investors want assurance that the company's executives have what it takes to safeguard their investments.

4. Desired deal structure

If the issuer is an existing company that has issued securities before, it may provide an overview of its current capital structure and how the new issue will affect the structure. For example, when selling bonds, the investors will be interested in knowing the level of the company's debt and its ability to pay. Equity investors will want to see the current equity ownership structure and how their investment will influence the structure and the expected rate of return.

5. Use of proceeds

A company will often offer an issue of securities when it is unable to raise capital internally to finance a large investment. For example, the company may want to expand its operations to other geographical locations, acquire proprietary technology, purchase large machinery, finance the production of a new line of products, execute mergers and acquisitions (M&A), etc.

6. Security offering details

The prospectus also provides information on the number of securities that are being offered to the public and the price for each security. It should also state the expected rate of return on the investor's funds. This section also provides information on the subscription period when interested investors can purchase the securities.

7. Financial information

The prospectus should provide investors with information about the company's past financial performance. The information may include EBIT, net profit, stock performance, etc. The security performance can be compared to a known benchmark such as the S&P 500 or Dow Jones Industrial Average.

8. Risks involved

The prospectus should disclose the risks that investors face when investing in a mutual fund. For example, an international mutual fund may include a disclosure detailing the currency risks that investors face when investing in the fund.

Other risks that a company may reveal include possible capital restrictions, government regulations, individual investors holding large numbers of stocks, etc. The disclosures protect the company from accusations that it withheld vital information that caused the investors to incur losses.

❖ PROSPECTUS IN THE UNITED STATES

When a company intends to issue securities to the public, it must file the prospectus with the SEC. The security issue must wait for the SEC to declare the registration statement effective before they can finalize the sale. The registration statement is only approved if the federal agency is satisfied that the security issuer has complied with all the rules governing disclosure.

However, there are certain exemptions when filing a prospectus with the SEC. If a security issue is from a company that has been consistent with their 10-K Form filling and reports a market capitalization above the required threshold, the company may issue a simplified version that incorporates the information into their 10-K filings.

❖ PROSPECTUS IN THE UNITED KINGDOM

In the United Kingdom, a prospectus is required for a security that will be offered to the public, or that wants to register on a regulated market such as the London Stock Exchange (LSE). The security issues are governed by the Prospectus Rules, an extension of the Prospectus Directive in European Law, and must be approved by the FCA – Financial Conduct Authority.

2.5 SHARES CAPITAL

The Companies Act, 2013 (‘the Act’) details all laws related to companies and their functioning in India, including shares and share capital. A company is a form of organisation whose capital is contributed largely by its shareholders, who are the real owners of the company. This capital is the amount that is invested in the company to carry out the company’s activities. Since a company is an artificial

person, all operations of the company are dependent upon its AOAs and MOAs that are signed with it. It has a corporate legal entity distinct from its shareholders and members, which means that the liability of the shareholders for the company depends a lot on shares. All companies limited by shares must have a share capital, and this share capital cannot be generated by the company on its own and has to be collected by several people. Although the issuance of share capital is not necessary for a company to be incorporated, it is crucial for running the business based on capital.

Shares in a company show the percentage of ownership of a person or member in that company, which is a single unit that is further divided into several units with their own price. All of these units are of a specific amount, and when someone purchases these units, they also purchase certain defined units of the share capital of the company, which makes that person a shareholder in the company. The term share has been defined under Section 2(84) of the Act, which means a share in the share capital of the company and includes stock. It signifies the interests of the shareholders in the company, measured for the purposes of liability and dividends. A share, debenture, or any interest held by a member of a company is deemed movable property and can be transferred as stipulated in the company's articles of association. A member has the option to transfer any "other interest" in the company following the procedures outlined in the articles.

❖CERTIFICATE OF SHARES

A share certificate is a document that is attested by the company and acts as legal proof of the ownership of shares. There is a difference between the share that makes up the share capital and the share certificate. This certificate can either be a part of the company's share capital or be owned by the shareholder while still being part of the company. Section 44 of the Act mentions that shares are movable properties and are transferable. This differs from a share certificate which under Section 46 is stated as a certificate under the common seal that specifies the shares held by members of the company. It is issued under the company's seal, signed by two directors, a managing director and a company secretary. It is the prima facie evidence that the title acts as estoppel to the title and an estoppel to the payment.

(i)Estoppel to the title

A share certificate, after it is issued to the shareholders, binds the company in two ways: either as a declaration by the company to the entire world about whose name the certificate is made under or to whom the certificate is given. The company here is thereby estopped from denying the title of the shares under the share certificate to the shareholder.

(ii)Estoppel to the payment

If the certificate states the shareholder has paid in full for all shares under that particular share certificate, the company is estopped as against a bona fide purchaser of the shares, i.e., the shareholder, from alleging that the shareholder has not paid the shares in full. If the statement in the certificate is not true, there will be no estoppel against the company.

Section 56(4) states that every company, unless prohibited by law, must deliver all certificates within a period of two months from the date of incorporation for the subscribers to the memorandum of the company and within two months from the date of allotment if any shares are allotted by the company. The issuance of share certificates shall be done in pursuance of a resolution issued by the Board, and if the letter of allotment is lost, the company may register the transfer of those on terms of indemnity as the Board may deem fit. Such certificate shall be issued with the company seal and shall be affixed by either two directors duly authorised by the Board of Directors or the secretary as authorised by the Board.

The share certificate shall contain particulars such as the name of the person and the date of issue, which shall be recorded in the registrar of members. These share certificates and documents have to be maintained as per the following requirements:

- All blank forms that are used for the share certificates are to be printed by the board in a resolution. The form shall be machine-numbered, and the engravings on the forms will be kept under the custody of the secretary and the board.
- The committee of the board, the company secretary, or the director assigned by the board shall be responsible for the maintenance and safe custody of the documents related to the issuance of share certificates and blank documents.

- All of these documents shall be preserved with care for at least thirty years, and they should be preserved forever if any of these cases are disputed before the Board. All share certificates that were surrendered by the shareholders are supposed to be destroyed within three years, as passed by the resolution by the Board.

❖ ISSUANCE OF DUPLICATE CERTIFICATES

Section 46 of the Act, read with Rules 6 of the Companies (Share Capital and Debentures) Rules, 2014, states that duplicate share certificates can be issued to the shareholders if the original share certificate is lost or misappropriated. If the share certificate has been lost or misplaced, the shareholder must inform the company of the loss through a letter sent at the email address of the company or by post. The letter must detail the name, address, folio number and share certificate number.

Once the company receives the letter, it should freeze the transfer of shares for at least thirty days to avoid fraud. After the company registration procedure is completed, the shareholder will be guided to issue a duplicate certificate once the identity of the shareholder is established. The following documents are required to issue a duplicate share certificate:

- Agreement to guarantee out-of-court stamp paper,
- Affidavit on non-judicial stamp paper,
- FIR with the complete data about the lost share certificate, including the name of the shareholder, folio number, share certificate number, and the number of shares.
- Advertisement about the lost certificate.

❖ PENAL PROVISION

Section 447 of the Act provides the penalty for the issuance of false shares by the company with an intention to defraud the public. The fine for such fraud shall be imprisonment for a term not less than six months extending to ten years with a fine of not less than the amount involved in the fraud.

❖ SHARE CAPITAL IN COMPANY LAW : AN OVERVIEW

Share capital refers to the capital raised by the company by issuing common or preferred stock, as the case may be. It is not important for a company to have a share capital; the case might be that it is a company limited by guarantee. The

amount contributed by the shareholders is dependent on them, and they can buy shares divided into equal amounts. Simply put, share capital is the total value of funds raised by a company through the issuance of shares to its shareholders.

(i) AUTHORISED CAPITAL

The Memorandum of Association of a company states the amount and division of share capital in the company. This amount is called the authorised or nominal capital of the company as per Section 2(8) of the Act.

(II)ISSUED CAPITAL

Section 4(1)(e)(i) of the Act mentions that this share capital is present in the capital clause of the memorandum, which can be issued depending upon the requirements. The portion of this share capital that is issued to the public is known as the 'issued capital,' which is distributed from time to time through subscriptions.

(III)SUBSCRIBED CAPITAL

The part of the issued capital that is subscribed by the public is called the 'subscribed capital', which, as per Section 2(86) of the Act, is the part of the share capital that is subscribed by the members for the time being. The minimum subscription requirement presently is ninety percent of the issued capital, and the company has flexibility in calling the subscribed capital.

(IV)PAID-UP CAPITAL

The actual amount that the company receives from the subscribed capital is called the 'paid-up capital' as per Section 2(64) of the Act, and the capital that forms the 'uncalled share capital' can be set aside as 'reserve share capital.'

(V) CALLED-UP CAPITAL

The part of the subscribed capital that the company calls up for payment is called the 'called-up capital' as per Section 2(15) of the Act.

The simple formula for this paid-up capital can be:

Paid-Up Capital = Number of Equity Shares Issued * The Face Value Called Up

For example, let's say that ABC has an authorised share capital of Rs 10 lakh, which is divided into equity shares worth Rs 1 lakh with a face value of Rs 10 per share. Here, let's assume that the shareholders fully pay for 50,000 equity shares at the decided face value. To calculate the paid-up capital, we would have to follow the formula as follows:

Paid-Up Capital = Number of Equity Shares Issued * The Face Value Called Up

Paid-up capital = 50,000 shares * 10 rupees per share

Paid-up capital= Rs 5 lakh

This capital is reported in the balance sheet of companies in the shareholders' equity section in separate line items depending upon the sources, like common stock, preferred stock, and additional paid-in capital. Common stock and preferred stock shares are reported in accounts at their par value at the time of sale, and the amount received in excess of this par value is called the additional paid-up capital. The share capital amount reported by a company includes only those payments made directly by the company and later sales and purchases or the rise or fall of these shares have no effect.

❖ KINDS OF SHARE CAPITAL IN COMPANY LAW

Section 43 of the Act mentions the two types of share capital that a company can have:

- Equity share capital

1. With voting rights
2. With differential rights as in dividends, voting, or any other in accordance with the rules prescribed.

- Preference share capital ,unless otherwise specified by the company's Articles of Association (AOA) or Memorandum of Association (MOA).

(i) EQUITY SHARES

Equity share capital means all share capital that is not preference share capital, which represents ownership in a company. All equity shareholders are eligible to voting rights in the company and are eligible for a share of the company's profits, thus bearing a high risk with the possibility of higher returns as well. The dividend that the shareholders get is not fixed in equity shares, and the company might not give any profits to its equity shareholders even if it has them. Though, as per Section 43(a) and Section 50(2), all equity shareholders get a right to vote on every resolution that is passed in the company, and their voting can be determined by the pool of paid-up capital until otherwise provided by the AOA and MOA.

Equity share capital is divided on the basis of differential (dividend) and voting rights, with the former providing the shareholders with much fewer voting rights. Long term, small investors can reduce their voting power to make up for the difference and seek higher dividends. Rule 4 of the Companies (Share Capital and Debentures) Rules, 2014 lays down the conditions for the issuance of equity shares:

- The AOA of the company is responsible for the issuance of equity shares with differential rights, such as dividends.
- The shares are issued by the passing of a resolution at a general meeting of the shareholders, where if the equity shares are listed on a stock exchange, the issuance of shares will be decided upon by the shareholders through a postal ballot.
- The equity shares that provide differential rights should not exceed more than 26 percent of the total post-issued paid-up capital shares.
- The company giving out the equity shares must have a consistent track record of distributable profits for at least three years and should not have defaulted in filing facial statements or returns for those three years and the three years preceding the year the shares are issued.
- The company should not have defaulted on the payment of its dividends, repayment, or redemption of preference shares to its shareholders.
- The company should not have defaulted on the payment of dividends, preference shares, and the repayment of loans taken from a public or private institution or a bank that requires statutory payments.
- The company should not have been penalised by any court or tribunal for at least the last three years under the Companies Act passed by the Central Government or SEBI that pose sectoral restrictions.

Companies that have their equity shares listed on a stock exchange can have their shares issued by postal ballot with the shareholders' approval. Section 102 talks about the statement to be annexed to a general meeting talking about the issuance of these shares. Though the company cannot cover its existing differential rights for its shares with voting rights or the other way around.

(ii) PREFERENCE SHARES

Preference shares are the shares where the shareholders get preferential rights related to the capital they hold and a dividend over equity shares. Preference shares are shares with a fixed rate of dividend and preferential rights over ordinary equity shares. People who buy preferential share capital get priority in dividend declarations, and at the time of winding up, they are the first ones to receive money. They have the right to vote only when the matter directly or indirectly affects them. This dividend may be a fixed amount that is payable to the shareholders to give them preference over the equity shareholders and to give them a higher claim over the assets of the company without the privilege of voting rights. Preference shareholders can only vote on resolutions that directly concern them or affect their rights as preference shareholders or the winding up of the company. If the preference dividend is not paid for two years or more, the preference shareholders will get the right to vote on every resolution.

In summary, preference share capital with reference to any company limited by shares means that part of the issued share capital of the company that carries or would carry a preferential right with respect to:

- Payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and
- Repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company.

KINDS OF PREFERENCE SHARES

Preference shares can be categorised into:

- **On the basis of rights to dividends**: Cumulative and Non-cumulative preference shares
- **On the basis of convertibility:** Convertible and Non-Convertible preference shares
- **On the basis of maturity period**: Redeemable and Irredeemable preference shares

- **On the basis of participations in surplus profits:** Participating and Non-Participating preference shares

(i)Cumulative and non-cumulative preference shares

In circumstances where the company cannot generate profits or fails to give dividends. In this case, the cumulative preference shareholders can get paid from their profits made in the subsequent years for the current year's dividends in arrears, which until fully paid will lead to the fixed dividend keep on accumulating.

Non-cumulative preference shares give the shareholder the right to obtain a fixed amount of dividends from the profits each year. If there are no profits or dividends available, the preference shareholders will not get anything and neither can they claim unpaid dividends as well in the next few years.

(ii)Convertible and non-convertible preference shares

Convertible preference shares are the shares of the company that are issued on the terms liable to be converted to certain ordinary shares or cash at a certain time. These shares may be converted on the sale of initial public offering of the company or at a set conversion price. The number of ordinary shares given to the shareholders will depend on the conversion method used. Non-convertible preference shares are shares that cannot be converted into equity shares. Shareholders with non-convertible preference shares get preferential benefits during the distribution of dividends and the dissolution of the company.

(iii)Redeemable and irredeemable preference shares

As per Section 55 of the Act, Preference shares can be either redeemable or irredeemable as mentioned earlier. Redeemable preference shareholders are repaid after an estimated period of time which is known as redemption of preference shares. This amount will be repaid to them after the completion of the stipulation period, which on the contrary the ones that cannot be paid are known as

(iv) Irredeemable preference shares.

Section 55 of the Act states that a company cannot issue irredeemable preference shares and can issue shares that are supposed to be redeemed in

a period not exceeding twenty years. There are certain conditions for this redemption that have been stated in the Act:

- Such redemption can be made in two ways, i.e.
  - Profits that would be available for dividend
  - Proceeds of the issue of shares
- Shares that are not fully paid cannot be redeemed.

In case a company redeems the shares out of the profits of the company, a sum equal to the nominal amount of the shares as to be set aside as reserve amount that is to be redeemed with the Capital Redemption Reserve Account. If the Capital Redemption Reserve Account was the paid-up share capital of the company, the provision relating to the reduction of share capital of the company of this Act, i.e Section 66 will apply. The capital reserved can be utilised by the company to pay up unissued shares to be paid up as bonus shares.

The preference shares can be redeemed if the class of companies comply or if its accounting statements are up to the standards as prescribed by Section 133 of the Act.

If there is any premium payable on redemption, it will be provided for out of profit from the company before the shares are redeemed.

Rule 10 of the Act states that a company that deals with infrastructure projects may issue preference shares for a period exceeding twenty years but not thirty years which would be subject to a redemption of a minimum of ten percent from the preference shares per year after the twenty years have expired.

(V) Participating and non-participating shares

Participating preference shares are entitled to a fixed preferential dividend and they have a right to participate in the surplus profits of the company along with the equity shareholders once the certain dividend amount has been paid to them. If there is still some surplus left after paying both the equity and preference shareholders during winding up of the company, then the participating shareholders will get the share of the additional surplus of the company. These shareholders only get the fixed preferential dividend and the return of capital during winding up after meeting all external liabilities. The

rights to these shareholders should be set down in the AOA and MOA of the company or in the terms of issue.

(vi) Other types of share capital in Company Law

There are shares which are used to raise the capital of the company. Those shares are:

- Sweat Equity Shares
- Employee Stock Option Scheme
- Bonus Issue
- Rights Issue

❖ SWEAT EQUITY SHARES

According to Section 2(88) of the Act, sweat equity shares are issued by a company to its directors or employees at a discount with some other consideration that does not include cash, like the know-how for getting rights to intellectual property or some other value additions from them. It is a mode of payment of shares to the employees of a company that allows it to retain the employees as well as reward them for their services by giving them incentives for their contribution to aid the development of the company.

As per Section 102 of the Act, the special resolution passed for the sweat equity share should contain:

- The date of the board meeting at which consideration for the shares was brought on;
- The rationale behind the issuance of the shares;
- The class under which these shares would be issued;
- The total number of shares to be issued;
- The class of employees or the directors to whom these shares would be issued;
- The terms and conditions, along with the valuation for the insurance of these shares;
- The time period of employment or association of the concerned shareholders;

- The names of the employees or directors to whom these shares will be issued;
- The price at which these shares will be issued;
- The consideration at which these shares will be issued;
- The ceiling on the remuneration received at a managerial level, and if disputed, the procedure for how it would be dealt with;
- The statement of effect by the company acknowledging the accounting standards;
- The value of the diluted earnings per share for the securities calculated according to the accounting standards.

After the sweat equity shares are issued, this resolution will cease to exist after twelve months from the authorisation. The company cannot issue sweat equity shares for more than 15% of the total paid-up capital of the company. The total amount of these shares should also not exceed more than 5 crores, or 25% of the total paid-up capital of the company. The directors of the company also get issued sweat equity shares, and those shares will be non-transferable to anyone for 3 years, during which they would be in a lock-in period.

Sweat equity shares are valued at a fair price by a valuer who will give a fair determination of the price and the valuation of any intellectual property rights. The valuation also includes the know-how of the employees or the directors. The price of the sweat equity shares shall be fixed by the valuer after the submission of a proper report to the board of directors with the proper justification, which would be sent to the shareholders after holding a general meeting. Any non-cash consideration in a depreciable asset will be carried into the balance sheet of a company in accordance with the applicable accounting standards. If those considerations do not meet accounting standards, they will be expensed for other financial activities.

It is issued for the purpose of:

- Contribution to the financial activities of the company.
- Contribution to the intellect of the company.
- Value addition to the employees.

According to Section 54 of the Act, whatever limitations on profits and dividends are applicable to equity shares are applicable to sweat equity

shares as well. Section 53 of the Act voids any other shares provided at a discount except for sweat equity shares and lays down the punishment for the company as a fine, which shall not be less than 1 lakh rupees and might extend to 5 lakhs and imprisonment for six months for each individual responsible for that penalty. The preliminary requirements for the issue of sweat equity shares are as follows:

- It should be authorized by a special resolution passed by the company.
- The resolution must specify the number of shares, the class of directors, and the current market price valuation.
- If the equity shares of a company are listed on a recognized stock exchange board, the issue of sweat equity shares shall be looked over by the SEBI (Securities and Exchange Board of India) and its rules.
- For the issuance of sweat equity shares, an employee must be a permanent employee of the company who might be working for the Indian office or a foreign one and/or a director of the company.

❖ EMPLOYEE'S STOCK OPTION SCHEME

According to Section 2(37) of the Act, an employee's stock option is a scheme or option given to the employees, directors, or officers of a company along with the holding or subsidiary companies that gives these people a benefit or the right to purchase or subscribe to the shares of the company at a future date at a predetermined price. SEBI, in its guidelines, clarifies that it is a right and not an obligation that is granted to all permanent employees of the company.

The objective behind the issuance of this scheme is to provide incentives and reward the employees of the company to make the company more profitable. Rule 12 of the Companies (Share Capital and Debentures) Rules, 2014, lays down certain requirements of this scheme:

- The issuance of the scheme would need the approval of the shareholders through a special resolution.
- This option is not transferable to any other person who was not previously entitled to it.

- There should be a minimum period of one year between the grant of the scheme and its vesting, and after this period, the exercising limit of this scheme will be decided by the company.
- Any amount payable by the employee during the grant of the scheme will be returned or refunded.
- Any company that does not comply with the SEBI rules, apart from a listed company, cannot issue the scheme.
- The company that is granting the scheme has to maintain a separate register that contains all the details about these shares.
- An employee who is a promoter of the company is not eligible for this scheme, nor is any director who already owns 10% of the company's equity shares.

❖ BONUS ISSUE

Bonus shares are issued to existing members according to Section 63 of the Act, where the company can issue paid-up bonus shares to its members in the following manners:

- **Free reserves:** These reserves must be built out of only genuine profits or shares premium collected in cash.
- **Securities premium account:** It is a reserve account made from a company's profits made by issuing shares of a certain face value for a higher price.
- **Capital redemption reserve account:** It is an account made when the company redeems its redeemable preference shares out of profits kept for paying dividends.

  Capitalising reserves that were created by the revaluation of assets will not be the parameters for the issue of bonus shares, nor can they be issued in lieu of dividends.

❖ CONDITIONS

- The AOA of a company should mention that bonus shares can be alloted to the shareholders. If such is not mentioned in the AOA, it is altered by a special majority resolution.

- A special resolution is passed by the Board of Directors, managers, and top level management, where they see if there is profit made by the company. If there is a lot of accumulated profit, in that case, the resolution is passed and a bonus is issued to all shareholders.
- There should be no previous defaults in the payments of interest to the debenture holder or of dividends.
- There should be no pending salaries or provident funds for any employee, etc.

  If the board passes a resolution declaring the bonus shares will be issued, it cannot withdraw the resolution.

❖ RESTRICTION ON ISSUING BONUS SHARE

As mentioned in the sweat equity share, there is a class of shares. A company can't issue bonus shares if they have outstanding fully or partly convertible debt instruments at the time of issuing bonus shares. Unless there is a reservation made of equity shares of the same class in favour of such holders of convertible debt instruments on the same terms and proportion to the convertible part.

The equity shares reserved for the holder of the fully or partly convertible debt instrument shall be issued at the time of conversion of such convertible debt instrument on the same terms or proportions as the bonus shares were issued.

In the case of *Standard Chartered Bank and Anr. Etc. v. Custodian and Anr. Etc. (2000)*, the court held that bonus shares are a distribution of capitalised undivided profits of the company. Bonus shares lead to an increase in the company's capital because they transfer the amount from the company's reserve towards its capital, which results in the issuance of extra shares to its shareholders.

❖ RIGHTS ISSUE

Section 62 of the Act talks about rights issues, which is an easy way of procuring finance for a company. The previous shareholders of the company have the right to subscribe for the new shares of the company. There is no prospectus or offer for sale of shares issued in rights issue, and equity shareholders of the company are given the offer through an application form,

which entitles them to take up shares at a price way below the listed price. Shareholders who do not want to keep their rights to the shares can sell them to other third parties at a specified price. Shareholders can also renounce their rights to the company and sell the shares to the public in a manner prescribed by the board of directors.

COMPLIANCE WITH RIGHTS ISSUE

- It has to be mentioned in the articles of association of the company.
- A notice to the shareholders regarding the same has to be sent.
- This offer should be available for 15-30 days.
- The existing shareholders may renounce or accept this offer.
- The number of shares and the price of such shares have to be mentioned.

❖ VOTING RIGHTS

Section 47 of the Act states that every equity shareholder has a voting right in the company, which is proportionate to the number of shares they hold in the paid-up equity share capital of the company. Preference shareholders of a company have the right to vote on the following:

- Resolutions passed before the company which directly affect the rights attached to their preference shares.
- Resolutions passed for the winding up of the company.
- Repayment for the reduction of the share capital.

These voting rights are in proportion to the shares held by the shareholders in the paid-up preference share capital of the company. The proportion of the voting rights of the preference shareholders and equity shareholders will depend upon the proportion of the paid-up share capital of each. Preference shareholders have the right to vote on every resolution passed by the company if the dividends held in those preference shares are in arrears for 2 years or more.

❖ ISSUE OF SHARES AT PREMIUM

When a company issues shares at a premium, a sum equal to the amount of premium received on those shares will be transferred into a securities premium account. According to Section 52 of the Act, the provisions for the reduction of shares of a company apply on this premium account as well as if it is a part of the paid up share capital of the company. These shares can be applied by the company:

- Towards the issuance of unissued shares of the company in the form of fully paid bonus shares.
- Towards writing off the preliminary expenses of the company.
- Towards writing of the expenses or discounts allowed on the issuance of any shares or debentures of the company.
- Towards providing the premium payable for the redeemable preference shares of the company.
- Towards the purchase of more shares and other securities.

The companies classifying under Section 133 of the Act can also utilise this premium account in the following manner:

- Paying up unissued equity shares to the members of the company in the form of bonus shares.
- Writing off the expenses incurred on the insurance of equity shares.
- Purchase of its own shares or other securities.

❖ ALLOTMENT OF SHARES

Allotment of shares is the procedure followed by a company to give its shares to the investor in an exchange for a purchase offer to signify the act of allotting. The investors make the offer through application forms or prospectus supplied by the company for these shares, and the acceptance of this application by the company amounts to the allotment of the shares.

The court in the case of *Sri Gopal Jalan & Co. v. Calcutta Stock Exchange Association Ltd, (1964*) defined the allotment of shares as the appropriation of the unappropriated capital of the company by giving a certain number of shares to certain people.

PROCEDURE FOR ALLOTMENT OF SHARES

- Before allotting the shares to new shareholders, the company must consider the shares allotted to the existing shareholders and analyses how much more shares it should give out;
- The board of directors will hold a meeting to pass a resolution for the allotment of shares;
- The company has to sign the Form MGT-14 and the special resolution passed with the register of the companies;

- The secretary then makes the necessary arrangements with company's bank for collecting the money to issue the letters of allotment to the investors, mentioning the shares allotted to them;
- If necessary, the company has to file a return of allotment form within 30 days of the allotment along with the name and address of the allotters, value of shares, amount paid, and amount payable;
- The company needs to prepare the register of members in accordance with Section 88 of the Act;
- The person either gets issued a share certificate or they can see the allotment of their shares in their Demat account.

❖ CALLS AND FORFEITURE OF SHARES

If a member of the company fails to provide a valid call within the stipulated period of time, the company can sue that member for the recovery of the amount of the call after waiting for a reasonable period of time. The articles of association of a company generally provide for the forfeiture of shares for non-payment of any calls. Power for forfeiture of shares is enacted bona fide and in the interest of the company and should not be collusive or fraudulent. All shareholders cease to be members when this forfeiture takes place, as per the liabilities provided under clause 1 of Schedule 32 of the Act. These forfeited shares become the property of the company, which also involves a reduction in the share capital until these shares are reissued. The company can also reissue these shares at any point in time at a discounted price, provided that the total amount paid by the previous owners of the shares and the reissued amount are not lesser than the par value. If the shareholders do not pay the amount for the shares in the stipulated time, the directors of the company can pass a resolution for the forfeiture of those shares with proper notice.

Calls on shares

The company collects the unpaid balance of the allotted shares after the application and allotment amounts in accordance with the terms and conditions of the shares by making calls:

- **First call:** The unpaid balance is supposed to be collected with the first call itself, which would also be treated as the final one.

- **Second call:** If the call amount is collected in instalments, the other call is known as a second call.
- **Last call**: The last instalment is collected in the final call, known as the last call.

This amount is part of the issue price of the share or debenture issued by the company to its shareholders or members that has not yet been paid. The board of directors has the party make these calls in accordance with resolutions passed in the general meetings, which can be made anytime during the timeline of the company and its winding up as well. Non payment of these calls will render the shareholders or members an interest payment of 10% per annum.

(i)CALLS IN ADVANCE

Articles of association corresponding to the shares of the company authorise it to accept the money remaining on the shares, irrespective of the calls not made by the company. Companies can accept a part or the whole payment made by the shareholders even if the calls are not made, and they can pay an interest agreed upon by the board and the members for the sum of the shares set at a maximum rate of 12% per annum. The amount received for calls in advance is not refundable, and it has to be paid along with the interest.

(ii)CALLS IN ARREARS

Shareholders may not pay the called amount on the due date, which is known as calls in arrears or unpaid calls. These represent the debit balance of all the calls in arrears and appear as notes to account for in the balance sheet. The directors, through the articles of association of the company, can charge interest on these calls in arrears, which shall not exceed more than 5% per annum and shall be paid on all unpaid amounts on these shares. When the call amount is received, the amount of interest received will be credited into the interest account, and the call money will be credited into the call's arrears account.

❖ REDUCTION OF SHARE CAPITAL AND DEMATERIALIZATION

Reduction of share capital refers to the reduction of the issued, paid-up, and subscribed share capital of the company as laid down under Section 66 of the

Act. The buyback and redemption of preference shares are also considered as the reduction of capital and do not require approval from the Tribunal. The reduction of the share capital for the company is subject to confirmation by the National Company Law Tribunal (NCLT).

Dematerialisation is a process by which the physical share certificate of an investor is taken back by the company in exchange for an equivalent amount of securities in electronic form. The investor opens an account with the depository participant, who then requests the dematerialisation of the share certificate so that the dematerialised holdings can be credited into the investor's account. This process is optional, and the investor can still hold his shares in physical form. Though the investor will still have to demat the shares if he wishes to sell them through the same stock exchange. If an investor purchases shares, he will get the delivery of those shares in the form of a demat.

Investors have to trade in a dematerialised form to trade in the shares of a listed company, and the company enlists its shares with the depositories. The Depositories Act, 1996, set up two depositories in India:

- National Securities Depository Limited (NSDL)
- Central Depository Services (India) Limited (CDSL)

There are several advantages to a depository system:

- Paper forms of shares that are held can be lost, damaged, or stolen easily, which can be avoided through the depository system.
- Shares under this system are held in electronic form, similar to bank accounts, which makes trading for these shares easier.
- Trading in the shares of a company has also been mandated by SEBI under the compulsory Demat segment.
- Banks prefer dematerialised securities to provide credit facilities because demat securities attract lower margins and rates of interest compared to physical securities.

❖ TRANSFER AND TRANSMISSION OF SHARES

A transfer of shares is done when a shareholder transfers shares to another person in the form of a gift or sale. This transfer, when done by law, particularly by inheritance, is known as the transmission of shares, which is caused by either death or insolvency of the shareholder. Section 56 of the Act lays down the

procedure for the transfer of shares and states that a deceased shareholder's shares can be transmitted through a legal representative even if he is not a member.

The basic difference between the transfer and transmission of shares is that the former is a voluntary act and the latter is an operation of the law. Transfer of shares requires the existence of a stamp duty, unlike the transmission of shares, which even a private listed company cannot refuse. The transferee does not have the same amount of liabilities that the transferor will have in the process of transferring shares, though in the transmission of shares, the original liabilities apply. While the transfer of shares is not permitted during a lock-in period, the transmission of shares takes place even during lock-in because it is an operation of the law. Transmission of shares does not require any operation or interference of the court of law, though the transfer of shares cannot be possible without an official liquidator.

❖ BUY-BACK OF SHARES

Buy-back is a tool for the financial reengineering of the company to purchase or buy back its shares from its existing shareholders when the company has sufficient cash balance with it, and the market price of the securities is much lesser than their face value. Section 68 of the Act permits the buy-back of shares by a company, either public or private, as listed. Section 68(1) lays down the sources for such buy-back:

- **Free reserves:** These are the reserves the company has as per the last audited balance sheet available for distribution and share premium but not available for the share application amounts.
- **Securities Premium Account**: It is a reserve account that is made from the profits earned by the issuance of shares at a premium.
- Proceeds of any shares or other securities, though the buy-back of the shares will not be made out of the proceeds of an earlier issue of shares of the same kind of shares or securities.
- The maximum buy-back limit of the aggregate paid-up capital or reserves of the company is 25%, which requires a specific balance amount with the company to accommodate the total value of the buy-back of shares.

No company shall purchase its own shares unless:

- The buy-back is authorised by its articles of association, which can be altered to authorise the buy-back.
- A special resolution needs to be passed at a general meeting or the buy-back of shares, depending on the quantum of the buy-back. In a listed company, the approval of the directors can only be obtained by a postal ballot. The board of directors can approve the buy-back of shares up to 10% of the total paid-up capital and free reserves of the company. Shareholders can approve a buy-back of 25% through a special resolution of the total equity capital, reserved, or paid-up capital.
- The ratio of the aggregate secured and unsecured debts that the company owes after the buy-back should not be more than twice the paid-up capital and the free reserves of the company (2:1). The central government can notify a higher ratio for certain classes of companies so that the shares are fully paid-up.
- The buy-back of the shares and securities listed on a recognised stock exchange will adhere to the rules specified by the SEBI, and the buy-back in respect of the shares of other specified securities other than the other listed securities is in accordance with the rules specified in Chapter IV of the Act.
- No offer of buy-back stands that is made within a period of 1 year from the date of the closure of the preceding buyback.
- The company, after the completion of the buyback, shall file it with the register of the SAPI in a matter of 30 days. If the company buybacks securities, it shall extinguish its securities within 7 days of the completion of the buyback.
- If a company purchases its own shares out of the free reserves during the buyback, the amount equal to the nominal value of the shares will be transferred to the share redemption reserve, and the details of this transfer shall be included in the balance sheet with no other issues until after 6 months of the buy-back.

  The notice of the meeting at which the special resolution for the buyback is passed will be accompanied by an explanatory statement consisting of:
- Full and complete disclosure of material facts;
- necessity for buy-back;

- the class of the shares and securities to be purchased;
- amount to be invested;
- time limit for the completion of the said buy-back.

Section 70(1) of the Act prohibits the buy-back of shares in certain circumstances:

- No company shall directly purchase its own shares and securities through:
    - Any subsidiary company that has its own subsidiary companies;
    - any investment company or group of investment companies;
    - a default made by the company in the repayment of the deposits made by it either before or after the initiation of the Act on any interest payment, debenture, redemption of preference shares; or the payment of dividends, loans, or other interests still owed to pay to any financial institution. Though if the company remedies this default within three years, it can still issue buy-backs.

❖ ADVANTAGES AND DISADVANTAGES OF BUY-BACK

There are several advantages and disadvantages of buy-back for a company depending upon the shares and securities withheld:

- The company can use its unutilised surplus cash if there are no other proper investment opportunities.
- Buy-back of shares and securities can improve the return on capital, net profitability, and earning per share of the company.
- Buy-back can also be used to enable settlement amongst the dissatisfied members of the company.
- The company can buy the shares of the retiring employees, and the existing management can also keep control over the company because there would be less shares to sell.
- The remaining shareholders of the company can also be satisfied because of the increased amount of dividend and the increased market value of shares.
- Buy-back brings liquidity to the investors, and it rationalises the capital structure of the company.

The disadvantages of buy-back are as follows:

- Buy-back can also be misused by the companies by endangering the investors through insider trading.

- The promoters before the buy-back of shares may understate the earrings by manipulating the valuations and accounting policies of the company which would lead to a fall in the price of shares and the promoters would buy them at the lowest prices.
- The insiders would be able to make more money when the company buy-backs these shares at a higher price.
- Buy-back of shares can lead to the artificial manipulation of stock prices and also weaken the position of the minority shareholders because buy-back enables the management to increase their control over the company.

❖ RIGHTS OF SHAREHOLDERS

Shareholders and members of companies enjoy the following rights:

- Section 47 of the Act gives all the equity members the right to vote pertaining to their shares in the company on every resolution passed by the board. That voting right will be in proportion to the amount of shares they hold in the paid-up share capital of the company. The preference share capital holders will only get the voting rights on the resolutions that directly affect the amount of shares they hold in the company. If the dividend on a specific class of preference shares is not paid-up for 2 years or more, those preference shareholders will get to vote on every resolution passed by the company.
- If a company accepts the unpaid share capital which is not yet called up, the shareholders will not be entitled to any voting rights of that share capital paid by them.
- Every equity shareholder has the right to obtain dividends and interim dividends declared by the directors of the company yearly as stated in Section 143 of the Act. Every preference shareholder has the right to obtain the preferred dividend as per the terms of the issue of their preference shares. Participating preference shareholders will have the right to obtain extra dividends from surplus profit of the company which may be in proportion to the amount of the paid-up capital on its shares if its articles authorise it to do so.

- Every shareholder of the company has the right to uniform calls on shares when the calls are made by the company for a class of shares for the unpaid capital.
- Every shareholder of the company has the right to be paid during the winding up of the company for their shares. Preference shareholders of the company have the right to be paid for their preference shares or repayment of the capital and participating preference shareholders have the right to participate in surplus capital as well. Equity shareholders have the right of payment from the capital that is left after repaying the creditors and the preference shareholders.
- Section 48 of the Act, restricts the variation in the shareholders' rights Except with the consent of the shareholders of not less than three fourths of the total issued shares whose rights are being modified. Such modification can be made through a special resolution through a shareholders meeting if such modification can be kept according to the memorandum of association and the articles of the company. If the variations in one class of shares affect the other class of shares as well, the three-fourth consent of that other class has to be obtained as well. Descending shareholders holding not less than 10% Of the issued shares of the class which Is under variation shall apply with the restriction of the variation.
- Every shareholder of the company has the right to participate in the Annual General Meeting along with a notice, financial statements, auditors report, and directors report of the meeting.
- Every shareholder of the company will have the right to transfer the shares and securities or other interest of the company to other members and shareholders. As per Section 44 of the Act, shareholders of a public company can easily transfer their shares without any restrictions. Shareholders in private companies need the approval of the board for transfer of their shares. Securities holders have the right to nominate people to whom the securities would be vested after their death. If the nominee of the securities is a minor, the holder has to appoint a person who will be responsible for those securities during the minority period of the nominee.

- Every equity shareholder of the company has a pre-emptive right to be offered shares when the company further issues capital under Section 62 of the Act.

❖ LIABILITIES OF SHAREHOLDERS

The liabilities and duties of shareholders of a company are subjected to terms and conditions stated in the articles of the company. The members are obligated to take part in the meetings of the company and vote on resolutions that they have the power to vote on. Shareholders of the company have to take an active interest in decision-making and the appointment of directors, auditors, alteration of memorandums and articles of the company. The shareholders also have to pay the full amount of their shareholding and if required, pledge or mortgage their shares since they are movable property. Share certificates in physical forms can be pledged to raise loans and securities can be pledged to retain the loan amount. If some rights or shares are transferred to the creditor, it amounts to the mortgage of shares and where shares are in dematerialised form with the depositories, the pledge and mortgage have to be registered with the depository.

Shares are the cornerstone of any major financial activity taking place in a company, and a company's share capital is the total number of shares that it has. Every business organisation needs funds for its business activities that it has to raise through several means. The company can raise this cash either internally, through external sources, or by issuing shares and raising capital. Share capital not only helps in getting investment from investors but also helps the company in re-investing in itself. Shares are divided into equity shares and preference shares, which are further divided into other subcategories based on dividends and voting rights. Every shareholder of a company has certain rights and liabilities towards the company that they have to adhere to. A company that wants to increase its share capital and increase its equity can do so by obtaining authorisation from the company's board of directors for issuing and selling additional shares. Understanding share capital comprehensively is crucial for both companies and their investors to make smart business choices. Companies, on the other hand, can manage their capital structure better and improve their finances in the long run.

2.6 DEBENTURE

The word 'debenture' itself is a derivation of the Latin word 'debere' which means to borrow or loan. Debentures are written instruments of debt that companies issue under their common seal. They are similar to a loan certificate. Debentures are issued to the public as a contract of repayment of money borrowed from them. These debentures are for a fixed period and a fixed interest rate that can be payable yearly or half-yearly. Debentures are also offered to the public at large, like equity shares. Debentures are actually the most common way for large companies to borrow money.

Let us look at some important features of debentures that make them unique,

- Debentures are instruments of debt, which means that debenture holders become creditors of the company
- They are a certificate of debt, with the date of redemption and amount of repayment mentioned on it. This certificate is issued under the company seal and is known as a Debenture Deed
- Debentures have a fixed rate of interest, and such interest amount is payable yearly or half-yearly
- Debenture holders do not get any voting rights. This is because they are not instruments of equity, so debenture holders are not owners of the company, only creditors

- The interest payable to these debenture holders is a charge against the profits of the company. So these payments have to be made even in case of a loss.

❖ ADVANTAGES OF DEBENTURES

- One of the biggest advantages of debentures is that the company can get its required funds without diluting equity. Since debentures are a form of debt, the equity of the company remains unchanged.
- Interest to be paid on debentures is a charge against profit for the company. But this also means it is a tax-deductible expense and is useful while tax planning
- Debentures encourage long-term planning and funding. And compared to other forms of lending debentures tend to be cheaper.
- Debenture holders bear very little risk since the loan is secured and the interest is payable even in the case of a loss to the company
- At times of inflation, debentures are the preferred instrument to raise funds since they have a fixed rate of interest

  Browse more Topics under Issue And Redemption Of Debentures
- Issue of Debentures
- Terms of Issue, Interest on Debentures
- Redemption of Debentures

❖ DISADVANTAGES OF DEBENTURES

- The interest payable to debenture holders is a financial burden for the company. It is payable even in the event of a loss
- While issuing debentures help a company trade on equity, it also makes it to dependent on debt. A skewed Debt-Equity Ratio is not good for the financial health of a company
- Redemption of debentures is a significant cash outflow for the company which can imbalance its liquidity
- During a depression, when profits are declining, debentures can prove to be very expensive due to their fixed interest rate

❖ TYPES OF DEBENTURES

There are various types of debentures that a company can issue, based on security, tenure, convertibility etc. Let us take a look at some of these types of debentures.

- **Secured Debentures:** These are debentures that are secured against an asset/assets of the company. This means a charge is created on such an asset in case of default in repayment of such debentures. So in case, the company does not have enough funds to repay such debentures, the said asset will be sold to pay such a loan. The charge may be fixed, i.e. against a specific assets/assets or floating, i.e. against all assets of the firm.
- **Unsecured Debentures:** These are not secured by any charge against the assets of the company, neither fixed nor floating. Normally such kinds of debentures are not issued by companies in India.
- **Redeemable Debentures**: These debentures are payable at the expiry of their term. Which means at the end of a specified period they are payable, either in the lump sum or in installments over a time period. Such debentures can be redeemable at par, premium or at a discount.
- **Irredeemable Debentures:** Such debentures are perpetual in nature. There is no fixed date at which they become payable. They are redeemable when the company goes into the liquidation process. Or they can be redeemable after an unspecified long time interval.
- **Fully Convertible Debentures:** These shares can be converted to equity shares at the option of the debenture holder. So if he wishes then after a specified time interval all his shares will be converted to equity shares and he will become a shareholder.
- **Partly Convertible Debentures**: Here the holders of such debentures are given the option to partially convert their debentures to shares. If he opts for the conversion, he will be both a creditor and a shareholder of the company.

- **Non-Convertible Debentures**: As the name suggests such debentures do not have an option to be converted to shares or any kind of equity. These debentures will remain so till their maturity, no conversion will take place. These are the most common type of debentures.

SECTION 2.1 to 2.6 FORMATION OF COMPANY

2.7 Check Your Progress – Quiz

1. The application for registration of a company should be presented to the registrar of the state in which the ________________ of the company is to be situated.
   (a) Manufacturing plant
   (b) The first branch
   (c) Business office
   (d) Any of the above

2. Among the following documents, which are not mandatory to be submitted to the registrar along with an incorporation application by a private company?
   (a) Address of registered office and undertaking
   (b) Undertaking and statement of capital
   (c) Statement of capital, address of the office, and list of directors
   (d) List of directors and statement of capital

3. If a company is instructed to change its name, which resembles the name of an existing company then the company can change the name by ______.
   (a) Passing a special resolution
   (b) Obtaining permission from the Central Government
   (c) Passing an ordinary resolution
   (d) Both a and b

4. If the proposed nominal capital is more than 25 lakh at the time of incorporation, then the company needs to submit ________________ along with the application.
   (a) Statement of capital
   (b) Certificate of incorporation
   (c) Certificate of capital
   (d) Certificate of incorporation

5. . _________ are companies created by a special act of the legislature.
   (a) Registered company
   (b) Public Ltd Company
   (c) Private Ltd company
   (d) Statutory company

6. A Government Company means any company in which not less than 51% of the paid-up share capital is held by _____.
   (a) Central Government
   (b) State Government
   (c) Both a and b
   (d) Neither a nor b

7. If the company can make arrangements for raising the capital privately, so that pubic appeal is unnecessary, the company is required to prepare a _________________.
   (a) Prospectus
   (b) Statement in lieu of Prospectus
   (c) Certificate of Prospectus
   (d) None of the above

8. __________ means the total amount of called up share capital which is actually paid to the company by the members.
   (a) Nominal capital
   (b) Reserve capital

(c) Called up capital
(d) Paid-up capital

9. Application for approval of name of a company is to be made to _____.
   (a) SEBI
   (b) Registrar of Companies
   (c) Government of India
   (d) Government of the State in which company is to be registered

10. Preliminary Contracts are signed ______.
    (a) Before the incorporation
    (b) After incorporation but before the capital subscription
    (c) After incorporation but before the commencement of business
    (d) After commencement of business

11. The application for registration of a company should be presented to the _______________ of the state-appointed under Companies Act 1956.
    (a) Controller
    (b) Registrar
    (c) Governor
    (d) Registration officer

12. The company will be considered as a separate person and different from its members from the date (when the) _____________.
    (a) Start of business
    (b) Apply for registration
    (c) Receive incorporation certificate
    (d) Mentioned in the certificate

13. 'Men may come and men may go, but the company exists.' – This explains the characteristics of the company as per Companies Act 1956.
    (a) Separate legal entity
    (b) Perpetual Succession
    (c) Capacity to sue

(d) None of the above

14. ___________ cannot give an invitation to the public to subscribe for any shares in or debentures of the company.

    (a) Subsidiary Company

    (b) Statutory Company

    (c) Private Company

    (d) Registered Company

15. Powers, rights, remuneration, qualification, and duties of directors are discussed clearly in _____.

    (a) Memorandum of Association

    (b) Articles of Association

    (c) Prospectus

    (d) None of the above

2.8 Unit Summary

The formation of a company begins with the promoter, who plays a crucial role in initiating and managing the incorporation process. The promoter's responsibilities include identifying business opportunities, assembling necessary resources, and preparing foundational documents. These foundational documents include the incorporation document, which is a combination of the Memorandum of Association (MOA) and the Articles of Association (AOA). The incorporation document is essential as it outlines the company's structure, purpose, and internal regulations.

The Memorandum of Association (MOA) is a vital document that defines the company's constitution and scope of activities. It includes essential details such as the company's name, registered office, objectives, liability of members, share capital, and the names of subscribers. Alterations to the MOA can be made through a special resolution passed by the shareholders and may require regulatory approval. The MOA serves as a binding contract between the company and its members and among the members themselves, defining the company's relationship with the external world and its internal governance framework.

The Articles of Association (AOA) contain the internal rules and regulations governing the management and administration of the company. This document outlines the procedures for conducting meetings, appointing directors, issuing shares, and other operational aspects. Once the MOA and AOA are prepared and filed with the Registrar of Companies (RoC), and all legal requirements are met, the RoC issues a Certificate of Incorporation. This certificate signifies the company's legal existence and allows it to commence business activities.

To raise capital, the company may issue a prospectus, which is a formal document providing detailed information about the company's operations, financial status, and investment opportunities. The prospectus can come in different forms, including red herring, shelf, and abridged versions. Promoters and directors are liable for any misstatements or omissions in the prospectus. Share capital is categorized into authorized, issued, subscribed, and paid-up, representing the funds raised through share issuance. Share capital can be altered as needed, and dividends, which are profits distributed to shareholders, are an essential aspect of shareholder returns. Additionally, debentures are long-term securities issued by the company to raise debt capital, providing another avenue for funding.

2.9 Glossary

Promoter	An individual or entity involved in the initial setup of a company, including identifying business opportunities, gathering resources, and preparing foundational documents.
Filing	The process of submitting the incorporation document and other necessary forms and fees to the Registrar of Companies (RoC) for approval.
Incorporation Document	A document that includes the Memorandum of Association (MOA) and the Articles of Association (AOA), essential for legally forming a company.
Memorandum of Association (MOA):	A key document that defines the company's constitution and scope of activities, including its name, registered

	office, objectives, member liability, share capital, and subscribers.
Certification of Incorporation	A certificate issued by the Registrar of Companies (RoC) upon successful filing, signifying the company's legal existence.
Prospectus:	A formal document issued when a company seeks to raise capital from the public, detailing its operations, financial status, and investment opportunities.
Share Capital	Funds raised by a company through the issuance of shares, divided into different categories.
Dividend	A portion of a company's profits distributed to shareholders as a return on their investment.
Debentures	Long-term debt securities issued by a company to raise funds, typically with a fixed interest rate and repayment schedule.

2.10 Self-Assessment

Essay type questions

1. What are the procedures for formation of company?
2. Write a brief notes on memorandum of association.
3. Explain for articles of association.
4. What are the content include prospects?Eexplain.
5. Explain different kinds of shares.
6. What is mean by debenture? Explain types of different .
7. What are the content include alternative of memorandum of association?
8. What are the content include article of association?

2.11 Case Study

Case Study 1:

Company Name: Tech Innovators Inc.

Background: John and Sarah, experienced software engineers, have identified a gap in the market for innovative software solutions. They decide to establish Tech Innovators Inc., a technology startup specializing in developing

cutting-edge software products.

Process Overview:

1. **Promoter Activities:**
    - John and Sarah act as promoters, conducting market research, developing a business plan, and assembling a team of developers.
    - They secure initial funding and prepare the incorporation documents.
2. **Incorporation Document Preparation:**
    - John and Sarah draft the Memorandum of Association (MOA) and Articles of Association (AOA) for Tech Innovators Inc., outlining the company's objectives, share capital, and internal management rules.
3. **Filing and Certification:**
    - The incorporation documents are filed with the Registrar of Companies (RoC), along with the necessary forms and fees.
    - Upon approval, the RoC issues a Certificate of Incorporation, formally establishing Tech Innovators Inc. as a legal entity.
4. **Prospectus Issuance:**
    - Tech Innovators Inc. decides to raise capital through a public offering and issues a prospectus detailing its business model, products, financial projections, and investment opportunities.
5. **Share Capital Management:**
    - The company offers new shares to investors through the IPO, raising funds for expansion.
    - Share capital is managed according to the company's needs, with alterations made as required by shareholder approval and regulatory compliance.
6. **Dividend Distribution and Debentures:**
    - As Tech Innovators Inc. grows and generates profits, it distributes dividends to shareholders as a return on their investment.
    - To fund further development projects, the company may issue

debentures, providing an alternative source of financing.

Outcome: Tech Innovators Inc. successfully establishes itself as a leading technology company, leveraging its innovative products and strong financial backing to achieve growth and profitability.

Case Study 2:

Company Name: Green Energy Solutions Ltd.

Background: Emily and Michael, environmental enthusiasts, recognize the urgent need for sustainable energy solutions. They decide to establish Green Energy Solutions Ltd., a renewable energy company specializing in solar power systems.

Process Overview:

1. **Promoter Activities:**
   - Emily and Michael act as promoters, conducting market research, identifying opportunities in the renewable energy sector, and securing initial funding.
   - They assemble a team of engineers and environmental experts to support the company's mission.
2. **Incorporation Document Preparation:**
   - Emily and Michael prepare the Memorandum of Association (MOA) and Articles of Association (AOA) for Green Energy Solutions Ltd., defining the company's objectives, share capital, and internal governance structure.
3. **Filing and Certification:**
   - The incorporation documents are filed with the Registrar of Companies (RoC), along with the necessary forms and fees.
   - Upon approval, the RoC issues a Certificate of Incorporation, formally establishing Green Energy Solutions Ltd. as a legal entity.
4. **Prospectus Issuance:**
   - Green Energy Solutions Ltd. decides to raise capital for expanding its solar projects and issues a prospectus detailing its business model, environmental impact, financial projections, and

investment opportunities.

5. **Share Capital Management:**
   - The company offers new shares to investors through the IPO, raising funds to invest in solar infrastructure and technology.
   - Share capital is managed carefully, with alterations made as needed to support the company's growth strategy.
6. **Dividend Distribution and Debentures:**
   - As Green Energy Solutions Ltd. achieves success and profitability, it distributes dividends to shareholders as a reward for their investment in sustainable energy.
   - To finance large-scale solar projects, the company may issue debentures, attracting investors interested in supporting renewable energy initiatives.

Outcome: Green Energy Solutions Ltd. emerges as a leading player in the renewable energy sector, contributing significantly to the transition to clean and sustainable energy sources while delivering value to its shareholders and investors.

2.12Task

- Analyze the Role of Promoters and the Preparation of Incorporation Documents
- Examine the Issuance of a Prospectus and the Management of Share Capital

2.13 E – Contents

S.No	Topic	E-Content Link
1.	Formation of a Company and Promoter	https://www.taxmann.com/post/blog/formation-of-company-promotion-and-incorporation/
2.	Articles of Incorporation	https://legal.thomsonreuters.com/blog/what-are-articles-of-incorporation-what-should-be-included/
3.	Prospectus, share capital, and dividends,	https://egyankosh.ac.in/bitstream/123456789/67940/1/Unit-

		4.pdf
4.	Debenture	https://www.investopedia.com/terms/d/debenture.asp
5.	E-Book	https://books.google.com/books/about/Company_Formation.html?id=NGKqoAEACAAJ
6.	E-Book	https://books.google.com/books/about/Company_Formation.html?id=R_sCzgEACAAJ
7.	E-Book	https://books.google.co.in/books/about/Introduction_to_Company_Law.html?id=LQflMqcZyOoC https://books.google.co.in/books/about/Introduction_to_Company_Law.html?id=LQflMqcZyOoC

2.14 Reference

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MEETING

Meeting and Resolution-Types-Requisites-Voting & poll-Quorum-proxy-Resolution-Ordinary &Special-Audit & Auditors- Qualification, Disqualification, Appointment and Removal of an Auditor.

MEETING

Self-Learning Material Development – STAGE – 1

Unit Module Structuring

- Meeting and Resolution
- Types-Requisites-Voting & poll
- Quorum-proxy
- Resolution
- Ordinary &Special-Audit & Auditors
- Qualification, Disqualification, Appointment and Removal of an Auditor.

3.1 MEETING AND RESOLUTION

Meetings and resolutions are fundamental components of corporate governance, providing structured processes for decision-making within a company. Meetings, such as Annual General Meetings (AGMs) and Extraordinary General Meetings (EGMs), serve as formal gatherings where directors and shareholders convene to discuss and decide on key business matters. Resolutions are formal decisions made during these meetings, categorized into ordinary resolutions, requiring a simple majority, and special resolutions, needing a higher threshold of approval. The proper conduct of meetings and the accurate documentation and implementation of resolutions ensure transparency, accountability, and compliance with legal requirements, thereby maintaining shareholder trust and the overall integrity of the company's operations.

(i) Limited companies

There are two types of meetings that can be held by private limited companies: a board meeting of the directors and a general meeting of the members (shareholders or guarantors). There is no statutory requirement in the Companies Act 2006 to hold either type of meeting, with the exception of the First Board Meeting of the Directors; however, the need to hold one or both types of meetings will arise on a number of occasions, when decisions have to be made.

If a board meeting or general meeting does take place, there are a number of statutory requirements to which a company must adhere. Minutes must be taken to record the proceedings of the meetings and note the names of those in attendance. During both types of meetings, it is common for resolutions to be passed. A resolution is simply a majority or unanimous decision taken by the directors or members on a particular matter pertaining to the business. Any resolutions that are passed must be recorded and stored at the company's registered office or SAIL address. In many cases, copies of these resolutions will also have to be filed with Companies House.

(ii)Limited liability partnerships

There are no provisions in the Limited Liability Partnerships Act 2000 or the Limited Liability Regulations 2001 requiring LLPs to hold any official type of meeting of their members - the reason being that LLP legislation is intended to provide freedom and flexibility to LLP members with regard their internal affairs and management.

As such, LLP members should draft their own regulations in a Partnership Agreement to outline the required procedures for decision-making. Most LLPs

will specify that ordinary matters may be decided by a majority of members, and that all members must consent to any significant changes to the nature of the business. However, it is entirely up to the members of an LLP to arrange such particulars between themselves when the business is formed.

(iii)Board meetings

Company directors collectively form a board. A board meeting is, therefore, any official meeting of the directors of a limited company. There is no legal requirement to hold any board meetings in a private limited company, but it is common practice to hold such meetings at regular intervals if a company has more than one director. Furthermore, it is beneficial to hold a meeting of the directors within one month of company formation. This enables the directors to clarify the objectives of the new business and determine their individual duties and responsibilities.

❖ **Board meeting agenda**

Directors will usually convene at a board meeting to discuss business matters that need to be addressed. During the first board meeting, such matters may include:

- Appointing a chairman
- Confirmation of company formation details
- Consulting the articles of association
- Issuing share certificates to shareholders
- Determining the rights and powers of the directors
- Assigning various duties and responsibilities to directors
- Verifying the company's accounting reference date (ARD)
- Confirming the statutory filing deadline for the first annual return and annual accounts
- HMRC registration for Corporation Tax, VAT and PAYE.
- Company insurance and licence requirements
- Appointing a company secretary
- Record-keeping and accounting requirements
- Appointing an accountant
- Opening a business bank account
- Raising capital
- Recruitment

- Marketing and advertising
- Suppliers and service providers
- Suggestions and recommendation for the business

(iv)Decision-making

Directors normally have an equal say in matters pertaining to company business and policy. When a decision is put to a vote at a board meeting, each director is usually entitled to one vote, unless the articles states otherwise. When a consensus - a majority agreement for or against a proposed resolution - is obtained, a decision has been reached. If no consensus is reached, the chairman of the board is usually given a second or casting vote in order to reach a decision. Many companies adopt a manual outlining the rules and procedures of board meetings.

(v) Calling a board meeting

Board meetings can be called at any time by the chairman of the board or an individual director. Reasonable notice of the meeting must be provided to all directors, but there is no provision in the Companies Act regarding a minimum notice period for board meetings. This is one of the points that can be set out in the board meeting manual. One week is usually sufficient.

The notice should state the following details:

- Time, date and location of the meeting
- Purpose of the meeting
- Any proposed resolutions
- Schedule of proceedings

(vi) Minutes of board meetings

It is a legal requirement that minutes be taken of all board meetings. This is usually the responsibility of the company secretary. Minutes are simply a record of the proceedings of the meeting, and they will usually include:

- Company name
- Names of those present
- Chairman of the meeting
- Apologies for any absences
- Time, date and location of meeting
- Details of proposed resolutions
- Result of any votes
- Objections raised

- Record of those for and against any proposed resolution
- Summary of other items of business discussed
- Chairman's signature

Board meeting minutes are usually kept at the back of the company registers (a bound book or loose-leaf binder) at the company's registered office or principal place of business, but they may also be kept in electronic form. They can be inspected at any time by directors and auditors; however, members, creditors and the general public are not permitted to inspect the minutes of directors' meetings.

(vii) General meetings

A general meeting is a meeting of the members of a limited company. This type of meeting is more formal than a board meeting of directors, because the calling and conduct of general meetings is regulated by the Companies Act 2006. Private limited companies are no longer legally required to hold Annual General Meetings (AGM) unless a provision to the contrary is included in the articles. Most private companies will only call general meetings when extraordinary decisions have to be made by the members, though it is good practice to hold an AGM to review the company's performance, annual accounts and plan ahead for the forthcoming year.

❖ **Purpose of a general meeting**

Shareholders will convene at a general meeting in exceptional circumstances when they need to address an issue or pass a resolution on any matter that extends beyond the directors' powers. It is possible to pass resolutions in writing, but it is often more beneficial to formally and collectively discuss a proposed resolution at a general meeting - particularly if a company has multiple shareholders who do not interact on a daily basis. If you are a sole director and shareholder of your own company, you will not need to hold any general meetings, because you are the sole decision-maker.

The types of matters discussed at a general meeting may include:

- Appointing or removing a director
- Altering the articles of association
- Changing the shareholders' agreement
- Changing the company's share structure by issuing more shares or creating different classes of shares
- Approving directors' loans
- Approving directors' service contracts

- Adding or removing directors' powers
- Appointing or removing an auditor
- Changing the company structure
- Approving the transfer of shares as proposed by a director

Under the Companies Act 2006, all members' decisions can be made by written resolution, with the exception of dismissing a director or removing an auditor before the end of their contractual period. It is possible to include provisions in the articles to further restrict decision-making by written resolution, if required.

❖ NOTICE PERIOD

A general meeting can be called by the company directors or shareholders. A minimum notice period of 14 days is required for calling a general meeting in a private limited company. The notice must be sent to every member and director, and any persons entitled to a share on the death or bankruptcy of a shareholder. Notice can be given in hard copy form, electronic form or by posting it on the company website. The following information should be disclosed on the notice:

- Time, date and location of the general meeting
- Purpose of the meeting
- Proposed resolutions to be agreed
- Statement that every shareholder may appoint a proxy if they are unable to attend
- Notice date
- Name(s) of director(s) or shareholder(s) calling the meeting

❖ Minutes of meetings

The company secretary (or director) must arrange for minutes to be taken to record the names of those present at the meeting, a summary of the proceedings and the outcome of any proposed resolution. A copy of the minutes should be kept in the company's statutory register held at the registered office or principal place of business for a minimum of 10 years. Copies should also be issued to the company members.

❖ RESOLUTIONS

A resolution is a legally binding agreement or decision made by company members or directors. The outcome of a resolution is determined by the votes cast for and against the decision. If the required majority is reached, the resolution is 'passed'. If the necessary majority is not reached, the proposed resolution fails.

Different types of resolutions

Any decision made by the directors of a company is called a resolution, but there are two types of members' resolutions: ordinary and special.

An ordinary resolution is passed when a simple majority vote is reached (above 50%). This type of resolution can be used for all decisions unless the Companies Act or articles of association specifies the need for a special resolution for any other matter.

A special resolution is passed when a 75% majority vote is reached.

Both types of resolutions can be passed at a general meeting or in writing (a written resolution), apart from a resolution to dismiss a director or remove an auditor before the expiration of his or her contract. If a member is unable to attend a general meeting, he or she can appoint a proxy.

Passing a resolution

Voting at general meetings is normally taken by a show of hands or a poll. If the vote is taken as a show of hands, the percentage is worked out as one vote per shareholder. If a poll is taken, the votes are worked out in proportion to the number of shares held by each shareholder - most shares carry one vote; therefore, shareholders with multiple shares can cast more votes.

The conditions of members' voting rights are usually stated in the articles of association and shareholders' agreement. Generally, however, a member will have the same number of votes whether passing a resolution at a general meeting or on a written resolution.

Resolutions must be proposed in the notice that is circulated prior to a board meeting or general meeting. Proposed members' resolutions must be also be issued to the auditors, if a company has any. If the proposed resolution is for the removal of a director, the director in question must receive a copy.

Copies of all special resolutions should be filed with Companies House within 15 days and issued to all shareholders and the company auditor, if applicable. Copies should also be kept in the company's statutory register at the registered office address or principal place of business for a minimum of 10 years.

3.2 REQUISITION

Extra Ordinary General Meeting can be called by the Board of Directors, members, or a tribunal. When it is called by the Board of Directors upon the requisition of members, it is referred to as an "extraordinary general meeting on requisition of members".

Companies Act, 2013 contains provisions regarding different types of meetings such as Shareholders Meetings, Directors Meetings, Committee Meetings, etc. Shareholders' Meetings, also known as General Meetings, can be further classified into three categories: Annual General Meetings, Extraordinary General Meetings (EGM), and Class Meetings.

While it is mandatory for a company to conduct an annual general meeting once a year (except for One Person Company), an EGM can be called anytime when it is necessary to do so and when the matter requires the immediate attention of the members.

Provision under the Companies Act, 2013

According to Regulation 42, Table F of Schedule I to the Companies Act, 2013, all general meetings other than the annual general meeting shall be called extraordinary general meetings.

Section 100 of the Companies Act, 2013

Section 100(2) of the Companies Act, 2013 contains a provision regarding the EGM of a company on the requisition of members. It provides that if a valid requisition is made by members of a company, the Board of Directors shall call an extraordinary general meeting of the company within a specified period. The requisition shall be made by:

Note: Such shareholding and voting power shall be held by members as of the date of receipt of the requisition by the company.

Other Essentials of a Valid Requisition

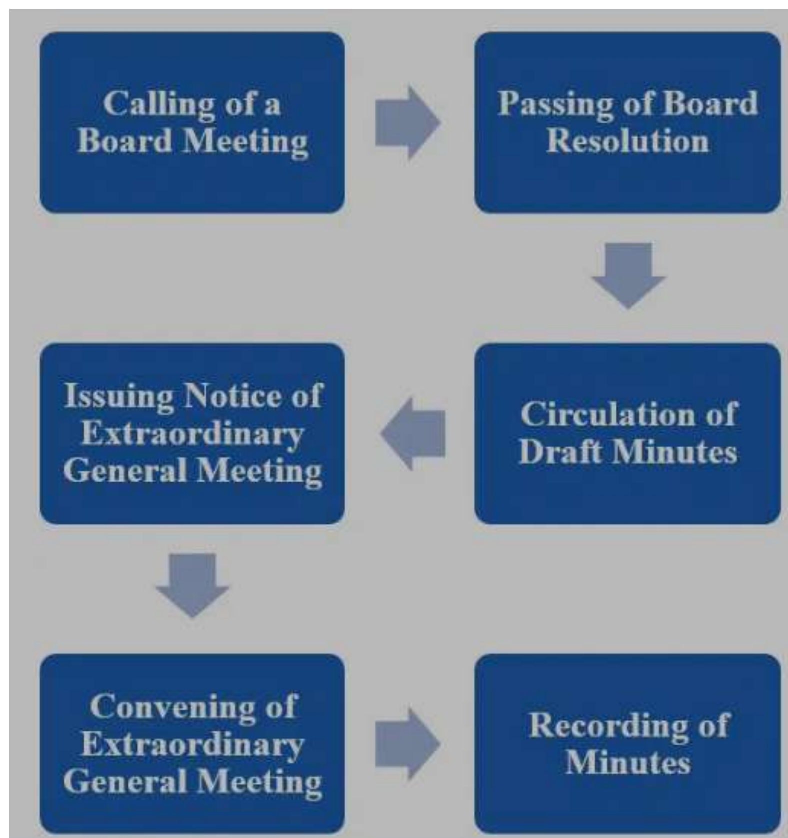
- The requisition shall clearly lay down the matters for which the requisitionists want the Board of Directors to call an EGM of the company.
- It shall be signed by the requisitionists.
- It shall be sent to the registered office of the company.

Within how many days should an EGM on Requisition be called by Board?

If the Board of Directors of a company receive a valid requisition from members of the company, then they shall proceed to call an EGM within the next 21 days and the meeting shall be held within 45 days from the date of receipt of such requisition by the company.

❖ Procedure for Conducting Extraordinary General Meeting on Requisition of members

Following is the procedure for conducting an EGM of a company on the requisition of members.



1) Calling of a Board Meeting – In order to conduct an extraordinary general meeting of a company, first call a meeting of the Board of Directors of the company. For calling board meetings, send a notice to all the directors of the company at their respective addresses registered with the company.

Such notice shall be issued at least 7 days prior to the date of the Board Meeting. Also, the agenda and draft resolution shall be attached with the notice.

2) Passing of Board Resolution – In a duly convened meeting of the Board of Directors, pass a resolution fixing date, time, and venue of the extraordinary general meeting to be held. Also, approve the draft notice of the extraordinary general meeting and explanatory statement to be annexed with such notice (if any).

Further, authorize a Director of the Company or Company Secretary for signing and issuing the notice of extraordinary general meeting and for carrying out all such acts as may be required.

3) Circulation of Draft Minutes – Within 15 days from the conclusion of the Board Meeting, circulate draft minutes to all the directors so they can comment on the same.

4) Issuing Notice of Extraordinary General Meeting – The Director or Company Secretary so authorized shall issue the notice of extraordinary general meeting (EGM) at least 21 clear days prior to the date of the proposed meeting.

The notice can be in writing or can be sent through electronic mode or through any other mode as specified by SS-2. However, it shall contain the day, date, time, and place of the meeting, along with an explanatory statement if required, and shall be sent to all the directors, members, and auditors of the company.

Note: An extraordinary general meeting (EGM) can be called on shorter notice as well if consent (in writing/ electronic mode) is received from –

a) members holding 95% of the paid-up share capital of the company carrying voting rights, in case of the company having a share capital

b) members having 95% of the total voting power of the company, in case of the company not having a share capital.

5) Convening of Extraordinary General Meeting – In the presence of a requisite quorum and Chairman of the meeting, conduct the meeting and transact all the matters for which the meeting is conducted and as set out in the notice of the meeting.

6) Recording of Minutes – Minutes of the meeting shall be recorded in the respective minutes' book within 30 days from the conclusion of the meeting.

The Quorum for Extraordinary General Meeting (EGM)

Section 103 of the Companies Act, 2013 contains a provision regarding quorum for general meetings i.e., the minimum number of members required to be present in person, in order to convene a valid meeting. The following table shows the requisite quorum for general meetings (including extraordinary general meetings) in the case of a public company and a private company .

Public Company		Private Company
Total Number of Members in the Company	**Quorum**	**2 members** personally present shall be the quorum, irrespective of the total number of members in the company
Less than or equal to 1000	5 members personally present	
More than 1000 and upto 5000	15 members personally present	
More than 5000	30 members personally present	

The total number of members shall be checked as of the date of the meeting in case of a public company. Further, as per Secretarial Standard-2, a quorum shall be present at all times during a meeting.

If an extraordinary general meeting is called by the Board of Directors on the requisition of members and quorum is not present within half an hour of the appointed time, the meeting shall stand adjourned and shall then be conducted in the next week on the same day, place and time.

However, if such a meeting is called by requisitionists themselves and the quorum is not present within half an hour of the appointed time, the meeting shall stand canceled.

❖ Chairman of Extraordinary General Meeting (EGM)

As per Secretarial Standard–2, the Chairman of the Board shall chair the general meetings of the company including an EGM. However, if the Chairman is not present within 15 minutes from the appointed time of the meeting or is unwilling to chair the meeting or if a Director has not been designated for the same, Chairman shall be elected from all the directors who are present at the meeting.

If none of the directors is present or is unwilling to chair the meeting, Chairman shall be elected from the members present at the meeting through a show of hands. In case a poll is demanded for the election of the Chairman of the meeting, it shall be conducted immediately.

Also, until the poll result is announced and a new person is elected as Chairman for the rest of the meeting, the Chairman elected through a show of hands shall continue to chair the meeting.

❖ **SPECIAL BUSINESS**

All the businesses that are transacted at an extraordinary general meeting are considered special businesses.

Rules on Extraordinary General Meetings (EGM) under Company Law that must be complied

Rule 17 of the Companies (Management and Administration) Rules, 2014 contains the following provision regarding the extraordinary general meeting of a company on the requisition of members .

- The requisition may be provided by members for the convening of extraordinary general meetings in writing or in electronic mode.
- The requisition shall be provided at least 21 clear days before the date proposed for the extraordinary general meeting.
- The meeting can be convened on any day other than national holiday and during normal business working hours i.e., between 9 am to 6 pm.
- The notice of an extraordinary general meeting of a company on the requisition of members shall be sent to such members only whose names are there in the Register of Members maintained by the company. Such names shall be checked on the 3rd day of receiving a valid requisition from members.
- The meeting shall be conducted at the registered office of the company or in the same city or town in which the registered office of the company is situated.
- If a resolution is required to be passed as a special resolution at an extraordinary general meeting of the company, the notice for the meeting shall be given in accordance with Section 114(2) of the Companies Act, 2013.

In addition, Form MGT-14 shall be filed with the Registrar of Companies, along with the explanatory statement, within 30 days of passing such resolution.

Other Provisions Regarding EGM of a Company

Secretarial Standard – 2 contains the following provision regarding the extraordinary general meeting of a company –

● Notice of an extraordinary general meeting shall be sent by hand delivery or by ordinary post or by registered post or by speed post or by facsimile or by courier or by electronic mail or other electronic modes.

● Such notice shall also be hosted on the website of the company, if any.

● A member who is eligible to attend the extraordinary general meeting and cast a vote, can appoint a proxy on his behalf to attend and vote in the meeting. It is not necessary for such a proxy to be a member of the company.

● For the purpose of determining the quorum for the meeting, proxies shall not be included.

● Voting on a resolution shall be done through the show of hands unless a poll has been demanded or it has been decided to put the resolution for remote e-voting.

In case of the Board's failure to conduct an EGM on the requisition of members, within 45 days from the date of receipt of the valid requisition, the requisitionists themselves may call an extraordinary general meeting of the company within 3 months from the date of such requisition.

In such case, the company shall give the list of members (as of the 21st day of receiving a valid requisition) along with their addresses and shareholding details to requisitionists within 45 days of receiving a valid requisition.

Further, if such a meeting is called, an explanatory statement is not required to be annexed with the notice of the meeting and the notice shall be sent through registered post or speed post or electronic means.

Moreover, all the expenses that are incurred by requisitionists in relation to the conduct of the meeting, shall be reimbursed by the company to such requisitionists and the same shall be deducted from the remuneration of directors in default.

3.3 VOTING AND POLL

This information is for schemes registered under the:

- Standard Module
- Accommodation Module
- Commercial Module
- Small Schemes Module.

Schemes registered under the Specified Two-lot Schemes Module do not have general meetings.

A poll vote can only be used on a motion that can be decided by ordinary resolution. A poll vote cannot be used on a motion that is a secret ballot.

When voting on a motion to be decided by ordinary resolution each lot has 1 vote.

A poll is a different way of counting votes for the motion. It takes into account the contribution schedule lot entitlements for the scheme.

Any person entitled to vote at a general meeting can ask for votes (on a motion to be decided by ordinary resolution) to be counted by a poll.

The person must ask for the poll:

- in person, at the meeting

  or
- on the voting paper, whether or not present at the meeting.

The request for the poll:

- can be made whether or not the meeting has already voted on the motion
- can be withdrawn by the person who asked for it at any time before the poll is finished.

The request for a poll must be made:

- before the meeting decides the next motion (if it is not the last motion)

  or
- before the meeting ends (if it is the last motion).

Instead of counting each vote for and against a motion, a poll counts the contribution schedule lot entitlements of the lots voting for and against a motion. The motion is passed only if the total ‘contribution schedule lot entitlements’ of the lots that vote for the motion are more than the total contribution schedule lot entitlements of the lots that vote against the motion. For example, a scheme has 8 lots and all lot owners are entitled to vote on a motion that can be decided by ordinary resolution. Three owners vote for the motion (“yes” votes) and 5 owners vote against the motion (“no” votes). The motion is lost, because there are more votes against the motion than in favour of the motion. However, an owner immediately asks for a poll vote. The votes must now be re-counted taking into account the contribution schedule of lot entitlements for the scheme. The owners of 3 lots voted in favour of the motion. These owners have different lot entitlements.

- Lot 1 has 1 lot entitlement.
- Lot 2 has 3 lot entitlements.
- Lot 3 has 4 lot entitlements.

The tally of the votes for the motion is 8.The owners of the other 5 lots voted against the motion. These owners all have 1 lot entitlement each.The tally of the votes against the motion is 5.Under a poll vote the motion is passed— 8 in favour and 5 against.

3.4 QUORUM

The Companies Act, 2013 hereinafter referred to as 'Act' or 'Companies Act' mandates a company to conduct various kinds of meetings which includes general meetings and board meetings, periodically. These meetings need to be conducted to make important decisions pertaining to the working of a company. Thus, there arises various questions as to whether all the members of the company are required to attend all the meetings of a company or is there any minimum number of members which is required for a particular meeting to take place or whether the meetings can take place even in the absence of some members of the company etc. To ensure that there is maximum participation of members in the decision making process and also to prevent arbitrary decisions, the concept of 'quorum' has been established under the Act and an attempt has been made to explain the same through this article.

The general dictionary meaning of the word 'quorum' as per the Cambridge Dictionary is "*the smallest number of people that must be present to officially conduct a meeting or to make any important decisions in a meeting*". The Black's Law Dictionary defines "quorum" as "*the minimum number of members who must be present for a deliberative assembly to legally transact business*".

In company law, the word 'quorum' means the minimum number of members who are required to attend a meeting and must be present at the meeting for a valid constitution of such meeting so that the business in the meeting can be transacted. The quorum should consist of a reasonable number of members. It should neither be too big nor too small.

A quorum is mandatory for a meeting to be considered as valid under the company law. It is generally mentioned in the bylaws of a company that all major decisions of the company should be made by a reasonable number of members and not by just a few individuals. If a meeting takes place without the required number of members, the decisions taken in such a meeting can be challenged for lack of quorum.

The objective of a quorum is to serve as a check against arbitrary decision-making. It ensures that the interests of all the stakeholders are taken into consideration before making any decisions. It also ensures democracy by ensuring that all the members present in the meeting have been given a chance to present their views and that the decisions attained at the end of the meeting are well-considered and reflective of a broader consensus.

The quorum is very important to ensure that the proceedings of a meeting are conducted as per the law. The quorum guarantees that the decisions are made through the collective wisdom of the members and only after consulting the diverse perspective of all the members present. It is also important as it promotes decision-making through adequate representation and collective insight.

❖ PROVISIONS FOR QUORUM UNDER COMPANIES LAW

Quorum of general meeting

Even though the provisions related to quorum are present in the Articles of Association of a company, the Companies Act, 2013 also contains some provisions pertaining to quorum. Section 103 of the Act provides information on the quorum for general meetings. This section can be divided into three categories. It provides information about the quorum for a public company, private company and the consequences that occur when the required quorum is not fulfilled. However, the conditions mentioned in the provision must be consistent with those mentioned in the Articles of Association of the company. That is to say, the Articles may require a greater number of members to constitute a quorum and the same would be applicable.

❖ PUBLIC COMPANY

The quorum of a public company has been provided under Section 103(1)(a) of the Act. It states that for a public company, the quorum is as follows:

- If the number of members of the company on the date of meeting are not more than one thousand, then, the quorum of the meeting is five members personally present in the meeting.
- If the number of members is more than one thousand but less than five thousand, then, the quorum is fifteen members personally present in the meeting.

- If the number of members is more than five thousand, then, the quorum of the meeting is thirty members personally present in the meeting.

❖ PRIVATE COMPANY

As per Section 103(1)(b) of the Act, the quorum for a private company is two members physically present at the time of the meeting. However, private companies are allowed to set a higher quorum in their articles of association. Whenever there is an inconsistency in the quorum set by the articles of the company and the quorum specified in the Act, the company must adhere to the condition with higher requirement. It was held by the High Court in the case of *Amruta Kaur Puri v. Kapurthala Flour Oil and General Mills Company Pvt Ltd. (1982)* that where the articles provide a higher quorum, the same has to be adhered .

❖ NON-FULFILMENT OF THE REQUIRED QUORUM

Section 103(2) of the Act provides for the consequences that can occur when the quorum is not fulfilled. It states that if a quorum of a general meeting is not present within half an hour from the time at which the meeting was scheduled to be conducted, the meeting will be adjourned. The meeting may get adjourned to the same day in the next week in the same location and at the same time. The board of directors can also decide an alternate day and time for conducting the board meeting. However, as per the Secretarial Standards, it should not be scheduled on a national holiday.

The term 'Secretarial Standards' refers to the standards issued by the Institute of Company Secretaries of India (ICSI) which is constituted under Section 3 of the Company Secretaries Act, 1980 and approved by the Central Government. Secretarial Standards 1(SS-1) deals with standards regarding board meetings. Secretarial Standard 1 on Meetings of the Board of the Board of Directors issued by ICSI and effective from 1st July, 2015, provides as to what days can be considered as national holidays.

SS-1 states that a "National Holiday" includes:

(i) Republic Day

(ii) Independence Day

(iii) Gandhi Jayanti and

(iv) any other day which is declared as a national holiday by the Central Government.

Section 103(2)(b) of the Act states that, if the said meeting is called by requisitionists under Section 100 of the Act, it will be cancelled subject to the conditions mentioned in the proviso of this Section.

The proviso in Section 103(2) of the Act, the company has to mandatorily provide a notice to its members which is not less than three days if the meeting has been adjourned or the date, time or place of the meeting has been changed. This notice can be provided by the company either individually to all the members or by publishing an advertisement both in an English newspaper as well as a newspaper in vernacular language which is circulated near the company's registered office. Section 103(3) of the Act further specifies that if the quorum is still not met even after half an hour of the adjourned meeting's scheduled time, the present members for such adjourned meeting will constitute the quorum for valid conduct of the board meeting.

Secretarial Standard-2, in Para 15.4 states that the number of members in an adjourned meeting should not be less than two. If a decision is made in a meeting without a valid quorum, it can be challenged in court. However, the parties who are affected by these decisions may be protected by the doctrine of indoor management. This doctrine, also known as Turquand's rule, seeks to protect the outsiders who have entered into some kind of transaction with the company. The Memorandum and Articles of Associations of a company are public documents and can be accessed by the outsiders before transacting with the company. However, whatever is happening internally in the company is not known to the public. Hence, if the outsiders follow the procedure mentioned in the articles of the company in good faith and without knowledge of the internal arrangements of the company, they will gain immunity by this doctrine. The outsiders are entitled to presume that all the internal procedures are catered by the company.

❖ QUORUM FOR A BOARD MEETING

Section 174 of the Companies Act, 2013 provides information regarding quorum for constituting a valid board meeting. This provision is applicable to all the companies whether public, private or one person companies. However, this

Section is not applicable to one person company having a sole director as mentioned in Section 173(5) of the Act.

Section 174(1) states that the quorum of a board meeting should be one-third of the total strength of directors or two directors, whichever is higher. This section also provides that it is not mandatory that the directors must be physically present to constitute a quorum, they can take part in a meeting virtually as well which means that the quorum should not be less than 2 members at any point of time. It should also be noted that the quorum of a board meeting is one-third of the total directors who are actually present virtually, physically or both in the company and does not include the positions of directors that are vacant.

Illustration: Suppose the articles of association of a company provide that the maximum number of directors that a company may have is 15. However, the number of directors that are actually present in the company is 6 and the rest of the 9 positions of directors is vacant. In such a scenario, the quorum of the meeting will be one-third of 6 directors, which is 2 directors.

Explanation 1 of this Section provides that if there is any fraction of the number of directors, then, such fraction shall be rounded off as one. In cases when there are even number of directors in a company, then, one-third of such an even number of directors will be a fraction and in such cases, it will be rounded off to one.

Illustration: Suppose a company has 8 directors. The quorum of the meeting will be one-third of 8 directors or 2 directors, whichever is higher. In this case, one-third of 8 is 2.67. Since it is not possible to have a quorum of 2.67 directors, the quorum will be considered to be 3 directors as per the explanation.

Also, it was held in the case of *Amrit Kaur Puri v. Kapurthala Flour, Oil & General Mills Co (P) Ltd. (1982)* that the Companies Act only specifies a minimum quorum and the company in its articles of association can specify a higher quorum.

Illustration: Suppose there is a company ABC Ltd. and the articles of the company provide for 5 directors as quorum and it has 12 directors on its board. In this case, the quorum for board meetings as per the Act will be either 2 directors or one-third of 12, which is 4 whichever is higher (in this case 4

directors). But, in this case, the quorum shall be 5 directors as the articles provided for a larger quorum than the quorum stipulated by the Act.

Section 174(2) provides for a situation in which the number of directors are lesser than the required quorum because of some extraordinary or exceptional circumstances. It states that in such cases, the continuing directors may act for two purposes:

- To increase the number of directors so that the required quorum is reached.
- Summon a general meeting of the company.

However, it is to be noted that the continuing directors cannot act for any other purposes.

Illustration: Suppose a company has 8 directors on its board and 7 directors die due to a plane crash. In this case, the remaining 1 director has the power to either summon a general meeting or to increase the number of directors to meet the quorum.

Section 174(3) of the Act states that an interested director will not be considered for the purpose of quorum and such a director will not have any voting right in respect of the subject matter in which he has interest and the director is not allowed to take part in the discussion pertaining to the same.

Illustration: Suppose a company has 9 directors on its board, but only 7 directors present at the meeting, out of which 6 directors are interested directors. In this case, the 6 directors who have a personal interest in the subject matter of discussion will not be considered for quorum. Hence, only one director will be considered to be present in the meeting and hence, this one director cannot be considered as a valid quorum and the meeting cannot be held. It also provides for a situation in which the number of interested directors exceeds or is equal to two-thirds of the total number of directors. It states that in such a scenario, the number of directors who are not interested in the subject matter of the meeting, are present at the meeting and the number of directors are not less than two, shall be the quorum of the meeting.

Illustration: Suppose a company has 9 directors on its board out of which 7 directors are interested directors and all of them attended the board meeting. In this case, the number of interested directors are more than two thirds of the total number of directors on the board. Hence, as per Section 174(3), the

quorum is 2 directors. Section 174(4) of the Act states that when a meeting cannot be held due to lack of quorum, then, the meeting will be adjourned automatically unless the articles of the company provide otherwise. The adjourned meeting will be held on the same day and the same time in the next week or if that day is a national holiday, then it will be held on the next day which is not a national holiday. However, if the quorum is not present even in the adjourned meeting, then, the meeting will get dissolved. It should also be noted that the quorum should not only be present at the time of commencement of the meeting but also while discussion is taking place.

Illustration: Suppose a company has 7 directors on its board and all the directors participated in the meeting. However, after some time, 4 directors left. In this case, the quorum was present at the beginning of the meeting and was also present while transacting the business but was gradually reduced. Hence, the meeting will not get adjourned as the quorum was present at the time of transaction of business.

❖ EXCEPTIONS TO SECTION 174 OF THE COMPANIES ACT, 2013

The following are the exceptions to Section 174 of the Companies Act, 2013:

- In case of Section 8 company, Section 174(1) shall be applicable with the exception that the quorum of board meeting shall be either 8 members of the company or 25 percent of the total directors on the board, whichever is less.
- It was provided in the Notification released by the Ministry of Corporate Affairs, dated January 04, 2017 that, in case of a Specified IFSC Public Company as well as a Specified IFSC Private Company, Section 174(3) will be applicable with the exception that an interested director may participate in a meeting if he discloses about his interest prior or during the time of the meeting.
- As per the Notification dated 13th June, 2017, it was provided that in case of a private company, Section 174(3) of the Act will be applicable with the exception that the interested director may also be counted towards

quorum in such meeting after disclosure of his interest pursuant to Section 184.

❖ QUORUM OF ONE PERSON

As already stated in this article, a quorum is very essential for a valid meeting. However, in the following circumstances, a meeting can take place even if the desired quorum is not present:

- As previously stated in the article, Section 103(3) states that if a meeting is adjourned for want of a quorum, any number of members who are present in the meeting will form the quorum.
- It was held in the case of *East v. Bennett Brothers Ltd. (1911)*, that if the meeting is held for the purpose of variation of rights of a particular class of shares and only one person holds all the shares of that particular class, then he alone shall make the quorum.

❖ SECRETARIAL STANDARDS ON QUORUM

As per Section 118(10) of the Companies Act 2013, every company should observe secretarial standards with respect to general meetings and board meetings. The Secretarial Standard-1 (SS-1) on meeting of the board of directors also spells out that quorum for a board meeting must be 1/3rd of the total number of directors or 2 directors whichever is the higher number.

Also, Clause 3.1 of SS-1 states that the quorum should be present throughout the meeting. This means that the quorum should be present not only during the commencement of a meeting but also while the discussion takes place during the meeting. It also states that the directors who take part in the meeting through electronic mode will also be counted for the purpose of quorum unless they are excluded by any provisions of the Companies Act or any other law.

The provisions pertaining to quorum of general meeting are provided in Secretarial Standards 2 (SS-2) and have already been mentioned in this article above.

Important case laws

Re. Opera Photographic Ltd (1989)

Facts of the case

In this case, there was a two-member company in which both the members were also appointed as directors. A professional rivalry had occured between the two because of which the appellant wanted to remove the respondent from the position of director but the respondent refused to attend the meeting because of which the resolution could not be passed due to lack of quorum. The applicant thus applied before the court to constitute a one member quorum.

Issue in the case

Whether the applicant is entitled to remove the respondent from the post of director by constituting a one member quorum?

Judgement of the case

It was held by the Chancery division that as the applicant was a 51% shareholder and had a statutory right to remove the other director, the respondent should not be able to misuse the provisions related to quorum to override the statutory rights of the applicant and as a result, the applicant was permitted to constitute a quorum of one member.

RajanNaginds Doshi v. British Burma Petroleum Co. Ltd. (1971)

In this case, it was held by the Bombay High Court that, when in a company, the election of all the directors is invalid except one, then, the only director present cannot form the quorum for a meeting. The way available with the company to resolve the matter is to call a general meeting and get the approval of the members to the matter in question. Another way is to appoint more directors on the board.

3.5 PROXY

A proxy is an agent legally authorized to act on behalf of another party or a format that allows an investor to vote without being physically present at the meeting. Shareholders not attending a company's annual general meeting (AGM) may vote their shares by proxy by allowing someone else to cast votes on their behalf, or they may vote by mail.

KEY TAKEAWAYS

- A proxy is an agent legally authorized to act on behalf of another party.

- The proxy may also allow an investor to vote without being physically present at the annual shareholder's meeting.
- Management ensures ownership interests are fully represented by encouraging shareholders who are unable to attend annual meetings to vote by proxy.
- A proxy statement is a packet of documents containing information necessary to make informed votes on issues facing the company.

❖ PROXY WORKING WAY

While proxy voting is often an option, management encourages shareholders to vote in person. If the shareholder cannot attend, voting by proxy is another option. For a person to act as a proxy for an individual, formal documentation may be required that outlines the extent to which the proxy can speak on the individual's behalf.

A formal power of attorney document may be required to provide the permissions to complete certain actions. The shareholder signs a power of attorney and extends official authorization to the designated individual to vote on behalf of the stated shareholder at the annual meeting. Meetings are often held in the spring during proxy season.

A proxy cannot vote if the shareholder arrives late and decides to vote for their own self.

❖ PROXY STATEMENTS

Before the annual shareholder meeting, all shareholders receive a packet of information containing the proxy statement. The proxy documents provide shareholders with the information necessary to make informed votes on issues important to the company's performance. A proxy statement offers shareholders and prospective investors insight into a company's governance and management operations.

The proxy discloses important information on agenda items for the annual meeting, lists the qualifications of management and board members, serves as a ballot for elections to the board of directors, lists the largest shareholders of a company's stock, and provides detailed information about executive compensation. There are also proposals from management and shareholders.1

Proxy statements must be filed with regulatory authorities, such as the Securities and Exchange Commission (SEC) in the United States, on an annual basis before the company's annual meeting.2

When voting by proxy remotely, shareholders may be eligible to vote by mail, phone, or internet. Shareholders use the information in the proxy statements to aid in the decision-making process.

Anyone can look up a public company's proxy statement via the SEC website under the name "DEF 14A."

❖ BENEFITS OF PROXY

Management ensures that ownership interests are fully represented by encouraging shareholders that are unable to attend annual meetings to vote by proxy. Before the annual meeting, each shareholder is issued a proxy card, allowing them to state their votes in writing or designate a third party to vote on their behalf.

Proxy voting allows shareholders to vote on the composition of the company's board, the compensation of its officers, and the company's accounting firm. It also allows voting on shareholder proposals.

During corporate elections, the board of elections will recommend their preferred candidates or choices, but the final decision is up to each voter.

❖ REAL-WORLD EXAMPLE OF A PROXY

Below is a portion of the proxy statement for Tesla, Inc. in 2022.3 It lists the date and time of the company's annual general meeting and has instructions for shareholders who wish to participate in the meeting virtually. It also lists the company officers and shareholder proposals that are to be voted on in the meeting, along with the board's recommendations.

PROXY CARD

Below is the proxy card showing the specific board members that were to be voted on as well as some of the proposals by management. If the shareholder wanted to vote, the proxy card could be mailed to the corporation.Proxy Card for Tesla Motors Annual Shareholder's Meeting, 2022.Securities and Exchange Commission

3.6 RESOLUTION

❖ PASSING A COMPANY RESOLUTION

This is **Information Sheet 22 (INFO 22)**.

A resolution is a formal way in which a company can note decisions that are made at a meeting of company members. There are two types of resolutions: ordinary and special.

Under the *Corporations Act 2001*, most of the decisions that affect a company need to be made by a resolution. Additionally, a company's constitution may have its own rules about what decisions need to be made by resolution.

- How to pass a resolution
- Ordinary resolutions
- Special resolutions

How to pass a resolution

For a resolution to pass, it must meet the following criteria:

- the resolution is passed at a meeting which is properly convened and satisfied any quorum (minimum number of members are present) requirements
- the resolution is put into the company's records within one month of the meeting being held, and
- the minutes of the meeting where the resolution was passed must be signed by the chair of the meeting, or the chair of the following meeting.

If these criteria aren't met, the resolution could be considered as invalid. You also need to determine if you are required to pass an ordinary resolution or a special resolution.If you are passing a special resolution, there may be other requirements you need to fulfil. See 'Special resolutions' below for more information.

Where a company has share capital, a member has one vote for each share they hold. These votes are subject to any rights or restrictions attached to their specific class of shares.

If the company doesn't have share capital, each member is entitled to one vote. The chair has a casting vote. If the chair is also a member, they have a member's vote as well.

❖ NOTICE OF A MEETING OF MEMBERS FOR A COMPANY OR SCHEME

Before a meeting of members takes place, the company must give its members at least 21 days notice. A listed company must give at least 28 days notice.

Shorter notice can be given if the members that hold at least 95% of the company's votes agree. This does not apply for a resolution to appoint/remove a director or remove an auditor.

Registered schemes must give at least 21 days notice. This cannot be shortened.

The notice must include:

- the date and time of the meeting
- the location
- an electronic address (i.e. email)
- planned business for the meeting
- information about any proposed special resolutions, and
- information about proxy votes.

❖ PROXY DOCUMENTS FOR MEMBERS OF LISTED COMPANIES

The notice must also provide an electronic address (e.g. email) where any proxy vote documents can be sent.

Listed companies are required to record in the minutes:

- the total number of proxy votes, and
- how they were cast.

This must be done for each separate resolution voted on at a meeting of members.

The above requirements are mandated by law and must be followed for both ordinary and special resolutions, regardless of any conflicting requirements in the company's constitution.

Ordinary resolutions

Ordinary resolutions are not specifically defined in the Corporations Act and need only a simple majority (i.e. normally, more than 50% of votes cast in favour) to pass.

Some decisions that may only require an ordinary resolution include:

- election/re-election of directors
- appointment of an auditor
- acceptance of reports at the general meeting
- strategic or commercial decisions
- increasing or reducing number of directors
- passing a board limit resolution (for public companies).

Special resolutions

Special resolutions are needed for certain changes as defined in the Corporations Act. Decisions like changing a company's name, winding up the company, or changing the company's type will require a special resolution.

Special resolutions must meet certain criteria before they can be voted on, or passed:

❖ NOTICE OF A MEETING OF MEMBERS FOR A COMPANY OR REGISTERED SCHEME

If a special resolution is being proposed at a meeting, the notice to members must include the intention to vote on the special resolution and details of its contents. This is in addition to the other standard requirements like providing a date and time, proxy information, etc.

Passing a special resolution at a meeting

For a special resolution to pass, at least 75% of the votes cast must be in favour.

❖ PASSING A SPECIAL RESOLUTION WITHOUT HOLDING A MEETING

A proprietary company with only one member of the company can pass a special resolution by signing a document that sets out the details of the resolution.

A proprietary company with more than one member can pass a special resolution by getting all members entitled to vote to sign a document that states they're in favour of passing the resolution.

Where a partnership holds shares together, each member must sign.

The resolution is considered as 'passed' when the last member signs (i.e. 100% of voting members agree to pass the resolution.)

The 75% threshold only applies to votes cast at a physical meeting; 100% of votes are needed to pass a resolution without a meeting.

Additionally, a resolution to remove an auditor must be passed at a physical meeting.

Once a special resolution has been passed, what forms need to be lodged?

Below is a list of some scenarios where you may need to pass a special resolution and any documents you may need to lodge with us.

The forms you need to lodge will depend on what the special resolution relates to. For example, to change a company name, you need to pass a special resolution and lodge a Form 205 *Notification of resolution*.

You may also need to include a copy of the special resolution that was passed and any supporting documentation (e.g. minutes of the meeting where the resolution was passed)

Changing the company's name

Lodge a Form 205 *Notification of resolution online*

Changes to the company's constitution or removing the company's constitution

Lodge a Form 205 (public companies only)

Modifying a registered scheme's constitution

Lodge a Form 5101 *Notification of change to managed investment scheme's constitution*

Company to be wound up voluntarily or wound up by the Court

Lodge a Form 205.

Changing the company's type

Lodge a Form 205 and a Form 206 *Application for change of company type.*

Outline powers and duties of an appointed liquidator

Lodge a Form 205.

Giving an appointed liquidator the power to accept shares or other items that are property of the company and sell them

Lodge a Form 205.

Confirming that any arrangements between creditors and the company are binding if the company is being wound up

Lodge a Form 205.

Outlining the procedure for varying the rights attached to shares or the rights of members

Lodge a Form 2205 *Notification of resolutions regarding shares*. Public companies will also need to lodge a Form 210 *Notification of statement of special rights carried by shares*. You'll only need to pass a special resolution if

the company doesn't have a constitution, or the constitution does not already outline the procedure.

A limited company provides that some or all of its unpaid share capital can be called upon if the company goes into external administration

Lodge a Form 2205.

Selectively reducing share capital

Lodge a Form 2205 and a Form 2560 *Notification of reduction in share capital details.*

Approving financial assistance for the company to become a shareholder of the company itself

Lodge a Form 2205, a Form 2601 *Notification of intention to give financial assistance*, and a Form 2602 *Notification of financial assistance details*.

Approving a public company to give financial assistance to one of its subsidiaries so the subsidiary can purchase shares in the parent company

Lodge a Form 2205, a Form 2601, and a Form 2602.

Converting ordinary shares into preferential shares

Lodge a Form 211 *Notification of division or conversion of classes of shares.*

Issuing preferential shares

Lodge a Change to company details (Form 484) online. You don't need to pass a special resolution if the company's constitution already provides for this change.

Shareholder approval for selective buy back of shares

Lodge a Form 280 *Notification of share buy-back details*.

Transferring the company's registration to a State or Territory registration

Lodge a Form 6014 *Application for transfer of registration of a company to registration under a law of a State or Territory.*

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice. We encourage you to seek your own professional advice to find out how the

applicable laws apply to you, as it is your responsibility to determine your obligations.

You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases, your particular circumstances must be taken into account when determining how the law applies to you.

3.7AUDITORS : QUALIFICATION, DISQUALIFICATION, APPOINTMENT AND REMOVAL OF AN AUDITOR.

1. Chapter X of the Companies Act, 2013: Auditors

Companies Act, 2013 is a RULE based Act. One should follow the rules as given in the sections and rules of the Companies Act. CA students should have very good knowledge on these provisions as these are going to be followed in practice. Broadly, in this chapter you will understand"who can be appointed as an auditor under the Act, *i.e.*, qualifications and disqualifications, the manner of appointment and removal of an auditor and rights and duties of an auditor".

2. Qualifications and Disqualifications of Auditor [Section 141]

The Section 141 has **four sub-sections**

141(1) & (2) – discuss about Qualifications;

141(3) & (4) – discuss about Disqualifications.

3. Qualifications of an auditor [Section 141(1) & (2)]

Section 141

(1) A person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant within the meaning of the Chartered Accountants Act,

1949. [CA means a Chartered Accountant *who holds valid Certificate of PRACTICE – Section 2(17)]*

A firm whereof majority of partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company.

In case of a partnership firm – Company appoints the "Firm" not the partner in individual capacity.

(2) Where a firm including a limited liability partnership (LLP) is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm. [Section 141(2)]

4. Disqualifications of Auditors

[Section 141(3) and Rule 10 of Companies (Audit and Auditors) Rules, 2014]:

The following persons **shall not be eligible for appointment** as an auditor of a company, namely:

(*a*) "a **body corporate other than a limited liability partnership (LLP)** registered under the Limited Liability Partnership Act, 2008";

Explanation

It means – If chartered accountants form a company (Whether public/private – like RK Private Ltd./RK Limitd) – This Company of CAs cannot be qualified for appointment as auditor of another company.

Body corporate u/s 2(11) includes a company as per the Companies Act, 2013 and a foreign company which is incorporated outside India.

As you know a Limited company has "limited liability" & Separate legal entity – The members of the company are responsible only to the extent of unpaid capital (if any). In case of any issue – We cannot make members personally responsible.

In case of LLP, at least one partner will have unlimited liability; hence it is allowed to be auditor.

(*b*) an **officer or employee** of **the** company;

Explanation

As per Section 2(59), ***'Officer'*** *includes*

- Any director;
- Manager;
- Key managerial personnel (KMP); or

- Any person in accordance with whose directions or instructions the BOD or any one or more of the directors is or are accustomed to act.

  As per Section 2(51), '***Key Managerial Personnel***', in relation to a company, means:

- the chief executive officer (CEO) **or** the managing director **or** the manager;
- the company secretary;
- the whole-time director;
- the chief financial officer (CFO); and
- such other officer as may be prescribed. Like *Chief Operating Officer (COO), etc.*

Reason

An officer or employee – cannot be independent – If those are appointed as auditors of the company, they cannot express independent opinion on the financial statements.

(c) a person who is a **partner**, or who is in the employment **(employee)**, of an **officer** or **employee** of the company;

Explanation

In this case, two relations are possible *i.e.*,

(*i*) partner
(*ii*) employee; } of officer or employee

Reason

These people have indirect relationship; hence they are not independent and cannot be appointed as auditor.

Clause (d) has three sub-clauses

(*d*) a person who, or his relative or partner

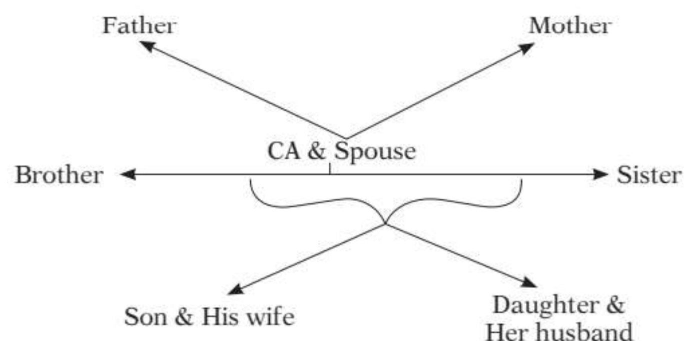
(*i*) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company;

(*ii*) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ` 5 Lacs; OR

(*iii*) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ` 1 Lac;

Who is relative as per the Companies Act, 2013?

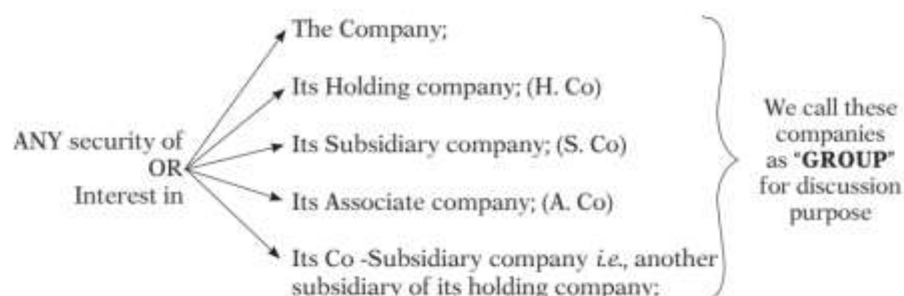
As per section 2(77) & Rules



"Relative" includes Members of Hindu Undivided family;Step father, Step mother, Step brother, Step sister & Step son (except Step daughter).

*This sub-section should be read with the rules (Follow instructions for better understanding).*First read the above sub-section (3) clause (*i*);

It says **Auditor (himself)** or **his Relative** or **Partner** should **NOT** hold



There is an exception to the above point- As per Rule 10 of the Company (Audit and Auditors) Rules, 2014,

The relative may hold security or interest in the company of **FACE VALUE ≤ ` 1,00,000**; *(Remember this exception is applicable only to relative but NOT to the auditor & Partner and also, this exception is not applicable if a relative holds security in any other group company such as H Co./S Co./A Co. Fellow S Co.)*

- If the relative acquires any security or interest greater than ` 1,00,000 face value – Corrective action can be taken by the auditor within 60 days of such acquisition or interest.

What do you mean by Security as per the Securities Contracts (Regulation) Act, 1956?

The word "Securities" include – All Shares, scrips, bonds, debentures, stock, derivatives etc.

I hope you understood, clause

(*i*); Let us get into clause (*ii*)

(ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ` 5 Lacs; OR

(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ` 1 Lac.

I hope you understood the clause. Let us get into clause (e) *of sub-section (3) of section 141- It says*

(*e*) a person (auditor) or a firm who, whether directly or indirectly *(through agent/relation)*, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company;

It says – Auditor or Firm should not have business relationship with the group either directly or indirectly.

'Business relationship' shall be understood as any transaction entered into for a commercial purpose, except *(means the following are not treated as business relationship)*

(*i*) commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under those Acts;

(*ii*) commercial transactions which are in the ordinary course of business of the company at arm's length price – *like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.*

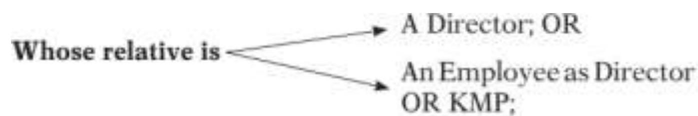
Just think,

Mr. A is a chartered accountant in practice – His wife (relative) is a director in ABC Ltd. and she has ` 50,000 face value equity shares in the company.

Can Mr. A be appointed as auditor for ABC Ltd.?

Answer is YES – as per so far clauses discussed. BUT your answer will be "NO" after reading the below clause.

(*f*) A person



(In simple words – a person whose relative is a director or key managerial person of the company is disqualified)

(*g*) *This clause has two points*

Point (i) – A person who is in full time employment elsewhere;

Explanation – When a member is in full time employment – he cannot be in practice as per CA Act, 1949. If a person is not in practice – he is not eligible to be appointed as an auditor of a company.

OR

Point (ii) – A person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies;

It means company cannot appoint a person as auditor if he is already auditor for 20 companies. It further means – one member cannot be auditor for more than 20 companies simultaneously.

(*h*) A person who has been convicted by a court of an offence **involving fraud** and a period of ten years has not elapsed from the date of such conviction.

(*i*) A person who directly or indirectly rendered any service referred to in section 144 to the company, its holding or its subsidiary.

(Section 144 deals with prohibited services by auditor – we will discuss this at later part of this chapter).

Your sub-section (3) of section 141 is completed.

Section 141(4) – Says

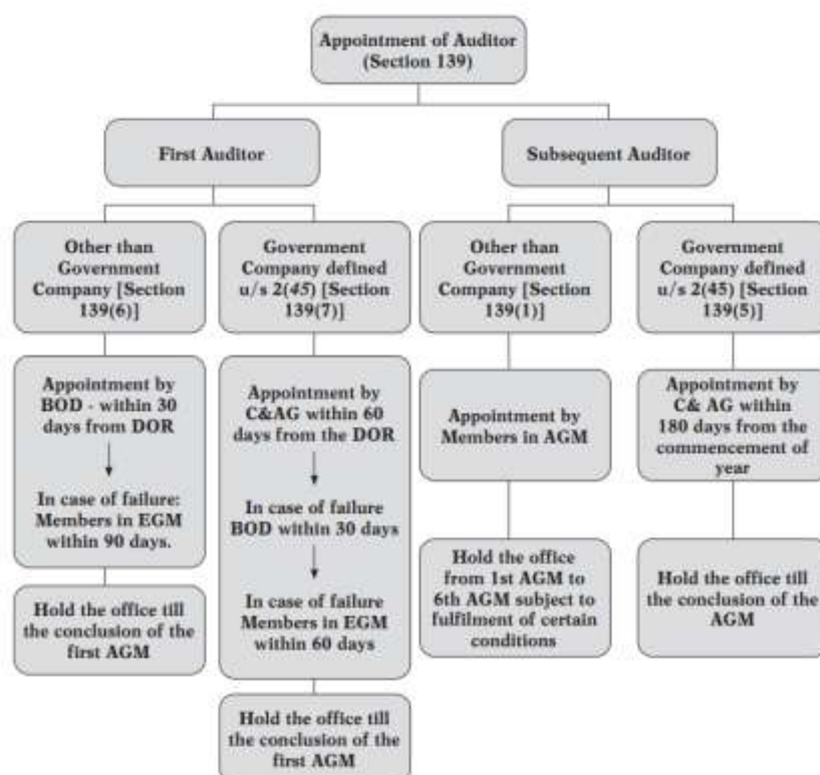
If a person appointed as an auditor of a company incurs any of the disqualifications specified in Section 141(3), he shall be **deemed to have vacated his office**. Such vacation shall be **deemed to be a casual vacancy** in the office of the auditor.

It means – he must not attract disqualifications u/s 141(3) throughout the tenure of his office. At any time, if he does attract ANY disqualification, it is deemed that NO

auditor exists in office. Auditor shall vacate the office immediately and no one need to serve any notice to auditor.

5. Appointment of Auditors [Section 139]

This section discusses appointment of first auditor, subsequent auditor, rotation of auditors and casual vacancy. Different sub-sections are applicable for Government Company and other than Government Company. Let us start with the discussion of first auditor.

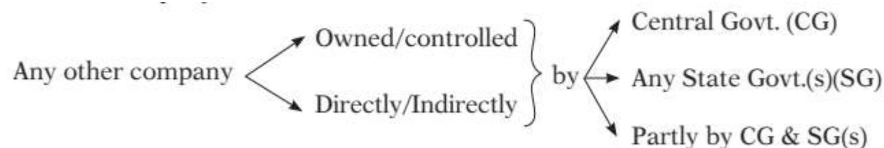


6. Appointment of the First Auditor [Sec. 139(6)]

The first auditor of a company, other than a Government company, shall be appointed by the Board of Directors (only by BOD) within 30 days from the date of registration (*i.e.*, Date of Incorporation) of the company.In the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall appoint within 90 days at an extraordinary general meeting (EGM).The first auditor shall hold office from the date of appointment to till the conclusion of the first AGM.

7. Appointment of the First Auditor of Government Company [Sec. 139(7)]

For a government company; or



First auditor shall be appointed by the CAG within 60 days from the date of registration of the company.

In case the CAG does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within 30 days.

In the case of failure of the Board to appoint such auditor, it shall inform the members of the company within the next 30 days and who shall appoint such auditor within the 60 days at an EGM.

The auditor so appointed shall hold office from the date of appointment till the conclusion of the 1st AGM.

8. Appointment of Subsequent Auditor/Reappointment of Auditor

[Section 139(1) & Rules 3 and 4 of Companies (Audit and Auditors) Rules, 2014]

(1) Every company shall, at the First AGM, appoint an individual or a firm (includes LLP) as an auditor of the company.Every company means ALL the companies incorporated under the Act which includes one-person company, Sec. 8 company, etc.;Ordinary resolution is sufficient to appoint an auditor.

(2) The auditor shall hold office from the conclusion of 1st AGM till the conclusion of its 6th AGM (*i.e.*, for 5 years); Appointment takes place only for 5 years, it means – No company can appoint auditor for less than 5 years. The AGM, in which he is appointed is counted as 1st AGM.

9. Manner and Procedure for Appointment

[Rule 3 of Companies (Audit and Auditor's) Rules, 2014]

The competent authority to appoint auditor is Audit committee of the company (if the company has); If it does not have audit committee, Board of directors are competent authority.The entity should obtain written consent and a certificate before the appointment is made at AGM.

Auditor should certify that

(*a*) Individual/firm is eligible for appointment and is not disqualified for appointment under

a. the Companies Act, 2013(*i.e.*, compliance of Sec. 141);

b. the Chartered Accountants Act, 1949; and

c. the Rules or Regulations made there under;

(*b*) the proposed appointment is as per the term provided under the Act;

(*c*) the proposed appointment is within the limits laid down by or under the authority of the Act;

(*d*) the provided list of proceedings relating to professional matters of conduct against the auditor or audit firm or any partner of the audit firm pending with respect to is true and correct.

After thisCompany appoints the auditor at AGM by passing ordinary resolution and thereafter, the company should

1. Give the information of appointment to the auditor *i.e.*, it should write a letter to the auditor by attaching "extract of resolution in the minutes of AGM"; and
2. File Form ADT-1 of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed. Form ADT -1 will be filed by the company only once in 5 years.

We must note that: Where a company is required to constitute an Audit Committee u/s 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.

Additional information

Which company should constitute audit committee? [Sec.177]

The following mpanies should constitute

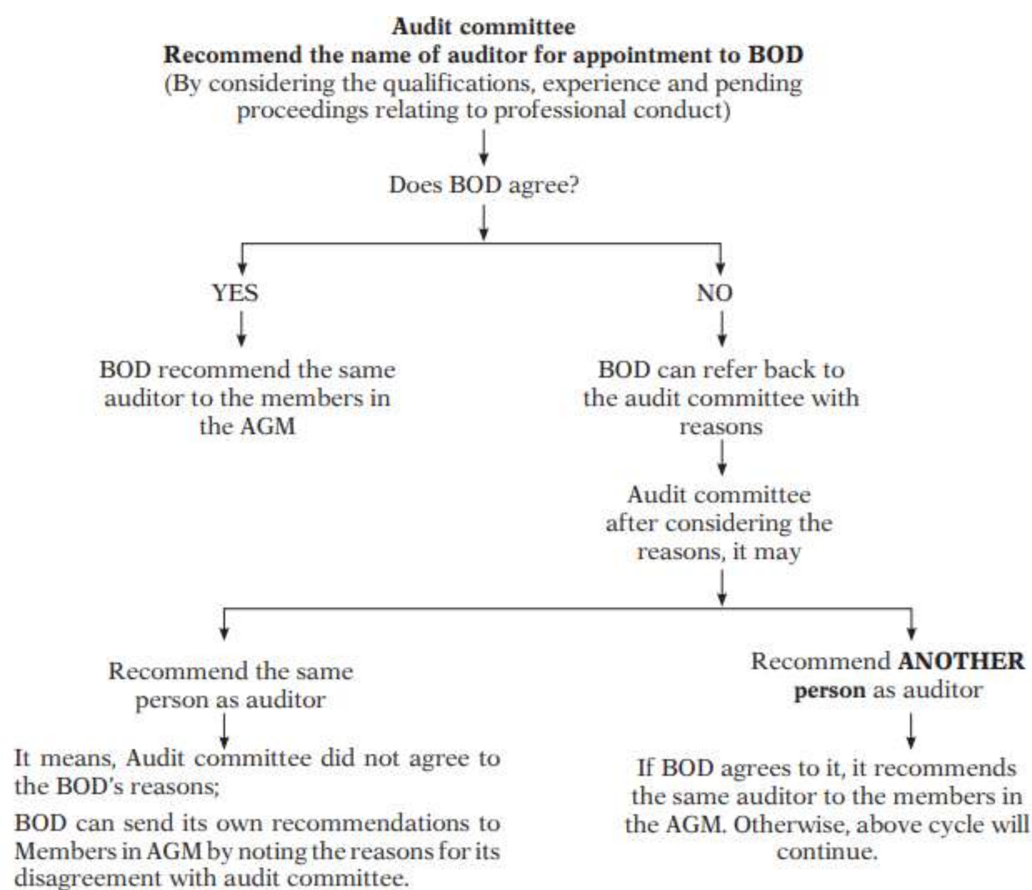
1. ALL Listed companies; and
2. The following classes of companies

i. All public companies with a paid-up capital ≥ ` 10 crore;

ii. All public companies having turnover ≥ ` 100 crore;

iii. All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits >` 50 crore.

Explanation– The paid-up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account for the purposes of this rule.



10. Term & Rotation of Auditor

Sec. 139(2) & Rule 5 of Companies (Audit and Auditors) Rules, 2014

Rotation of auditors is a new topic introduced in the Companies Act, 2013. As per the section, a company should rotate auditors after specified time. It means, the same auditor cannot continue forever. Let us get into the details of the section.

TERM

Rotation is applicable only to

(1) Listed companies;

(2) Other prescribed class of companies (except One person & small companies)

(*a*) all unlisted public companies having paid up share capital ≥ ` 10 crore;

(*b*) all private limited companies having paid up share capital ≥ ` 50 crore; or

(*c*) all companies having public borrowings from financial institutions, banks or public deposits ≥ ` 50 crores.

The above companies shall not appoint or re-appoint:

(*a*) an individual as auditor for more than ONE term of five consecutive years;

(*b*) an audit firm as auditor for more than TWO terms of five consecutive years Cooling off Period

SECTION 3.1 to 3.6 MEETING

3.8 Check Your Progress – Quiz – 1

1. Which ONE of the following statements is true?
   - Only persons who have purchased shares can become members.
   - A person can be a shareholder, but may not necessarily be a member.
   - A public company has shareholders whereas a private company has members.
   - There is no difference at all – a shareholder is always a member and vice versa.

2. Members exercise considerable decision-making power via the passing of resolutions. Which ONE of the following is not a power exercisable by passing a resolution of the members?
   - Authorizing a private company to enter into a credit transaction with one of its directors.
   - The removal of a director.
   - The alteration of the articles.
   - Converting from a private company to a public company.
   - Converting from an unlimited company to a private limited company.

3. What is an 'ordinary resolution?'
   - A resolution that is passed by 50 per cent or more of the members.
   - A resolution that is passed by a majority of not less than 75 percent.
   - A resolution that is passed if 100 per cent of the members agree.
   - A resolution that is passed by a simple majority.

4. Only the directors have the power to call a general meeting. True or false?
   - True
   - False

5. What is the notice period for the annual general meeting of a public company?
   - Twenty-one clear days.
   - Twenty-one clear days, unless the articles provide for a longer period.
   - Fourteen clear days.
   - Fourteen clear days, unless the articles provide for a longer period.

6. What is a 'quorum?'
   - The minimum number of 'qualifying persons' required in order to validly conduct business.
   - A meeting that lacks a chairman.
   - The maximum number of persons who may attend a meeting.
   - A meeting that is invalid because sufficient notice has not been provided.

7. The general rule is that, at company meetings, each member has one vote per share. True or false?
   - True
   - False

8. Are all companies required to hold an annual general meeting (AGM)?
   - Both public and private companies are required to hold an AGM.
   - Both public and private companies are required to hold an AGM, but private companies can opt out of this requirement.
   - Only public companies are required to hold an AGM, but they can opt out of this requirement.

- Only public companies are required to hold an AGM.

9. What is a 'proxy?'

- A person appointed, on behalf of a member, to attend, speak and/or vote at a general meeting on the member's behalf.
- A member who appoints another person to attend, speak and vote at a general meeting on his behalf.
- A member who has agreed not to use the votes attached to his shares.
- A director of a company who owns shares in that company.

10. The *Duomatic* principle states that any decision can be taken without a meeting if all of the members agree to it. True or false?

- True
- False

3.9 Unit Summary

This unit delves into the intricacies of organizing and conducting corporate meetings, with a particular focus on Annual General Meetings (AGMs) and Extraordinary General Meetings (EGMs). It begins by outlining the preparatory steps necessary for these meetings, including setting the date and venue, and ensuring compliance with notice requirements. The unit emphasizes the importance of timely communication with shareholders, providing them with detailed agendas and relevant documents well in advance. This preparation is crucial for fostering transparency and ensuring that all shareholders are informed and ready to participate effectively.

A significant portion of the unit is dedicated to the procedures and rules governing resolutions. It distinguishes between ordinary resolutions, which require a simple majority, and special resolutions, which need a higher approval threshold, typically 75%. The unit explains the circumstances under which each type of

resolution is used, and provides guidance on conducting votes, whether by show of hands, poll, or electronic means. This section underscores the importance of clarity and accuracy in the voting process to ensure that the decisions made reflect the true will of the shareholders.

The unit also addresses the roles and responsibilities related to auditors. It covers the qualifications and disqualifications of auditors, detailing the criteria they must meet to maintain independence and objectivity. The process for appointing and re-appointing auditors is explained, highlighting the need for shareholder approval and the circumstances under which an auditor can be removed. This section ensures that students understand the critical role auditors play in corporate governance and the importance of their unbiased oversight.

Finally, the unit covers the post-meeting procedures, including the documentation of minutes and the implementation of decisions. It emphasizes the importance of recording all discussions and resolutions accurately and distributing this information to shareholders. Filing required reports with regulatory bodies and following up on action items are also crucial steps covered in this unit. Overall, the unit provides a comprehensive framework for conducting corporate meetings, ensuring that all processes are carried out legally, transparently, and efficiently, thus maintaining shareholder trust and regulatory compliance.

3.10 Glossary

Meeting	A formal gathering of members or directors of a company to discuss and decide on business matters.
Resolution	A formal decision made by a vote at a meeting.
Notice	Prior notification to members or directors about the meeting and the resolutions to be discussed.
Quorum	The minimum number of members or directors required to be present for a meeting to be valid.
Proxy	A person authorized to vote on behalf of a shareholder or member. It can also refer to the document granting this authority.
Examination Period	The length of time covered by the examination in a Type

	II audit. Usually 6 – 18 months.
Financial Statements	The formal records of the financial activities and position of a company, including the balance sheet, income statement, and cash flow statement.
Risks	Threats to business operations or the achievement of control objectives.

3.11 Self-Assessment

Essay type questions

1. Distinguish between ordinary resolution and special resolution .
2. Distinguish between: Special Resolution
3. must be held in each calendar year. and Resolution requiring special notice.
4. Every Annual general meeting of the company
5. Discuss briefly the voting rights of a proxy.
6. Discuss the requirements for keeping the minute's book of general meetings.
7. Write a short note on: Voting by show of hands.
8. Write a short note on Class Meetings.

3.12 Case Study

Case Study 1: General Meeting and Resolution Process in a Public Company

Background

ABC Corporation, a publicly listed company, holds its Annual General Meeting (AGM) in April each year. The AGM is a critical event where shareholders discuss and vote on key issues, including the election of directors, approval of financial statements, and appointment of auditors.

Scenario

During the AGM of ABC Corporation in April 2023, several important resolutions were tabled:

1. **Ordinary Resolution for the Approval of Financial Statements:** Shareholders were asked to approve the financial statements for the fiscal year 2022.
2. **Ordinary Resolution for the Election of Directors:** Five directors were up for re-election.
3. **Special Resolution to Amend the Articles of Association:** A proposal to amend the company's articles to allow for virtual AGMs in the future.
4. **Ordinary Resolution for the Appointment of Auditors:** The proposal to re-appoint XYZ Auditors as the company’s external auditors.

Process

1. **Notice and Quorum:**
   - Notices for the AGM, including details of the resolutions, were sent to all shareholders 21 days in advance.
   - The meeting required a quorum of at least 50 shareholders present in person or by proxy.
2. **Voting and Polling:**
   - Shareholders could vote in person, by proxy, or via postal vote.
   - A poll was conducted for the election of directors to ensure each shareholder’s vote was counted according to their shareholding.
3. **Resolutions:**
   - The ordinary resolution for the approval of financial statements was passed with a 60% majority.
   - Four directors were re-elected, while one new director was elected.
   - The special resolution to amend the articles of association required a 75% majority but only received 70%, so it was not passed.
   - The ordinary resolution to re-appoint XYZ Auditors was passed with a 65% majority.

Outcome

- The AGM concluded with most resolutions passed, except the special resolution to amend the articles. The company continued with its existing articles and scheduled a review to propose an updated version at the next AGM.

Case Study 2: Removal and Appointment of an Auditor

Background

DEF Ltd., a medium-sized manufacturing company, encountered issues with its external auditors, ABC Audit Firm, regarding the accuracy and independence of their audit reports.

Scenario

In September 2023, DEF Ltd.'s board of directors decided to remove ABC Audit Firm due to concerns about conflict of interest and potential bias in their auditing process. The board called for an Extraordinary General Meeting (EGM) to discuss and vote on the removal and appointment of a new auditor.

Process

1. **Notice and Quorum:**
   - A 14-day notice for the EGM was sent to all shareholders, detailing the agenda of removing the current auditors and appointing new ones.
   - The quorum for the EGM was set at 25 shareholders.
2. **Resolution for Removal of Auditor:**
   - An ordinary resolution was proposed to remove ABC Audit Firm as the external auditor.
   - During the EGM, shareholders discussed the reasons for the removal, focusing on the lack of independence and recent audit issues.
3. **Voting:**
   - Shareholders were allowed to vote in person or by proxy.
   - The resolution to remove ABC Audit Firm was passed with a 58% majority.
4. **Appointment of New Auditor:**
   - Following the removal, another ordinary resolution was proposed to appoint DEF Audit Associates as the new external auditors.
   - The board provided details about DEF Audit Associates, emphasizing their qualifications and independence.
5. **Voting and Polling:**
   - A poll was conducted to ensure transparency in the voting process.
   - The resolution to appoint DEF Audit Associates was passed with a 62% majority.

Outcome

- DEF Ltd. successfully removed ABC Audit Firm and appointed DEF Audit Associates as the new external auditors.
- The new auditors conducted a thorough review and provided an independent and comprehensive audit report for the fiscal year.

Analysis and Learnings

1. **Importance of Independence and Qualifications:** Both case studies highlight the importance of auditor independence and the qualifications required to maintain shareholder trust and compliance with regulations.
2. **Effective Use of Resolutions:** The structured use of ordinary and special resolutions ensures that significant decisions, such as amendments to articles or the appointment of auditors, receive appropriate attention and approval.
3. **Role of Quorum and Voting:** Establishing a quorum and using polls ensures that decisions reflect the majority view of shareholders, maintaining democratic principles in corporate governance.
4. **Communication and Transparency:** Clear communication through notices and detailed discussions during meetings fosters transparency and informed decision-making among shareholders.

3.13 TASK

Organize and conduct the Annual General Meeting (AGM) of a company by setting the date and venue, sending out notices to shareholders at least 21 days in advance, and preparing a comprehensive agenda that includes approval of financial statements, election of directors, and appointment or re-appointment of auditors. Ensure all necessary documents are available, establish a quorum, and clearly explain the voting procedure. Conduct the meeting by following the agenda, managing the voting process accurately for both ordinary and special resolutions, and documenting the minutes of the meeting. After the AGM, distribute the minutes, file required reports with regulatory bodies, and implement the decisions made during the meeting. Evaluate the process based on legal compliance, transparency, accuracy, and shareholder satisfaction.

3.14 E – Contents

S.No	Topic	E-Content Link
1.	Company Auditor’s Qualifications,	https://www.taxmann.com/post/

	Disqualification & Appointment	blog/company-auditor-qualifications-disqualification-appointment
2.	Auditing Pronouncements	http://kb.icai.org/pdfs/PDFFile5b28ae88743507.12130871.pdf
3.	Appointment and Removal of Auditors	https://www.klaggarwal.com/others/appointment-and-removal-of-auditors/
4.	Responsibilities of an Auditor: Disqualification of Director	https://muds.co.in/responsibilities-of-an-auditor-in-disqualification-of-director/
5.	E-Book	https://www.icsi.edu/portals/0/AUDIT%20AND%20AUDITORS.pdf

3.15 Reference

- https://taxguru.in/company-law/quorum-board-meeting-interested-director.html
- https://www.icsi.edu/media/webmodules/Guidance_note_on_Meetings_of_the_Board_of_Directors_(based_on_Revised_SS-1).pdf
- Quorum: Meaning, Features and General Patterns | Meetings (yourarticlelibrary.com)

.UNIT-IVMANAGEMENT & ADMINISTRATION

.Management & Administration –Directors-Legal position- Board of Directors-Appointment/Removal-Disqualification- Director Identification Number- Directorships- powers-Duties- Board of committees-Related party transaction-Contract by one person company-Insider trading-Managing Director-Manager-Secretarial Audit-Administrative Aspects and Winding up-National Company law tribunal(NCLT)-National Company Law Appellate Tribunal(NCLAT)-Special courts.

Self-Learning Material Development – STAGE – 1

Unit Module Structuring

- Introduction to Management and Administration
- Directors, Legal Position
- Board of Directors
- Appointment & Removal of Directors
- Disqualification of Directors
- Directors Identification Number
- Directorships,Power of Directors and Duties of Directors
- Board of committees and Related Party Transaction
- Contract by one person company,Inside Trading
- Managing Director, Manager ,Secretarial Audit & Administrative Aspect
- Winding Up

4.1 INTRODUCTION TO MANAGEMENT& ADMINISTRATION

Management and administration are foundational concepts in the realm of organizational leadership, essential for steering businesses, institutions, and entities towards their goals and objectives. While often used interchangeably, each discipline carries distinct roles and responsibilities that contribute to the overall effectiveness and success of an organization.

❖ Understanding Management

Management encompasses the process of planning, organizing, leading, and controlling resources within an organization to achieve specific goals. It involves coordinating human, financial, and material resources efficiently and effectively. Managers are tasked with making decisions, allocating resources, setting goals, and overseeing operations to ensure productivity and profitability. They play a pivotal role in translating strategic visions into actionable plans and guiding teams towards successful outcomes.

❖ The Role of Administration

Administration, on the other hand, focuses on the implementation of policies, procedures, and regulations that govern organizational activities. Administrators establish frameworks for decision-making, ensure compliance with legal and ethical standards, and facilitate communication across different levels of the organization. They provide the structural support necessary for operations to run smoothly, handling logistical details and administrative tasks that uphold organizational integrity and efficiency.

❖ Key Functions and Responsibilities

In both management and administration, key functions and responsibilities include:

1. **Strategic Planning**: Formulating long-term objectives and strategies to guide organizational growth and development.
2. **Organizational Development**: Structuring the organization to optimize efficiency and productivity, including designing workflows and job roles.
3. **Leadership and Motivation**: Inspiring and motivating teams to achieve high performance and fostering a positive organizational culture.
4. **Decision Making**: Analyzing information, assessing risks, and making informed decisions that align with organizational goals.
5. **Resource Management**: Allocating and managing resources such as finances, human capital, and technology effectively.
6. **Communication**: Facilitating clear and effective communication both within the organization and with external stakeholders.

7. **Monitoring and Evaluation**: Monitoring progress towards goals, evaluating outcomes, and implementing corrective measures as needed to ensure continuous improvement.

❖ **Challenges and Adaptation**

The landscape of management and administration is continuously evolving, influenced by technological advancements, global economic shifts, and changing societal expectations. Organizations must adapt to digital transformation, embrace diversity and inclusion initiatives, and navigate regulatory complexities to remain competitive and sustainable. Effective management and administration practices are crucial in navigating these challenges, fostering innovation, and maintaining organizational resilience.

Management and administration are integral components of organizational leadership, each contributing uniquely to the success and sustainability of businesses and institutions. By understanding their distinct roles, functions, and responsibilities, leaders can effectively navigate complexities, drive growth, and cultivate environments where individuals and teams thrive. Embracing principles of strategic planning, effective communication, and adaptive leadership ensures that organizations remain agile, responsive, and poised for continued success in an ever-changing world.

4.2 DIRECTORS

In simple terms, the ‘director’ is the supreme executive authority in the company, who is entrusted with the management and control of the company’s affairs. Generally, a company has a team of directors, which are ultimately responsible for the entire management of the company’s state of affairs. These teams of directors are collectively known as the ‘Board of Directors’. In ideal corporate governance practice, it is the team of directors that ensures the protection of the stakeholders of the company and of other members of the company.

This institution of the formulation of a team of members, known as directors, was based on the foundation that a company must have a team of faithful,

trustable, and respectable members who work for the betterment of the company. They are appointed to work for the company's best interests.

It is pertinent to mention here that the directors do not work in an individual capacity, unless specifically said so, in any board resolution meeting. It means that all the directors have to work collectively. The work done by any director in its individual capacity is not binding on the company.

The term 'director' is defined under Section 2(34) of the Companies Act, 2013 (hereinafter referred to as the 2013 Act). It states that a 'director', "means a director appointed to the board of a company." The definition provided under the 2013 Act is not an exhaustive one. This section corresponds to Section 2(13) of the Companies Act, 1956. It defines a director as "any person occupying the position of director by whatever name called".

According to Section 5(2) of the Small Coins (Offences) Act, 1971 (repealed), the term 'director' in relation to a firm is said to be the partner of the firm. Whereas, if the term is used in relation to a society or association, it connotes the person who has been conferred with the management and control of the affairs of that particular society or association under the concerned rules.

4.2.1 LEGAL POSITION

The legal position of directors in a company is a complex and pivotal one, intertwining various legal identities. Directors are not easily defined as either agents, trustees, managing partners, or employees. Their functions are influenced by the overarching framework of corporate law and the specific governing documents of a company.

They represent the interests of shareholders, wield significant decision-making authority, and owe a fiduciary duty to the company. This intricate blend of roles underscores the legal intricacies of a director's position.

This article explores the legal position of directors, shedding light on their diverse responsibilities and legal obligations.

4.2.2 BOARD OF DIRECTORS

A board of directors (BofD) is the governing body of a company, whose members are elected by shareholders (in the case of public companies) to set strategy, oversee management, and protect the interests of shareholders and stakeholders.

Every public company must have a board of directors. Some private companies and nonprofit organizations also have a board of directors.

Works Board of Directors

The structure and powers of a board are determined by a company's articles of incorporation and its corporate bylaws. Bylaws can set the number of board members, how the board is elected (e.g., by a shareholder vote at an annual meeting), and how often the board meets. The board typically meets at regular intervals.

The board makes decisions as a fiduciary on behalf of the company and its shareholders. Broadly speaking, it provides insight, advice, and leadership for important objectives such as:

Protecting the interests of shareholders–A board will promote efforts and activities that maximize the value that shareholders receive for their investment. In addition to ensuring an efficiently run and profitable operation, it makes certain that shareholders receive properly reported financial data and any other important information that could impact their holdings.

Managing risk–A board will establish policies that allow a company to identify, evaluate, and respond to financial, security, and legal risks, as well as to mitigate actual loss. Facilitating ongoing risk monitoring is an essential responsibility of a board.

Engaging with stakeholders–A board will communicate with individuals and firms with vested interests in the company so that it understands those interests, can address concerns, pursue necessary changes in corporate behavior, and make a positive impact that strengthens these relationships.

Job of Board of Directors

A board of directors is responsible for overseeing and advising a company so that it functions as effectively as possible. The board ensures that an organization operates lawfully and in the interests of the company's shareholders and other stakeholders

(such as its employees). It operates independently of company management and day-to-day operations.

A board of directors considers important issues relating to the company, its shareholders, its employees, and the public. It's involved in:

- Helping a company to define objectives, establish major goals, and stay focused on its direction over time
- The hiring and dismissal of senior executives and upper management
- Determining executive compensation
- Defining a process and schedule for its interactions with the company's CEO
- Establishing an overarching yet flexible company policy for employees
- Advising executives in their planning and decision-making
- Overseeing budgets and ensuring proper funding when important resources are required
- Monitoring, and making necessary changes to, financial and accounting activities to safeguard corporate finances and assets
- Establishing a company's dividend policies
- Declaring dividends and payouts
- Instituting policies for stock options
- Directing mergers, acquisitions, and the divesting of assets
- Leading crises management efforts
- Building and maintaining a strong, lasting, and positive brand identity for the company and the public

The New York Stock Exchange and the Nasdaq require listed companies to have boards with a majority of independent directors, and to include independent directors on key board committees such as the audit committee.1

How a Board of Directors Is Chosen

While no set number of members is required for a corporate board, many pursuing diversity as well as cohesion settle on a range of 8 to 12 directors. Some boards require an uneven number of members to prevent votes from ending in a tie. Boards often stagger the terms of directors to avoid a full slate of yearly elections.

Election

For publicly listed companies in the U.S., members of the board of directors are elected by shareholders at the annual meeting. Board candidates can be nominated

by the board's nomination committee, or by investors seeking to change a board's membership and policies.

For private companies, a board of directors can be chosen in a manner that abides by a company's bylaws or articles of incorporation. Directors may also be chosen by shareholders via simple agreement on whom to appoint.

Dismissal

Directors may be removed in elections or otherwise in instances of fiduciary duty violations. In addition, some corporate boards have fitness-to-serve rules that may lead to the removal of a director if broken.

For example, some rules are intended to prevent abuse of board power, director conduct that indicates a conflict of interest, using insider information for financial gain, selling one's votes for personal gain to outside interests, or attempting to sway other directors' votes to benefit an outside business.

Types of Boards

Different boards of directors can have different, broad mandates. For example:

Executive Board

The role of this board is to take on the role of a chief executive officer (where there is none) and manage a company's operations effectively and profitably. It acts to ensure that a company has and maintains a mission and a purpose, and meets its goals on an ongoing basis.

Governing Board

This board's purpose is to offer a company owner specific guidance related to the company's business mandate so that it can operate effectively and achieve its future goals.

Advisory Board

Like the governing board, this board brings insight to a company's top executive. It offers different perspectives and experience that can help the company meet specific goals, such as growing a network, achieving community brand recognition and connection, and building a new customer segment.

Fundraising Board

This board is focused on attracting funds that can help an organization meet its goals. Board members organize various opportunities, such as campaigns, special events, galas, tournaments, auctions, and more to raise money. They use their positions in the business community and personal relationships to help an organization financially.

Types of Board Members

The board of directors typically is formed from inside and outside directors. An inside director is most commonly defined as a company employee, though the category sometimes also covers significant shareholders.

Outside, or independent, directors are only involved with the company through their board membership. As a result, independent directors face fewer conflicts of interest than company insiders in discharging their fiduciary obligations.

In addition, they bring to the board different points of view and expertise related to different kinds of business. Outside directors can be invaluable to a board in helping it carry out its responsibilities effectively.

The board usually will include the company's chief executive officer (who is often the board's chairperson) and sometimes other senior officers or managers.

Directors may have specific roles and titles. For example:

Chairperson or President: This individual leads and manages the board of directors. They are responsible for setting agendas, running successful board meetings, establishing committees, and other duties. They normally represent the company at public events.

Vice chair or Vice president: The vice chair works closely with the chairperson or president in support of their responsibilities. They also help to facilitate directives and may address potential conflicts of interest of board members. The vice chair normally fulfills the chairperson's duties when the latter is unavailable.

Secretary: The secretary manages the board's administrative tasks. They take the board meeting minutes and maintain accurate corporate records.

Treasurer: The treasurer focuses on a company's budget, financial policies and accounting, investments, and other financial issues. They work with other professionals concerned with the company's financial well-being.

STEPS to Make a Successful Board of Directors.

How effective a board of directors is ultimately depends on the quality and conduct of its members, and their ability to properly oversee and guide a company so that it can achieve its goals of building profitability and shareholder value.

Each member should bring to the table different expertise and skills that relate to the company's focus. They must be able to work together harmoniously and constructively to achieve common objectives and fulfill fiduciary responsibilities.

Their motivation should be the company's advancement rather than their own and therefore they must recognize and handle conflicts of interest that may arise.

Additionally, an effective board of directors maintains transparency of its oversight and decision-making, thus ensuring the accountability of its independent and ethical standards and conduct.

the Job of a Board of Director

In general, a board sets broad policies and makes important decisions as a fiduciary on behalf of the company and its shareholders. Issues that fall under a board's purview include mergers and acquisitions, dividends and major investments, as well as the hiring and firing of senior executives and their compensation.

No, the CEO (who may be on the board) and the directors work together on relevant company issues. The Board doesn't interfere with the CEO's handling of a company's daily operations. But it has the authority to evaluate the performance of a CEO and remove them, if deemed necessary.

Insider directors are not typically compensated for board duties since they're most often company employees. Outside directors are paid.

A board of directors is a group of individuals elected by a public company's shareholders to provide the expert and experienced guidance and oversight to ensure a company's profitability and sustainability.

The board has a fiduciary duty to make decisions and take actions in the interest of shareholders and stakeholders. It operates independently of management and focuses on a company's major issues rather than its day-to-day operations.

4.2.3 APPOINTMENT & REMOVAL OF DIRECTORS

Appointment and removal of directors in a company are crucial processes governed by legal and procedural requirements. Here’s a breakdown of how these processes typically work:

Appointment of Directors:

1. **Board Resolution or Shareholder Resolution:**
   - Directors are usually appointed by a resolution passed by the board of directors or by the shareholders of the company, depending on the company's Articles of Association and applicable laws.
2. **Eligibility and Qualifications:**

  - The person being appointed must meet the eligibility criteria as per the company's Articles of Association and relevant laws. This includes factors such as age, citizenship, residency, and any specific qualifications required by law or the company's policies.
3. **Consent and Acceptance:**
   - The person appointed must consent to act as a director and formally accept the position. This is usually done by signing a letter of appointment or a consent form.
4. **Filing Requirements:**
   - After appointment, the company may need to file certain documents with the relevant government authorities, such as the appointment resolution or notification.
5. **Effective Date:**
   - The appointment of a director becomes effective from the date specified in the resolution or as per the company's policies.

Removal of Directors:

1. **Board Resolution or Shareholder Resolution:**
   - Directors can typically be removed by a resolution passed by either the board of directors or by the shareholders. The procedure for removal may be outlined in the company's Articles of Association or applicable laws.
2. **Special Notice:**
   - In many jurisdictions, a special notice must be given to the director concerned and to the other directors or shareholders before a resolution for removal is passed. This ensures the director has an opportunity to respond or defend themselves.
3. **Vote Requirement:**
   - The resolution to remove a director usually requires a majority vote of either the board of directors or the shareholders, depending on who is initiating the removal.
4. **Filing Requirements:**
   - Similar to appointment, there may be filing requirements with government authorities to notify them of the director's removal.
5. **Effective Date:**

- The removal of a director takes effect immediately upon passing the resolution unless otherwise specified.

Legal Considerations:

- **Contractual Obligations:** Check if there are any contractual obligations or employment agreements that govern the director's appointment or removal.
- **Corporate Governance:** Ensure all procedures comply with corporate governance guidelines and regulations applicable to the company.
- **Shareholder Rights:** In publicly traded companies, shareholders often have rights to appoint or remove directors under specific circumstances outlined in corporate governance codes or securities regulations.

In summary, the appointment and removal of directors involve following specific procedures laid out in the company's Articles of Association and relevant laws. These procedures ensure transparency, accountability, and compliance with legal requirements throughout the process.

4.2.4 DISQUALIFICATION OF DIRECTORS

Disqualification of directors refers to the legal process where an individual serving as a director of a company loses their eligibility to continue in that role. This can occur due to various reasons outlined in company law and regulations. Here are the key aspects related to the disqualification of directors:

Reasons for Disqualification:

1. **Legal Grounds:**
    - Directors can be disqualified for breaches of law or regulations related to corporate governance, such as fraudulent activities, wrongful trading, or failure to comply with filing requirements.
2. **Convictions:**
    - A director may be disqualified if they have been convicted of certain criminal offenses, especially those related to dishonesty or financial wrongdoing.
3. **Insolvency:**
    - Individuals who are declared bankrupt or disqualified from acting as a director due to insolvency-related issues can face disqualification.
4. **Unfitness or Misconduct:**

  - Directors can be disqualified if they are found unfit to manage a company due to misconduct, negligence, incompetence, or persistent breaches of company law.
5. **Prohibited Activities:**
    - Engaging in activities that are prohibited by law or are in conflict with the director's fiduciary duties can lead to disqualification.

Process of Disqualification:

1. **Investigation:**
    - Disqualification proceedings often begin with an investigation by regulatory authorities or following complaints from shareholders, creditors, or other stakeholders.
2. **Legal Action:**
    - If grounds for disqualification are established, legal action may be taken to initiate disqualification proceedings against the director.
3. **Court Order:**
    - Disqualification orders are typically issued by a court or a regulatory authority empowered to enforce company law. The court may consider evidence presented by regulatory bodies or interested parties.
4. **Effect of Disqualification:**
    - Once disqualified, the individual is prohibited from acting as a director or in any managerial role in a company for a specified period, which can vary depending on the seriousness of the misconduct.
5. **Consequences:**
    - Disqualified directors may also face financial penalties and restrictions on involvement in the management or promotion of companies during the disqualification period.

Legal Considerations:

- **Appeal Process:** Directors typically have the right to appeal against a disqualification order, seeking to overturn or reduce the disqualification period.
- **Personal Liability:** Disqualification does not absolve directors from personal liability for actions taken during their tenure, particularly if those actions led to legal or financial consequences.

- **Impact on Other Roles:** Disqualification from directorship may also affect an individual's ability to hold certain other positions, such as trustee roles or other corporate responsibilities.

In conclusion, the disqualification of directors is a serious legal matter designed to uphold corporate governance standards and protect stakeholders. It aims to ensure that those entrusted with directing companies act responsibly and within the bounds of the law.

4.2.5 DIRECTORS IDENTIFICATION NUMBER

The corporate landscape requires a strong system for identifying and tracking company directors. This is where the concept of the Director Identification Number (DIN) comes into play. This article delves into the intricacies of DIN in India, explaining what a DIN number, its purpose, its application process, and its significance in the corporate world.

Director Identification Number (DIN)?

A Director Identification Number (DIN) is a unique, eight-digit identification number assigned by the Central Government of India to any individual who is either an existing director of a company or intends to become one. It serves as a unique identifier throughout a director's career, regardless of the number of companies they are associated with. Think of it as a social security number but specifically for company directors.

Significance of DIN

The introduction of the Director Identification Number (DIN) marked a significant step towards enhancing transparency and accountability within the corporate sector. It helps streamline company processes and enables stakeholders to perform director identification number checks. This allows for verification of an individual's credentials and confirmation of their directorship roles, fostering a more informed and secure corporate environment. It offers several key benefits:

- **Unique Identification:** DIN eliminates the possibility of duplicate identities for company directors. This ensures clear and accurate records, minimizing the risk of fraud or confusion.
- **Improved Corporate Governance:** By linking directors to a unique identifier, DIN facilitates better monitoring of their activities and potential conflicts of interest, fostering a more responsible and ethical corporate environment.

- **Streamlined Processes:** DIN simplifies the incorporation of new companies and the registration of changes in directors. It also promotes faster application and approval processing.
- **Public Disclosure:** DIN information is publicly available on the Ministry of Corporate Affairs (MCA) website. This allows stakeholders, including investors and creditors, to easily verify the credentials of company directors.

Needs a DIN

- **Existing Directors:** Any individual currently serving as a director in a registered company in India must obtain a DIN.
- Aspiring Directors: Anyone who intends to become a director of a company in the future needs to acquire a DIN before their appointment.

There is no exemption from obtaining a DIN. It is a mandatory requirement for all individuals seeking to participate in company governance in India.

Uses DIN

The DIN finds application in various aspects of corporate affairs:

- **Company Incorporation:** When registering a new company, all proposed directors must possess a valid DIN.
- **Appointment of Directors:** Any individual being appointed as a director in an existing company requires a DIN.
- **Filing of Company Forms:** The Companies Act, 2013 mandates that directors furnish their DIN details on various forms.
- **Know Your Customer (KYC) Procedures:** Financial institutions and other regulated entities may require DIN information for KYC purposes when dealing with companies.

In essence, a DIN has become an essential element in the Indian corporate ecosystem. It ensures proper identification, promotes transparency, and streamlines various company-related processes.

Obtaining a Director Identification Number (DIN)

The process of acquiring a DIN is relatively straightforward and can be completed online. Here's a breakdown of the key steps:

- **Eligibility:** As mentioned earlier, any individual aspiring to be a director in an Indian company needs to be eligible for a DIN. There are no specific educational qualifications required, but the applicant must be at least 18 years old and possess a sound mind.

- **Application Form:** The applicant must submit an online application form (DIR-3) through the Ministry of Corporate Affairs (MCA) portal.
- **Required Documents**: The application must be accompanied by scanned copies of documents establishing the applicant's identity and address proof, as prescribed by the MCA.
- **Fees:** An application fee needs to be paid online at the time of submission.
- **Processing Time:** The processing time for a DIN application typically takes a few working days, subject to verification of submitted documents.
- **DIN Allotment:** Upon successful verification, the MCA will allot a unique DIN to the applicant.

It's important to note that the DIN application process is designed to be user-friendly and accessible online. The MCA website provides detailed instructions and resources to guide applicants through the process.

Maintaining and Deactivating a DIN

- **Lifetime Validity:** A DIN has a lifetime validity, meaning it remains valid throughout the director's career, irrespective of any changes in company association.
- **Change in Details:** If personal details like name or address change, the director must update their DIN record through the MCA portal by filing the prescribed form.
- **Deactivation:** If a director permanently ceases to be associated with any company and no longer intends to hold future directorships, they can apply for deactivation of their DIN. However, deactivation is an irreversible process, and a deactivated DIN cannot be reactivated.

By understanding these aspects, directors can ensure their DIN information remains accurate and reflects their current status within the corporate world.

4.2.6 DIRECTORSHIPS

Directors are a vital part of the company management. Every company needs to appoint directors at the time of incorporation. One person company needs to have at least one director. A private company needs to have at least two directors, and a public company must have at least three directors. A company can have a maximum of 15 directors.

A person appointed as a director will perform all the duties and functions of a director as per the provisions of the Companies Act, 2013 ("Act"). A person is appointed as a director for the Board of a company. The Board or Board of Directors of a company means the collective body of directors of a company. The company operates through the Board of Directors. The Board of Directors is responsible for the management of the company. They make decisions regarding company affairs.

The Act lays down the provisions regarding the appointment, rights and duties of the directors. Any person appointed as a director of a company has the freedom to be a director in another company. However, Section 165 of the Act states the provisions relating to the number of directorships a person can hold at a given time.

❖ NUMBER OF DIRECTORSHIPS OF A DIRECTOR

Section 165(1) of the Act states that a person can hold the office of director simultaneously in 20 companies. The number of 20 companies includes the office of alternate directorship. A person cannot be a director in more than 20 companies at a given time. However, the maximum number of public companies in which a person can be a director simultaneously is 10. An individual cannot be appointed as a director in more than 10 public companies at a given time. For calculating the number of public companies, the directorship in private companies that are either holding or subsidiary of a public company is included. However, the directorship in a dormant company is not included in calculating the limit of directorships of 20 companies. The purpose of prescribing the number of the office of directorship is that the person who is appointed as a director can give proper and sufficient time to a company. The Act prohibits a person from holding the office of a director in more than 20 companies to provide quality time to the companies in which he is a director and discharge his functions as a director in an efficient manner.

❖ REDUCTION IN THE NUMBER OF DIRECTORSHIPS

Section 165(2) of the Act provides a reduction in the number of directorships held by a person. A company can specify any number less than 20 in which the directors of their company can act as directors in other companies. The members of a company can specify a smaller number of the office of directorship for its directors by passing a special resolution. For Ex – Abc is appointed as a director in Xyz

company. Xyz company has passed a special resolution stating that Xyz company's directors can hold the office of directorship in 10 companies. Then, Abc can be a director in only 10 companies simultaneously and not beyond it. Though the Act provides that a person can hold a director's office in 20 companies, Abc can be a director in only 10 companies due to the resolution passed by Xyz reducing the number to 10. If he holds the office of director in more than 10, it will amount to the contravention of the Act.

- **DIRECTORSHIP BEFORE THE COMMENCEMENT OF THE COMPANIES ACT, 2013**

Section 165(3) and 165(4) of the Act is a transitional provision that provides a time limit to the directors to comply with the provisions of the Companies Act, 2013. Before the commencement of this Act, the number of directorships followed by a director was according to the Companies Act, 1956. The Companies Act, 1956, did not include private companies and unlimited companies in the number of directorships held by a person. But the Companies Act, 2013 includes private companies and unlimited companies under the limit of 20 companies. A person holding the office of a director in more than 20 companies before the commencement of this Act shall follow the limits prescribed under this Act within one year. Any director holding the office of directorship in more than 20 companies shall choose the 20 companies he wants to continue as a director within one year from the commencement of this Act. After choosing to hold the office of a director in 20 companies, he shall resign from the office of director in the other remaining companies. The resignation made by a director in the remaining companies shall be effective immediately on the despatch of his resignation to the respective companies. A director shall intimate his choice of 20 companies to the registrar and the companies in which he held the office of directorship before the commencement of this Act. Section 165(5) of the Act provides that a person shall not act as a director in more than 20 companies after dispatching his resignation to the remaining companies or after one year from the commencement of this Act, whichever is earlier.

- **PENALTY FOR NON-COMPLIANCE OF SECTION 165**

Section 165(6) of the Act provides a penalty for a person who holds the office of a director in contravention of this Act. If a person accepts an appointment as a director in more than 20 companies, then he will be liable to a penalty of Rs.2,000

for each day during which the violation continues subject to a maximum of Rs.2 lakh. This penalty provision was included in the Act from 21.12.2020 to prevent persons from holding the office of directors in more than 20 companies.

4.2.7 POWER OF DIRECTORS

The power of directors in a company is substantial but also circumscribed by legal duties, responsibilities, and the company's Articles of Association. Here are the key aspects of the powers typically vested in directors:

1. Management and Decision-Making:

   Directors are responsible for managing the business and affairs of the company. They make decisions on behalf of the company, including strategic, operational, and financial matters.

2. Corporate Governance:

   Directors ensure the company operates in compliance with applicable laws, regulations, and internal policies. They oversee corporate governance practices, including transparency, accountability, and ethical behavior.

3. Appointment and Oversight:

   Directors appoint and oversee the performance of senior management, including the CEO and other executives. They may delegate day-to-day management but retain ultimate responsibility.

4. Financial Oversight:

   Directors approve budgets, financial statements, and major transactions. They safeguard the company's assets and financial integrity, ensuring accurate reporting and compliance with financial regulations.

5. Risk Management:

   Directors identify and manage risks that could affect the company's business operations or reputation. They implement risk management strategies and monitor risk exposure.

6. Strategic Planning:

   Directors participate in strategic planning processes, setting long-term goals and objectives for the company. They assess market conditions, competitive threats, and opportunities for growth.

7. Legal Compliance:

Directors ensure the company complies with all legal and regulatory requirements. They may establish compliance programs and oversee legal matters, including litigation and regulatory filings.

8. Shareholder Relations:

Directors maintain relations with shareholders, communicating company performance and strategy. They may convene shareholder meetings and ensure shareholder rights are respected.

❖ **LIMITS AND LEGAL RESPONSIBILITIES:**

- **Fiduciary Duties:** Directors owe fiduciary duties of loyalty and care to the company and its shareholders, requiring them to act in good faith and in the best interests of the company.
- **Statutory Limits:** Certain decisions, such as altering the Articles of Association or issuing shares, may require shareholder approval as per company law.
- **Board Resolutions:** Major decisions are often made through board resolutions, requiring majority or sometimes unanimous consent depending on the significance of the matter.
- **Liability:** Directors can be held personally liable for breaches of duty, such as negligence, fraud, or breaches of fiduciary duty. Liability can extend to financial penalties or disqualification from future directorship roles.

Governance and Oversight:

- **Board Committees:** Directors may delegate specific responsibilities to committees (e.g., audit, compensation, or governance committees) to enhance oversight and specialized expertise.
- **Independent Directors:** Companies often include independent directors on their boards to bring objectivity and impartial judgment, particularly in matters involving conflicts of interest.

In essence, while directors wield significant power in managing and directing company affairs, this power is tempered by legal obligations, fiduciary duties, and the need for transparency and accountability to shareholders and stakeholders. Effective governance ensures that directors balance autonomy with responsibility in guiding the company's success and sustainability.

4.2.8 DUTIES OF DIRECTORS

Directors of a company have various duties and responsibilities that are essential for ensuring effective governance, accountability, and the protection of stakeholders' interests. These duties are typically categorized into several key areas:

1. Fiduciary Duties:
   - **Duty of Loyalty:** Directors must act in the best interests of the company. This includes avoiding conflicts of interest and not using their position for personal gain.
   - **Duty of Care:** Directors are required to exercise reasonable care, skill, and diligence in carrying out their responsibilities. This involves being informed, prepared, and making decisions based on adequate information.
2. Statutory Duties:
   - **Compliance:** Directors must ensure that the company complies with all applicable laws, regulations, and the company's Articles of Association.
   - **Reporting:** They are responsible for preparing accurate financial statements and reports, ensuring they present a true and fair view of the company's financial position.
3. Duties Towards Shareholders:
   - **Communication:** Directors should communicate effectively with shareholders, ensuring transparency about the company's performance, strategy, and risks.
   - **Dividends:** They must consider the interests of shareholders when making decisions on dividends and capital distributions.
4. Duties Towards Employees and Stakeholders:
   - **Employment:** Directors have a duty to act fairly towards employees, ensuring their well-being and complying with employment laws.
   - **Stakeholder Interests:** They should consider the impact of their decisions on stakeholders such as customers, suppliers, and the community.
5. Duties of Oversight:
   - **Risk Management:** Directors are responsible for identifying and managing risks that could affect the company's business operations or reputation.
   - **Internal Controls:** They must establish and monitor effective internal controls to safeguard company assets and ensure compliance.

6. Duties During Insolvency:

- **Creditors:** In cases of insolvency or financial distress, directors must prioritize the interests of creditors over those of shareholders.
- **Wrongful Trading:** They must avoid wrongful trading, where they continue to trade and incur debts when they knew or ought to have known that the company could not avoid insolvent liquidation.

Enforcement and Consequences:

- **Liability:** Breaches of duties can lead to personal liability for directors, including financial penalties, compensation orders, and potential disqualification from acting as a director in the future.
- **Legal Action:** Shareholders, creditors, or regulatory bodies can take legal action against directors for breaches of duty, seeking remedies such as damages or injunctions.

Governance and Compliance:

- **Board Dynamics:** Directors contribute to effective board dynamics, fostering constructive debate, diversity of perspectives, and decision-making that aligns with the company's long-term goals.
- **Training and Development:** Continuous education and training help directors stay updated on governance best practices, regulatory changes, and industry developments.

4.3 BOARD OF COMMITTEES

A Board of Committees, also known as Board Committees, refers to specialized groups formed by a company's board of directors to focus on specific areas of governance, oversight, and strategic decision-making. These committees are crucial for enhancing board effectiveness, ensuring proper oversight, and addressing complex issues in a structured manner. Here are some common types of board committees and their roles:

1. Audit Committee:

- **Purpose:** Oversees financial reporting, internal controls, and risk management processes.
- **Responsibilities:** Reviews financial statements, audits, and compliance with accounting standards. Monitors the effectiveness of internal controls and risk management systems.

- **Composition:** Typically comprises independent directors with financial expertise.

2. Compensation Committee:

- **Purpose:** Sets executive compensation, including salaries, bonuses, and stock options.
- **Responsibilities:** Reviews and approves compensation packages, performance-based incentives, and equity plans. Ensures alignment with company goals and shareholder interests.
- **Composition:** Composed of independent directors to ensure objectivity.

3. Nominating and Governance Committee:

- **Purpose:** Identifies and nominates candidates for board positions. Oversees corporate governance practices.
- **Responsibilities:** Evaluates board composition, diversity, and director qualifications. Develops governance policies and practices. Manages board succession planning.
- **Composition:** Often includes independent directors with experience in governance.

4. Risk Management Committee:

- **Purpose:** Assesses and manages risks facing the company.
- **Responsibilities:** Identifies strategic, operational, financial, and compliance risks. Develops risk management strategies and monitors risk mitigation efforts.
- **Composition:** Includes directors with expertise in risk management and relevant industry knowledge.

5. Strategic Planning Committee:

- **Purpose:** Assists the board in long-term strategic planning and business development.
- **Responsibilities:** Analyzes market trends, competitive landscape, and growth opportunities. Recommends strategic initiatives and monitors their implementation.
- **Composition:** Directors with experience in strategic management and industry insights.

6. Technology or IT Committee:

- **Purpose:** Oversees technology strategy, cybersecurity, and IT infrastructure.

- **Responsibilities:** Reviews IT investments, cybersecurity policies, and data management practices. Ensures alignment of technology initiatives with business objectives.
- **Composition:** Includes directors with expertise in technology and cybersecurity.

Benefits of Board Committees:

- **Expertise:** Committees allow for focused expertise in specific areas critical to the company's operations.
- **Efficiency:** Streamlines decision-making and oversight processes by addressing complex issues in smaller, specialized groups.
- **Accountability:** Enhances accountability by assigning specific responsibilities to committees and ensuring regular reporting to the board.

Considerations:

- **Composition and Independence:** Committee members should be independent and possess relevant expertise to fulfill their roles effectively.
- **Reporting and Communication:** Committees report findings and recommendations to the full board, facilitating informed decision-making.
- **Regulatory Compliance:** Committees ensure compliance with legal and regulatory requirements relevant to their areas of focus.

board committees play a vital role in enhancing governance, oversight, and strategic direction within a company. By leveraging specialized knowledge and focusing on specific responsibilities, committees contribute to effective board operations and the long-term success of the organization.

4.4 RELATED PARTY TRANSACTION

A related party transaction refers to a business deal or arrangement between two parties who have a pre-existing relationship or connection due to their close association. This relationship could be due to family ties, ownership interests, or other affiliations that can potentially influence the terms of the transaction. Here’s a detailed overview of related party transactions:

Types of Related Parties:

1. **Key Management Personnel (KMP):**
    - Executives, directors, and significant shareholders who have the ability to influence company policies and decisions.

2. **Close Family Members:**
    - Spouses, children, and siblings of key management personnel or significant shareholders.
3. **Entities under Common Control:**
    - Subsidiaries, associates, joint ventures, or other entities controlled by the same shareholder(s) or parties.
4. **Associates:**
    - Individuals or entities that have significant influence over the company or are under common control with the company.

Examples of Related Party Transactions:

- **Sale or Purchase of Goods or Services:**
    - Transactions involving the sale of products or services between the company and a subsidiary company owned by a director.
- **Leasing Agreements:**
    - Rental agreements for office space between the company and a property owned by a director's family member.
- **Loans or Advances:**
    - Providing loans or advances to key management personnel or their family members.
- **Compensation Arrangements:**
    - Salaries, bonuses, or stock options granted to directors or executives who are also significant shareholders.

Regulatory and Disclosure Requirements:

- **Financial Reporting Standards:**
    - Companies are required to disclose related party transactions in their financial statements. This includes the nature of the transaction, the amount involved, and any terms or conditions that differ from those that would apply in arm's length transactions.
- **Corporate Governance Guidelines:**
    - Many jurisdictions have guidelines or regulations that require companies to have procedures in place for the identification, approval, and disclosure of related party transactions.
- **Board Oversight:**

- Boards of directors typically play a crucial role in reviewing and approving related party transactions to ensure they are conducted on terms that are fair and reasonable to the company and its shareholders.

Challenges and Considerations:

- **Conflicts of Interest:** Related party transactions can create conflicts of interest that may compromise the company’s interests or the fairness of the transaction.
- **Fairness and Arm's Length Principle:** Transactions should be conducted on terms that are comparable to those available in arm's length transactions to ensure fairness to the company and its shareholders.
- **Legal and Regulatory Compliance:** Companies must comply with applicable laws, regulations, and governance guidelines related to related party transactions to avoid legal repercussions or regulatory sanctions.

In summary, related party transactions are closely scrutinized due to their potential impact on corporate governance, financial reporting, and shareholder interests. Transparency, proper disclosure, and adherence to governance standards are essential to manage related party transactions effectively and mitigate risks associated with conflicts of interest.

4.5 CONTRACT BY ONE PERSON COMPANY

Section 2(62) of Companies Act defines a one-person company as a company that has only one person as to its member. Furthermore, members of a company are nothing but subscribers to its memorandum of association, or its shareholders. So, an OPC is effectively a company that has only one shareholder as its member.

Such companies are generally created when there is only one founder/promoter for the business. Entrepreneurs whose businesses lie in early stages prefer to create OPCs instead of sole proprietorship business because of the several advantages that OPCs offer.

Features of a One Person Company

Here are some general features of a one-person company:

a. **Private company:** Section 3(1)(c) of the Companies Act says that a single person can form a company for any lawful purpose. It further describes OPCs as private companies.

b. **Single-member:** OPCs can have only one member or shareholder, unlike other private companies.
c. **Nominee:** A unique feature of OPCs that separates it from other kinds of companies is that the sole member of the company has to mention a nominee while registering the company.
d. **No perpetual succession:** Since there is only one member in an OPC, his death will result in the nominee choosing or rejecting to become its sole member. This does not happen in other companies as they follow the concept of perpetual succession.
e. **Minimum one director:** OPCs need to have minimum one person (the member) as director. They can have a maximum of 15 directors.
f. **No minimum paid-up share capital:** Companies Act, 2013 has not prescribed any amount as minimum paid-up capital for OPCs.
g. **Special privileges:** OPCs enjoy several privileges and exemptions under the Companies Act that other kinds of companies do not possess.

Formation of One Person Companies

A single person can form an OPC by subscribing his name to the memorandum of association and fulfilling other requirements prescribed by the Companies Act, 2013. Such memorandum must state details of a nominee who shall become the company's sole member in case the original member dies or becomes incapable of entering into contractual relations.

This memorandum and the nominee's consent to his nomination should be filed to the Registrar of Companies along with an application of registration. Such nominee can withdraw his name at any point in time by submission of requisite applications to the Registrar. His nomination can also later be canceled by the member.

Membership in One Person Companies

Only natural persons who are Indian citizens and residents are eligible to form a one-person company in India. The same condition applies to nominees of OPCs. Further, such a natural person cannot be a member or nominee of more than one OPC at any point in time.

In the context of a One Person Company (OPC), which is a type of business entity where there is only one shareholder, the company can enter into contracts and agreements like any other legal entity. Here's how contracts by an OPC typically work:

Capacity to Enter into Contracts:

1. **Legal Entity Status:**
   - An OPC is recognized as a separate legal entity distinct from its owner. This means it can own assets, incur liabilities, and enter into contracts in its own name.
2. **Authority of the Director:**
   - The sole shareholder of the OPC acts as its director. This individual has the authority to bind the company and enter into contracts on behalf of the OPC.
3. **Limitations and Restrictions:**
   - The Memorandum of Association (MOA) and Articles of Association (AOA) of the OPC outline the scope of its activities and any restrictions on entering into contracts. The director must ensure that any contracts entered into are within the company's authorized business activities.

Process of Contract Formation:

1. **Offer and Acceptance:**
   - Like any contract, formation begins with an offer by one party and acceptance by the other, leading to mutual agreement on terms and conditions.
2. **Authority and Signature:**
   - Contracts are typically signed by the director on behalf of the OPC. It's essential to ensure that the director has the authority to bind the company, and this authority may be explicitly granted in the AOA or by resolution of the OPC.
3. **Compliance and Legal Requirements:**
   - Contracts must comply with all legal requirements, such as those related to stamp duty, registration (if required by law), and other relevant regulations.

Types of Contracts an OPC Can Enter Into:

- **Business Contracts:** Agreements related to the business operations of the OPC, such as contracts for services, supply agreements, or lease agreements.

- **Employment Contracts:** Contracts with employees or consultants hired by the OPC.
- **Financial Contracts:** Agreements with banks or financial institutions, including loans, credit facilities, or investment contracts.
- **Sales and Purchase Contracts:** Contracts for the sale or purchase of goods or services.
- **Intellectual Property Contracts:** Licensing agreements or contracts related to intellectual property rights.

Responsibilities and Liabilities:

- **Obligations:** The OPC is responsible for fulfilling its contractual obligations once a valid contract is entered into.
- **Liability:** In the event of breach of contract or other legal issues arising from contracts, the OPC is liable, and the director may also bear personal liability if there are issues of negligence or fraud.

An OPC enjoys the flexibility and benefits of limited liability while being able to function as a legal entity capable of entering into contracts and conducting business activities. It's crucial for the director to understand their authority, comply with legal requirements, and ensure that contracts entered into are in the best interests of the company and within its authorized scope of activities.

4.6 INSIDE TRADING

Insider trading refers to the practice of buying or selling a company's securities (such as stocks, bonds, or options) based on material, non-public information about the company. This practice is generally illegal because it undermines fairness and transparency in the financial markets. Here’s an overview of insider trading, its implications, and how it is regulated:

Key Aspects of Insider Trading:

1. **Material Non-Public Information (MNPI):**
    - Insider trading occurs when individuals or entities trade securities based on MNPI that has not been disclosed to the public. This information could include earnings results, mergers or acquisitions, significant contracts, regulatory decisions, or any other information that could affect the company's stock price.
2. **Types of Insiders:**

  - **Corporate Insiders:** Executives, directors, and employees who have access to confidential information about the company.
  - **Tippees:** Individuals who receive MNPI from insiders, either directly or indirectly, and then trade on that information.

3. **Prohibition and Legal Framework:**
   - Insider trading is prohibited under securities laws in most countries, including the United States (under SEC regulations) and various other jurisdictions. These laws aim to ensure fair markets and prevent individuals from profiting unfairly at the expense of others who do not have access to the same information.
4. **Regulation and Enforcement:**
   - Regulatory bodies, such as the Securities and Exchange Commission (SEC) in the US, enforce rules against insider trading. They investigate suspicious trading activities, monitor compliance with disclosure requirements, and prosecute violations through civil and criminal penalties.
5. **Consequences of Insider Trading:**
   - **Legal Penalties:** Individuals found guilty of insider trading can face severe penalties, including substantial fines, disgorgement of profits gained from the illegal trades, and imprisonment.
   - **Civil Liability:** In addition to regulatory actions, insiders and tippees can be sued civilly by affected parties, such as shareholders, for damages resulting from insider trading.
   - **Reputational Damage:** Insider trading tarnishes the reputation of individuals and companies involved, affecting their credibility and trust in the financial community.

Ethical and Market Integrity Considerations:

- Insider trading undermines market integrity by eroding investor confidence in the fairness of markets and disadvantaging those who do not have access to privileged information.
- It raises ethical concerns about fairness, trust, and the fiduciary responsibilities of corporate insiders to act in the best interests of shareholders and the broader market.

Prevention and Compliance Measures:

- **Internal Controls:** Companies implement strict policies and procedures to prevent unauthorized disclosure of MNPI and monitor trading activities by insiders.
- **Educational Programs:** Training programs educate employees and directors about insider trading laws, ethical considerations, and the consequences of non-compliance.
- **Whistleblower Protections:** Encouraging employees to report suspected insider trading and providing mechanisms for whistleblowers to come forward without fear of retaliation.

Insider trading is a serious violation of securities laws that undermines the integrity of financial markets and can lead to significant legal and reputational consequences for individuals and companies involved. Strict regulation, enforcement, and ethical awareness are essential to maintain fair and transparent markets for all participants.

4.7 MANAGING DIRECTOR

A Managing Director (MD) plays a crucial role in the leadership and management of a company, typically serving as the senior-most executive responsible for the day-to-day operations and overall strategic direction. Here's an overview of the roles, responsibilities, and key aspects related to a Managing Director's position:

Roles and Responsibilities:

1. **Executive Leadership:**
   - The Managing Director provides executive leadership and vision, guiding the company towards its strategic objectives and goals.
2. **Operational Management:**
   - Responsible for overseeing the daily operations of the company, ensuring efficient and effective execution of business activities.
3. **Financial Management:**
   - Oversees financial performance, budgeting, and resource allocation to optimize profitability and sustainability.
4. **Strategic Planning:**
   - Leads the development and implementation of strategic plans and initiatives to drive business growth and expansion.
5. **Stakeholder Relations:**

   - Acts as a key liaison with stakeholders, including shareholders, board members, employees, customers, suppliers, and regulatory bodies.
6. **Corporate Governance:**
   - Ensures compliance with legal and regulatory requirements, as well as internal policies and procedures.
7. **Risk Management:**
   - Identifies and manages business risks, implementing strategies to mitigate potential threats to the company's operations and reputation.
8. **People Management:**
   - Provides leadership to senior management and employees, fostering a positive organizational culture and ensuring talent development and retention.

Appointment and Authority:

- **Appointment:** The Managing Director is usually appointed by the board of directors. The appointment may require shareholder approval depending on the company's Articles of Association and applicable laws.
- **Authority:** Typically, the Managing Director has broad authority to manage the company's affairs within the framework set by the board. This authority is derived from the board's delegation and is subject to oversight by the board.

Legal and Fiduciary Duties:

- **Fiduciary Duties:** Like other directors, the Managing Director owes fiduciary duties of loyalty and care to the company, acting in its best interests and avoiding conflicts of interest.
- **Legal Responsibilities:** Responsible for ensuring compliance with corporate governance requirements, financial reporting standards, and other legal obligations.

Challenges and Considerations:

- **Market Dynamics:** Managing Directors must navigate competitive pressures, market volatility, and technological advancements to sustain and grow the business.
- **Change Management:** Leading organizational change and adaptation to market conditions, industry trends, and regulatory changes.
- **Crisis Management:** Addressing crises or unexpected challenges that may impact the company's operations, reputation, or financial stability.

Success Factors:

- **Vision and Strategy:** Clear vision and strategic direction aligned with the company's mission and values.
- **Leadership and Communication:** Strong leadership skills, effective communication, and the ability to inspire and motivate teams.
- **Adaptability and Innovation:** Flexibility to adapt to changing environments and innovate to stay ahead of the competition.
- **Ethical Leadership:** Upholding ethical standards and promoting a culture of integrity and transparency within the organization.

The role of Managing Director is pivotal in driving organizational success through effective leadership, strategic management, and responsible governance. It requires a combination of business acumen, interpersonal skills, and a commitment to ethical conduct to navigate challenges and capitalize on opportunities in today's dynamic business environment.

4.8 MANAGER

A manager within an organization plays a critical role in overseeing and coordinating various aspects of operations to ensure the achievement of organizational goals and objectives. Here's an overview of the responsibilities, skills, and key aspects related to the role of a manager:

Responsibilities of a Manager:

1. **Team Leadership:**
    - Managers are responsible for leading and supervising teams within their department or functional area. This includes assigning tasks, providing guidance, and motivating team members to achieve goals.
2. **Operational Oversight:**
    - They oversee day-to-day operations, ensuring smooth workflow, efficiency, and adherence to established processes and procedures.
3. **Performance Management:**
    - Managers monitor the performance of team members, provide feedback, conduct performance evaluations, and address any issues or areas for improvement.
4. **Strategic Planning:**

   - They contribute to the development of departmental or organizational strategies and objectives, aligning team efforts with broader business goals.

5. **Resource Allocation:**
   - Managers allocate resources such as budget, manpower, and equipment effectively to support operational activities and achieve targets.
6. **Decision-Making:**
   - They make informed decisions on behalf of their team or department, weighing risks and benefits and considering the impact on stakeholders.
7. **Communication:**
   - Effective communication is crucial. Managers communicate goals, expectations, policies, and organizational changes to their teams, ensuring clarity and alignment.
8. **Conflict Resolution:**
   - Managers handle conflicts and disputes within their teams or between teams, promoting a collaborative and productive work environment.

Skills and Qualities of a Manager:

- **Leadership:** Ability to inspire, motivate, and guide teams towards achieving common objectives.
- **Communication:** Clear and effective communication skills to convey ideas, instructions, and feedback.
- **Decision-Making:** Sound judgment and analytical skills to make informed decisions under varying circumstances.
- **Problem-Solving:** Ability to identify issues, analyze root causes, and develop solutions to overcome challenges.
- **Organizational Skills:** Strong organizational and time management skills to prioritize tasks and manage resources efficiently.
- **Adaptability:** Flexibility to adapt to changing priorities, market conditions, and organizational needs.
- **Interpersonal Skills:** Ability to build and maintain relationships with team members, stakeholders, and external parties.

Types of Managers:

- **Functional Managers:** Oversee specific functions such as finance, marketing, operations, or human resources.

- **Project Managers:** Manage projects from initiation to completion, coordinating resources and ensuring project goals are met.
- **Middle Managers:** Bridge the gap between senior management and front-line employees, translating strategic goals into actionable plans.
- **General Managers:** Responsible for overall operations and performance of a business unit or division.

Challenges and Considerations:

- **Balancing Priorities:** Managing multiple priorities and competing demands while maintaining focus on strategic objectives.
- **Team Development:** Developing and nurturing talent within the team, fostering a culture of continuous learning and professional growth.
- **Performance Metrics:** Setting clear performance metrics and goals, monitoring progress, and adjusting strategies as needed.

Managers play a pivotal role in driving organizational success by effectively leading teams, managing resources, and aligning operational activities with strategic objectives. Their leadership, decision-making abilities, and interpersonal skills are essential for fostering a productive and cohesive work environment that contributes to the overall growth and sustainability of the organization.

4.9 SECRETARIAL AUDIT & ADMINISTRATIVE ASPECT

Secretarial audit and administrative aspects are critical components in ensuring corporate governance, compliance, and efficient management within an organization. Let's explore each of these concepts in detail:

Secretarial Audit:

1. **Definition and Purpose:**
    - **Secretarial Audit** is a process that examines the compliances with legal and procedural requirements under various laws applicable to the company. It ensures that the company complies with the provisions of the Companies Act, other relevant laws, rules, regulations, and guidelines issued by regulatory authorities.

2. **Scope of Secretarial Audit:**
    - **Compliance with Company Law:** Ensures compliance with the provisions of the Companies Act, including maintenance of statutory registers, filing of necessary documents, conducting meetings, etc.
    - **Listing Requirements:** Compliance with listing agreements, if applicable, including disclosures, filings, and corporate governance norms.
    - **Other Applicable Laws:** Compliance with other laws applicable to the company, such as environmental laws, labor laws, tax laws, etc.
    - **Board Processes:** Review of board meeting processes, approval mechanisms, and adherence to corporate governance practices.
    - **Documentation and Filings:** Examination of documents, filings with regulatory authorities, and maintenance of records as required by law.
3. **Role of Company Secretary:**
    - The Company Secretary (CS) typically oversees the secretarial audit process. They ensure that all legal and regulatory requirements are met and provide guidance to the board and management on compliance matters.
4. **Report and Compliance Certificate:**
    - After conducting the audit, the CS submits a Secretarial Audit Report to the board of directors. This report includes findings, observations, and recommendations for ensuring compliance. A Compliance Certificate may also be issued if all requirements are met.

Administrative Aspects:

1. **Administrative Functions:**
    - **Office Management:** Ensuring smooth functioning of office operations, including infrastructure, supplies, and logistics.
    - **HR and Personnel Management:** Recruitment, training, and development of personnel, ensuring compliance with labor laws and employee welfare.
    - **Financial Administration:** Managing financial resources, budgeting, accounting, and financial reporting.

  - **IT and Systems Administration:** Oversight of information technology systems, cybersecurity, data management, and compliance with data protection regulations.
2. **Facility and Asset Management:**
   - **Facility Maintenance:** Maintenance and upkeep of physical facilities, ensuring safety and operational efficiency.
   - **Asset Management:** Management of company assets, including procurement, utilization, and disposal.
3. **Legal and Regulatory Compliance:**
   - Ensuring compliance with various legal and regulatory requirements applicable to administrative functions, such as labor laws, environmental regulations, health and safety standards, etc.
4. **Support to Management and Operations:**
   - Providing administrative support to management and operational teams to facilitate decision-making and efficient execution of business activities.
5. **Documentation and Record Keeping:**
   - Maintaining accurate and up-to-date records, documentation, and filing systems as required by law and organizational policies.

Integration and Importance:

- **Integration:** Secretarial audit and administrative functions are closely integrated to ensure overall compliance, governance, and operational efficiency within the organization.
- **Importance:** Both aspects are crucial for maintaining transparency, accountability, and sustainability while enhancing stakeholder trust and confidence in the organization.

secretarial audit ensures legal and regulatory compliance, while administrative aspects focus on efficient management of organizational resources and support functions. Together, they contribute to effective corporate governance and operational excellence in modern business practices.

4.10. WINDING UP

Winding up of a company is the process whereby its life is ended and its property administered for the benefit of its creditors and members. An administrator, called a 'liquidator', is appointed and he takes control of the company, collects its assets,

pays its debts and finally distributes any surplus among the members in accordance with their rights. In simple words winding up means applying the assets of a company in the discharge of its liabilities and returning any surplus to those entitled to it, subject to the cost of doing so. The statutory process by which this is achieved is called 'liquidation'. Winding up of a company differs from insolvency of an individual inasmuch as a company

WINDING UP AND DISSOLUTION OF COMPANIES

A company may be wound up in any of the three ways:

A. Compulsory winding up under an order of the Court.

B. Voluntary winding up.

C. A voluntary winding up under the supervision of the Court.

Winding up by the Court Winding up by the Court, also called compulsory winding up, may be ordered in cases mentioned in s.433. The Court will make an order for winding up on an application by any of the persons enlisted in s.439. Grounds for compulsory winding up [s.433(3)]: A company may be wound up by the Court on the following grounds:

1. Special resolution: The company may, by special resolution, resolve that it be wound up by the Court. The resolution may be passed for any cause whatsoever. However, the Court may not order winding up if it finds it to be opposed to public interest or the interest of the company as a whole.

2. Default in holding statutory meeting: If default is made in delivering the statutory report to the Registrar or in holding the statutory meeting, the company may be ordered to be wound up. Petition on this ground can be presented either by the Registrar or by a contributory. If it has to be filed by any other person it should be filed before the expiration of 14 days after the last day on which the statutory meeting ought to have been held [s.439 (7)].

3. Failure to commence business: If a company does not commence business within a year from incorporation or suspends business for a whole year, it may be ordered to be wound up. Failure to commence or to carry on business is not treated as a ground for compulsory winding up unless the company has no intention of carrying on business or it has become impossible to do so. If there are sufficient ground to prove that there are justifiable reasons for not commencing the business within time, it will not be ordered to be wound up (Murlidhar v. Bengal Steamship Co. 1920).

4. Reduction in membership: If the number of members is reduced below the statutory minimum of 7 in a public company or 2 in a private company, the company may be ordered to be wound up.

5. Inability to pay debts: The court may order a company to be wound up if it is unable to pay its debts. According to s.434, a company shall be deemed to be unable to pay its debts if:

(a) A creditor for more than one lakh rupees has served on the company at its registered office a demand under his hand requiring payment and the company has for three weeks thereafter neglected to pay or secure or compound the sum to the reasonable satisfaction of the creditor; or

(b) execution or other process issued on a judgement or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) it is proved to the satisfaction of the Court that the company is unable to pay its debts, taking into account its contingent and prospective liabilities. The provision that the Court is to take into account the company's contingent and prospective liabilities is important. A company which has to date paid all its debts as they fell due may still be ordered to be wound up if a consideration of its assets and liabilities shows that it will or may shortly be unable to do so. Inability is to be seen in the commercial sense of a running enterprise and not in the sense of liquidation, i.e., if the company cannot meet its current demand, even though its assets, when realised, would exceed its liabilities, it will be deemed to be unable to pay its debt and may be wound up. But the important condition to be fulfilled is that the creditor should have a complete title to the debt and the debt must have become payable. Where there is a bona fide dispute regarding the debt, the company cannot be charged to have neglected to pay it. 6. Just and equitable: The Court may also order for the winding up of a company if it is of the opinion that it is just and equitable that the company should be wound up. In exercising its power on this ground, the Court shall give due weight to the interest of the company, its employees, creditors and shareholders and the interest of the general public. The relief based on the just and equitable clause is in the nature of a last resort when other remedies are not efficacious enough to protect the general interests of the company. While in the above five cases definite conditions should be fulfilled but in the 'just and equitable' clause the entire matter is left to the 'wide and wise' direction of the CLB. The winding up must be just and equitable not only to the

persons applying but also to the company and to all its shareholders. [Hind Overseas Pvt. Ltd. v. R.P. Jhunjhunwala (1977) ASIL. XIII] A few of the examples of 'just and equitable' grounds on the basis of which the CLB may order the winding up are given below:

(i) When the substratum of the company has gone: The substratum of a company is deemed to be gone where its objects have failed or become impossible of achievement. For example in Re German Date Coffe Co. (1882) a company was formed to manufacture dates under patent, which was never granted hence the substratum of company is not there.

(ii) When there is a complete deadlock in the management: A company will be wound up on this ground even though it is making good profits. In ReYenidje Tobacco Co. Ltd. A and B, the only shareholders and directors of a Private Limited company became so hostile to each other that neither of them would speak to the other except through the secretary. Held, there was a complete deadlock and consequently the company was wound up.

(iii) Where the company was formed for fraudulent or illegal purposes: For this purpose, fraud in the prospectus or in the manner of conducting company's business is not sufficient. It must be shown that the original object of creating the company was fraudulent or illegal [Re T. E. Brismead& Sons Ltd. (1897)1 Ch.45].

(iv) Where the principal shareholders have adopted an aggressive or oppressive policy towards the minority: [R. Sabapathy Rao v. Sabapathy Press Ltd. AIR (1925) Mad. 489]. However, the CLB will order winding up only when it is satisfied that it is impossible for the business of the company to be carried on for the benefit of the company as a whole because of the way in which voting power is held and used.

(v) When the company is a 'bubble',: i.e., it never had any real business [ReLondon and Country Coal C. (1867) L.R. 3 Eq. 365].

(vi) Where the business of the company cannot be carried except at loss: But, mere apprehension on the part of some shareholders that loss instead of gain will result has been held to be no ground [Re-Mahamandal Shastra Prakashik Samiti Ltd. (1917) 15 All L.T. 193]. Similarly, in Re-Shah Steamship Navigation Co. [(1901) 10 Bom. L.R. 107], it was that 'The Court (now CLB) will not be justified in making winding up order merely on the ground that the company has made losses and it was likely to make further losses.

(vii) Where a private company is in essence or substance a partnership, it may be ordered to be wound up if such circumstances exist under which it would be just and equitable for the court to order for the dissolution of the partnership firm. In Re-Davis and Coltett Ltd. [(1935) Ch. 693] one member improperly excluded the other, who held half the shares, from taking part in the company's business. Held, the company be wound up.

(viii) Requirements for Investigation: Where directors were making allegations of dishonesty against each other in respect of defalcations of the funds of the company, the company was ordered to be wound up on the ground that it was a case in which the conduct of some of the officers of the company required an investigation which could only be obtained in a winding up by the Court [Re Varieties Ltd. (1893) 2 Ch. 235]. Who may petition (s. 439): A petition for the compulsory winding up of a company may be presented by:

(1) the company itself by the passing of a special resolution; or

(2) any creditor or creditors, including any contingent or prospective creditor or creditors; o r

(3) a contributory or contributories; or

(4) any combination of creditors, company or contributories acting jointly or separately; or

(5) the Registrar; or

(6) any person authorised by the Central Government, as per s.243.

(7) the official liquidator (s.440).

1. The company [s.439(1) (a)]: A company may make a petition for its winding up, when the members of the company have so resolved by passing a special resolution. However, it is not very common for companies to apply for winding up orders since, if desired, they have only to pass a special resolution for voluntary winding up under s. 484 of the Act. But, where the directors find the company to be insolvent due to circumstances which ought to be investigated by the CLB, they may file a petition for winding up order on behalf of the company.

2. Creditor's petition [s.439 (1) (b)]: A creditor has a right to a winding up. If he can prove that he claims an undisputed debt and that the company has failed to discharge it. The word 'Creditor' includes secured creditor, debenture holder and a trustee for debenture holders. It is not even necessary that the secured creditor should give up his security [In Re-India Electric Works (1969) 2 Comp. L.T. 169]. A

contingent or prospective creditor (such as the holder of a bill of exchange not yet matured or of debentures not yet payable) is also entitled to petition for winding up the company. But, he must give a reasonable security for costs and establish a prima facie case for winding up [s.439 (8)]. Sometimes a creditor's petition is opposed by other creditors. In such cases the CLB may ascertain the wishes of the majority of the creditors. However, the opinion of the majority of creditors does not bind the Court. The question will ultimately depend upon the state of the company. If the company is commercially insolvent and the object of trading at a profit cannot be attained, winding up order will follow as a matter of course. A creditors' petition is generally based on the ground that the company is unable to pay its debts. He will not ordinarily be heard to urge that a winding up order should be made because the substratum of the company is gone which is usually the proper concern of the company's shareholders [Bukhtiarpur Bihar Light Rly. Co. Ltd. v. Union of India, AIR (1954) Cal.499]. However, if the debt of a petitioning creditor is disputed no order for winding up can be made [Md. Amin Bros v. Dominition of India, AIR (1952) Cal. 323].

3. Contributory's petition [s.439(1) (c)]: A 'contributory' means any person liable to contribute to the assets of a company in the event of its being wound up. But for this purpose the term 'contributory' includes a holder of fully paid shares. A 'contributory', however, may petition only:

(i) on the ground that the number of members is reduced below the statutory minimum of seven members in case of public company and two in case of a private company;

(ii) on any other ground if the shares in respect of which he is a contributory or some of them were originally allotted to him, or/have been held by him and registered in his name for at least six out of the eighteen months preceding the commencement of the winding up, or/ have devolved upon him through the death of the former holder.

Example: A transfer though executed and stamped in June, 1997, was registered in October, 1998. The shareholder presented a winding up petition in December, 1998. Held: the petition was not valid since she had not held shares for six months as required by the Act. A holder of fully paid shares is a contributory for the purpose of a petition not because he is liable to contribute but because he may have an interest in the assets in a winding up. The section

provides: “A contributory shall be entitled to present a petition for winding up a company notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities.” The legal representative of a deceased shareholder may petition. Even an insolvent shareholder, whose name is still there on the register, may, at the instance of the assignee, petition.

4. Joint petition [s.439(1) (d)]: By all or any of the parties specified above. This means that any combination of the company, the creditors and the contributories can present a petition for winding up.

5. The registrar [s.439(1) (e)]: The registrar may file a petition where:

(i) a default is made in delivering the statutory report to him or in holding the statutory meeting; o r

(ii) the company has not commenced its business within a year from its incorporation; or

(iii) the number of its members has fallen below the statutory minimum; or

(iv) the financial condition of the company, as disclosed in its balance sheet or from the report of a special auditor appointed under s.233A or any inspector appointed under Ss.235 to 237 it appears that it is unable to pay its debts, or

(v) it is just and equitable that the company be wound up. The petition on the ground of default in delivering the statutory report or holding the statutory meeting cannot be presented before the expiration of 14 days after the last day on which the statutory meeting ought to have been held. In any case, the registrar cannot present the petition unless sanctioned by the Central Government.

6. Central Government petition (s.243): The Central Government may petition for winding up where it appears from the report of inspectors appointed to investigate the affairs of a company under s.235 that the business of the company has been conducted for fraudulent or unlawful purposes. The Government may authorise any person to act on its behalf for the purpose. [s.439 (1) (b)].

7. Official liquidator’s petition (s.440): An official liquidator may present a petition for winding up by the Court where a company is being wound up voluntarily. The Court, however, shall not make a winding up order unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interest of the creditors or

contributories or both. Commencement of winding up (s.441): The winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up. If no order for winding up is made and the winding up petition is dismissed, the date of presentation of the winding up petition has no relevance. As such, until winding up order is made, the company will have to comply with the requirements of the Companies Act as are required if company not wound up. Also the words 'shall be deemed to commence' indicate that although the winding up of a company does not in fact commence at the time of the presentation of the petition, it nevertheless shall be taken to commence from that time if and when the winding up order is made. However, where before the presentation of a petition for the winding up of a company by the Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company is deemed to have commenced at the time of the passing of the resolution. Procedure for winding up order:

(1) The winding up petition must be presented to the Court.

(2) After the presentation of the petition but before the hearing, application may be made to the Court by either the company, creditor or contributories: to appoint a provisional liquidator to safeguard the assets pending the hearing. Before making such appointment, however, the Court must give notice to the company so as to enable it to make its representation in the matter unless, for reasons to be recorded in writing, it thinks fit to dispense with such notice. The powers of the provisional liquidator are the same as those of a liquidator unless limited by the Court (s.450).

(3) On hearing a winding up petition, the Court may [s.443(1)]:

(i) dismiss it, with or without costs; or

(ii) adjourn the hearing conditionally or unconditionally; or

(iii) Make any interim order that it thinks fit; or

(iv) make an order for winding up the company with or without costs, or any other order that it thinks fit. The Court cannot, however, refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets. According to the provisions of section 443(2) "Where the petition is presented on the ground that it is just and equitable that the company should be wound up, the Court may refuse to make an order of winding up if it is of the

opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy." Where the petition is presented on the ground of default in delivering the statutory report to the registrar or in holding the statutory meeting, the Court may:

(a) instead of making a winding up order, direct that the statutory report shall be delivered or that a meeting shall be held; and

(b) order the costs to be paid by persons who, in the opinion of the court, are responsible for the default [s.443 (3)].

In all matters relating to the winding up of a company, the Court may have regard to the wishes of creditors or contributories of the company as proved to it by any sufficient evidence and for the purpose may direct that their meetings may be held or conducted as directed by the court (s.557).

- **CONSEQUENCE OF WINDING UP ORDER.**

The consequence of the winding up order by the Court are as follows:

1. The Court must, as soon as the winding up order is made, cause intimation thereof to be sent to the official liquidator and the Registrar (s.444).

2. The petitioner and the company must also file with the Registrar within 30 days a certified copy of the order [s.445(1)]. The Registrar should file with himself a certified copy of the winding up order of the Court when himself is a petitioner under s.439. If default is made in filing the certified copy of the order, the petitioner, or the company and every officer of the company who is in default, shall be punishable with fine upto Rs 1,000 for every day during which the default continues (s.445).

3. The Registrar should then make a minute of the order in his books relating to the company and notify in the Official Gazette that such an order has been made [s.445(2)].

4. The order for winding up is deemed to be a notice of discharge to the officers and employees of the company, except when the business of the company is continued. In any employee has been appointed on contract basis he will have to be compensated in case of winding up [s.445(3)].

5. The order operates in the interests of all the creditors and all the contributories, no matter who is fact asked for it (s.447).

6. The Official Liquidator, by virtue of his office becomes the liquidator of the company and takes possession and control of the assets of the company (s.449).
7. All actions and suits against the company are stayed, unless the Court gives leave to continue or commence proceedings (s.446). Further as per section 446A after the order of winding up the directors and officers of company should submit the audit book to court.
8. All the power of the Board of Directors cease and the same are then exercised by the liquidator [Ss.491 & 505].
9. On the commencement of winding up, the limitation ceases to run in favour of the company.
10. Any disposition of the property of the company and any transfer of shares in the company or alteration in the status of members made after the commencement of winding up shall, unless the Court otherwise orders, be void [s.536(2)].
11. Any attachment, distress or execution put in force, without leave of the Court, against the estate or effects of the company after the commencement of the winding up shall be void [s.537 (a)] but not for dues payable to Government [s.537(2)].
12. Any sale held, without leave of the Court, of any of the properties or effects of the company after the commencement of winding up shall be void [s.537(b)].
13. Any floating charge created within 12 months preceding the commencement of winding up is void unless it is proved that the company after the creation of the charge was solvent, except as to, any cash advanced at the time of or subsequent to the creation of the charge or to any interest on that amount @ 5% or such other rate notified by the Central Government (s.534). The secured creditor is outside the winding up and can realize his security without the leave of the Court. Statement of affairs to be made to the liquidator (s. 454): When a winding up order is made by the Court, the directors of the company must make to the liquidator a statement as to the affairs of the company, stating the following particulars:
(i) the debts and liabilities of the company;
(ii) the assets of the company, showing separately the cash in hand and in bank, if any;

(iii) the name, residence and occupation of each creditor stating separately the amount of secured debts and unsecured debts;

(iv) the debts due to the company and the name, residence and occupation of each person from whom the sum is due and the amount likely to be realized therefrom. The object of such a statement is to give the liquidator an idea as to the financial affairs and liabilities of the company. The creditors and contributories of the company can inspect the statement. The statement should be made within 21 days (or such extended time not exceeding 3 months as the official liquidator or Court may for special reasons allow) after the relevant date. The relevant date is the date of the winding up order by the CLB or where a provisional liquidator is appointed, the date of his appointment. The statement must be submitted and verified by affidavit by one or more of the persons who, at the relevant date are the Directors and by the person who at that time is the Manager, Secretary or other Chief Officer of the company. Defaulter shall be punishable with imprisonment upto 2 years or with fine upto Rs 1,000 for every day during which default continues or with both. Committee of inspection: The Court may, at the time of making an order of winding of a company or at any time thereafter, direct that there shall be appointed a committee of inspection to act with the liquidator. In such a case the liquidator must, within 2 months from the date of such direction convene a meeting of the creditors of the company for the purpose of determining who are to be members of the committee. Within 14 days from the date of the creditors meeting (or such further time as the court in its direction may grant for the purpose), the liquidator should convene a meeting of the contributories to consider the decision of the creditors' meeting with respect to the membership of the committee. It is open to the meeting of the contributories to accept the decision of the creditors' meeting with or without modifications or to reject it. If there is any conflict between the two meetings, the liquidator should work as per the directives of court. He must apply to the Court for directions as to what the composition of the committee shall be and who shall be members thereof. However, it will not be necessary to seek directions in this regard where the meeting of the contributories accept the decision of the creditors' meeting in its entirety. Section 465 provides:

(i) a committee of inspection cannot have more than 12 members;

(ii) the committee shall have the right to inspect the accounts of the liquidator at all reasonable times;

(iii) it must meet at such times as it may from time to time appoint and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary;

(iv) the quorum for the meeting of the committee shall be 1/3rd of the total number or two whichever is higher;

(v) a member of the committee may resign by notice in writing. But where a member of the committee is adjudged an insolvent or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of the members, he shall cease to remain a member. Further a member may also be removed by an ordinary resolution.

- **GENERAL POWERS OF THE COURT**

1. Power of Court to stay winding up (s.446): The Court may at any time after making a winding up order (on the application either of the Official Liquidator of any creditor or contributor and on proof to the satisfaction of the CLB that all proceedings in relation to the winding up order be stayed) make an order staying the proceedings either altogether or for a limited time, on such terms and conditions as the CLB thinks fit.

2. Settlement of the list of contributories (s.467): The Court has the power to cause the assets of the company to be collected and applied in discharge of its liabilities. For this purpose the court has the power to make a list of contributories. In settling the list of contributories the CLB shall distinguish between those who are contributories in their own right and those who are contributories as being representatives of, or liable for the debts of others.

3. The power to make calls (s. 470): The Court is empowered to make call on all or any of the contributories to the extent of their liability. It should be noted that no statutory liability for an unpaid call can be set off against a credit except in the following cases:

(a) in the case of an unlimited company, a contributory may set off his debt against any money due to him from the company on any independent dealing or contract with the company. But no set off is allowed for any money due to him as a member of the company in respect of any dividend or profit;

(b) if, in the case of a limited company, there is any director or manager whose liability is unlimited, he shall have the same right of set off as described in (a) above;

(c) in the case of any company, whether limited or unlimited when all the creditors have been paid in full, any money due on any account whether to a contributory from the company may be allowed to him by way of set off against any subsequent call.

4. Payment into bank of moneys due to company (s.471). The Court may order any contributory, purchaser or other person from who any money is due to the company to pay the money into the public account of India in the Reserve Bank of India instead of to the liquidator.

5. Power to exclude creditors not proving in time (s.474). The Court may fix a time or times within which creditors are to prove their debts or claims. In such a case, if the creditors fail to establish their claims in time, they may be excluded from the benefit of any distribution made.

6. Adjustment of rights of contributories (s.475). The Court is empowered to adjust the right of the contributories among themselves and distribute any surplus among the person entitled thereto.

7. Power to order costs (s.476). The Court may, in the event of assets being insufficient to satisfy the liabilities, make an order for the payment out of the asset, of the costs, charges and expenses incurred in the winding up, in such order of priority inter se as the court thinks just.

8. Power to summon persons suspected of having property of company, etc. (s.477). The Court may summon before it any officer of the company or person known or suspected to have in his possession any property or books or papers of the company or known or suspected to be indebted to the company. Any such person may be examined on oath. The Court may also require him to produce any books and papers in his custody or power relating to the company; but where he claims any lien on books or papers produced by him, the production must be without prejudice to that lien. If any officer or person summoned, after being paid or tendered a reasonable sum for his expenses, fails to appear before the Court at the time appointed without any valid reason, the court may cause him to be apprehended and brought before the Court for examination.

9. Power to order public examination of promoter, directors etc. (s.478). Where the Official Liquidator has made a report to the Court, stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any officer of the company since its formation, the CLB may direct that person or officer may appear before the Court and be publicly examined. Examination shall relate to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as an officer thereof. Official Liquidator, any creditor or contributory may take part in such examination. The Court may put such questions to the person examined as it thinks fit. The person shall be examined on oath and must answer all such questions as the CLB may put or allow to be put, to him. Notes of the examination must be taken in writing and must be read over to or by and signed by the person examined and may thereafter be used in evidence against him. Statement so recorded shall be open to the inspection of any creditor or contributory at all reasonable times.

10. To order the appointment of a committee of inspection. (already discussed)

11. Power to arrest a contributory intending to abscond (s.479). At any time (either before or after making a winding up order), the Court may, on proof of probable cause for believing that a contributory is about to quit India or otherwise to abscond or is about to remove or cancel any of his property, for the purpose of evading payment of calls or of avoiding examination in respect of the affairs of the company, cause:

(a) the contributory to be arrested and safely kept until such time as the Court may order; and

(b) his books and papers and movable property be seized and safely kept until such time as the court may order.

12. Power to order for dissolution of the company (s.481). When the affairs of a company have been completely wound up or when the Court is of the opinion that the liquidator cannot proceed with the winding up of a company for want of funds and assets or for any other reason whatsoever and it is just and reasonable in the circumstances of the case that an order of dissolution of the company should be made, the Court shall make an order that the company be dissolved from the date of the order. The liquidator must, within 30 days, send a copy of the order to the Registrar who shall make in his books a minute of the dissolution of the company. If he makes a default in forwarding a copy as aforesaid, he shall be punishable

with fine which may extend to Rs 500 for every day during which the default continues. On the expiry of 5 years from the date of dissolution, the name of the company should be struck off the Register. But within 2 years of the date of the dissolution on application by the liquidator of the company or by any other person who appears to the Court to be interested, the Court may make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void. After such an order is passed, such proceedings may be taken as might have been taken if the company had not been dissolved (s. 559). Voluntary Winding up Winding up by the creditors or members without any intervention of the Court is called 'voluntary winding up', According to section 484, voluntary winding could be of three types– creditor's voluntary winding up, members voluntary winding up and voluntary winding up under court's supervision. In voluntary winding up, the company and its creditors are left to settle their affairs without going to the CLB for directions or orders if and when necessary. Winding up should not be confused with insolvency. Company may be solvent and running a prosperous business yet it may decide to be wound up voluntarily, e.g., in pursuance of a scheme of reconstruction or amalgamation. A company may be wound up voluntarily:

(1) if the company in general meeting passes an ordinary resolution for voluntary winding up where the period fixed by the Articles for the duration of the company has expired or the event has occurred on which under the Articles the company is to be dissolved;

(2) if the company resolves by special resolution that it shall be wound up voluntarily (s.484). When a company has passed a resolution for voluntary winding up, it must within 14 days of the passing of the resolution, give notice of the resolution by advertisement in Official Gazette and also in some newspaper circulating in the district where the registered office of the company is situated i.e. any vernacular newspaper. In case of default, the company and every officer of the company who is in default shall be punishable with fine which may extend upto Rs 500 for every day during which the default continues (s.485). Consequences of voluntary winding up.

The consequences of voluntary winding up are as follows:

1. A voluntary winding up is deemed to commence at the time when the resolution for voluntary winding up is passed (s.486). This will be so even when after passing

a resolution for voluntary winding up, a petition is presented for winding up by the Court (s.441).

2. The company, from the commencement of winding up, must cease to carry on its business except so far as may be required to secure a beneficial winding up although the corporate state and powers of the company continue until final dissolution (s.487).

3. All transfer of shares and alterations in the status of members, made after the commencement, are void unless sanctioned by the liquidator (s.536).

4. A resolution to wind up voluntarily operates as notice of discharge to the employees of the company (Fowler v. Commercial Times Co.) except: (a) when the liquidation is only with a view to 'reconstruction' [Midland Counties Bank Ltd. v. Attwood (1905) 1 Cg. 357] or (b) when business is continued by the liquidator for the beneficial winding up of the company.

5. On the appointment of the liquidator, all the powers of the Board of Directors, managing director or 'manager' shall cease except (s.491):

(a) for the purpose of giving notice to the Registrar about the name of the liquidator appointed, or

(b) insofar as the company in general meeting or the liquidator may sanction the continuance of their powers.

Types of Voluntary Winding up As stated earlier voluntary winding up may be of three types:

(a) Members' Voluntary winding up;

(b) Creditors' Voluntary winding up.

(c) Voluntary winding up under supervision of the Court. Members' Voluntary Winding up Members' Voluntary winding up is possible only when the company is solvent and is able to pay its liabilities in full.

Following are the important provisions regarding members' voluntary winding up.

1. Declaration of solvency (s.488): Where it is proposed to wind up a company voluntarily, its directors, or in case the company has more than two directors, the majority of the directors, may at a meeting of the Board, make a declaration verified by an affidavit, to the effect that they have made a full enquiry into the affairs of the company and that having done so, they have formed the opinion that the company has no debts, or that it will be able to pay its debts in full within such period not

exceeding 3 years from the commencement of the winding up as may be specified in the declaration. In order to be effective, this declaration must be:

(i) made within five weeks immediately preceding the date of passing of the winding up resolution by the members;

(ii) delivered to the Registrar for filing before the said date;

(iii) accompanied by a copy of the report of the auditors of the company on the Profit and Loss account prepared since the date of the last account and the Balance-Sheet of the company made out as on the last mentioned date and also embodies a statement of the company's assets and liabilities as at that date. Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be punishable with imprisonment for a term which may extend to six-months, or with fine upto Rs 5,000 or with both. If the company is wound up in pursuance of a resolution passed within the period of five weeks after making the declaration, but its debts are not paid or provided for in full within the period specified in the declaration, it shall be presumed, until the contrary is shown, that the director did not have reasonable grounds for his opinion. If the above provisions are not complied with, the winding up shall not be a members' voluntary winding up [Vosica vs. Janda Rubber Works AIR (1950) East Punjab 180] and in such case provisions (s.490 and 498) relating to members voluntary winding up cannot apply and if liquidator is appointed in pursuance of s. 490 or 498 such appointment would be bad in law. In such a case the provisions relating to creditor's voluntary winding up (Ss. 500-509) should be followed and the violation of these provisions will make the winding up proceedings void ab initio (M. Kakshmiah v. Registrar of Companies, Trivandrum–unreported case decided by the Kerala High Court) and if default is made in calling a meeting of the creditors then the company and the director's' as the case may be, shall be punishable with fine which may extend to Rs 10,000 and in the case of default by the company, every officer of the company who is in default, shall be liable to the like punishment [s. 500 (6)]. The court may, if moved by the company or its shareholders, instead of treating the winding up proceedings as invalid, direct the company to convene the creditors meeting [Light of Asia Insurance Company, I.L.R. 1940 (2) Cal.325]. The above rules will be applicable even where a declaration of solvency has been filed but in

accordance with the provisions of s.488(2). The company, however, may pass a fresh resolution for its winding up the after and complying with the requirements of s.488 (Declaration of Solvency).

2. Appointment and remuneration of liquidators (s.490): The company in general meeting must:

(a) appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company; and

(b) fix the remuneration, if any, to be paid to be liquidator or liquidators. Any remuneration so fixed cannot be increased in any circumstances whatever, whether with or without the sanction of the court. No liquidator shall take charge of his office unless his remuneration is fixed. Further, if a vacancy occurs by death, resignation or otherwise in the office of the liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy. For this purpose a meeting may be convened by any contributory or the continuing liquidator or by the court on the application of any of them (s.492).

3. Board's power to cease: On the appointment of a liquidator, all the powers of the Board of Directors and of the Managing or whole time directors or manager shall cease except for purpose of giving a notice of such appointment to the Registrar. But their powers may continue if sanctioned by the general body or by the liquidator so far as the sanction applies (s.491).

4. Notice of appointment of liquidator to be given to registrar (s.493): The company must give notice to the Registrar regarding the appointment of liquidator within 10 days of his appointment. In case of default, the company and every officer of the company (including liquidator) who is in default, shall be punishable with fine which may extend to Rs 1,000 for every day during which the default continues.

5. Power of liquidator to accept shares, etc., as consideration of sale of property of the company (s.497): The liquidator may accept shares, policies or like interests in consideration of the sale of the company's undertaking to another company, with an object to distribute them amongst the members of transferor company, provided:

(a) a special resolution is passed by the company to that effect; and

(b) he purchases the interest of any dissenting member at a price to be determined by agreement or by arbitration. The money to the dissenting

members should be paid before the company is dissolved and should be raised in such manner as may be determined by special resolution.

6. Duty of liquidator to call creditor's meeting in case of insolvency (s.495): If the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the declaration of solvency, or that period has expired without the debts having been paid in full, he must forthwith summon a meeting of the creditors and must lay before the meeting a statement of the assets and liabilities of the company. If he fails to comply with the above requirements, he shall be punishable with fine which may extend to Rs 5,000.

7. Duty of the liquidator to call general meeting at the end of each year (s.496): In case winding up continues for more than one year the liquidator must:

(a) call a general meeting of the company at the end of the first year from the commencement of winding up and at the end of each succeeding year, or as soon thereafter as may be convenient within 3 months from the end of the year or such longer period as the Central Government may allow; and

(b) lay before the meeting an account of his acts and dealing and of the conduct of the winding up during the preceding year.

8. Final meeting and dissolution [s.497]: As soon as the affairs of the company are fully wound up, the liquidator must:

(a) make up an account of the winding up showing how the winding up has been conducted and the property of the company has been disposed of; and

(b) call a general meeting of the company for the purpose of laying the account before it, and giving any explanation thereof.

The meeting must be called by advertisement specifying the time, place and object of the meeting and must be published at least one month before the meeting in the Official Gazette and also in some newspaper circulating in the district where the registered office of the company is situated. Within one week after the meeting, the liquidator must send to the Registrar and the Official Liquidator each, a copy of the account and the return regarding holding of the meeting. In case quorum was not present at the meeting called, he must report accordingly. On receipt of the above documents, the Registrar will register them and the official liquidator shall make a scrutiny of the books and papers of the company and report to the CLB, the result of his scrutiny. If the report of the Official Liquidator shows that the affairs of the company have not been

conducted in a manner prejudicial to the interest of its members or to public interest, then, from the date of submission of report of the CLB, the company shall be deemed to be dissolved. In the case of an unfavourable report, the CLB shall direct the Official Liquidator to make a further investigation of the affairs of the company. On receipt of the report of the Official Liquidator on such further investigation, the CLB may either make an order that the company stands dissolved with effect from the date specified in the order or make such order as the circumstances of the case brought out in the report permit. Creditors' Voluntary Winding up The procedure in a creditors' voluntary winding up is based upon the assumption that the company is insolvent. The process of such type of winding up is dominated by the creditor. From the beginning, meetings of creditors are held in addition to those of the members. The chief power to appoint the liquidator is in the hands of the creditors and there is provision for the appointment of a committee of inspection, if desired, to which is left the fixing of the liquidator's remuneration. The detailed provisions as enlisted in Ss.500 to 509 are given below: Meeting of Creditors (s.500). When no statutory declaration of solvency has been made and filed as required by the Act, the Board of Directors, acting on behalf of the company must summon a meeting of the creditors, for the same day or the next day after the meeting at which the resolution for voluntary winding up is to be proposed. Notice of the meeting have to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company. Notice of the meeting should also be advertised in the Official Gazette and in two newspapers circulating in the district of the registered office or principal place of business of the company. The Board of Directors must prepare and lay before the meeting a statement of the position of the company's affairs, together with a list of its creditors and the estimated amounts of their claims. Violation of s.500 is punishable with fine which may extend to Rs 10,000. Notice to registrar. A copy of any resolution passed at the creditors' meeting must be filed with the Registrar within 10 days of the passing thereof. If default is made then the company and every guilty officer shall be punishable with fine which may extend to Rs 500 for every day of the default (s.501). Appointment of liquidator (s.502). The creditors and the members at their respective first meetings may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company. If

the creditor and the members nominate different persons, the creditor's nominee will as a rule be the liquidator. But any director, member or creditor may apply to the court for an order that the company's nominee or the Official Liquidator or some other person should be appointed. If no person is nominated by the creditors, the members' nominee shall be the liquidator. Vacancies in the office caused by death, resignation or otherwise may be filled by creditors, except where the liquidator was originally appointed by or by the direction of the court, when the court will on application fill the vacancy. Committee of inspection (s.503). The creditors at their first or any subsequent meeting may, if they think fit, appoint a committee of inspection of not more than five members. If such committee is appointed, the company may, either at the meeting at which the winding up resolution is passed, or at a later meeting, appoint five persons to serve on the committee. If the creditors object against the persons appointed by the company, then the matter will be referred to the court for the final decision. The powers of such committee are the same, as those of a Committee of Inspection appointed in a compulsory winding up. Fixing of liquidator's remuneration (s.504). The remuneration to be paid to the liquidator or liquidators has to be fixed by the committee of inspection or if there is no much committee, by the creditors. Where the remuneration is not so fixed, it must be determined by the court. Any remuneration once fixed shall not be increased in any circumstances, whatever, whether with or without sanction of the court. Board's powers to cease on appointment of liquidator (s.505). On the appointment of liquidator, all the powers of the Board of Directors shall cease, except in so far as the committee of inspection, or if there is not such committee, the creditors in general meeting, may sanction the continuance thereof. Duty of liquidator to call meeting of company and of creditors at the end of each year [s.508]. In the event of the winding up continuing for more than one year, the liquidator must call a general meeting of the company and a meeting of the creditors at the end of the first year, from the commencement of the winding up and at the end of each succeeding year, or as soon thereafter as may be convenient within 3 months from the end of the year or such longer period as the Central Government may allow. Further, he may lay before the meeting an account of his acts and dealings and of the conduct of winding up during the preceding year, together with a statement in the prescribed form and containing the

prescribed particulars with respect to the proceedings and position of the winding up. Final meeting and dissolution (s.509). As soon as the affairs of the company are fully wound up, the liquidator must:

(a) make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of; and

(b) call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meeting and giving any explanation thereof. Each such meeting must be called by advertisement and must specify the time, place and objects thereof and must be published at least one month before the meeting in the Official Gazette and also in some newspaper circulating in the district where the registered office of the company is situated. Within one week after the date of the meetings, the liquidator shall send to the Registrar and the Official Liquidator a copy of the account and a return of the meeting held [s.509 (3)]. The Official Liquidator, after scrutiny of the books and papers of the company, shall make a report to the court. If this report states that the affairs of the company have not been conducted in a manner prejudicial to the interest of the company or public then from the date of the submission of the report the company shall be deemed to be dissolved; otherwise the court will ask Official Liquidator to make further investigation and may, after that report, order that the company shall stand dissolved from the specified date [s. 509 (6)].

Distinction between Members' Voluntary Winding up and Creditor's Voluntary Winding up

1. Members' voluntary winding up can be resorted to by solvent companies and thus requires the filing of a 'declaration of solvency' by the directors of the company with the Registrar; Creditors' winding up, on the other hand, is resorted to by insolvent companies.

2. In members' voluntary winding up there is no need to have creditor's meeting. But in the case of creditors' voluntary winding up, a meeting of the creditors must be called immediately after the meeting of the members.

3. Liquidator, in the case of members' winding up is appointed by the members and members fix his remuneration. But in the case of creditors' voluntary winding up, if the members and creditors nominate two different persons as liquidators, creditors' nominee shall become the liquidator and his remuneration is fixed either by the committee of inspection or the creditors.

4. In the case of creditor's voluntary winding up, if the creditors so wish a 'Committee of Inspection' may be appointed. In the case of members' voluntary winding up, there is no provision for any such committee.

5. The proceedings of winding up are more on less controlled by members in case of members voluntary winding up while such control goes to the hands of creditors in case of creditors voluntary winding up. Voluntary Winding up under Supervision of the Court At any time after a company has passed a resolution for voluntary winding-up, the Court may make an order that the voluntary winding-up should continue subject to the supervision of the Court (Section 522). Application for such supervision order may be made either by a creditor, a contributory, the company, or the liquidator. One advantage of having a supervision order is that the liquidator is allowed to occupy the same position and exercise the same power (subject to restrictions where necessary) as voluntary liquidator. At the same time the advantage of a compulsory winding-up as regards stay of suits and other proceedings and making and enforcing calls etc., are also secured and the Court is empowered to exercise all the powers which it can exercise in a compulsory winding-up. In truth, a supervision order is an amalgam of both—a voluntary winding-up and a winding-up by Court as it is made on such terms and conditions as the Court thinks just. Such an order is passed by the court under the following circumstances:

1. the resolution for winding-up was obtained by fraud, or
2. the rules relating to winding-up order are not being observed, or
3. the liquidator is prejudicial or is negligent in collecting the assets. The Court, in such a case, gets the same powers as it has in the case of compulsory winding-up. The Court may also appoint an additional liquidator or liquidators. It may also remove any liquidator and fill any vacancy occasioned by the removal or by death or by resignation (Section 524). A liquidator so appointed shall have the same powers, be subject to the same obligations and in all respects stand in the same position as if he had been appointed in accordance with the provisions of the Act relating to the appointment of liquidator in voluntary winding-up, subject, however, to any restrictions the Court may impose (Section 525). Unless the Court imposes restrictions on the exercise of any powers by the liquidator, he will have all the powers conferred on a liquidator in voluntary winding-up [s.526(1)]. The Court will have as wide powers as in compulsory

winding-up. The Court may stay suits or legal proceedings. It can make or enforce calls and all other orders necessary for beneficial winding-up of the company [s.526(2)]. Powers of Court to Order Compulsory Winding-up (s. 527): The court may pass an order for compulsory winding-up superseding the order of winding-up under its supervision. The Court may then appoint a person who is the liquidator, either provisionally or permanently to be liquidator in winding-up by the court in addition to, and subject to the control of Official Liquidator. Dissolution of Company: In the case of winding-up under the supervision of the Court, the company is deemed to be dissolved from the date the order of the court is issued to that effect. The Court will issue such an order when the affairs of the company have been completely wound-up and the liquidator has made an application to the Court requesting it to order for the dissolution of the company. Where a company has been dissolved according to the due process of law, (except under Section 560-defunct companies) on the expiry of 5 years from the date of dissolution of the company, the name of the company should be struck off the Register of companies after noting against its name that it has been dissolved

4.10.1 NATIONAL COMPANY LAW TRIBUNAL (NCLT)

The **National Company Law Tribunal (NCLT)** is a quasi-judicial body established under the Companies Act of 2013 in India. It replaced the Company Law Board and operates based on rules framed by the Central Government. NCLT handles disputes arising in Indian companies and serves as a special court where civil court cases are barred from jurisdiction. Its powers include addressing issues related to company management, investigating unlawful acts, approving conversions, and handling winding-up proceedings.

4.10.2 NATIONAL COMPANY LAW APPELIATE TRIBUNAL (NCLAT)

The National Company Law Appellate Tribunal (NCLAT) is a key judicial body in India that plays a critical role in the country's corporate governance framework. Here are some details about NCLAT:

1. **Establishment**: The NCLAT was established under the Companies Act, 2013 to hear and adjudicate appeals against orders passed by the National Company Law Tribunal (NCLT).
2. **Jurisdiction**: NCLAT primarily deals with appeals arising from decisions of the NCLT related to corporate matters such as mergers and acquisitions, insolvency and bankruptcy proceedings, disputes between companies and shareholders, and other issues governed by the Companies Act and other corporate laws.
3. **Composition**: The tribunal consists of a chairperson and judicial members who are usually retired judges from the Supreme Court or High Courts, as well as technical members who possess expertise in corporate matters such as law, finance, accounting, or management.
4. **Powers and Functions**: NCLAT has the authority to hear appeals against orders passed by NCLT benches across India. It also has the power to review decisions and pass orders that ensure fair and just resolution of corporate disputes.
5. **Appeals Process**: Appeals to NCLAT are typically filed by aggrieved parties who are dissatisfied with the decisions of NCLT. The tribunal reviews the case based on legal grounds and evidence presented, and its decisions are binding unless overturned by a higher court.
6. **Significance**: NCLAT plays a crucial role in promoting transparency, accountability, and efficiency in India's corporate sector. Its decisions often set precedents that influence corporate governance practices and legal interpretations.
7. **Challenges and Developments**: Like any judicial body, NCLAT faces challenges such as backlog of cases, resource constraints, and ensuring timely disposal of appeals. Efforts are ongoing to streamline processes and enhance the tribunal's effectiveness.

Overall, NCLAT serves as a vital institution in India's corporate legal framework, providing a platform for resolving complex corporate disputes and ensuring compliance with corporate laws and regulations.

4.11 SPECIAL COURTS.

In a bustling city, tucked away from the usual courthouse crowds, lies a discreet building housing the Special Court of Judicial Integrity. Established by legislative mandate, this court stands as a bastion against corruption within the judiciary, tasked with investigating and prosecuting cases involving judicial misconduct and malpractice. Its solemn chambers, adorned with symbols of justice and impartiality, echo with the weight of its purpose: to uphold the integrity of the legal system and restore public trust in the judiciary. Led by seasoned judges and supported by a dedicated team of legal experts and investigators, the court operates with meticulous adherence to due process, ensuring every case is rigorously examined and adjudicated. Its decisions, aimed not only at punishing wrongdoing but also at setting exemplary standards of ethical conduct, serve as a beacon of accountability in the realm of law. Despite its low profile, the court's impact reverberates through legal circles, influencing reforms and fostering a culture of transparency and fairness. As it continues to navigate complex legal landscapes and confront challenges to its authority, the Special Court of Judicial Integrity remains steadfast in its commitment to upholding the principles upon which justice stands.

- **Purpose and Establishment**: Special courts are established with a specific mandate to handle particular types of cases or issues that require specialized knowledge or procedures. They often address complex matters that ordinary courts may not have the expertise or resources to handle effectively.
- **Jurisdiction**: The jurisdiction of special courts is defined by legislation or executive order, focusing on areas such as military justice, terrorism, corruption, human rights violations, or economic crimes. They may operate at national, regional, or international levels.
- **Composition**: Special courts typically consist of judges and sometimes jurors with expertise in the relevant field. They may include legal specialists, forensic experts, and investigators to ensure thorough examination and understanding of the cases brought before them.
- **Procedures**: These courts often have unique procedural rules tailored to the types of cases they handle. This may include expedited processes, protective measures for witnesses, or allowances for classified information.
- **Independence and Impartiality**: Maintaining independence from political influence is crucial for special courts to ensure impartiality and fairness in their

decisions. They often have safeguards in place to protect against undue interference.

- **Transparency and Accountability**: Despite their specialized nature, special courts are expected to uphold principles of transparency and accountability. This includes publicly accessible proceedings and decisions that adhere to legal standards.
- **Impact and Legacy**: Special courts can have a significant impact on legal systems and societies by addressing critical issues and setting precedents. Their decisions may influence reforms, improve governance, and strengthen the rule of law.
- **Challenges**: Special courts may face challenges such as resource constraints, public scrutiny, and balancing the need for efficiency with due process rights. Maintaining public trust and legitimacy is essential for their continued effectiveness.
- **International Examples**: Examples of special courts include the International Criminal Court (ICC), established to prosecute individuals for genocide, war crimes, and crimes against humanity, and domestic tribunals like the United States Tax Court, which specializes in tax-related disputes.
- **Future Trends**: The concept of special courts continues to evolve with changes in global issues and legal frameworks. There is ongoing debate about their effectiveness, scope, and role in promoting justice and accountability in contemporary society.

4.12 Let's Sum Up

The unit on Management & Administration encompasses a comprehensive overview of the roles and legal framework governing directors within a corporation. It includes the legal position and duties of the Board of Directors, processes for appointment and removal, and disqualification criteria. Essential administrative details such as obtaining a Director Identification Number (DIN) and understanding the scope of directorships are covered. The unit outlines the powers and responsibilities of directors, the function of board committees, and handling related party transactions. Specific scenarios like contracts made by one person companies and regulations on insider trading are addressed. Additionally, it covers the roles of managing directors and managers, requirements for secretarial audits, and the administrative processes involved in

winding up a company. Legal bodies such as the National Company Law Tribunal (NCLT), the National Company Law Appellate Tribunal (NCLAT), and special courts play crucial roles in corporate governance and dispute resolution. This framework ensures that corporate governance is maintained with transparency, accountability, and legal compliance

SECTION 4.1 to 4.11 INTRODUCTIONS OF MANAGEMENT AND ADMINISTRATION

4.12 Check Your Progress – Quiz – 1

1. Audit Note Book contains: ---
   (A) Various dates of reference.
   (B) Details of work done.
   C) Notes regarding item requiring clarification, explanations, etc.
   (D) All of the above.

2. Which of the following has a broader scope?
   (A) Internal Control.
   (B) Internal Audit.
   (C) Internal Checking.
   (D) None of the above.

3. An internal auditor is :
   (A) Temporary Employee.
   (B) Permanent Employee.
   (C) Daily Wager.
   (D) None of the above.

4. The main object of vouching is :
   (A) To prepare trial balance.
   (B) Conduct routine checking.
   (C) Verify authenticity & authority of transactions.
   (D) Checking of vouchers

5. Valuation is the base of:
   (A) Verification.
   (B) Marketing.
   (C) Internal checking.
   (D) Vouching.

4.13 Unit Summary

.Basically, it's a section that includes all the most important information about people responsible for company's management. By adding such section to your business plan you show the investors how exactly is your business structured. You also demonstrate them who are involved in the development of your company and how's the whole business is managed.

This section is very important because it demonstrates the experience of your team, and therefore the strength of your company the most. It supports all the data provided in other sections of your business plan and can influence the investors' decision a lot.

For better understanding, you can check the examples of management summaries included in a bakery business plan and in a coffee shop business plan.

4.14 Glossary

Authority	The right to make decisions and take action.
Decision Making-	The process of choosing a course of action.
Motivation	The driving force that compels employees to act
Audit	An official inspection of an organization's accounts, typically by an independent body.
Inside Trader	The illegal practice of trading on the stock exchange to one's own advantage through having access to confidential information.

4.15 Self-Assessment

Essay type questions

1. Give a brief notes on management and Administration.
2. What are the procedure for appointment and removal of directors?
3. Explain Board of directors duties and powers.

4. Write a short notes on
   (a) Insider Trading
   (b) Managing director
   (c) Manager
   (d) Secretarial Audit
5. .Related party Transaction.
6. Explain Director Identification Number.
7. Write brief notes on Board of committees.
8. What do mean by contract by one-person company?

4.16 Case Study

Insider Trading and Board of Directors' Responsibilities

Background

Company: XYZ Ltd. is a publicly listed company in the technology sector.

Key Individuals:

- **Mr. A**: Managing Director of XYZ Ltd.
- **Mr. B**: Chief Financial Officer (CFO) of XYZ Ltd.
- **Mr. C**: An independent director on the board of XYZ Ltd.
- **Ms. D**: Compliance Officer of XYZ Ltd.

Scenario

XYZ Ltd. is preparing to announce its quarterly financial results, which show a significant increase in revenue and profit. Mr. A, the Managing Director, is aware of this information ahead of its public release. Mr. A shares this confidential information with Mr. B, the CFO, who then informs his friend, Mr. E, about the impending positive financial results.

Mr. E, acting on this non-public information, buys a substantial number of shares in XYZ Ltd. The share price of XYZ Ltd. rises sharply after the official announcement of the financial results, leading to significant profits for Mr. E.

Key Issues

1. **Insider Trading**: Mr. A and Mr. B have engaged in insider trading by sharing non-public information with Mr. E, who then used this information to trade XYZ Ltd.'s shares.

2. **Board of Directors' Responsibilities**: The Board, including Mr. C, the independent director, must address this breach of trust and regulatory compliance.
3. **Compliance and Corporate Governance**: Ms. D, the Compliance Officer, has the duty to ensure that the company adheres to regulatory requirements regarding insider trading and must investigate the breach.

Legal Framework

1. **SEBI (Prohibition of Insider Trading) Regulations, 2015**: These regulations prohibit insider trading and mandate the disclosure of material information to prevent misuse.
2. **Companies Act, 2013**: Outlines the duties and responsibilities of directors, including the duty to act in the best interest of the company and its stakeholders.
3. **National Company Law Tribunal (NCLT)**: Handles cases related to corporate misconduct and disputes, including those involving insider trading.
4. **National Company Law Appellate Tribunal (NCLAT)**: Acts as the appellate body for decisions made by the NCLT.

Actions Taken

1. **Investigation by Compliance Officer**: Ms. D initiates an internal investigation upon noticing unusual trading patterns. She reviews communications and trading records.
2. **Board Meeting**: The Board of Directors, led by Mr. C, convenes an emergency meeting to discuss the issue. They decide to suspend Mr. A and Mr. B pending further investigation.
3. **Report to SEBI**: Ms. D reports the incident to the Securities and Exchange Board of India (SEBI) as required by law.
4. **Internal Disciplinary Action**: Based on the findings, the Board decides to terminate the employment of Mr. A and Mr. B for gross misconduct and violation of company policies.

Outcome

1. **NCLT Proceedings**: The case is taken to the NCLT, which imposes penalties on Mr. A, Mr. B, and Mr. E for insider trading.
2. **NCLAT Appeal**: Mr. A and Mr. B appeal the decision at the NCLAT, but the tribunal upholds the NCLT's ruling.

3. **Strengthening Compliance**: XYZ Ltd. enhances its compliance programs, conducts regular training for its directors and employees on insider trading regulations, and implements stricter internal controls to prevent future occurrences.

Lessons Learned

1. **Importance of Compliance**: Companies must ensure robust compliance frameworks to detect and prevent insider trading.
2. **Directors' Duties**: Directors must act with integrity and prioritize the interests of the company and its shareholders.
3. **Effective Governance**: Strong corporate governance practices, including the role of independent directors, are crucial in maintaining corporate integrity and accountability.
4. **Regulatory Cooperation**: Prompt reporting and cooperation with regulatory authorities are essential in addressing corporate misconduct effectively.

This case study illustrates the critical role of the Board of Directors and compliance officers in maintaining corporate governance standards and preventing insider trading.

4.17 Task

Develop a comprehensive Insider Trading Prevention Policy for XYZ Ltd., ensuring it aligns with SEBI (Prohibition of Insider Trading) Regulations, 2015, and the Companies Act, 2013. This policy should clearly define insider trading, establish procedures for trading windows, pre-clearance of trades, disclosure requirements, and penalties for violations, while also emphasizing the importance of confidentiality and compliance. Additionally, implement a robust training and awareness program for all employees and stakeholders, and set up mechanisms for monitoring, reporting violations, and continuous improvement to maintain strict adherence and effectiveness.

4.18 E – Contents

S.No	Topic	E-Content Link
1.	Director	https://icmai.in/upload/PPT_Chapters_RCs/Bhubaneswar-

		120715.pdf
2.	Role of director	https://www.taxmann.com/post/blog/meaning-of-a-director-appointment-qualifications-legal-position-etc
3.	E-book of administration and management.	https://www.everand.com/book/387248394/Administration-and-Management-Theory-and-Techniques-A-Guide-for-Practising-Managers
4.	Management e-books	http://www.free-management-ebooks.com/
5.	Principles of management e-book.	https://www.amazon.in/PRINCIPLES-MANAGEMENT-ADMINISTRATION-CHANDRA-BOSE-ebook/dp/B00TTLQ190

4.19 Reference

1. https://www.clearias.com/corporate-governance/
2. https://www.iod.com/
3. https://corpgov.law.harvard.edu/

UNIT-V WINDING UP

INTRODUCTION TO WINDING UP
Meaning-Modes –Compulsory Winding up-Voluntary Winding Up-Consequences of winding up order – power of Tribunal-Petition for winding Up- Company Liquidator.

Self-Learning Material Development – STAGE – 1

Unit Module Structuring

- Overview of winding up
- Modes ,Compulsory&Voluntary winding up
- Consequences of winding up order
- Power of Tribunal
- petition for winding up
- Company liquidators based on Incorporation, Liabilities ,Number of members and control

5.1 INTRODUCTION TO WINDING UP

Winding up of a company is the process whereby its life is ended and its property administered for the benefit of its creditors and members. An administrator, called a 'liquidator', is appointed and he takes control of the company, collects its assets, pays its debts and finally distributes any surplus among the members in accordance with their rights. In simple words winding up means applying the assets of a company in the discharge of its liabilities and returning any surplus to those entitled to it, subject to the cost of doing so. The statutory process by which this is achieved is called 'liquidation'. Winding up of a company differs from insolvency of an individual inasmuch as a company

5.2 MODES OF WINDING UP

A company may be wound up in any of the three ways: A. Compulsory winding up under an order of the Court. B. Voluntary winding up. C. A voluntary winding up

under the supervision of the Court. Winding up by the Court Winding up by the Court, also called compulsory winding up, may be ordered in cases mentioned in s.433. The Court will make an order for winding up on an application by any of the persons enlisted in s.439. Grounds for compulsory winding up [s.433(3)]: A company may be wound up by the Court on the following grounds:

1. Special resolution: The company may, by special resolution, resolve that it be wound up by the Court. The resolution may be passed for any cause whatsoever. However, the Court may not order winding up if it finds it to be opposed to public interest or the interest of the company as a whole.
2. Default in holding statutory meeting: If default is made in delivering the statutory report to the Registrar or in holding the statutory meeting, the company may be ordered to be wound up. Petition on this ground can be presented either by the Registrar or by a contributory. If it has to be filed by any other person it should be filed before the expiration of 14 days after the last day on which the statutory meeting ought to have been held [s.439 (7)].
3. Failure to commence business: If a company does not commence business within a year from incorporation or suspends business for a whole year, it may be ordered to be wound up. Failure to commence or to carry on business is not treated as a ground for compulsory winding up unless the company has no intention of carrying on business or it has become impossible to do so. If there are sufficient ground to prove that there are justifiable reasons for not commencing the business within time, it will not be ordered to be wound up (Murlidhar v. Bengal Steamship Co. 1920).
4. Reduction in membership: If the number of members is reduced below the statutory minimum of 7 in a public company or 2 in a private company, the company may be ordered to be wound up.
5. Inability to pay debts: The court may order a company to be wound up if it is unable to pay its debts. According to s.434, a company shall be deemed to be unable to pay its debts if:

   (a) A creditor for more than one lakh rupees has served on the company at its registered office a demand under his hand requiring payment and the company has for three weeks thereafter neglected to pay or secure or compound the sum to the reasonable satisfaction of the creditor; or

   (b) execution or other process issued on a judgement or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) it is proved to the satisfaction of the Court that the company is unable to pay its debts, taking into account its contingent and prospective liabilities. The provision that the Court is to take into account the company's contingent and prospective liabilities is important. A company which has to date paid all its debts as they fell due may still be ordered to be wound up if a consideration of its assets and liabilities shows that it will or may shortly be unable to do so. Inability is to be seen in the commercial sense of a running enterprise and not in the sense of liquidation, i.e., if the company cannot meet its current demand, even though its assets, when realised, would exceed its liabilities, it will be deemed to be unable to pay its debt and may be wound up. But the important condition to be fulfilled is that the creditor should have a complete title to the debt and the debt must have become payable. Where there is a bona fide dispute regarding the debt, the company cannot be charged to have neglected to pay it.

6. Just and equitable: The Court may also order for the winding up of a company if it is of the opinion that it is just and equitable that the company should be wound up. In exercising its power on this ground, the Court shall give due weight to the interest of the company, its employees, creditors and shareholders and the interest of the general public. The relief based on the just and equitable clause is in the nature of a last resort when other remedies are not efficacious enough to protect the general interests of the company. While in the above five cases definite conditions should be fulfilled but in the 'just and equitable' clause the entire matter is left to the 'wide and wise' direction of the CLB. The winding up must be just and equitable not only to the persons applying but also to the company and to all its shareholders. [Hind Overseas Pvt. Ltd. v. R.P. Jhunjhunwala (1977) ASIL. XIII] A few of the examples of 'just and equitable' grounds on the basis of which the CLB may order the winding up are given below:

(i) When the substratum of the company has gone: The substratum of a company is deemed to be gone where its objects have failed or become impossible of achievement. For example in Re German Date Coffe Co. (1882) a company was formed to manufacture dates under patent, which was never granted hence the substratum of company is not there.

(ii) When there is a complete deadlock in the management: A company will be wound up on this ground even though it is making good profits. In ReYenidje Tobacco Co. Ltd. A and B, the only shareholders and directors of a Private Limited

company became so hostile to each other that neither of them would speak to the other except through the secretary. Held, there was a complete deadlock and consequently the company was wound up.

(iii) Where the company was formed for fraudulent or illegal purposes: For this purpose, fraud in the prospectus or in the manner of conducting company's business is not sufficient. It must be shown that the original object of creating the company was fraudulent or illegal [Re T. E. Brismead& Sons Ltd. (1897)1 Ch.45].

(iv) Where the principal shareholders have adopted an aggressive or oppressive policy towards the minority: [R. Sabapathy Rao v. Sabapathy Press Ltd. AIR (1925) Mad. 489]. However, the CLB will order winding up only when it is satisfied that it is impossible for the business of the company to be carried on for the benefit of the company as a whole because of the way in which voting power is held and used.

(v) When the company is a 'bubble',: i.e., it never had any real business [ReLondon and Country Coal C. (1867) L.R. 3 Eq. 365].

(vi) Where the business of the company cannot be carried except at loss: But, mere apprehension on the part of some shareholders that loss instead of gain will result has been held to be no ground [Re-Mahamandal Shastra Prakashik Samiti Ltd. (1917) 15 All L.T. 193]. Similarly, in Re-Shah Steamship Navigation Co. [(1901) 10 Bom. L.R. 107], it was that 'The Court (now CLB) will not be justified in making winding up order merely on the ground that the company has made losses and it was likely to make further losses.

(vii) Where a private company is in essence or substance a partnership, it may be ordered to be wound up if such circumstances exist under which it would be just and equitable for the court to order for the dissolution of the partnership firm. In Re-Davis and Coltett Ltd. [(1935) Ch. 693] one member improperly excluded the other, who held half the shares, from taking part in the company's business. Held, the company be wound up.

(viii) Requirements for Investigation: Where directors were making allegations of dishonesty against each other in respect of defalcations of the funds of the company, the company was ordered to be wound up on the ground that it was a case in which the conduct of some of the officers of the company required an investigation which could only be obtained in a winding up by the Court [Re Varieties Ltd. (1893) 2 Ch. 235].

5.3 COMPULSORY WINDING UP

A petition for the compulsory winding up of a company may be presented by:

(1) the company itself by the passing of a special resolution; or

(2) any creditor or creditors, including any contingent or prospective creditor or creditors; o r (3) a contributory or contributories; or

(4) any combination of creditors, company or contributories acting jointly or separately; or (5) the Registrar; or

(6) any person authorised by the Central Government, as per s.243.

(7) the official liquidator (s.440).

1. The company [s.439(1) (a)]: A company may make a petition for its winding up, when the members of the company have so resolved by passing a special resolution. However, it is not very common for companies to apply for winding up orders since, if desired, they have only to pass a special resolution for voluntary winding up under s. 484 of the Act. But, where the directors find the company to be insolvent due to circumstances which ought to be investigated by the CLB, they may file a petition for winding up order on behalf of the company.

2. Creditor's petition [s.439 (1) (b)]: A creditor has a right to a winding up. If he can prove that he claims an undisputed debt and that the company has failed to discharge it. The word 'Creditor' includes secured creditor, debenture holder and a trustee for debenture holders. It is not even necessary that the secured creditor should give up his security [In Re-India Electric Works (1969) 2 Comp. L.T. 169]. A contingent or prospective creditor (such as the holder of a bill of exchange not yet matured or of debentures not yet payable) is also entitled to petition for winding up the company. But, he must give a reasonable security for costs and establish a prima facie case for winding up [s.439 (8)]. Sometimes a creditor's petition is opposed by other creditors. In such cases the CLB may ascertain the wishes of the majority of the creditors. However, the opinion of the majority of creditors does not bind the Court. The question will ultimately depend upon the state of the company. If the company is commercially insolvent and the object of trading at a profit cannot be attained, winding up order will follow as a matter of course. A creditors' petition is generally based on the ground that the company is unable to pay its debts. He will not ordinarily be heard to urge that a winding up order should be made because the substratum of the company is gone which is

usually the proper concern of the company's shareholders [Bukhtiarpur Bihar Light Rly. Co. Ltd. v. Union of India, AIR (1954) Cal.499]. However, if the debt of a petitioning creditor is disputed no order for winding up can be made [Md. Amin Bros v. Dominition of India, AIR (1952) Cal. 323].

3.Contributory's petition [s.439(1) (c)]: A 'contributory' means any person liable to contribute to the assets of a company in the event of its being wound up. But for this purpose the term 'contributory' includes a holder of fully paid shares. A 'contributory', however, may petition only:

(i) on the ground that the number of members is reduced below the statutory minimum of seven members in case of public company and two in case of a private company;

(ii) on any other ground if the shares in respect of which he is a contributory or some of them were originally allotted to him, or/have been held by him and registered in his name for at least six out of the eighteen months preceding the commencement of the winding up, or/ have devolved upon him through the death of the former holder. Example: A transfer though executed and stamped in June, 1997, was registered in October, 1998. The shareholder presented a winding up petition in December, 1998. Held: the petition was not valid since she had not held shares for six months as required by the Act. A holder of fully paid shares is a contributory for the purpose of a petition not because he is liable to contribute but because he may have an interest in the assets in a winding up. The section provides: "A contributory shall be entitled to present a petition for winding up a company notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities." The legal representative of a deceased shareholder may petition. Even an insolvent shareholder, whose name is still there on the register, may, at the instance of the assignee, petition.

4. Joint petition [s.439(1) (d)]: By all or any of the parties specified above. This means that any combination of the company, the creditors and the contributories can present a petition for winding up.

5. The registrar [s.439(1) (e)]: The registrar may file a petition where:

(i) a default is made in delivering the statutory report to him or in holding the statutory meeting; o r

(ii) the company has not commenced its business within a year from its incorporation; or

(iii) the number of its members has fallen below the statutory minimum; or

(iv) the financial condition of the company, as disclosed in its balancesheet or from the report of a special auditor appointed under s.233A or any inspector appointed under Ss.235 to 237 it appears that it is unable to pay its debts, or

(v) it is just and equitable that the company be wound up. The petition on the ground of default in delivering the statutory report or holding the statutory meeting cannot be presented before the expiration of 14 days after the last day on which the statutory meeting ought to have been held. In any case, the registrar cannot present the petition unless sanctioned by the Central Government.

6. Central Government petition (s.243): The Central Government may petition for winding up where it appears from the report of inspectors appointed to investigate the affairs of a company under s.235 that the business of the company has been conducted for fraudulent or unlawful purposes. The Government may authorise any person to act on its behalf for the purpose. [s.439 (1) (b)]. 7. Official liquidator's petition (s.440): An official liquidator may present a petition for winding up by the Court where a company is being wound up voluntarily. The Court, however, shall not make a winding up order unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interest of the creditors or contributories or both.

5.4 VOLUNTARY WINDING UP

Winding up by the creditors or members without any intervention of the Court is called 'voluntary winding up', According to section 484, voluntary winding could be of three types– creditor's voluntary winding up, members voluntary winding up and voluntary winding up under court's supervision. In voluntary winding up, the company and its creditors are left to settle their affairs without going to the CLB for directions or orders if and when necessary. Winding up should not be confused with insolvency. Company may be solvent and running a prosperous business yet it may decide to be wound up voluntarily, e.g., in pursuance of a scheme of reconstruction or amalgamation. A company may be wound up voluntarily: (1) if the company in general meeting passes an ordinary resolution for voluntary winding up where the period fixed by the Articles for the duration of the company has expired or the event has occurred on which under the Articles the company is to be dissolved; (2) if the

company resolves by special resolution that it shall be wound up voluntarily (s.484). When a company has passed a resolution for voluntary winding up, it must within 14 days of the passing of the resolution, give notice of the resolution by advertisement in Official Gazette and also in some newspaper circulating in the district where the registered office of the company is situated i.e. any vernacular newspaper. In case of default, the company and every officer of the company who is in default shall be punishable with fine which may extend upto Rs 500 for every day during which the default continues (s.485).

Consequences of voluntary winding up. The consequences of voluntary winding up are as follows:

1. A voluntary winding up is deemed to commence at the time when the resolution for voluntary winding up is passed (s.486). This will be so even when after passing a resolution for voluntary winding up, a petition is presented for winding up by the Court (s.441).

2. The company, from the commencement of winding up, must cease to carry on its business except so far as may be required to secure a beneficial winding up although the corporate state and powers of the company continue until final dissolution (s.487).

3. All transfer of shares and alterations in the status of members, made after the commencement, are void unless sanctioned by the liquidator (s.536).

4. A resolution to wind up voluntarily operates as notice of discharge to the employees of the company (Fowler v. Commercial Times Co.) except:

   (a) when the liquidation is only with a view to 'reconstruction' [Midland Counties Bank Ltd. v. Attwood (1905) 1 Cg. 357] or

   (b) when business is continued by the liquidator for the beneficial winding up of the company.

5. On the appointment of the liquidator, all the powers of the Board of Directors, managing director or 'manager' shall cease except (s.491):

   (a) for the purpose of giving notice to the Registrar about the name of the liquidator appointed, or

   (b) insofar as the company in general meeting or the liquidator may sanction the continuance of their powers.

Types of Voluntary Winding up As stated earlier voluntary winding up may be of three types:

(a) Members' Voluntary winding up;

(b) Creditors' Voluntary winding up.

(c) Voluntary winding up under supervision of the Court. Members' Voluntary Winding up Members' Voluntary winding up is possible only when the company is solvent and is able to pay its liabilities in full. Following are the important provisions regarding members' voluntary winding up. 1. Declaration of solvency (s.488): Where it is proposed to wind up a company voluntarily, its directors, or in case the company has more than two directors, the majority of the directors, may at a meeting of the Board, make a declaration verified by an affidavit, to the effect that they have made a full enquiry into the affairs of the company and that having done so, they have formed the opinion that the company has no debts, or that it will be able to pay its debts in full within such period not exceeding 3 years from the commencement of the winding up as may be specified in the declaration. In order to be effective, this declaration must be:

(i) made within five weeks immediately preceding the date of passing of the winding up resolution by the members;

(ii) delivered to the Registrar for filing before the said date;

(iii) accompanied by a copy of the report of the auditors of the company on the Profit and Loss account prepared since the date of the last account and the Balance-Sheet of the company made out as on the last mentioned date and also embodies a statement of the company's assets and liabilities as at that date. Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be punishable with imprisonment for a term which may extend to six-months, or with fine uptoRs 5,000 or with both. If the company is wound up in pursuance of a resolution passed within the period of five weeks after making the declaration, but its debts are not paid or provided for in full within the period specified in the declaration, it shall be presumed, until the contrary is shown, that the director did not have reasonable grounds for his opinion. If the above provisions are not complied with, the winding up shall not be a members' voluntary winding up [Vosica vs. Janda Rubber Works AIR (1950) East Punjab 180] and in such case provisions (s.490 and 498) relating to members voluntary winding up cannot apply and if liquidator is appointed in pursuance of s. 490 or 498 such appointment would be bad in law. In

such a case the provisions relating to creditor's voluntary winding up (Ss. 500-509) should be followed and the violation of these provisions will make the winding up proceedings void ab initio (M. Kakshmiah v. Registrar of Companies, Trivandrum–unreported case decided by the Kerala High Court) and if default is made in calling a meeting of the creditors then the company and the director's' as the case may be, shall be punishable with fine which may extend to Rs 10,000 and in the case of default by the company, every officer of the company who is in default, shall be liable to the like punishment [s. 500 (6)]. The court may, if moved by the company or its shareholders, instead of treating the winding up proceedings as invalid, direct the company to convene the creditors meeting [Light of Asia Insurance Company, I.L.R. 1940 (2) Cal.325]. The above rules will be applicable even where a declaration of solvency has been filed but in accordance with the provisions of s.488(2). The company, however, may pass a fresh resolution for its winding up the after and complying with the requirements of s.488 (Declaration of Solvency). 2. Appointment and remuneration of liquidators (s.490): The company in general meeting must: (a) appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company; and (b) fix the remuneration, if any, to be paid to be liquidator or liquidators. Any remuneration so fixed cannot be increased in any circumstances whatever, whether with or without the sanction of the court. No liquidator shall take charge of his office unless his remuneration is fixed. Further, if a vacancy occurs by death, resignation or otherwise in the office of the liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy. For this purpose a meeting may be convened by any contributory or the continuing liquidator or by the court on the application of any of them (s.492). 3. Board's power to cease: On the appointment of a liquidator, all the powers of the Board of Directors and of the Managing or wholetime directors or manager shall cease except for purpose of giving a notice of such appointment to the Registrar. But their powers may continue if sanctioned by the general body or by the liquidator so far as the sanction applies (s.491). 4. Notice of appointment of liquidator to be given to registrar (s.493): The company must give notice to the Registrar regarding the appointment of liquidator within 10 days of his appointment. In case of default, the company and every officer of the company (including liquidator) who is in default, shall be punishable with fine which may

extend to Rs 1,000 for every day during which the default continues. 5. Power of liquidator to accept shares, etc., as consideration of sale of property of the company (s.497): The liquidator may accept shares, policies or like interests in consideration of the sale of the company's undertaking to another company, with an object to distribute them amongst the members of transferor company, provided: (a) a special resolution is passed by the company to that effect; and (b) he purchases the interest of any dissenting member at a price to be determined by agreement or by arbitration. The money to the dissenting members should be paid before the company is dissolved and should be raised in such manner as may be determined by special resolution. 6. Duty of liquidator to call creditor's meeting in case of insolvency (s.495): If the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the declaration of solvency, or that period has expired without the debts having been paid in full, he must forthwith summon a meeting of the creditors and must lay before the meeting a statement of the assets and liabilities of the company. If he fails to comply with the above requirements, he shall be punishable with fine which may extend to Rs 5,000. 7. Duty of the liquidator to call general meeting at the end of each year (s.496): In case winding up continues for more than one year the liquidator must: (a) call a general meeting of the company at the end of the first year from the commencement of winding up and at the end of each succeeding year, or as soon thereafter as may be convenient within 3 months from the end of the year or such longer period as the Central Government may allow; and (b) lay before the meeting an account of his acts and dealing and of the conduct of the winding up during the preceding year. 8. Final meeting and dissolution [s.497]: As soon as the affairs of the company are fully wound up, the liquidator must: (a) make up an account of the winding up showing how the winding up has been conducted and the property of the company has been disposed of; and (b) call a general meeting of the company for the purpose of laying the account before it, and giving any explanation thereof. The meeting must be called by advertisement specifying the time, place and object of the meeting and must be published at least one month before the meeting in the Official Gazette and also in some newspaper circulating in the district where the registered office of the company is situated. Within one week after the meeting, the liquidator must send to the Registrar and the Official Liquidator each, a copy of the account and the return

regarding holding of the meeting. In case quorum was not present at the meeting called, he must report accordingly. On receipt of the above documents, the Registrar will register them and the official liquidator shall make a scrutiny of the books and papers of the company and report to the CLB, the result of his scrutiny. If the report of the Official Liquidator shows that the affairs of the company have not been conducted in a manner prejudicial to the interest of its members or to public interest, then, from the date of submission of report of the CLB, the company shall be deemed to be dissolved. In the case of an unfavourable report, the CLB shall direct the Official Liquidator to make a further investigation of the affairs of the company. On receipt of the report of the Official Liquidator on such further investigation, the CLB may either make an order that the company stands dissolved with effect from the date specified in the order or make such order as the circumstances of the case brought out in the report permit.

Creditors' Voluntary Winding up The procedure in a creditors' voluntary winding up is based upon the assumption that the company is insolvent. The process of such type of winding up is dominated by the creditor. From the beginning, meetings of creditors are held in addition to those of the members. The chief power to appoint the liquidator is in the hands of the creditors and there is provision for the appointment of a committee of inspection, if desired, to which is left the fixing of the liquidator's remuneration. The detailed provisions as enlisted in Ss.500 to 509 are given below: Meeting of Creditors (s.500). When no statutory declaration of solvency has been made and filed as required by the Act, the Board of Directors, acting on behalf of the company must summon a meeting of the creditors, for the same day or the next day after the meeting at which the resolution for voluntary winding up is to be proposed. Notice of the meeting have to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company. Notice of the meeting should also be advertised in the Official Gazette and in two newspapers circulating in the district of the registered office or principal place of business of the company. The Board of Directors must prepare and lay before the meeting a statement of the position of the company's affairs, together with a list of its creditors and the estimated amounts of their claims. Violation of s.500 is punishable with fine which may extend to Rs 10,000. Notice to registrar. A copy of any resolution passed at the creditors' meeting must be filed with the Registrar within 10 days of the passing thereof. If default is made then the

company and every guilty officer shall be punishable with fine which may extend to Rs 500 for every day of the default (s.501). Appointment of liquidator (s.502). The creditors and the members at their respective first meetings may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company. If the creditor and the members nominate different persons, the creditor's nominee will as a rule be the liquidator. But any director, member or creditor may apply to the court for an order that the company's nominee or the Official Liquidator or some other person should be appointed. If no person is nominated by the creditors, the members' nominee shall be the liquidator. Vacancies in the office caused by death, resignation or otherwise may be filled by creditors, except where the liquidator was originally appointed by or by the direction of the court, when the court will on application fill the vacancy. Committee of inspection (s.503). The creditors at their first or any subsequent meeting may, if they think fit, appoint a committee of inspection of not more than five members. If such committee is appointed, the company may, either at the meeting at which the winding up resolution is passed, or at a later meeting, appoint five persons to serve on the committee. If the creditors object against the persons appointed by the company, then the matter will be referred to the court for the final decision. The powers of such committee are the same, as those of a Committee of Inspection appointed in a compulsory winding up. Fixing of liquidator's remuneration (s.504). The remuneration to be paid to the liquidator or liquidators has to be fixed by the committee of inspection or if there is no much committee, by the creditors. Where the remuneration is not so fixed, it must be determined by the court. Any remuneration once fixed shall not be increased in any circumstances, whatever, whether with or without sanction of the court. Board's powers to cease on appointment of liquidator (s.505). On the appointment of liquidator, all the powers of the Board of Directors shall cease, except in so far as the committee of inspection, or if there is not such committee, the creditors in general meeting, may sanction the continuance thereof. Duty of liquidator to call meeting of company and of creditors at the end of each year [s.508]. In the event of the winding up continuing for more than one year, the liquidator must call a general meeting of the company and a meeting of the creditors at the end of the first year, from the commencement of the winding up and at the end of each succeeding year, or as soon thereafter as may be convenient within 3 months

from the end of the year or such longer period as the Central Government may allow. Further, he may lay before the meeting an account of his acts and dealings and of the conduct of winding up during the preceding year, together with a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings and position of the winding up. Final meeting and dissolution (s.509). As soon as the affairs of the company are fully wound up, the liquidator must: (a) make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of; and (b) call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meeting and giving any explanation thereof. Each such meeting must be called by advertisement and must specify the time, place and objects thereof and must be published at least one month before the meeting in the Official Gazette and also in some newspaper circulating in the district where the registered office of the company is situated. Within one week after the date of the meetings, the liquidator shall send to the Registrar and the Official Liquidator a copy of the account and a return of the meeting held [s.509 (3)]. The Official Liquidator, after scrutiny of the books and papers of the company, shall make a report to the court. If this report states that the affairs of the company have not been conducted in a manner prejudicial to the interest of the company or public then from the date of the submission of the report the company shall be deemed to be dissolved; otherwise the court will ask Official Liquidator to make further investigation and may, after that report, order that the company shall stand dissolved from the specified date [s. 509 (6)]. Distinction between Members' Voluntary Winding up and Creditor's Voluntary Winding up 1. Members' voluntary winding up can be resorted to by solvent companies and thus requires the filing of a 'declaration of solvency' by the directors of the company with the Registrar; Creditors' winding up, on the other hand, is resorted to by insolvent companies. 2. In members' voluntary winding up there is no need to have creditor's meeting. But in the case of creditors' voluntary winding up, a meeting of the creditors must be called immediately after the meeting of the members. 3. Liquidator, in the case of members' winding up is appointed by the members and members fix his remuneration. But in the case of creditors' voluntary winding up, if the members and creditors nominate two different persons as liquidators, creditors' nominee shall become the liquidator and

his remuneration is fixed either by the committee of inspection or the creditors. 4. In the case of creditor's voluntary winding up, if the creditors so wish a 'Committee of Inspection' may be appointed. In the case of members' voluntary winding up, there is no provision for any such committee. 5. The proceedings of winding up are more on less controlled by members in case of members voluntary winding up while such control goes to the hands of creditors in case of creditors voluntary winding up. Voluntary Winding up under Supervision of the Court At any time after a company has passed a resolution for voluntary winding-up, the Court may make an order that the voluntary winding-up should continue subject to the supervision of the Court (Section 522). Application for such supervision order may be made either by a creditor, a contributory, the company, or the liquidator. One advantage of having a supervision order is that the liquidator is allowed to occupy the same position and exercise the same power (subject to restrictions where necessary) as voluntary liquidator. At the same time the advantage of a compulsory winding-up as regards stay of suits and other proceedings and making and enforcing calls etc., are also secured and the Court is empowered to exercise all the powers which it can exercise in a compulsory winding-up. In truth, a supervision order is an amalgam of both—a voluntary winding-up and a winding-up by Court as it is made on such terms and conditions as the Court thinks just. Such an order is passed by the court under the following circumstances: 1. the resolution for winding-up was obtained by fraud, or 2. the rules relating to winding-up order are not being observed, or 3. the liquidator is prejudicial or is negligent in collecting the assets. The Court, in such a case, gets the same powers as it has in the case of compulsory winding-up. The Court may also appoint an additional liquidator or liquidators. It may also remove any liquidator and fill any vacancy occasioned by the removal or by death or by resignation (Section 524). A liquidator so appointed shall have the same powers, be subject to the same obligations and in all respects stand in the same position as if he had been appointed in accordance with the provisions of the Act relating to the appointment of liquidator in voluntary winding-up, subject, however, to any restrictions the Court may impose (Section 525). Unless the Court imposes restrictions on the exercise of any powers by the liquidator, he will have all the powers conferred on a liquidator in voluntary winding-up [s.526(1)]. The Court will have as wide powers as in compulsory winding-up. The Court may stay suits or legal proceedings. It can make or enforce

calls and all other orders necessary for beneficial winding-up of the company [s.526(2)].

5.5 CONSEQUENCES OF WINDING UP ORDER

The consequence of the winding up order by the Court are as follows:

1. The Court must, as soon as the winding up order is made, cause intimation thereof to be sent to the official liquidator and the Registrar (s.444).

2. The petitioner and the company must also file with the Registrar within 30 days a certified copy of the order [s.445(1)]. The Registrar should file with himself a certified copy of the winding up order of the Court when himself is a petitioner under s.439. If default is made in filing the certified copy of the order, the petitioner, or the company and every officer of the company who is in default, shall be punishable with fine upto Rs 1,000 for every day during which the default continues (s.445). 3. The Registrar should then make a minute of the order in his books relating to the company and notify in the Official Gazette that such an order has been made [s.445(2)].

4. The order for winding up is deemed to be a notice of discharge to the officers and employees of the company, except when the business of the company is continued. In any employee has been appointed on contract basis he will have to be compensated in case of winding up [s.445(3)].

5. The order operates in the interests of all the creditors and all the contributories, no matter who is fact asked for it (s.447).

6. The Official Liquidator, by virtue of his office becomes the liquidator of the company and takes possession and control of the assets of the company (s.449).

7. All actions and suits against the company are stayed, unless the Court gives leave to continue or commence proceedings (s.446). Further as per section 446A after the order of winding up the directors and officers of company should submit the audit book to court.

8. All the power of the Board of Directors cease and the same are then exercised by the liquidator [Ss.491 & 505].

9. On the commencement of winding up, the limitation ceases to run in favour of the company.

10. Any disposition of the property of the company and any transfer of shares in the company or alteration in the status of members made after the commencement of winding up shall, unless the Court otherwise orders, be void [s.536(2)].

11. Any attachment, distress or execution put in force, without leave of the Court, against the estate or effects of the company after the commencement of the winding up shall be void [s.537 (a)] but not for dues payable to Government [s.537(2)].

12. Any sale held, without leave of the Court, of any of the properties or effects of the company after the commencement of winding up shall be void [s.537(b)].

13. Any floating charge created within 12 months preceding the commencement of winding up is void unless it is proved that the company after the creation of the charge was solvent, except as to, any cash advanced at the time of or subsequent to the creation of the charge or to any interest on that amount @ 5% or such other rate notified by the Central Government (s.534).

5.6 POWER OF TRIBUNAL

The tribunal, typically a specialized legal body like the National Company Law Tribunal (NCLT) in India, has significant powers during the winding-up process of a company. These powers include:

1. **Initiating Winding Up**: The tribunal can order the winding up of a company based on petitions filed by creditors, shareholders, or other eligible parties, usually in cases of insolvency, legal violations, or when it is just and equitable to do so.
2. **Appointment of Liquidator**: The tribunal appoints a company liquidator to oversee the winding-up process. It can also remove or replace the liquidator if necessary.
3. **Supervision of Liquidation Process**: The tribunal supervises the liquidator’s actions, ensuring that the winding-up process is conducted in accordance with legal requirements and in the best interests of creditors and shareholders.
4. **Asset Management and Distribution**: It oversees the liquidation and distribution of the company's assets, ensuring that creditors are paid in accordance with the priority of claims and that any remaining assets are distributed to shareholders.
5. **Dispute Resolution**: The tribunal resolves disputes that arise during the winding-up process, such as claims from creditors, disputes among shareholders, or issues related to the distribution of assets.

6. **Examination and Investigation**: The tribunal can order an examination of the company's affairs, summon persons connected to the company for questioning, and investigate any potential wrongdoing or fraudulent activities.
7. **Making Orders and Directions**: It has the authority to make various orders and directions to facilitate the winding-up process, such as staying proceedings against the company, approving arrangements for the company's business, and handling any other matters necessary for winding up.
8. **Public and Creditor Meetings**: The tribunal can direct the liquidator to call meetings of creditors and contributories to discuss and approve key decisions during the winding-up process.

Through these powers, the tribunal ensures that the winding-up process is conducted fairly, transparently, and in accordance with the law, protecting the interests of all stakeholders involved.

5.7 PETITION FOR WINDING UP

A petition for winding up is a formal application made to a tribunal or court to initiate the process of dissolving a company. This petition can be filed by various parties under specific circumstances, and it involves a legal process that ultimately leads to the liquidation of the company's assets and the settlement of its liabilities. Here are the key aspects of a petition for winding up:

1. **Who Can File**:
   - **Creditors**: If a company is unable to pay its debts, creditors can file a petition to recover their dues.
   - **Shareholders**: Members of the company can file a petition if they believe it is just and equitable to wind up the company.
   - **Company Itself**: The company, through its board of directors, can decide to voluntarily wind up and file a petition.
   - **Registrar of Companies**: In some jurisdictions, the registrar can file a petition on grounds such as non-compliance with statutory requirements.
   - **Contributories**: Individuals or entities liable to contribute to the company's assets in the event of winding up can file a petition.
2. **Grounds for Winding Up**:
   - **Insolvency**: The company is unable to pay its debts as they fall due.

- **Just and Equitable Grounds**: Situations like deadlock in management, loss of substratum, or fraud.
- **Statutory Violations**: Non-compliance with statutory requirements or fraud.
- **Special Resolution**: The company has passed a special resolution for winding up.

3. **Contents of the Petition**:
    - **Details of the Company**: Name, address, and incorporation details.
    - **Grounds for Winding Up**: The specific reasons and evidence supporting the petition.
    - **Statement of Facts**: Information on the company's financial position and operations.
    - **Relief Sought**: The specific orders requested from the tribunal, such as the appointment of a liquidator.
4. **Procedure**:
    - **Filing the Petition**: The petition is filed with the tribunal or court, and a copy is served to the company.
    - **Advertisement**: In some cases, the petition must be advertised in a prescribed manner to inform all stakeholders.
    - **Hearing**: The tribunal schedules a hearing to consider the petition. Interested parties can appear and present their case.
    - **Provisional Liquidator**: The tribunal may appoint a provisional liquidator to manage the company's affairs during the pendency of the petition.
    - **Tribunal's Order**: After considering all evidence and arguments, the tribunal may either dismiss the petition or issue a winding-up order.
5. **Consequences of Filing**:
    - **Stay on Proceedings**: Once a petition is filed, the tribunal may stay other proceedings against the company.
    - **Appointment of Liquidator**: Upon issuing a winding-up order, the tribunal appoints a liquidator to take control of the company's assets.
    - **Investigation and Examination**: The tribunal can investigate the company's affairs and examine persons involved in its management.

Filing a petition for winding up is a serious step that leads to the formal dissolution of a company, requiring careful consideration of legal and financial implications. The tribunal's role is crucial in overseeing the process to ensure fairness and compliance with legal standards.

5.8 COMPANY LIQUIDATORS

Company liquidators play a crucial role in the winding-up process of a company. They are appointed to manage the dissolution process, including the liquidation of assets and distribution of proceeds to creditors and shareholders. Here are the key aspects of company liquidators:

1. **Appointment**:
   - **Tribunal Appointment**: In compulsory winding up, the tribunal or court appoints a liquidator.
   - **Company or Creditor Appointment**: In voluntary winding up, the liquidator may be appointed by the company's members or creditors.
2. **Qualifications**:
   - Liquidators are often required to be professionals such as accountants, lawyers, or insolvency practitioners with specific qualifications and experience in handling liquidations.
3. **Duties and Responsibilities**:
   - **Control of Assets**: Take control of and secure all the company's assets.
   - **Asset Liquidation**: Sell or otherwise dispose of the company's assets to convert them into cash.
   - **Debt Settlement**: Pay off the company's debts and liabilities in accordance with the priority of claims.
   - **Distribution of Surplus**: Distribute any remaining funds to the company's shareholders.
   - **Investigation**: Investigate the company's financial affairs and transactions to identify any wrongdoing or preferential payments.
   - **Reporting**: Provide regular reports to the tribunal, creditors, and shareholders on the progress of the liquidation.
4. **Powers**:
   - **Sell Property**: Sell or dispose of the company's property and assets.

- **Litigation**: Initiate or defend legal actions on behalf of the company.
- **Business Operations**: Continue the company's business if necessary for beneficial winding up.
- **Settle Claims**: Settle or compromise claims against the company.
- **Discharge Duties**: Perform all actions necessary for the orderly winding up of the company.

5. **Types of Liquidators**:
    - **Official Liquidator**: Appointed by the tribunal and typically associated with the government or a regulatory body.
    - **Provisional Liquidator**: Appointed temporarily to preserve the company's assets until a final decision on winding up is made.
    - **Voluntary Liquidator**: Appointed by the company's members or creditors in a voluntary winding up.
6. **Accountability**:
    - Liquidators are accountable to the tribunal, creditors, and shareholders. They must act impartially and in the best interests of all parties involved.
    - They can be removed or replaced by the tribunal if they fail to perform their duties adequately or if there is a conflict of interest.
7. **Process**:
    - **Initial Steps**: Upon appointment, the liquidator takes control of the company's assets and records.
    - **Asset Realization**: The liquidator identifies, collects, and sells the company's assets.
    - **Claims Settlement**: Creditors are invited to submit claims, which are reviewed and settled based on priority.
    - **Final Distribution**: After settling debts and liabilities, any remaining funds are distributed to shareholders.
    - **Dissolution**: Once all assets are liquidated and distributions made, the liquidator applies to the tribunal for the company's dissolution.

The liquidator's role is critical to ensuring that the winding-up process is conducted efficiently, fairly, and in accordance with legal requirements, protecting the interests of creditors and shareholders throughout the process.

SECTION 5.1 to 5.8 INTRODUCTIONS OF COMPANY LAW

5.9 Check Your Progress – Quiz – 1

1. Voluntary winding up:
   a)If period fixed for the company is expired.
   b)If company passes a special resolution the company wound up voluntarily.
   c)Members voluntary winding up is applicable to solvent companies only.
   d)All of the above

2. Compulsory winding up:
   a)If a company unable to pay its debt
   b)If the number of members of company reduced below statutory limit.
   c)If a company does commence its business within a year from its incorporation. d)All of the above.

3. The first item in order of payment to be made by liquidator is:
   a) Secured creditors
   b) Preferential creditors
   c) Liquidation expenses
   d) Preferential creditors

4. Liquidator's statement of receipts and payment is know as:
   a) Cash flow statement
   b) Cash book
   c) Liquidator's final statement of account
   d) Deficiency account

5. The liquidator final statement of account is prepared

a) Only in case of creditor voluntary winding up

b) Only in case of members voluntary winding up

c) Only in case of compulsory winding up

d) Whatever may be

6. When the liquidator company has adequate cash to pay off all liabilities, the interest on liabilities will be paid

a) Up to date of commencement of insolvency

b) Up to date of actual payment

c) Up to date of payment to share holders

d) None of these

5.10 Unit Summary

Winding up refers to the process of dissolving a company, liquidating its assets, and distributing the proceeds to satisfy its liabilities. This process can occur through two primary modes: compulsory winding up and voluntary winding up. Compulsory winding up is initiated by a court or tribunal order, often due to insolvency, legal violations, or it being just and equitable to do so. In contrast, voluntary winding up is initiated by the company's members or creditors, typically when the company is solvent but the members decide to cease operations for various reasons.

When a winding-up order is issued, several significant consequences follow. The company must cease its business operations except for activities necessary for winding up. The tribunal has extensive powers, including appointing a liquidator to manage the company's affairs, overseeing the liquidation process, and ensuring that the company's assets are distributed fairly to creditors and shareholders. The tribunal can resolve disputes, stay proceedings against the company, and investigate its affairs to detect any fraud or irregularities. The liquidator, appointed by the tribunal or the company, plays a pivotal role in managing the liquidation process, realizing the company's assets, paying off debts, and distributing any remaining funds to shareholders.

A petition for winding up can be filed by various parties, including creditors, shareholders, the company itself, or regulatory authorities like the Registrar of

Companies. The petition must outline the grounds for winding up, such as insolvency or statutory violations, and include a detailed statement of the company's financial position. Upon receiving the petition, the tribunal may appoint a provisional liquidator to safeguard the company's assets during the proceedings. The tribunal then holds hearings to consider the petition, after which it may either dismiss the petition or issue a winding-up order. The appointed liquidator then undertakes the task of liquidating the company's assets, settling its debts, and completing the distribution process, ultimately leading to the company's formal dissolution.

5.11 Glossary

Winding Up	The process of dissolving a company, liquidating its assets, and distributing the proceeds to pay off its liabilities.
Compulsory Winding Up	A court or tribunal-ordered process initiated typically due to the company's inability to pay its debts or other statutory grounds.
Voluntary Winding Up:	Initiated by the company's members or creditors, often when the company is solvent and they decide to cease operations.
Tribunal:	A legal body, such as the National Company Law Tribunal (NCLT) in India, that oversees the winding-up process, including the appointment and supervision of liquidators.
Liquidator:	A professional appointed to manage the winding-up process, including asset liquidation, debt repayment, and distribution of any remaining funds to shareholders.
Contributories	Individuals or entities liable to contribute to the company's assets in the event of winding up, often including shareholders.

Distribution:	The allocation of the remaining funds after debts are settled to the company's shareholders.

5.12 Self-Assessment

Essay type questions

1. What is mean by winding up? Explain its Modes.
2. Wwhat are the different type of winding up?
3. Explain consequences of winding up.
4. Give a brief notes on power of Tribunal.
5. Petition for winding up-Explain.
6. Write a details of company liquidators

5.13 Case Study

Background: Kingfisher Airlines, once a prominent Indian airline founded by Vijay Mallya, began operations in 2005. Despite early success, the company faced severe financial distress by 2012 due to a combination of high debt, rising fuel costs, and operational mismanagement. The airline was grounded in October 2012, and by early 2013, it had lost its operating license. Various creditors, including banks and airport authorities, were owed substantial amounts.

Petition for Winding Up: In 2014, a consortium of 17 banks, led by the State Bank of India, filed a petition with the Karnataka High Court seeking the compulsory winding up of Kingfisher Airlines due to its inability to repay debts exceeding ₹9,000 crores (approximately $1.3 billion USD). The banks argued that Kingfisher Airlines was insolvent and unable to meet its financial obligations.

Tribunal's Role and Powers: The Karnataka High Court acted as the tribunal in this case. It evaluated the petition and the evidence provided by the creditors. The tribunal has the authority to:

- Appoint a liquidator to manage the company's assets.
- Oversee the liquidation process.
- Investigate the company's financial dealings.
- Ensure fair distribution of the company's assets to satisfy creditor claims.

Consequences of the Winding-Up Order: In 2016, the tribunal issued a winding-up order against Kingfisher Airlines. The court-appointed official liquidator took control

of the company's remaining assets, which included real estate, aircraft, and other movable and immovable properties. The liquidator was tasked with:

- Selling these assets to generate funds.
- Settling the outstanding debts with the proceeds.
- Distributing any remaining funds among shareholders, although in this case, it was unlikely due to the substantial debts.

Outcome: The liquidation process involved identifying and selling off various assets linked to Kingfisher Airlines. High-profile properties, such as the Kingfisher House in Mumbai and Kingfisher Villa in Goa, were auctioned to recover some of the debts. However, the realization from these sales was insufficient to cover the total outstanding debts. The case also highlighted significant regulatory and enforcement challenges, as Vijay Mallya had fled to the UK, complicating asset recovery efforts.

Conclusion: The compulsory winding up of Kingfisher Airlines illustrates the tribunal's crucial role in managing insolvent companies' dissolution. It demonstrates how the process is initiated by creditors through a petition, the tribunal's powers to oversee and direct the liquidation process, and the complex challenges in realizing and distributing assets to settle outstanding debts. This case remains a significant example of corporate insolvency and the legal mechanisms in place to address it.

5.14 Task

The compulsory winding up of Kingfisher Airlines, initiated by a consortium of banks due to the airline's insolvency and inability to repay debts exceeding ₹9,000 crores, involved a tribunal's appointment of a liquidator to manage the asset liquidation and debt settlement process. The Karnataka High Court supervised the liquidation, oversaw the sale of assets like Kingfisher House and Kingfisher Villa, and conducted investigations into the airline's financial affairs. Despite the asset sales, the recovery was insufficient to cover the debts, complicated further by Vijay Mallya fleeing to the UK. This case illustrates the tribunal's critical role in corporate insolvency, from petition filing to asset distribution, highlighting the challenges in recovering and distributing assets to settle debts.

5.16 E – Contents

S.No	Topic	E-Content Link

1.	Winding up	http://www.bjvm.ac.in/doc/KR/SKRadadiya/bcom/sem2/2022/unit%2003%20Winding%20up%20of%20a%20Company.pdf
2.	Tribunal	https://taxguru.in/company-law/winding-up-company-tribunal-company-act-2013.html
3.	Rules of winfding up	https://www.mca.gov.in/LLP/pdf/llp_winding_up_rules_corrected.pdf
4.	E-book	https://www.mannaniyacollege.ac.in/wp-content/uploads/2019/06/Winding-Up-of-companies.pdf

5.17 Reference

1. https://thelegalaffair.com/kinds-consequences-and-reasons-for-winding-up-of-a-company-under-the-companies-act-2013/
2. https://jamapunji.pk/sites/default/files/Guide_WindingUp.pdf
3. https://bwc.edu.in/wp-content/uploads/2022/05/UG-COM-2019.pdf