MAR GREGORIOS COLLEGE OF ARTS & SCIENCE

Block No.8, College Road, Mogappair West, Chennai – 37

Affiliated to the University of Madras
Approved by the Government of Tamil Nadu
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DEPARTMENT OF COMMERCE

(CORPORATE SECRETARYSHIP)

SUBJECT NAME: COMPANY LAW & SECRETARIAL PRACTICE

SUBJECT CODE: AY23B

SEMESTER: III

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COMPANY LAW & SECRETARIAL PRACTICE

Course Objectives

- To acquire knowledge at practical and procedural aspects of a company formation and e-governance including digital signature and compliance requirements.

UNIT I - INCORPORATION OF COMPANY AND ROLE OF COMPANY SECRETARY

Evolution of Company law – Meaning and characteristics of a company – Stages of incorporation – e-filing – Memorandum of Association and Articles of Association – Alteration
– Effects of registration – Doctrine of constructive notice – Ultravires and indoor management – liftingof corporate veil.

Role and importance of Company Secretary – Key Managerial Personnel – Compliance officer – Compulsory Appointment - Qualification and disqualifications – Powers, duties and responsibilities of Secretary – Resignation and removal of Company Secretary – Officer in default.

UNIT II - PROSPECTUS & SHARECAPITAL

Prospectus – Shelf Prospectus – Red herring Prospectus – Civil & Criminal liability for mis-statement in Prospectus – Statement in lieu of Prospectus - Secretarial duties in the issue of Prospectus.

Share capital – Alteration of Share capital – rights issue, Bonus issue, Private and preferential allotment – Dividend, interim dividends, warrants and mandates – Secretarial duties in the issue of share capital.

UNIT III - MEMBERS AND SHAREHOLDERS

Members – Rights and responsibilities – who can be a member – member, shareholder, contributory – difference – transfer and transmission of shares (including depository mode) – Nomination and its importance.

UNIT IV - KEY MANAGERIAL PERSONNEL AND MEETINGS

Directors – Women Director – Independent Director and Whole time Key Managerial Personnel – Director Identification Number and its significance – duties, qualification and disqualification.

Board meeting, shareholder meeting, committee meeting, mandatory committee meeting – Role and composition – Powers of the board – Notice , Agenda, minutes and resolution – Secretarial duties in meetings.

UNIT V - WINDING UP

Modes of Winding up - Winding up by the tribunal – Voluntary Winding up – NCLT – Specialcourts – Mediation and Conciliation panel.

UNIT – I

INCORPORATION OF COMPANY AND ROLE OF COMPANY SECRETARY

EVOLUTION OF COMPANY LAW

Background of English Company Law

At first, incorporation seems to have been used only in connection with ecclesiastical and public bodies, such as chapters, monasteries, and boroughs, which had corporate personality conferred upon them by a charter from the crown or were deemed by prescription to have received such a grant. At the same time in the commercial sphere the principal medieval associations were the guilds of merchants, organizations that had few resemblances to modern companies but corresponded roughly to the trade protection associations.

Incorporation as a convenient method of distinguishing the rights and liabilities of the association from those of its members was hardly needed since each member traded on his own account subject only to obedience to the regulations of the guild. Trading on joint account, as opposed to individual trading subject to the rules of the guild, was carried on through partnerships, of which two types were known to the medieval law merchant the commenda and the societies.

The first type of English organization to which the name company was applied was merchant adventures for trading overseas.

Royal charters conferring privileges on such companies are found as early as the fourteenth century, but it was not until the expansion of foreign trade and settlement in the sixteenth century that they become common.

The earliest types were the so called regulated companies which were virtually extensions of the guild principles into the foreign sphere and which retained much of the ceremonial and freemasonry of the domestic guilds. Each member traded with his own stock and on his own account, subject to obeyingthe rules of the company, and incorporation was not essential since the trading liability of each memberwould be entirely separate from that of the company and the other members.

At first, the concept was separate trading by each member with his own stock but later instead ofit, they started to operate on joint account and with a joint stock. This process can be traced in the development of the famous East India Company, which received its first charter in 1600, granting it a monopoly of trade with the Indies.

But even after that until the second half of the seventeenth century differentiation between the two types of company (unincorporated partnerships and incorporated companies) was not firmly established. At this time there was no limit to the number of partners, but in fact they were generally small in number and additional capital was raised by leviations or calls on the existing members rather than by invitations to the public.

HISTORY OF MODERN COMPANY LAW:

The history of modern company law in England began in 1844 when the Joint Stock Companies Act was passed. The Act provided for the first time that a company could be incorporated by registration without

obtaining a Royal Charter or sanction by a special Act of Parliament. The office of the Registrar of JointStock Companies was also created.

But the Act denied to the members the facility of limited liability. The English Parliament in 1855 passed the Limited Liability Act providing for limited liability to the members of a registered company. The act of 1844 was superseded by a comprehensive Act of 1856, which marked the beginning of a new era in company law in England. This Act introduced the modern mode of creating companies by means of memorandum and articles of associations.

The first enactment to bear the title of Companies Act was the companies Act, 1862. By theseacts some of the modern provisions of the company were clearly laid down.

First of all, two documents, namely,

(a) The memorandum of association, and

(b) Articles of association formed the integral part for the formation of a limited liability company. Secondly, a company could be formed with liability limited by guarantee. Thirdly, any alteration in the object clause of the memorandum of association was prohibited. Provisions for windingup was also introduced.

Thus, the basic structure of the company as we know had taken shape. Sir Francis Palmer described this Act as the Magna Carta of co-operative enterprises. But the companies (Memorandum of Association) Act, 1890 made relaxation with regard to change in the object clause under the leave of the court obtained on the basis of special resolution passed by the members in general meeting.

Then the liability of the directors of a company was introduced by the Directors' liability Act, 1890 and the compulsory audit of the company's accounts was enforce under the Companies Act 1990.The concept of private company was introduced for the first time in the companies Act, 1908 (the earlierones were called public companies).

Two subsequent acts were passed in 1908 and 1929 to consolidate the earlier Acts. The companies Act 1948, which was the Principal Act in force in England was based on the report of a committee under Lord Cohen. This Act introduced inter alia another new form of company known asexempt private company.

Another outstanding feature of 1948 Act was the emphasis on the public accountability of the company. Generally recognized principles of accountancy were given statutory force and had to be applied in the preparation of the balance sheet and profit and loss account.

Further, the 1948 legislation extended the protection of the minority (Section 210) and the powers of the Board of Trade to order an investigation of the company's affairs (section 164-175); and for the first time the shareholders in general meeting were given power to remove a director beforethe expiration of his period of office. The independence of auditor's vis-à-vis the directors were strengthened.

CHARTER COMPANIES

These were a type of corporations that evolved in the early modern era in Europe. They enjoyed certain rights and privileges and were bound by certain obligations, under a special charter granted to them by the sovereign authority of the state, such charter defining and limiting those rights, privileges,and obligations and the localities in which they were to be exercised. The charter usually conferred a trading monopoly upon the company in a specific geographic area or for a specific type of trade item.

The earliest English chartered companies were the Merchant Adventurers and the Merchant Staplers. Such early companies were regulated companies, deriving the principles of their organization from the medieval merchant guilds. The regulated company was a corporation of merchants, each of whom traded on his own account but was subjected to a rigid set of common rules that regulated his operations within narrow limits. A great increase in the number and activities of the chartered companies took place during the second half of the 16th century, when the English, French, and Dutch governments were ready to assist trade and encourage overseas exploration. Changes also occurred in the organization of chartered companies. The regulated company, which had been very convenient for trading with countries where conditions were stable, was not so suitable for ventures to remoter lands, where the risks, commercial and political, were greater.

To meet the requirements of the new trading conditions, the joint-stock organization, in which the capital was provided by shareholders who then participated in the profits from the joint enterprise, was evolved.

In some cases, the companies alternated between one form and the other. In all charters,provisions were inserted to secure the "good government" of the company.In England two of the earliest and most important of overseas trading companies were the Muscovy Company (1555) and the Turkey Company (1583).

They had important effects on international relations, for they maintained English influence and paid the expenses of ambassadors sent to those countries. Other English companies were established in this period for similar trading ventures: the Spanish Company (1577, regulated); the Eastland Company, for trade with the Baltic (1579, regulated); and the French Company (1611, regulated). The first company for African trade was founded in 1585, and others were granted charters in 1588, 1618, and 1631. But it was the chartered companies that were formed during this period for trade with the Indies and the New World which had the most wide-reaching influence.

The East India Company was established in 1600 as a joint-stock company with a monopoly of thetrade to and from the East Indies. Its political achievements form a large part of the history of the British Empire, and its economic power was enormous, contributing substantially to the national wealth and causing the company to be the center of most of the economic controversies of the 17th century.

In North America the English chartered companies had a colonizing as well as a trading purpose. Although the Hudson's Bay Company was almost wholly devoted to trade, most companies--such as the London Company, the Plymouth Company, and the Massachusetts Bay Company--were directly involvedin the settlement of colonists.

Elsewhere, chartered English companies continued to be formed for the development of

new trade--for instance, the short-lived Canary Company in 1665, the Royal African Company in 1672, and the South Sea Company in 1711. There was frantic speculation in the shares of the South Sea Company,resulting in a severe setback to joint-stock enterprise.

The Bubble Act of 1720 was designed to make it much more difficult to obtain a charter.In France and the Netherlands, chartered companies had also been used for similar purposes by the governments. In France, from 1599 to 1789, more than 70 such companies came into existence.

Under J.B. Colbert the French East India Company was founded (1664), and the colonial and Indian trade was placed in the hands of chartered companies in which the king himself had large financial interests. The French companies, however, were largely destroyed by the "Mississippi scheme" of John Law, in which trading companies like the Senegal and French East India companies were incorporated in a plan to take over the public debt.

The financial crash in 1720 destroyed public confidence, and although a new Company of the Indies existed until 1769, the chartered company was virtually dead. In the Netherlands the Dutch East India and West India companies were the basis of the commercial and maritime supremacy of the Dutch inthe 17th century.

The success of the East India companies caused the foundation of the Ostend Company, whereby the Holy Roman emperor Charles VI sought unsuccessfully to acquire the trade of England and the Netherlands.The development of the modern limited-liability company or corporation under successive companies acts led to a decline in the importance of chartered companies. Some of the older ones still exist, however, including the Hudson's Bay Company.

MERCHANT ADVENTURERS AND THE GROWTH OF DOMESTIC COMPANIES

The first type of English organization to which the name company was generally applied was that adopted by merchant adventurers for trading overseas. Royal Charters conferring privileges on suchcompanies are found as early as the fourteenth century, but it was not until the expansion of foreign trade and settlement in the sixteenth century that they became common. The earliest types were the so-called regulated companies which were virtually extensions of the guild principle into the foreign sphereand which retained much of the ceremonial and freemasonry of the domestic guilds.

Each member traded with his own stock and on his own account, subject to obeying the rules of the company, and incorporation was not essential since the trading liability of each member would be entirely separate from that of the company and the other members.

Charters were nevertheless obtained largely because of the need to acquire a monopoly of trade for members of the company and governmental power over the territory for the company itself At a later stage, however, the partnership principle of trading on joint account was adopted by the regulated companies which became joint commercial enterprises instead of trade protection associations. At first, in addition to the separate trading by each member with his own stock, and later instead of it, they startedto operate on joint account and with a joint stock.

This process can be traced in the development of the famous East India Company, whichreceived its first charter in 1600, granting it a monopoly of trade with the Indies. Originally any membercould carry on that trade privately, although there also existed a joint stock to which members could, ifthey wished, subscribe varying amounts.

At first this joint stock and the profits made from it were re-divided among the subscribers aftereach voyage. From 1614 onwards, however, the joint stock was subscribed for a period of years, and this practice subsisted until 1653 when a permanent joint stock was introduced. It was not until 1692 that private trading was finally forbidden to members. Until this date, therefore, the constitution of the East India Co. represents a compromise between a regulated company, formed primarily for the government of a particular trade, and the more modern type of company, designed to trade for the profitsof its members.

This new type was called a joint stock company, a name which persists until the present day, although few of those who use it realize that it was adopted to distinguish the companies to which itrelates from a once normal, but now obsolete, form.

GROWTH OF DOMESTIC COMPANIES

By the middle of the seventeenth century powerful monopolistic companies were already coming to be regarded as anachronisms; it was realized that their governmental powers were properly the functions of the State itself and that their monopolies were an undue restraint on the freedom of trade.

Most of them atrophied; but some survived for a time by converting, as did the Levant and Russia companies, from the joint stock to the regulated form (a strange reversal of the normal trend designed to allow greater freedom to their members) and others, like the Royal Africa Company, by completely relinquishing their monopolies. After the Revolution of 1688, it seems to have been tacitly assumed that the Crown's prerogative was limited to the right to grant a charter of incorporation, and that any monopolistic or other special powers should be conferred by statute.

The decline in the foreign-trading companies was, however, accompanied by an immense growth in those for domestic trade. Some of these were powerful corporations chartered under statutory powers (such as the Bank o England) the objects of which resembled those of the public corporations of the present day, but most were public companies in the sense that they invited the participation of the investing public.

As regards these, the close relation between incorporation and monopoly was still maintained, for most companies were incorporated in order to work a patent of monopoly granted to an inventor. Bythe end of the seventeenth century some idea had been gleaned of one of the primary functions of the company concept- the possibility of enabling the capitalist to combine with the entrepreneurs. Share dealings were common and stock-broking was a recognized profession, the abuses of which the legislature sought to regulate as early as 1696.

But it would be entirely misleading to suggest that there was in any sense a company law; at themost there was embryonic law of partnership which applied to those companies which had not becomeincorporated and, with modifications required by the terms of the charter and the nature of incorporation,to those which had.

From the end of the seventeenth century the term directors began to supersede assistant governors. But the terminology varied and still varies.

MEANING AND CHARACTERISTICS OF A COMPANY

The word 'company' is derived from the Latin word Com Panis (Com means 'with or together' and Panis means 'Bread'), and it originally referred to an association of persons who took their meals together. In the leisurely past, merchants took advantage of festive gatherings, to discuss business matters.

In popular parlance, a company denotes an association of likeminded persons formed for the purpose of carrying on some business or undertaking

In the legal sense, a company is an association of both natural and artificial persons and is incorporated under the existing law of a country.

In terms of the **Companies Act, 2013 a "company" means a company incorporated under this Act or under any previous company law [Section 2 (68)]**

In common law, a company is a "legal person" or "legal entity" separate from, and capable of surviving beyond the lives of its members.

Literary meaning of the word 'company' is an association of persons formed for common object. A company is a voluntary association of persons recognized by law, having a distinctive name and common seal, formed to carry on business for profit, with capital divisible into transferable shares, limited liability, a corporate body and perpetual succession.

Definition of Company:

1. According to Justice James, "A company is an association of persons united for a common object."
2. According to Lord Lindley, "By a 'company' is meant an association of many persons Who contribute money or money's worth to a common stock and employ it for some common purpose. The common stock so contributed is denoted in money and is the capital of the company. The persons who contribute it or to whom it belongs are members. The proportion of capital to which each partner is entitled is his share."
3. According to Kimball and Kimball, "A corporation is by nature an artificial person created orauthorized by the legal stature for some specific purpose."
4. According to Prof. Haney, "A company is an artificial person created by law having a separate entity with a perpetual succession and a common seal."
5. According to James Stephenson, "A company is an association of any persons who contributemoney or money's worth to a common stock and employs it in some trade or business, and who share the profit and loss (as the case may be) arising there from."
6. According to Section 3 (1) (i) of Indian Companies Act, 1956. "Company means a company formed and registered under this act or an existing company. 'Existing Company' means a company formed and registered under any of the previous Company Laws."

NATURE AND CHARACTERISTICS OF COMPANY

1. CORPORATE PERSONALITY:

A company incorporated under the Act is vested with a corporate personality so it bears its ownname, acts under name, has a seal of its own and its assets are separate and distinct from those of its members. It is a different 'person' from the members who compose it. Therefore it is capable of:

- Owning property,
- Incurring debts,
- Borrowing money,
- Having a bank account,
- Employing people,
- Entering into contracts and suing or being sued in the same manner as an individual.

2. COMPANY AS AN ARTIFICIAL PERSON:

A Company is an artificial person created by law. It is not a human being but it acts through human beings. It is considered as a legal person which can enter into contracts, possess properties in itsown name, sue and can be sued by others.

3. COMPANY IS NOT A CITIZEN:

The company, though a legal person, is not a citizen under the Citizenship Act, 1955 or the Constitution of India.

4. COMPANY HAS NATIONALITY AND RESIDENCE:

Though it is established through judicial decisions that a company cannot be a citizen, yet it hasnationality, domicile and residence.

5. LIMITED LIABILITY:

"The privilege of limited liability for business debts is one of the principal advantages of doingbusiness under the corporate form of organization." The company, being a separate person, is the ownerof its assets and bound by its liabilities. The liability of a member as shareholder, extends to the contribution to the capital of the company up to the nominal value of the shares held and not paid by him.

6. PERPETUAL SUCCESSION:

An incorporated company never dies, except when it is wound up as per law. A company, beinga separate legal person is unaffected by death or departure of any member and it remains the same entity, despite total change in the membership. Perpetual succession, means that the membership of a company may keep changing from time to time, but that shall not affect its continuity.

7. SEPARATE PROPERTY:

A company being a legal person and entirely distinct from its members, is capable of owning, enjoying and disposing of property in its own name. The company is the real person in which all its property is vested, and by which it is controlled, managed and disposed of.

8.* TRANSFERABILITY OF SHARES*:

The capital of a company is divided into parts, called shares. The shares are said to be movableproperty and, subject to certain conditions, freely transferable, so that no shareholder is permanently ornecessarily wedded to a company.

Section 44 of the Companies Act, 2013 enunciates the principle by providing that the shares held by the members are movable property and can be transferred from one person to another in the manner provided by the articles.

9. CAPACITY TO SUE AND BE SUED:

A company being a body corporate, can sue and be sued in its own name.

10. CONTRACTUAL RIGHTS:

A company, being a legal entity different from its members, can enter into contracts for the conduct of the business in its own name.

11. LIMITATION OF ACTION:

A company cannot go beyond the power stated in its Memorandum of Association. The Memorandum of Association of the company regulates the powers and fixes the objects of the companyand provides the edifice upon which the entire structure of the company rests.

12. SEPARATE MANAGEMENT:

The members may derive profits without being burdened with the management of the company. They do not have effective and intimate control over its working and they elect their representatives as Directors on the Board of Directors of the company to conduct corporate functions through managerialpersonnel employed by them.

In other words, the company is administered and managed by its managerial personnel.

13.* VOLUNTARY ASSOCIATION FOR PROFIT*:

A company is a voluntary association for profit. It is formed for the accomplishment of some stated goals and whatsoever profit is gained is divided among its shareholders or saved for the future expansion of the company.

14. TERMINATION OF EXISTENCE:

A company, being an artificial juridical person, does not die a natural death. It is created by law,carries on its affairs according to law throughout its life and ultimately is effaced by law. Generally, theexistence of a company is terminated by means of winding up.

STAGES OF INCORPORATION

Incorporation or Registration of a Company

After Promotion, the second stage in the formation of a company is the registration or incorporation. The promoter of a company should perform the following functions for getting the company registered under the Companies Act.

I. Approval of the Proposed Name of the Company

Before the company is registered, it is essential to obtain the approval of the Registrar to its proposed name. There is a specific application form for this purpose.

The promoter generally selects a few suitable names in order of preference and apply to the National Company Law Tribunal through the Registrar of the State in which the company is to be registered in Form No. 1A along with a fee of Rs.100.

On hearing about the available name, the promoter has to decide the name for the company.

II. Documents to be filed with the Registrar during registration

The promoter should then prepare and file the following documents with the Registrar of Joint Stock Companies. He should also pay the necessary filing and registration fees.

1. Memorandum of Association

The Memorandum should be printed and at least seven persons each agreeing to take at least oneshare must subscribe their names to Memorandum.

2. The Articles of Association

The Articles must also be signed by at least seven members. If a public company doesn't prepare and file Articles, then it is deemed to have adopted Table A in Schedule I of the Indian Companies Act.

3. List of Directors

A complete list of directors, their addresses and occupations and age. If not separate list is filed,the subscribers to the Memorandum are deemed to be the first directors.

4. Consent of the Directors

When Directors of a Company are appointed by the Articles of Association or named in the prospectus, a written consent to act as directors and also a written undertaking to take up and pay for thequalification shares if any are mandatory in Incorporation of a Company.

5. Statutory Declaration

A statutory declaration by any one of the following persons stating that all the requirementsof the Act regarding Registration have been duly complied with:

An Advocate of the Supreme Court or High Court.

An Attorney or Pleader who is entitled to appear before a High Court.

A Chartered Accountant who is engaged in formation of the company and also practicing inIndia.

Any individual who is named in the Articles of Association as the Company's Director, Manager or Secretary.

6. Notices of the Address of the Registered Office

The notice for the address of the registered office of the company should be given within 30 days after its incorporation or on the date from which the company commences its business

whichever is earlier.

7. A Letter of Authority for Making Necessary Corrections in Memorandum and Articles

A letter of authority on a non-judicial stamp paper of the requisite value signed by all the subscribers in favour of one of them or any other person for making necessary corrections, on their behalf, in the Memorandum and Articles and other papers is to be filed with the Registrar of Companies.

8. Letter of Registrar of Companies about the Availability of Name

Notarized original copy of Registrar of Companies stating the availability of the proposed name is mandatory while registering a company name. It should be filed with the Registrar of Companies. However, the requirements as given in points 3 and 4 above shall not apply to private companies.

III. Payment of Necessary Fees

Along with the above-detailed documents, the registration and filing fee as per the ratesprescribed in Schedule X to the Companies Act, 1956 are to be paid.

IV. Registration of the Company

The Registrar of Companies will then verify the documents submitted for registration. If there are any discrepancies found, concerned person was called to visit the Registrar's office to rectify the errors in the documents. If the documents for registrations are found in order, the Registrar will registerthe company and a Registration number is allotted.

The Registrar under his hand and Seal of his office will issue a Certificate of Incorporation. Thedate given by the Registrar in the certificate will be the date of incorporation of the company. The company will be considered to be a legal entity from this date.

Certificate of Incorporation of the Company

After the above documents are filed with the Registrar and the prescribed fees are paid and the Registrar is satisfied that all the requirements of the Act regarding the registration have been complied with, he will register the documents and retain them.

The Registrar will then issue a certificate known as **Certificate of Incorporation** and enter thename of the company in the Register kept in his office. This Certificate of Incorporation entitles the company as a legal person. In other words, the company is born upon the issue of Certificate of Incorporation.

Conclusiveness of the Certificate of Incorporation

According to Companies Act, the certificate is conclusive evidence that all the requirements of the Act in regard to the formation and registration of the company have been complied with. The effectsof the certificate of incorporation can be summed up as follows:

1. Neither the Court nor the Registrar can cancel the Certificate of Incorporation even if thecompany is formed for an illegal purpose.

2. The validity of the Certificate of Incorporation cannot be debated or argued upon on anygrounds whatsoever.

3. When a certificate is issued, the new company is born. In other words, a legal person hascome into existence through a legal process.

4. The date mentioned in the certificate is the date of incorporation of the company.

Specimen copy of Certificate of Incorporation

SPECIMEN OF THE CERTIFICATE OF INCORPORATION

I hereby certify that the Leather Loft India Ltd. is this day incorporated under the Companies Act, 1956 and that the company is limited.

Given under my hand at Chennai this Fifth Day of June 2007.

SEAL
The Registrar of Companies

Signature .....

Registrar of Companies

Capital Subscription Stage

A private company or a public company not having share capital can commence business immediately on its incorporation. **Capital Subscription Stage** and **Commencement of Business Stage** are relevant only in the case of a public company having a share capital. Such a company has to pass through these two additional stages before it can commence its business.

The capital subscription stage deals with the task of obtaining the necessary capital for the company. For this purpose, immediately after the incorporation, a meeting of the Board of Directors is conducted to deal with the following business:

Appointment of the secretary. In most cases, the appointment made at the promotion stage isconfirmed.

Appointment of Bankers, Auditors, Solicitors and Brokers etc.

Adoption of draft "Prospectus"/"Statement in lieu of

Prospectus". Adoption of underwriting contract, if any.

Besides the above mentioned business, the Board also decides as to whether - a public offer for capitalsubscription is to be made, and listing of shares at a stock exchange is to be secured.

After the above formalities have been completed, the Directors of the company file a copy of the prospectus with the Registrar and invite the public to subscribe into the shares of the company by puttingthe prospectus in circulation.

Applications for shares are received from the public through the company's bankers and if the subscribed capital is equal to the minimum subscription amount as disclosed in the prospectus, and otherrequirements of a valid allotment are fulfilled, the directors of the company pass a formal resolution ofallotment.

Allotment letters are then posted, return of allotment is filed with the Registrar and sharecertificates are issued to the allottees in exchange of the allotment letters.

No allotments can be made or money paid for the subscription of shares will be refunded if the total subscribed capital is less than the minimum subscription of if the company does not obtain the minimum subscription within 120 days from the issue of prospectus.

It may be noted that a public company having a share capital, but not issuing a prospectus has tofile with the Registrar a Statement in lieu of Prospectus at least 3 days before the directors proceed to pass the resolution of first allotment.

E-FILING

Every Company incorporated under **Companies Act 2013** or any previous Act is required to filefinancial statements along with Annual return every year in the following E-forms with the Registrar ofCompanies:-

AOC4- For Filing Balance Sheet
AOC 4 CFS- for Filing Statement containing features of consolidated financial statements of GroupCompanies
AOC 4 XBRL- for Filing Financial Statements of certain class of Companies.
MGT-7- For Filing Annual Return of Company having share Capital.
CRA-4- For Filing Cost Audit Report of certain class of Companies.

* There are certain class of Companies which are required to file their financial Statements in XBRL
1) All Companies which are listed in any stock Exchange in India including their subsidiaries,
2) All Companies having paid up capital of **5 crores** and above, or
3) All Companies having turnover of 100 **crores** and above, or
4) All companies which are required to maintain their accounts as per Companies (Indian AccountingStandards) rules 2015.

EXEMPTION FROM XBRL FILING

1) Banking Companies
2) Power Companies
3) Non-Banking Financial Companies
4) Insurance Companies.

DUE DATE OF FILING

AOC4/AOC4 CFS/ AOC 4 XBRL

In case of One Person Company- within 180 days from closure of Financial Year In all other Cases – within 30 days from the Date of Annual General Meeting.

MGT-7

Within 60 days from date of Annual General Meeting.

CRA-4

Within 30 days from the date of receiving Cost Audit Report.
* Form CRA-4 is required to be filed by Companies satisfying the limits specified under Companies Act2013.

PENALTY FOR NON FILING

For Company- Rs.1000 for every day during which the failure continues but which shall not extend Rs.10,00,000.
For Officers- One Lakh rupees which shall not extend Rs. 5,00,000.

(Substituted by the Companies (Amendment) Ordinance, 2018 dated 02.11.2018) As per Companies (Registration Offices and Fees) Second Amendment Rules 2018–

1) If case a document required to be filed under section 92 (Annual return)and Section 137 (FinancialStatements) of the Act **after 30.06.2018**, following additional late fees to be paid Delay beyond period mentioned under section 92(4), additional fees would be **100 Rupees Per day**;Delay beyond period mentioned under section 137(2), additional fees of **100 rupees per day**.

2) In all other cases following additional fees would be

paid;Upto 30 days- 2 **times of normal fees**

More than 30 but upto 60 days- **4 times of normal fees**

More than 60 but less than 90 days- 6 **times of normal fees**

More than 90 days but less than 180 days –**10 times of normal fees**

Moe than 180 days – **12 times of normal fees**

* Plus 100 per day wef 11.07.2018

ROC FILLING:

Every company is required to file the Audited financial statement and annual return as per The Companies Act, 2013 within 30 days and 60 days respectively from the conclusion of the Annual General Meeting date. Filing of Audited financial statement is governed under Section 129 and 137 of The Companies Act, 2013 read with Rule 12 of the Company (Accounts) Rules, 2014 and annual return is **governed under Section 92** of the Companies Act,2013 read

with Rule 11 of the Companies (Management and Administration) Rules, 2014.

The procedure of ROC filing the annual return and Audited financial statement can be easily understood by the following process:

1. Hold a Board Meeting to
   Authorize the auditor for the preparation of financial statements as per Schedule III of the Companies Act, 2013.
   Authorize the Director or Company Secretary for preparation of Board Report and AnnualReturn as per the Companies Act, 2013.

2. Hold another Board Meeting for approving the draft financial statements, Board Report and AnnualReturn by the directors of the company.

3. Conduct the Annual General meeting of the Company and pass the necessary resolutions. Please notethat the financial statements are considered final only when the same is approved by the shareholdersat the General Meeting.

Documents Required for ROC Annual Filing

Every company has to attach some documents important while filing the ROC and it includes:

Balance-Sheet: Form AOC-4 to be filed by all companies while ROC filing

Profit & Loss Account: Form AOC-4 to be filed while ROC filing by all companies

Annual Return: MGT 7 to be filed by companies

Cost Audit Report: Form CRA 4 to be filed by the companies

E-Forms required to be Filed with ROC

Name of E-form	Purpose of E-form	Attachments	Due date of filing	Applicability on Company
Form ADT-1	Appointment of Auditor	Appointment Letter, Confirmation Letter from Company	15 days from the date of AGM.	Private Company, Public Limited Companies, Listed Company, One Person Company

Form AOC-4 and Form AOC-4 CFS (in case of Consolidated financial statements)	Filing of Annual Accounts	Board Report along with annexures: MGT-9, AOC-2, CSR Report, Corporate Governance Report, Secretarial Audit Report etc.. as per the nature of Company and financial statements	30 days from the date of the AGM (In case of OPC within 180 days from the close of financial year)	Private Company, Public Limited Companies, One Person Company
Form AOC-4 (XBRL)	Filing of Annual Accounts in XBRL mode	XML document of financials of the Company	30 days from the date of the AGM	Listed companies in India and their Indian subsidiaries (or) a public company With paid-up capital >= 5 crores (or) With turnover>=100 crores

Form MGT-7	Filing of Annual Return	List of shareholders, debenture holders, Share Transfer, MGT-8	60 days from the date of AGM.	Private Company, Public Limited Companies, Listed Company, One Person Company
Form CRA-4	Filing of Cost Audit Report	XML document of Cost Audit report	30 days from the receipt of Cost Audit Report	Companies prescribed as per The Companies (Cost records and Audit Rules), 2014 amended from time to time.
Form MGT-14	Filing of resolutions with MCA regarding approval of Board Report and Annual Accounts	Certified true copy of the resolution.	30 days from the date of concerned Board Meeting	Public Companies and Listed Companies (Exempted for private companies)

ROC E-filing Process on MCA (www.mca.gov.in)

1. Download the forms as per above table (i.e. AOC-4 and MGT-7) from the MCA website under:MCA services menu ====> E-filing===> Company Forms Download.

2. Fill the appropriate E-forms applicable of your company and attach the pdf or XML documents as perthe requirement of the form ===> Press Check form ===> Attach the Digital Signature of the Directorand Practicing professional (if applicable; exempted for OPC and small companies) ===> Now do pre-scrutiny.

3. Get yourself registered on the MCA portal as a Business User or registered user. After getting registered on the portal, log in with your ID and password.

4. After login go to upload E-forms ===> Browse the filled and signed form from your system's location.

5. After uploading the form, the system will automatically generate a Service Request Number(SRN) and option to go on payment window.

Have two options:

- Pay Later and save the challan generated and pay within the due time
- Pay using internet banking or debit/credit card facility simultaneously and save the paymentchallan for future reference.

6. After doing this complete process, you can track the transaction status of your form through SRN under the MCA services menu. What you need to do is just put the SRN generated in the challan and you will be able to know whether your form is approved or for pending for approval.

General Points to be Kept in Mind while Doing the Annual ROC Filing

The notice of Board Meeting should be sent to all the directors before 7 days and acknowledgment for the same should be taken.

As per Section 134 of the Companies Act, 2013 the financial statement, including consolidated financial statement, if any, shall be signed on behalf of the Board at least by the chairperson of the company where he is authorized by the Board or by two directors out of which one shall be the managing director and the Chief Executive Officer if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One PersonCompany, only by one director.

As per Section 101 of the Companies Act, 2013, a clear 21 days' notice for the general meetingshall be given to all the members, legal representatives of any deceased person, auditor, and every director of the company by physical or electronic mode. The notice should also contain the location mapof the venue of the general meeting as per Secretarial Standards and should be placed on the website ifany.

The company shall prepare its books of accounts and keep at its registered office. If the company chooses to place at any other place, then the company will have to file AOC-5 by passing a board resolution.

While uploading the forms, care should be taken that the form is the latest version as provided on the MCA.

398. Provisions relating to filing of applications, documents, inspection, etc., in electronic form.

I. Notwithstanding anything to the contrary contained in this Act, and without prejudice to the provisions contained in section 6 of the Information Technology Act, 2000, the Central Government may make rules so as to require from such date as may be prescribed in the rules that—

a. such applications, balance sheet, prospectus, return, declaration, memorandum, articles, particulars of charges, or any other particulars or document as may be required to be filed

or delivered under this Act or the rules made there under, shall be filed in the electronic form and authenticated in such manner as may be prescribed;

b. such document, notice, any communication or intimation, as may be required to be served or delivered under this Act, in the electronic form and authenticated in such manner as maybe prescribed;

c. such applications, balance sheet, prospectus, return, register, memorandum, articles, particulars of charges, or any other particulars or document and return filed under this Act or rules made there under shall be maintained by the Registrar in the electronic form and registered or authenticated, as the case may be, in such manner as may be prescribed;

d. such inspection of the memorandum, articles, register, index, balance sheet, return or any other particulars or document maintained in the electronic form, as is otherwise available for inspection under this Act or the rules made there under, may be made by any person through the electronic form in such manner as may be prescribed;

e. such fees, charges or other sums payable under this Act or the rules made there under shall be paid through the electronic form and in such manner as may be prescribed; and

f. The Registrar shall register change of registered office, alteration of memorandum or articles, prospectus, issue certificate of incorporation, register such document, issue such certificate, record the notice, receive such communication as may be required to beregistered or issued or recorded or received, as the case may be, under this Act or the rules made there under or perform duties or discharge functions or exercise powers under this Act or the rules made there under or do any act which is by this Act directed to be performedor discharged or exercised or done by the Registrar in the electronic form in such manner as may be prescribed.

Explanation. — For the removal of doubts, it is hereby clarified that the rules made under this section shall not relate to imposition of fines or other pecuniary penalties or demand orpayment of fees or contravention of any of the provisions of this Act or punishment there for.

II. the Central Government may, by notification, frame a scheme to carry out the provisions of sub-section (1) through the electronic form.

MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION

MEMORANDUM OF ASSOCIATION

Memorandum of Association is a document which actually forms the charter of the company and defines its powers and objects. It is the basic document and it states how the company is to be constituted and what work it will perform at the same time.

It contains rules regarding the capital structure, the liability of the members, the objects clause, and other important matters of the company.
It delimits the area beyond which the company cannot go.

Forms of Memorandum:

According to Sec. 14 of the Companies Act, Memorandum of Association will be in such one of the forms which are laid down in Tables B, C, D and E in Schedule I to the Companies Act:

- Table B = It relates to Memorandum of Association of a company limited by shares.
- Table C = It relates to Memorandum and Articles of Association of a company limitedby guarantee and not having a share capital.
- Table D = It relates to Memorandum and Articles of Association of the company limitedby guarantee and having a share capital.
- Table E = It relates to Memorandum and Articles of Association of an unlimitedcompany.

Contents of Memorandum:

Sec. 13 of the Companies Act states that the Memorandum of Association of every company must contain:

(a) Name clause:

It must contain the name of the company with the word 'Limited' in case of a Public Limited Company and with the word 'Private Limited' in case of a Private Limited Company.

(b) Situation clause:

The name of the State where the Registered Office of the company is situated. In order to determinethe jurisdiction of the court and of the Registrar of this company, it is very important.

(c) Object clause:

The Memorandum must contain the objects of the company and which must be classified as:

(i) The main objects of the company to be pursued by the company;

(ii) Objects incidental or ancillary to the attainment of the main objects; and

(iii) Other objects which are not included in (i) and (ii) above.

(d) Area of operation clause:

The state or states to whose territories the objects of the company extend (except in case of tradingcorporation) must be contained.

(e) Liability clause:

A limited company must state in its Memorandum that the liability of its members is limited and a guarantee company must state the liability of its members if the company goes into liquidation.

(f) Capital clause:

In the case of a company having a share capital, it must mention the amount of share capital bywhich the company proposes to be Registered and division thereof into share of a fixed amount.

(g) The Association and Subscription clause:

The Memorandum must contain this clause which informs the consent of the members relating toformation and the number of shares taken by each of them.

Each member is to take at least one share of the company and to state his name, address, description, number of shares taken by him along with the name, address and description of the witness.

Printing and Signing of Memorandum:

Sec. 15 lays down that the Memorandum of Association shall be:

(i) Printed,

(ii) Divided into paragraphs, numbered consecutively, and

(iii) Signed by seven members in case of private company.

Every member must sign and add his address, his occupation, description in the presence of at least one witness who also must attest his signature and add his address, description and occupation, if any.

ALTERATION

ALTERATION OF THE MEMORANDUM:

The following procedures have been laid down by the Companies Act in order to alter theMemorandum of Association of the company.

The provisions of the Memorandum, for the purpose of alteration, may be divided into two:

(1) Provision which must be included in the Memo (viz., the name, object, place of registeredoffice etc.);

(2) Other provision (viz., appointment of manager, managing director etc.).

Needless to mention here that provisions coming under (2) stated above can be altered in thesame manner as provision of Articles of Association unless otherwise provide in the Act.

But provisions coming under (1) stated above are called 'Conditions contained in the Memorandum' and may be altered in the following ways:

(a) Change of Name:

Sec. 21 lays down that a company may change its name by special provisions provided the Company Law Board approves of the change. But no such approval is necessary in case of addition or deletion of the word 'Private' when a public company is converted into a private company, or vice versa.

Sec. 22 states that if, by inadvertence, a company is registered with a name which is identical with or closely resembles the name of tin existing company, the name may be changed by an ordinary resolution, with the previous approval of the Company Law Board. If the company takes no steps in thematter, the Board may direct it to change its name within a prescribed period.

Similarly, Sec. 23 lays down that when the name is validly changed, the Registrar shall enter the new name in the register of companies and shall issue a fresh certificate of incorporation. The Registrar shall also make the necessary alteration in the Memorandum of Association of the company.

(b) Change of object:

Sec. 17 to 19 of the Companies Act state how the object clause of a Memorandum can be changedin order to enable the company:

(i) To carry on its business more economically and more efficiently;

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

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

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

(v) To restrict or abandon any of the objects specified in the Memorandum;

(vi) To sell or dispose of the whole or any part of the undertaking of the company; or

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

Procedure of Alteration:

(i) A special resolution must be passed [Sec. 17(1)].

(ii) The alteration must be confirmed by the Company Law Board on petition [Sec. 17(2)].

(iii) Notice must be given to every person whose interest will be affected by the alteration and consent of the creditors of the company must be obtained or claims have been discharged orsecured [See. 17(3)].

(iv) Notice must be given to the Registrar of companies so that he can appear before the CompanyLaw Board and state his objections and suggestions, if any, in regard to the confirmation ofthe alteration [Sec. 17(4)].

(v) The Company Law Board may make an order confirming the alteration either wholly

or in part and on such terms and conditions, as it thinks fit [Sec. 17(5)].

A certified copy of the Company Law Board's order along with a printed copy of the Memorandum as altered shall be filed with the Registrar within 3 months of the date of the orderafter the Board has confirmed the alterations and the certificate of the Registrar of Companies isconclusive evidence of the alteration.

(c) Change of Registered Office:

Change of registered office includes:

(i) Change of registered office from one place to another place in the same city, town or village;
(ii) Change, of registered office from one town to another town of the same State; and
(iii) Change of registered office from one state to another State.

(c) Alteration of Capital Clause this may include:

(i) Alteration including increase of capital;
(ii) Reduction of capital;
(iii) Variation of shareholders' right;
(iv) Creation of Reserve Capitals.

ARTICLES OF ASSOCIATION:

Articles of Association contain the rules and regulations which are to be followed for the internalmanagement of the company based on the Memorandum of Association. In other words, it is a documentwhich contains rules, regulations, bye-laws etc. of the company.

Form of Articles:

Sec. 30 of the Companies Act lays down the model form of Articles, for use in the case of companies not limited by shares, which are given in Schedule I to the Act. The Articles must (i) be printed, (ii) be divided into paragraph and numbered consecutively, and (iii) be signed by each memberof the Memorandum in the presence of at least one witness who shall attest the signature, add his addressand description and occupation.

Model Form of Articles:

- Table A = It deals with regulations for management of a company limited by shares;
- Table B = It contains a model form of Memorandum and Articles of Association of companylimited by shares;
- Table C = It contains model form of Memorandum and Articles of Association of a companylimited by guarantee and not having a share capital;

- Table D = It presents model form of Memorandum and Articles of Association of a companylimited by guarantee and having a share capital;
- Table E = It gives the model form of Memorandum and Articles of Association of an unlimitedcompany.

Contents of Articles:

The Articles of Association of a public limited company usually contain:

(a) Number and value of shares, share capital, variation of shareholders' right, payment of commission,share certificate;

(b) Preliminary contracts, if any;

(c) Loan on shares;

(d) Calls on shares;

(e) Transfer and Transmission of shares;

(f) Forfeiture of shares;

(g) Share Warrants;

(h) Alteration of capital;

(i) General meeting;

(j) Voting rights of members;

(k) Directors, their remuneration etc.;

(l) Secretary and Manager;

(m) Dividend and Reserves;

(h) Accounts and Audit; and

(o) Winding-up.

ALTERATION

ALTERATION OF ARTICLES:

Procedure of Alteration:

According To Sees. 40 and 192 (1) and (2) of the Companies Act, a company may alter the rules and regulations that are contained in its Articles anytime by passing a special resolution. Similarly, anynew regulation may also be adopted which could have been lawfully included in the original Articles.

Although, a copy of the special resolution altering the Articles must be filed with the Registrar within 30 days of its passing, together with every copy issued thereafter. Sec. 31(2) also states that anyalteration made in the Articles shall be as valid as if originally contained in the Articles and shall be subject in like manner to alteration by special resolution.

Limitations of Alteration:

The following points should carefully be considered:

(i) Articles must not conflict with Memorandum;

(ii) It must not sanction anything illegal;

(iii) It must not be inconsistent with the Act;

(iv) It must not increase the liability of members;

(v) It must be altered by special resolution only;

(vi) It must not cause breach of contract;

(vii) It must be for the benefit of the company;

(viii) It may be effected with retrospective effect.

Differences between Memorandum of Association and Articles of Association:

(1) The Memorandum is the fundamental charter which states the objects and power of the company while the Articles are the rules and regulations which control the internal management of the company.

(2) An Article may be altered by a special resolution and consent of Company Law Board is not necessary. But Memorandum may be altered by a special resolution subject to sanction of the court or Company Law Board.

(3) Any act beyond the powers of Memorandum (ultra vires) is void and that is not ratified by the members even by a unanimous resolution. But any acts beyond the Articles can be ratified by the member provided these are within the jurisdiction of the Memorandum.

(4) Any rule in the Articles Contrary to the Memorandum is invalid.

(5) The Memorandum is practically a contract between the company and the outsiders but Articles dealwith the contract between the company and the shareholders.

(6) There are certain clauses which cannot be altered without the sanction of the Central Government and the court (e.g., the object clause, the liability clause etc.) and there are other clauses which can be altered easily (e.g., the name clause). But that is not applicable in case of the Articles. It can be altered by a special resolution.

(7) The Memorandum is governed by the Companies Act whereas the Articles are governed by both theCompanies Act and the Memorandum as well.

EFFECTS OF REGISTRATION

Effect of registration under this Part of provision is 371

1. When a company is registered in pursuance of this Part, sub-sections (2) to (7) shall apply.

2. All provisions contained in any Act of Parliament or any other law for the time being in force, or other instrument constituting or regulating the company, including, in the case of a companyregistered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same mannerand with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

3. All the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows:—

    a. Table F in Schedule I shall not apply unless and except in so far as it is adopted by specialresolution;

    b. the provisions of this Act relating to the numbering of shares shall not apply to any company whose shares are not numbered;

    c. in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid;

    d. in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives of deceased contributories, or with respect to the assignees of insolvent contributories, as the case may be, shall apply.

4. The provisions of this Act with respect to—

    I. the registration of an unlimited company as a limited company;

    II. the powers of an unlimited company on registration as a limited company, to increase thenominal amount of its share capital and to provide that a portion of its share capital shallnot be capable of being called-up except in the event of winding up;

    III. the power of a limited company to determine that a portion of its share capital shall not be capable of being called-up except in the event of winding up, shall apply, notwithstanding anything in any Act of Parliament or any other law for the time being in force, or other instrument constituting or regulating the company.

5. Nothing in this section shall authorize the company to alter any such provisions contained in any instrument constituting or regulating the company as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorized to be altered by this Act.

6. None of the provisions of this Act (apart from those of section 242) shall derogate from any power of altering its constitution or regulations which may be vested in the company, by virtue of any Act of Parliament or any other law for the time being in force, or other instrument constituting or regulating the company.

7. In this section, the expression ―instrument includes deed of settlement, deed of partnership, orlimited liability partnership.

DOCTRINE OF CONSTRUCTIVE NOTICE

Section 399 allows any person to electronically inspect, make a record, or get a copy/extracts of anydocument of any company which the Registrar maintains. There is a fee applicable for the same. The documents include the certificate of incorporation of the company.

By now we know that the Memorandum and Articles of Association are public documents. Thissection confers the right of inspection to all.

Before any person deals with a company he must inspect its documents and establish conformitywith the provisions. However, even if a person fails to read them, the law assumes that he is aware of the contents of the documents. Such an implied or presumed notice is called Constructive Notice.

In simpler words, if a person enters into a contract which is beyond the powers of a company, thenhe has no right under the said contract against the company. The Memorandum of Association defines thepowers of the company. Also, if the contract is beyond the authority of the directors as defined in the Articles, the person has no rights.

ULTRAVIRES AND INDOOR MANAGEMENT

Doctrine of Indoor Management

The doctrine of indoor management is an exception to the earlier doctrine of constructive notice. It is important to note that the doctrine of constructive notice does not allow outsiders to have notice of theinternal affairs of the company.

Hence, if an act is authorized by the Memorandum or Articles of Association, then the outsider canassume that all detailed formalities are observed in doing the act. This is the Doctrine of Indoor Managementor the Turquand Rule. This is based on the landmark case between The Royal British Bank and Turquand. In simple words, the doctrine of indoor management means that a company's indoor affairs are the company's problem.

Therefore, this rule of indoor management is important to people dealing with a company through its directors or other persons. They can assume that the members of the company are performing their actswithin the scope of their apparent authority. Hence, if an act which is valid under the Articles, is done in aparticular manner, then the outsider dealing with the company can

assume that the director/other officershave worked within their authority.

Exceptions to the Doctrine of Indoor Management

The Turquand rule or the law of indoor management is not applicable to the following cases:

The outsider has actual or constructive knowledge of an irregularity In such cases, the rule of indoor management does not offer protection to the outsider dealing with the saidcompany.

The outsider behaves negligently

The rule of Indoor management does not protect a person dealing with a company if he does not initiate an inquiry despite suspecting an irregularity. Further, this rule does not offer protection if the circumstances surrounding the contract are suspicious. For example, the outsider should get suspicious ifan officer purports to act in a manner outside the scope of his authority.

Forgery

The doctrine of indoor management is applicable to irregularities that affect a transaction except forforgery. In case of a forgery, the transaction is deemed null and void.

A company has separate legal entity which can be formed by an association of individuals to with the intention to carry commercial activities to generate profit. The formation and functioning of thecompany are governed by certain laws, rule and regulations.

The intention to behind the enactment of such laws is to provide protection to company, its management as well as the outsider person who is contractually engaging with the company. There arecertain set of laws and the principles which provide safeguard to the company from the outsider personand vice versa.

Companies use to resources in the country and generate revenues. So, companies constitute important role in the growth of the economy and hence, it becomes necessary to create the laws governing them. These laws operate as prevention to curb the unfair and wrong practices in the corporateworld. The doctrine of constructive notice and the doctrine of indoor management are important principles in the Company Laws. The former being the rule and the latter being the exception to it.

The doctrine and its exception provide the protection. The doctrine of constructive notice protects the company from the actions of outsider person and the doctrine of indoor management protectsthe outsider person from the actions of the company. The interest of the company and the outsider personhas been protected. Both the doctrines make sure that no party gets unfair gain out of any contractual operation.

Doctrine of Constructive Notice:

This doctrine reduces the complicity in the rules and regulations of the business. This Doctrine functions as a safety to the company while dealing with the outsider party. There is no strict definition to constitute the Doctrine of Constructive Notice, but it can be summed as follows. A company is publicbody and the documents such as Memorandum of Association and

the Article of Association of the company are open to public for inspection.

Therefore, it is assumed that the outsider person, who is involving with the company for business,has gone through these documents. It is a duty of outsider person to be aware of the rules and regulations of the company because they it is available in public record. This assumption is called the Doctrine ofConstructive Notice.

At the time of the formation of the company MOA and the AOA of the company are submittedwith the Registrar of Companies. These documents are the charter of the company and the company is governed by laws mentioned there. This doctrine puts the obligation on the outsider person to inspect and well verse with these two documents.

In the event of a dispute, the outsider person cannot take the defence that he doesn't have the knowledge of the rules given in the MOA or AOA. This rule is vital while the adjudicating the disputes arising out of the violations of MOA and AOA. So, the doctrine of constructive notice can be termed asthe bylaws of the company must to be known to the outsider person as that information is available in the public domain. It is not the company's duty to convey this information to the outsider person as thatinformation is available in the public domain.

Section 399 of the **Companies Act, 2013** gives the legal foundation for this doctrine. As per this section, the Companies Act allows the outsider person to inspect and go through the records of the Company which are available with registrar of the Company. This section also provides the right of inspection of the documents of the company.

The MOA and AOA of the company are the public document and the outsider person shall get into the contract only after the inspection of these documents. By this provision, the doctrine of constructive notice is established by which the person is presumed to have the knowledge of the information in the documents available publically.

Before getting into the contract with any company, the outsider person must have knowledge of the company and he shall ensure that his purpose shall be fulfilled. Making available the documents ofthe public is the assumed and implied notice to the outsider person.

This doctrine is applicable to the documents which are available in the public record at the Registrar of Company. In the case of Oakbank Oil Co. vs. Crum it was held that, anyone who is involving in the contract with the company shall be assumed to have the knowledge and the understanding of thecompany's MOA and AOA. Therefore, the person is presumed to have the notice of it. This principle iscalled doctrine of the constructive notice.

The nature of the Doctrine of Indoor Management is wholly opposite to that of the doctrine of the constructive notice. The former protects the outsider person from the illegal actions of the company and the latter works as a protection to the company from the illegal actions of the outsider person.

The principle of the constructive extends to operation that there shall no need to deliver actual notice. Doctrine of Indoor Management sets the principle that the persons involving into contract with the company cannot be compelled to obtain the knowledge of the internal functioning and the proceedingof the company in relation with the contract.

The doctrine of Indoor Management is exception to the rule established by the Doctrine of constructive notice. This doctrine of indoor management is derived on the concept that the person getting into the contract with the company operates in good faith and he shall not suffer

by the illegal actions of the company.

The Doctrine of Indoor Managements states that outsider person has no responsibility to have the knowledge about the internal affairs of the company. The outsider person cannot be bound by the duty to review the internal functioning or the internal managerial proceedings of the company.

So, the outsider person shall not be made liable for the irregularities in the internal proceedingsof the company. The company cannot transfer its liability on the outsider person of its own irregular internal actions. This principle is called the Doctrine of the Indoor Management.

It is not the responsibility of the outsider person to look into internal management and the compliances of the company except MOA and AOA. If any such irregularity occurs due to the actions of the company then the company itself is responsible as the outsider person has acted in good faith. Asit is assumed that the outsider person has the knowledge of the MOA and AOA, it shall also be assumedthat, the internal compliance has been done by the company.

It is the responsibility of the company to comply all the requirements provided in the in the MOA and AOA, the outsider person cannot be bound with the responsibility of to inspect the internal mattersof the company. Though, it is obligatory for the outsider person to check whether the contract is in consistency with the MOA and AOA.

If the object of the contract is in accordance with and authorised by the MOA or AOA of the company, then the outsider person can presume that all the internal regulations are being completed bythe Company. The obligation of the outsider person ends there and the company becomes responsible for any ultra vires act or any irregularity remained in the contract.

The doctrine of Indoor Management simply states that the indoor affairs of the company are thecompany's difficulty to tackle and company has to bear its consequences. This doctrine is essential for directors who act on behalf of the companies. Persons contracting with the company can presume that the acts done by these directors are within their powers and scope. So, any act done by them in accordance with the MOA or AOA then the outsider person can assume validity of that act as it is donein their capacity.

Both the doctrines have been established maintain the balance between both the parties to the contract. No party in the contract shall take unfair advantage of its irregular and illegal actions and it ismade sure that the other party shall not suffer by its consequences.

The doctrine of indoor management was evolved 150 years ago. It is also known as Turquand's rule. The role of the doctrine of indoor management is opposed to the role of the doctrine of constructivenotice. The doctrine of constructive notice protects the company against outsiders whereas the doctrineof indoor management protects outsiders against the actions of the company. This doctrine also is a possible safeguard against the possibility of abusing the doctrine of constructive notice.

The person entering into a transaction with the company only needed to satisfy that his proposedtransaction is not inconsistent with the articles and memorandum of the company. He is not bound to see the internal irregularities of the company and if there are any internal irregularities than the companywill be liable as the person has acted in the good faith and he did not know about the internal arrangementof the company.

The rule is based upon the obvious reason of convenience in business relations. Firstly, the articles of association and memorandum are public documents and they are open to the public for inspection. Hence an outsider "is presumed to know the constitution of a company, but what may ormay not have taken place within the doors that are closed to him."

Exceptions to the Doctrine Of Indoor Management

In the following circumstances, relief of indoor management cannot be claimed by an outsider who isdealing with the company.

1. Where the outsider had knowledge of irregularity – The rule will not apply if the person dealingwith the company has a slight knowledge about the lack of authority of the person who is actingon behalf of the company in this situation the doctrine will not apply.

   In the case of **Howard v. Patent Ivory Co.** the directors cannot borrow more than 1000 pound without the consent of the company's annual general meeting. Directors borrowed 3500 pounds without the consent of annual general meeting from another director who took debentures. Now as the plaintiff is a director that he has the knowledge about the internal irregularity. Held- the debentures are good only for the 1000 pounds only because the plaintiff (director) has the knowledge of the internal irregularity.

2. No knowledge of memorandum and articles- again, the rule cannot be invoked by a person on the ground that he doesn't have the knowledge of memorandum and articles and thus he did relyon them.

   In the case of **Rama Corporation v. Proved Tin & General Investment Co.** the X who was the director in the company entered into a contract with Rama Corporation while purportingto act on behalf of the company and he also took a cheque from them. The articles of the companydid provide that the director may delegate their power but Rama Corporation did not have knowledge of this as they did not read the articles and memorandum of the company. Now, later on, it was found that the company had never delegated its power to X.
   Held– the plaintiff cannot take the remedy of the indoor management as they even don't that power could be delegated.

3. Forgery- The rule does not apply to the transaction involving forgery or illegal or transactions which are void ab initio. In the case of the forged transaction, there is a lack of consent. Here the question of consent cannot arise as the person whose signature is forged he is not even aware ofthe transaction.

   In the case of Rouben v. Great Fingal Consolidated, Here the secretary of the company forged the signature of two of the directors and issued the certificate without the authority. The issue of the certificate requires the signatures of two directors as given in the article. Held- here the holder of the certificate cannot take the advantage of the doctrine as it was forged transaction which is void ab initio.

   In the case of **Kreditbank Cassel v. Schenkers Ltd,** a bill of exchange signed by the manager of a company with his own signature under the words stating that he signed on behalf of the company, was held to be forgery when the bill was drawn in favor of a payee to whom themanager was personally indebted. The bill, in this case, was held to be forged because it purported to be a different document from what it was in fact; it

purported to be issued on behalf of the company in payment of its debt when in fact it was issued in payment of the manager'sown debt.

4. Negligence- the doctrine of indoor management, in no way, rewards those who behave negligently. Thus, where an officer of a company does something which shall not ordinarily be within his authority, the person dealing with him must make proper inquiries and satisfy him asto the officer's authority. If he fails to make an inquiry, he is estopped from relying on the rule.

   In the case of B**. Anand Behari Lal v. Dinshaw & Co. (Bankers) Ltd.,** an accountant of a company in favor of Anand Behari. On an action brought by him for breach of contract, thecourt held the transfer to be void. It was observed that the power of transferring immovable property of the company could not be considered within the apparent authority of an accountant.

5. The doctrine will not apply where the question is in regard to the very existence of an agency.

   In the case of **Varkey Souriar v. Leraleeya Banking Co. Ltd** the Kerala High Court held that the doctrine of Indoor management cannot apply where the question is not one as to thescope of the power exercised by an apparent agent of a company but is in regard to the very existence of the agency.

6. This doctrine is also not applicable where a pre-condition is required to be fulfilled before the company itself can exercise a particular power. In other words, the act done is not merely ultra vires the directors/officers but ultra vires the company itself.

LIFTING OF CORPORATE VEIL

Meaning Of The Doctrine:

Lifting the corporate refers to the possibility of looking behind the company's framework (or behind the company's separate personality) to make the members liable, as an exception to the rule thatthey are normally shielded by the corporate shell (i.e. they are normally not liable to outsiders at all either as principles or as agents or in any other guise, and are already normally liable to pay the companywhat they agreed to pay by way of share purchase price or guarantee, nothing more).

When the true legal position of a company and the circumstances under which its entity as a corporate body will be ignored and the corporate veil is lifted, the individual shareholder may be treatedas liable for its acts.

The corporate veil may be lifted where the statute itself contemplates lifting the veil or fraud orimproper conduct is intended to be prevented.

"It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of public interest, the effect on parties who may be affected, etc.". This was iterated by the Supreme Court in **Life InsuranceCorporation of India v. Escorts Ltd.**

The circumstances under which corporate veil may be lifted can be categorized broadly into two following heads:

1. Statutory Provisions
2. Judicial interpretation

STATUTORY PROVISIONS

Section 5 of the Companies Act defines the individual person committing a wrong or an illegal act to be held liable in respect of offenses as 'officer who is in default'. This section gives a list of officers who shall be liable to punishment or penalty under the expression 'officer who is in default' which includes a managing director or a whole-time director.

Section 45– Reduction of membership below statutory minimum: This section provides that if the members of a company is reduced below seven in the case of a public company and below two in the case of a private company (given in Section 12) and the company continues to carry on the businessfor more than six months, while the number is so reduced, every person who knows this fact and is a member of the company is severally liable for the debts of the company contracted during that time.

In the case of **Madan lal v. Himatlal & Co**. The respondent filed suit against a private limited company and its directors for recovery of dues. The directors resisted the suit on the ground that at no point of time the company did carry on business with members below the legal minimum and therefore,the directors could not be made severally liable for the debt in question. It was held that it was for the respondent being dominus litus, to choose persons of his choice to be sued.

Section 147- Misdescription of name: Under sub-section (4) of this section, an officer of a company who signs any bill of exchange, hundi, promissory note, cheque wherein the name of the company is not mentioned is the prescribed manner, such officer can be held personally liable to the holder of the bill of exchange, hundi etc. unless it is duly paid by the company. Such instance was observed in the case of Hendon v. Adelman.

Section 239– Power of inspector to investigate affairs of another company in same group or management: It provides that if it is necessary for the satisfactory completion of the task of an inspector appointed to investigate the affairs of the company for the alleged mismanagement, or oppressive policy towards its members, he may investigate into the affairs of another related company in the same management or group.

Section 275- Subject to the provisions of Section 278, this section provides that no person can be a director of more than 15 companies at a time. Section 279 provides for a punishment with fine which may extend to Rs. 50,000 in respect of each of those companies after the first twenty.

Section 299- This Section gives effect to the following recommendation of the Company Law Committee: "It is necessary to provide that the general notice which a director is entitled to give to the company of his interest in a particular company or firm under the proviso to sub-section (1) of section 91-A should be given at a meeting of the directors or take reasonable steps to secure that it is brought up and read at the next meeting of the Board after it is given.

The section applies to all public as well as private companies. Failure to comply with the requirements of this Section will cause vacation of the office of the Director and will also subject him to penalty under sub-section (4).

Sections 307 and 308- Section 307 applies to every director and every deemed director. Not only the name, description and amount of shareholding of each of the persons mentioned but also the nature and extent of interest or right in or over any shares or debentures of such person must be shown in the register of shareholders.

Section 314- The object of this section is to prohibit a director and anyone connected with him, holding any employment carrying remuneration of as such sum as prescribed or more under the companyunless the company approves of it by a special resolution.

Section 542- Fraudulent conduct: If in the course of the winding up of the company, it appears that any business of the company has been carried on with intent to defraud the creditors of the company or any other person or for any fraudulent purpose, the persons who were knowingly parties to the carrying on of the business, in the manner aforesaid, shall be personally responsible, without any limitation of liability for all or any of the debts or other liabilities of the company, as the court may direct. In Popular Bank Ltd.,

it was held that section 542 appears to make the directors liable in disregard of principles of limited liability. It leaves the Court with discretion to make a declaration of liability, in relation to 'all or any of the debts or other liabilities of the company'. This section postulates a nexus between fraudulent reading or purpose and liability of persons concerned.

ROLE AND IMPORTANCE OF COMPANY SECRETARY

A company secretary is essentially responsible for all the company administration which is also known as company compliance.

This means they are accountable for the submission of confirmation statements and other important documents to Companies House, and they often take up a number of other administrative matters such as arranging board meetings. The company secretary cannot be the same person as the limited company director, however, in the absence of a company secretary, the company director will need to absorb the required duties.

There is no formal training required of a company secretary. They will, however, be responsible for a lot of administrative work. It is recommended that the ideal person in the role is naturally organised, efficient, and has some understanding of the business structure and finances.

Definition of a Company Secretary:

A Company Secretary means **"a person who is a member of the Institute of Company Secretaries of India".** [Sec. 2(i) (c) of the Company Secretaries Act, 1980],
According to Section 2(45) of the Companies Act, 1956, "Secretary means any individual possessing the prescribed qualifications, appointed to perform the duties which may be performed by a secretary under this Act and any other ministerial or administrative duties".

ROLE OF COMPANY SECRETARY

In modem time, company secretary plays an important role in company management. From the inception of a company, he performs many important functions. The success of company management largely depends on the efficiency and ability of the company secretary. Though the important plans andpolicies of the company are formulated by the board, execution of those plans and policies depends on the initiative of the company secretary. It is says that, though the Directors are the Brain of a Company,the Secretary is Its Ear, Eyes and Hands.

- **Advisor to the board**: Company secretary acts as the advisor to the board of directors of the company. He provides necessary information and advice to the board for formulation of plans and policies.

- **Organizer:** Company secretary plays the role of an organizer. As an organizer of the company, he takes necessary steps in registering share allotment statements, prepares share certificates, and distributes them to the shareholders. In addition, he prepares various kinds of reports like statutory report, directors' report, annual report etc., and submits them to the board of directors.

- **Coordinator:** Company secretary performs an important role as a coordinator. He coordinates functions performed by various departments for achieving the company's goal. Moreover, he maintains liaison with various panics like board of directors, shareholders, employees and regulatory authorities.

- **Conductor of meetings:** Various meetings of the company like, annual general meeting, extra ordinary general meeting, directors' meeting etc. all are organized and conducted under the supervision of company secretary. He prepares the notices, agenda and minutes of meetings.

- **Custodian of books of accounts:** Company secretary plays the role of custodian in the organization. He ensures that the company maintains necessary books of accounts as mentioned in the Companies Acts. Moreover, he keeps those books of accounts under his custody and makesnecessary arrangements for inspection by various parties.

IMPORTANCE OF COMPANY SECRETARY

A company Secretary plays an important role in a company. He performs many functions and activities as per authorization from the board of directors. The secretary of a company is considered as the Ear, Eyes, and Hands of a Company. The following is the justification of such a statement:

1. A company secretary acts as the advisor to the board of directors and provides the necessary information to formulate plans and policies.

2. A company secretary is an organizer as he registers share allotment, prepares and allocates share certificates, makes all arrangements to prepare various reports like a statutory report, director's report, and annual report, etc.

3. A company secretary acts as an agent of a company and enters into a contract and makes representation on behalf of the company.

4. He is a coordinator and maintains correspondence with all stockholders of the company.

5. He is the conductor of various meetings like annual general meetings, extraordinary generalmeetings, director's meetings, etc. He also prepares the notice, agenda, and minutes of meetings.

6. He performs the role of a custodian by maintaining all books of accounts required by thecompany Act.

7. He is the chief administrative officer and carries all administrative jobs of a company and reportsto the board of directors.

KEY MANAGERIAL PERSONNEL

Key Managerial Personnel refers to a group of people who are in charge of maintaining the operations of the company.

Accounting Standard 18(AS-18) states that Key Managerial Personnel (KMP) are **people who haveauthority and responsibility for planning, directing and controlling the activities of the reportingenterprise.**

Chief Executive Office, Cheif Financial Officer, Company Secretary, Whole Time Director arethe Key Managerial Personnel.

Key Managerial Personnel

The term **'personnel'** refers to a **group of people working together**, instead of one person. The Key Managerial Personnel are the decision makers. They are **accountable for the smooth functioningof company operations.**

The members of the **Board of Directors** do not necessarily get involved in the day to day operations of the company. Their job is to supervise the company as a whole, not micromanage.

The Board of Directors sets goals and objectives for the company.
The key managerial personnel is the one who actually works on these goals and objectives to be achieved.

Key Managerial Personnel under Companies Act, 2013

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

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

Chief Executive Officer/Managing Director

The managing director or chief executive officer is responsible for running the whole company. Also, the managing director has **authority over all operations** and has the most power in a managerialhierarchy.
He is also responsible for **innovating and growing the company** to a larger scale. In many countries, a **managing director is also called a Chief Executive Officer**

(CEO).Company Secretary

A company secretary is a senior level employee in a company who is responsible for the lookingafter the efficient administration of the company. The company secretary takes care of all the compliances with **statutory and regulatory requirements**.
He also ensures that the targets and instructions of the board are successfully implemented. However, insome countries, **a company secretary is also called a corporate secretary**.

Whole Time Director

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

Chief Financial Officer

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

APPOINTMENT OF KEY MANAGERIAL PERSONNEL

According to Section 203(1), it is very much clear that following companies are mandated toappoint a whole-time KMP when read with Rule 8 of the

Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014:

1. Every listed company.
2. Public companies having paid-up share capital of 10 crore rupees or more.
3. Companies having paid-up share capital of 5 crore rupees or more are mandated to have aCompany Secretary.

Procedure of appointment

- The appointment of key managerial personnel is prescribed under Section 203 of the Act. Every member of managerial personnel is appointed through a resolution adopted by the Board with terms and conditions of appointment and remuneration.

- A member of managerial personnel can hold the position in one company at a given time. However, a member of managerial personnel of a company can be a member of managerial personnel of its subsidiary company.

- In case of vacancy, the Board has the responsibility of filling up within six months from thedate of such vacancy.

If the company or its Board tries to violate the provision of appointment of managerial personnel, then the company has to suffer from penalty. The company shall be punishable with fine of rupees one lakh which may extend up to rupees five lakh. Every director and other key managerial personnel shall also be punishable with a fine of Rs. 50,000. If the contravention is continuing, then they would be charged with Rs. 1,000 per day after the first offense

Roles and Responsibilities of Key Management Personnel

The KMPs are basically are basically responsible for taking the most important **decisions and managing all the employees**. They are also liable if they do not follow compliances laid down by the Companies Act 2013.
The growth and development of the company depend on the effectiveness of the KMPs at their jobs. Themain responsibilities and functions of the KMP are:

- As per Section 170 of the Companies Act, the details about the securities held by the KMPs in the company or its holdings and subsidiaries must be disclosed and thus recorded in the Registrar.
- KMPs have a right to voice their opinion especially in meetings of the Audit Committee. However,they don't have a voting right.
- According to Section 189, Companies Act, KMPs should disclose their interests in other companiesand associations, at least within 30 days of the start of the employment period.

COMPLIANCE OFFICER

COMPLIANCE OFFICER	
compliance officer is an employee of a company that ensures the Company is in compliance with its outside regulatory and legal requirements as well as internal policies and bylaws. The chief compliance officer is usually the head of a firm's compliance department.	Compliance officers have a duty to their employer to work with management and staff to identify and manage regulatory risk. Their objective is to ensure that an organization has internal controls that adequately measure and manage the risks it faces. Compliance officers provide an in-house service that effectively supports business areas in their duty to comply with relevant laws and regulations and internal procedures.

COMPLIANCE OFFICER SERVES AN ORGANISATION:

A compliance officer is an employee of a company who helps that company maintain policies and procedures to remain within an industry's regulatory framework. Compliance officers wear many hats which are in detail below:

1. A compliance officer must have a thorough knowledge of the company and an awareness of where possible regulatory breaches may occur. It is essential that the compliance officer effectively communicate the company's key ethical principles and compliance regulations.
2. Compliance officers organize regular training sessions for employees to communicate key regulatory changes and updates. This is particularly important in a heightened regulatory environment where change is constant.
3. The compliance officer must work with business units and management to ensure appropriate contingency plans are in place that set guidelines on how to respond to a possible compliance breach.
4. The duties of a compliance officer may include reviewing and setting standards for outside communications by requiring disclaimers in emails or examining facilities to ensure they are accessible and safe.
5. Compliance officers may also design or update internal policies to mitigate the risk of the company breaking laws and regulations and lead internal audits of procedures.
6. In the event of a regulatory breach, it is important for the compliance officer to have appropriate disciplinary measures in place to avoid a future recurrence.

7. It is the compliance officer's duty to ensure continual monitoring and review of compliance procedures to help identify possible areas where improvements could be made.
8. Compliance officers are expected to provide an objective view of company policies.
9. Influence by other employees, including management and executives, to overlook infractions may result in significant fines or sanctions that may lead to financial loss or even business closure.
10. Compliance officers must also have strong attention to detail. They need the ability to notice actions that may result in liability with Brilliant oral and written communication skills.

5 .CRUCIAL TRAITS OF A SUCCESSFUL COMPLIANCE OFFICER:

Embodying these traits can accelerate the process of building relationships, earning trust, and gainingrespect.

1. Integrity. As the pillar of ethics at a company, a compliance officer must always act with integrity and tact and be an example to fellow employees.
2. Agility. Regulations change quickly. A savvy compliance officer must stay up-to-date with industry rules and be ready to adjust at a moment's notice.
3. Transparency. A compliance officer must gain the trust of all employees and executives. Being open and honest in all interactions will take you far.
4. Charisma. People skills are crucial for compliance officers to nurture a culture of corporate ethics and communicate the importance of compliance among all employees.
5. Expertise. A compliance officer must not only know the current standards but also be able to interpret them quickly and accurately.

Compliance risk is a complex subject as it varies by industry and also changes with the political and economic environment. While internal compliance may seem easier to manage since it isset up within the organization, it also is not always a black and white issue.

That's why having a dedicated individual who is responsible for such oversight can bebeneficial. Here Compliance officer plays an important role.

To protect your business, no matter the industry, a compliance officer can oversee the internal and external environment to provide all that is needed to comply with rules and regulations. To enhancetheir powers by combining an automation tool with a compliance officer, you can significantly relieve the burden of compliance risk and allow your employees to focus on the tasks at hand that they were hired to perform.

In a Nutshell, a compliance officer identifies and mitigates risk for a company. Compliance officers are in-house employees who ensure the company and its employees comply with all external industry laws and government regulations as well as internal bylaws and policies. As corporate scrutiny grows and regulations tighten and grow more complex, compliance officers will need to adapt to the changing landscape.

COMPULSORY APPOINTMENT

Every Listed Company and every other Public Company having a paid-up share capital of ten crore rupees or more shall have whole-time key managerial personnel. **[Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014]**

Every private company which has a paid up share capital of ten crore rupees or more shall have a whole -time company secretary. **[8A Appointment of Company Secretaries in Companies]**

Key Managerial Personnel In Relation To A Company Means

- Chief Executive Officer or the Managing Director or the Manager
- **The Company Secretary (CS)**
- The Whole-time Director
- The Chief Financial Officer
- Such other officer, not more than one level below the directors who is in whole-time employment,designated as Key Managerial Personnel by the Board
- Such other officer as may be prescribed. **[Section 2(51)]**

COMPULSORY / MANDATORY REQUIREMENTS

1. Company Secretary shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

2. A Company Secretary shall not hold office in more than one company except in its subsidiary company at the same time. If he is holding office in more than one company at the same time on the date of commencement of this Act, shall, within a period of six months from such commencement, choose one company, in which he wishes to continue to hold the office.

FOLLOWING PROCEDURE IS TO BE FOLLOWED

1. Meeting of Nomination and Remuneration Committee

Where a Company is required to constitute a Nomination and Remuneration Committee under section 178, shall receive a recommendation from the committee for the appointment and remuneration of the Whole-Time Company Secretary. **[For convening meeting of Nomination and Remuneration Committee, Refer the Procedure for Conducting Nomination and Remuneration Committee Meeting].**

2. Obtain recommendations from the Audit Committee

Where a Company is required to constitute an Audit Committee under section 177, shall receive a recommendation from the committee for the appointment and remuneration of the Whole-Time Company Secretary. **[For convening meeting of Audit Committee, Refer the Procedure for Conducting Audit Committee Meeting].**

3. Convene a Meeting of Board of Directors [As per Section 173 & Secretarial Standard-1 (SS-1)]

a. Issue Notice of Board Meeting to all the Directors of Company at their addresses registered withthe Company, at least 7 days before the date of Board Meeting. A shorter notice can be issued incase of urgent business.

b. Attach Agenda, Notes to Agenda and Draft Resolution with the Notice.
c. Hold a meeting of Board of Directors and pass a Board Resolution

- To approve the appointment of Whole-Time Company Secretary on the recommendation of the Nomination and Remuneration Committee and Audit Committee, where Company is required to constitute such Committees.

- To authorize Chief Financial Officer or any Director of the Company to file the requisite Formand Return with ROC.

d. Issue Appointment letter to the newly appointed Whole-Time Company Secretary.

e. Listed Company shall submit the disclosure of such appointment to the Stock Exchange within 24 hours from the date of the Board Meeting and post the same on the website of the Company within 2 working days. **[Regulation 30 & 46(3) of the SEBI (LODR) Regulations, 2015]**

f. Prepare and Circulate Draft Minutes within 15 days from the conclusion of the Board Meeting, by Hand/Speed Post/Registered Post/Courier/E-mail to all the Directors for their comments. **[Refer the <u>Procedure for Preparation and Signing of Minutes of Board Meeting</u>]**

4. File Form MGT-14 with ROC

   Every Listed Company and every other Public Company shall file a copy of Board Resolution withthe ROC in form MGT-14 within 30 days of passing of such resolution.

5. File Form DIR-12 with ROC

   Company shall file the particulars of appointment of Whole-Time Company Secretary to ROC in Form DIR-12 within 30 days of such appointment along with the following documents.

   a. Certified true copy of the Board Resolution

   b. Letter of Appointment
   c. Any other relevant document

6. Making Necessary entries in Register of Directors - Company shall make necessary entries in theRegister of Director and Key Managerial Personals.

<u>QUALIFICATION AND DISQUALIFICATIONS</u>

Qualifications of the Secretary:

Since the amendment of the Companies Act in 1994, only a person having prescribed qualifications can be appointed secretary of a company. Apart from the statutory qualifications, he should also have other qualifications as may be necessary to conduct the affairs of the company.

Statutory Qualifications:

According to Section 2(45) of the Companies Act 1956, as amended in 1974, a Company Secre-tary must possess the qualifications prescribed by the Central Govt. from time to time.

The qualifications as prescribed by the Companies (Secretary's Qualifications) Rules 1975, for the Secretary of a Company are:

(a) In case of a company having a paid-up share capital of Rs. 50 lakhs or more, the Secretary mustbe a member of the Institute of Company Secretaries of India incorporated under the CompaniesAct, 1956, and licensed under Sec. 25 of that Act. A person who is a member of the Institute of Chartered Secretaries of London shall also be eligible for appointment as Secretary of such a company.

(b) In the case of any other company, one or more of the following qualifications shall have to be possessed by the Secretary:

(i) Qualifications specified in clause (a) above;

(ii) A degree in law granted by any university.

(iii) Membership of the Institute of Chartered Accountants of India.

(iv) Membership of the Institute of Cost and Works Accountants of India.

(v) A post-graduate degree or diploma in Management granted by any university or the Indian Instituteof Management.

(vi) A post-graduate degree is Commerce granted by any university.

(vii) A diploma in Company Law granted by any Indian Law Institute.

Other Qualifications:

In order to be a Company Secretary, statutory qualifications are not enough.

A Company Secretary should also possess the following special qualifications:

1. **Knowledge of Company Law:**

The Secretary must know the detailed provisions of the Companies Act and its implications. Hemust have a knowledge of the rules of meetings.

2. **Knowledge of Mercantile Law:**

Most of the companies carry on their business as mercantile firms and have to act according to different provisions of Mercantile Law including the Contract Act, Sale of Goods Act, Negotiable Instruments Act, MRTP Act, Insurance Act etc.

The company also faces problems of labour, trademarks, patents, copyrights and so on. Therefore, the Secretary must have a sound knowledge of Labour Laws, Factories Act, ESI Act, Mercantile Laws and Patent, Copyright and Trade Mark Laws.

3. Knowledge of Economics:

In order to handle economic problems of the company, the Secretary should have a sound knowledge of Economics—theoretical and practical—general money market, capital market and financial institutions.

4. General Knowledge:

The Secretary must have a sound general knowledge. He must have thorough acquaintance withsocial, political and economic conditions of the country.

5. The Secretary must be smart, unbiased, and must have high IQ, presence of mindand amiable personality.

Appointment:

The First Secretary of a company is generally appointed by promoters and his name may be mentioned in the Articles of Association. If the First Secretary is appointed subsequently, it has to be done by the Board of Directors by passing a resolution in their meeting. The terms and conditions of appointment should be mentioned in the resolution of the Board meeting. A Director may also be ap- pointed as a Secretary.

Dismissal:

The Secretary is a servant of the company and his dismissal is governed by the normal law appli- cable to master and servant. The Secretary can ordinarily be dismissed by the Board of Directors. He may be removed in the following manner:

(i) By giving a written notice;

(ii) On the expiry of the tenure of service;

(iii) In such manner as prescribed by the Articles of Association of the company.

The Secretary may also be removed without notice for:

i. Willful misconduct;

ii. Willful disobedience to order of the manner;

iii. Negligence of duty;

iv. Permanent disability; and

v. Moral turpitude.

Functions and Duties of the Company Secretary:

Functions of the Company Secretary may be discussed under two headings:

(i) Statutory Functions or Duties and
(ii) Non-statutory Functions or Duties.

- **Statutory Functions:**

The Companies Act, 1956, imposes certain duties upon the Secretary.

The Companies Act has specified the following duties of the Company Secretary:

1. Signing of Annual Returns,
2. Registration of Allotment Returns,
3. Issuing Share Certificates,
4. Convening Annual General Meeting,
5. Maintaining Share Registers,
6. Maintaining Register of Directors.

The Indian Stamp Act also requires a Company Secretary to ensure that proper stamps are affixedon the company's documents. The Indian Sales Tax Act also provides that the Secretary of the Company should arrange for registration of the company, if necessary, and submit the tax returns.

Under the Income Tax law, the Company Secretary has to deduct income tax from the salaries of the staff and dividend payable at source and to submit income tax returns to the authorities in ac- cordance with the law.

Under the MRTP Act, FERA (now FEMA) and Essential Commodities Act, he is entrusted withcertain obligations under the Payment of Wages Act, Bonus Act, Provident Fund Act and Gratuity Act.He is personally liable for the violation of provisions of the respective Acts.

Non-statutory Functions:

The non-statutory functions of the Company Secretary vary with the nature and size of the com- pany. He has got certain non-statutory functions in relation to Directors, shareholders and office and staff.

1. Functions in Relation to Directors:

Company secretary is an employee of the Company and acts as the mouthpiece of the Board of Directors.From the legal standpoint the Secretary is an employee of the company but actually his position is not like a servant because he is a highly responsible and honorable person, often more qualified and knowledgeable than the Directors.

The Secretary helps the Directors in framing policies and arriving at decisions. It is his duty to implement these decisions. He helps the Chairman of the Board in conducting Board meetings.

The functions of the Secretary in relation to the Directors are:

(i) He is to ensure that the actions of the Board of Directors are strictly in accordance with the provisionsof the law.

(ii) He helps the Board of Directors to formulate policies and arrive at decisions.

(iii) He issues notices and prepares the agenda in consultation with the Chairman for themeeting of Board of Directors.

(iv) He records the attendance of the Directors.

(v) He prepares the Minutes of the Board meeting.

(vi) He issues the orders and instructions of the Board to the members of the staff.

(vii) He arranges for the payment of Directors' fees.

(viii) He maintains all important correspondence, files, documents and records of Board office.

2. Functions in Relation to Shareholders:

A Company Secretary is the medium of communication between the Directors and the shareholders, debenture holders, and creditors. A secretary handles all confidential matters. By virtue of his position he knows the percentage of dividend to be declared beforehand. He should not leak out any confidentialmatter like the above before they are officially notified to the public.

A company is created for making profit. Every shareholder can reasonably expect a return on his investment in the company's shares. The return on the shares is given to the shareholders in the form ofdividend. The Secretary of a company has to take-full responsibility for the payment of dividend to theshareholders within 42 days from the date of Annual General Meeting.

After the dividend is declared at the Annual General Meeting, Secretary will have to prepare dividend warrants and send them to the shareholders.

The functions of the Secretary in relation to shareholders may be summed up as:

(i) He has to issue share certificates, share warrants and debentures.

(ii) He issues allotment letters and letters of regret.

(iii) He issues call letters.

(iv) He has to issue notices and agenda of the Statutory Meeting, Annual General Meeting and Extraordinary General Meeting of shareholders.

(v) He has to maintain the Minute Book of shareholders' meeting.

(vi) He has to maintain the Share Register and Share Transfer Register.

(vii) He maintains the proceedings of all meetings.

3. Functions in Relation to Office and Staff:

The Secretary is the executive head of the company and he is responsible for smooth functioning ofthe office work. He exercises an overall supervision of all clerical activities in the office. Legal and financial matters are under his direct control. The Secretary is the kingpin of the whole corporate machinery. It is the duty of the Secretary to see that all the departments are properly coordinated, controlled and supervised.

4. Functions in Relation to Meetings:

The Secretary of the company has to deal with all kinds of meetings of the company.
There are different types of company meetings—Statutory Meeting, Annual General Meeting, BoardMeeting, Extraordinary General Meeting, meeting of debenture holders etc.
In all these cases, the Secretary has to arrange for everything in connection with the meeting.

The functions of the Secretary can be discussed under three stages:

(i) Functions before the meeting.

(ii) Functions at the meeting.

(iii) Functions after the meeting.

Functions before the Meeting:

The functions of the Secretary before the meeting are:

(i) To fix up the date of the meeting in consultation with the Chairman;

(ii) To prepare the agenda of the meeting;

(iii) To issue notices to the members entitled to attend the meeting;

(iv) To arrange for convening the meeting;

(v) To append the proxy forms;

(vi) To send the notice of holding the Annual General Meeting to the auditors of the company;

(vii) To draft and circulate the Director's Report, Statutory Report and Chairman's speech.

Functions at the Meeting:

The functions of the Secretary at the meeting are:

(i) To record the attendance in the Attendance Register;

(ii) To distribute relevant papers and documents amongst the members;

(iii) To read out the notice of the meeting and the minutes of the last meeting;

(iv) To read out the Audit Report, the Director's Report or any other report in the meeting;

(v) To help the Chairman in conducting the meeting smoothly;

(vi) To take notes of the proceedings of the meeting;

(vii) To draft the resolutions. Functions after the Meeting.

The functions of the Secretary do not end with the meeting. As soon as the meeting is over, he should draft the proceedings of the meeting and get them signed by the Chairman. He should arrange to file the Statutory Report, Annual Returns along with Director's Report and Audit Report (in case of AGM) with the Registrar of Companies.

If any special resolution is adopted, a copy of such resolution should be filed with the Registrarof Companies. He has to execute decisions of the meeting. He has to send press reports for publication. The Secretary should also make all arrangements for voting and, if necessary, should conduct the poll peacefully and efficiently.

Lastly, he has to arrange for refreshments for members immediately after the meeting.

Functions of the Company Secretary as:

Executive Officer:

The Company Secretary is the executive head of the office. He has to carry out official functionsand see that the activities of the company are in accordance with the provisions of the Companies Act. He is responsible for cash, accounts, records, share and publicity affairs. The Secretary has to supervise,coordinate and manage the activities of the office.

As the Chief Executive Officer, the Secretary's principal functions are:

(i) Supervising, controlling and coordinating the activities of the office.

(ii) He has to look after all staff matters. He handles recruitment, induction, promotion, transfer,remuneration of office staff.

(iii) He has to arrange and attend meetings, conferences and seminars.

(iv) He has to handle correspondence, records, routine work, incoming and outgoing mails, attendcallers, arrange interviews etc.

(v) He issues orders, circulars, and directives to the departmental heads.

(vi) He has to carry out the decisions of the Board of Directors.

(vii) He has to negotiate with third parties on behalf of the company.

Functions of the Company Secretary as a Liaison Officer

The Company Secretary has to act as a Liaison Officer between the Board of Directors and the government and the public. He is the linkman between the top management and the staff and through him the decision of the management is conveyed to the staff. The suggestions and grievances of the employees are conveyed by the Secretary to the management. The Secretary also acts as the Public Relations Officer.

As a Liaison Officer the Company Secretary has to:

(i) Maintain cordial relations between the management and staff.

(ii) Convey all decisions, policies, orders and directions of the Board to the members of the staff,shareholders and the public.

(iii) Inform the shareholders about the necessary rules for transfer of shares.

(iv) Negotiate with the third parties for the settlement of contracts and bargains.

(v) The management inform of any discontentment among the members of the staff.

Functions of the Company Secretary as Advisor to the Management:

The Company Secretary is an advisor to the management. In most cases, the authorities depend largely on the advice of the Secretary. His suggestions and opinions are valuable to the management. The exact nature and the extent of the advice given by the Secretary will vary according to the nature, and size of the organisation.

The advisory functions of the Company Secretary are very valuable to their employers. The Sec-retary advises the Board of Directors to take decisions. The Directors know little about the legal, pro- cedural and constitutional aspects of company matters. A qualified Company Secretary, well-conversantwith all the aspects of company management, is in a better position to give right advice to the Board ofDirectors.

Rights and Liabilities of the Company Secretary:

Rights of a Company Secretary emanate from the Companies Act on the one hand and his service contract on the other. Rights which emanate from the Companies Act are known as statutory rights and rights which emanate from his service contract are known as contractual rights.

Rights of the Company Secretary

1. As the head of the secretarial department, the Secretary has the right to control, direct and supervise the activities of the department.

2. As the principal executive officer of the company the Secretary has the right to sign documentswhich require authentication of the company.

3. The Secretary has the right to get remuneration from the Company. As an officer of the companyhe has the right to claim two months' salary as a preferential creditor at the time of winding-up of the company.

4. The Secretary has the right to claim damages and compensation when his service is terminated before the expiry of his terms as per service contract.

5. The Secretary has the right to inspect the books maintained by the secretarial department.

Liabilities:

Liabilities of a Company Secretary emanate from various statutes and service contracts. The Secretary has two sets of liabilities—statutory liabilities and contractual liabilities.

Statutory Liabilities:

The Company Secretary may be held liable for many penalties under the Companies Act if hemakes any default in complying with its provisions.

The Company Secretary may be held liable for:

(i) Default in holding Statutory Meeting and filing and circulating the Statutory Report to the Registrarof Companies and members of the company;

(ii) Default in holding the Annual General Meeting of the Company;

(iii) Failure to give due notice of Board Meetings;

(iv) Failure to record the minutes of the Board and General Meetings;

(v) Failure to maintain Director 'Members' and Debenture holders' Registers and Index;

(vi) Failure in registering resolutions and agreements which need to be registered;

(vii) Failure to make entries in the register of members on the issue of a share warrant; (viii)Default in filing with the Registrar particulars of any change created by the company;

(ix) Failure to file with the Registrar copies of the annual Balance Sheet, Profit and Loss Account,Annual returns, statements, certificates, etc.;

(x) Failure in circulating resolutions for which members have given notice;

(xi) Failure in delivering share certificates, debentures etc. within 3 months of the date of allotment andwithin 2 months of the application for registration of transfer of shares;

(xii) Failure in painting or affixing the name of the company outside every office and place of business;

(xiii) Non-compliance with the provisions of the Act relating to the appointment of auditors, auditof accounts and auditor's report;

(xiv) Like any officer of the company, the Secretary will be punishable with imprisonment for falsifying the books of the company and making willfully and knowingly a material false statement in the Balance Sheet, or, in certain returns, reports, certificates or other documents of the company.

Under the Income Tax Act, the Company Secretary is liable for:

(i) Failure to deduct income tax from salaries of employees at source;

(ii) Failure to deduct income tax from dividend payable to shareholders;

(iii) Failure to deposit tax deducted at source to the Income Tax Authority;

(iv) Failure to pay corporate tax in time.

Under the Stamp Act, the Company Secretary is liable for:

Failure to verify whether the requisite stamps are affixed to various documents.

Under the Sales Tax Act, the Company Secretary is liable for:

(i) Failure to get the company registered with the Sales Tax Authority;
(ii) Failure to pay sales tax in time.

Under the Registration Act, the Company Secretary is liable for:

- Non-compliance with the rules and procedures of registration.
- Non-payment of registration charges under the MRTP, FERA, Shops and Establishment Act.The Secretary may incur personal liability for default of any provision of the respective Acts.

Contractual Liabilities:

The Company Secretary also has certain liabilities arising out of his contract of service with the company for:

(i) Disclosure of official secrets;

(ii) Acts done beyond the limits of his authority;

(iii) Acts of omission and commission in violation of the rules and fraud in course ofemployment;

(iv) Making breach of trust;

(v) Discharging duties without reasonable care and skill.

Secretary of a Cooperative Society:

A cooperative society is a voluntary association of a number of persons to promote the economic interests of its members. It is organised by its members and run by them through an elected Managing Committee.

The Cooperative Societies Act has defined a Cooperative Secretary as **"a person who subject to the control of the Managing Committee, has the management of the affairs of a cooperative society and includes a member of a Managing Committee or any other person discharging the duties of a secretary, by whatever name called, and whether under a contract of service or not."**

Appointment:

The secretary of a cooperative society may either be appointed as a paid secretary or may be elected from amongst the members of the Managing Committee to act as an honorary secretary. Every cooperative society must have a secretary.

The secretary of a cooperative society is the Chief Executive Officer of the society. He manages the society and is fully liable to the Managing Committee for the management of the society.

Qualifications:

The secretary of a cooperative society should possess the following qualifications:

(i) Graduate from a recognised university.

(ii) A good knowledge of English.

(iii) A good working knowledge in Accountancy.

(iv) A good knowledge of secretarial practice.

(v) A good knowledge of office procedure and ability of drafting notices, letters,minutes etc.

Functions of the Cooperative Secretary:

The main functions of the secretary of a cooperative society may be summed up as:

1. To act as the mouthpiece of the Managing Committee and to carry out the decisions of the Managing Committee.

2. To carry out the routine activities of the office including correspondence,

maintenance of registers and accounts, receipts of payment of cash and preparation of statements and returns for submission to the Registrar of Cooperative Societies.

3. To convene all the meetings of the society and to help the Chairman in conducting the meetings and to write the Minutes of the meetings.

4. To advise the Managing Committee in legal and other matters regarding the activities ofthe society.

5. To control and supervise the staff of the society.

6. To prepare the budget estimate for the next year and place it before the ManagingCommittee and before the Annual General Meeting.

7. To prepare annual accounts for placing before the Auditors.

8. To receive all money on behalf of the society and issue receipts thereof and to depositmoney to the society's bank.

9. To institute, defend and conduct all legal proceedings in law courts and other places onbehalf of the society.

10. To look after the appointment of staff and staff matters.

11. To prepare Income and Expenditure Account and Balance Sheet and Annual Reports andStatements.

12. To all shareholders, issue share certificates, arrange for transfer of shares and maintainshare register.

13. To arrange election of office-bearers, Secretary and members of the Managing Committee.

14. To represent the society in the govt., court and the public.

15. To maintain the bank accounts of the society.\

Profession

Profession it is necessary to clarify the term 'profession'. The word 'profession' means a vocation or calling. Profession requires specialized or expert knowledge for giving instructions, guidance and advice.

A profession should have the following characteristics:

1. A body of specialized knowledge;
2. There must be a formal method of acquiring training and experience;
3. There must be a code of conduct;
4. There must be a professional ideology;

5. There must be a professional body which is authorized to issue licensed for practicing theprofession;
6. There is the practice of charging fees for services;
7. A membership and license have to be obtained from the respective Institute (here,Company Secretaries of India).

Secretary-ship as a Profession:

In India, Company Secretary-ship has passed through all the stages of professionalization. The administrative function of Company Secretary is well recognized. The Secretary is the Chief ExecutiveOfficer of the company and not a mere servant.

The Companies Act, 1956, has prescribed the statutory qualifications of a Company Secretary. The Act states that for every company having a paid- up share capital of Rs. 50 lakhs or more, the appointment of a full-time secretary is obligatory.

The need for a properly qualified and trained secretary for taking the responsibility of company management has compelled the government to set up the Institute of Company Secretaries of India and to conduct the examination of Company Secretary-ship. Thus, the profession of company secretary-shiphas attained public and legal recognition.

The profession of Secretary-ship is of recent growth in India. The company form of business was introduced in India with the passing of First Companies Act in 1840. So, we find that it took more thana century for company secretary-ship to emerge as a profession.

There are different types of secretaries—private secretary, secretary to the govt. department, clubsecretary or secretary of an association etc. These types of secretaries have not gained recognition as professionals because most of the basic features of a profession are absent in these occupations.

The secretary has got a prestigious status in the organization. The secretary holds a responsible post of permanent nature. The governing body of an organization may change from time to time, but thepost of secretary is permanent. Presidents come and go, may be every year. It is the work of the Secretariat and staff that promotes the growth of the organization.

Secretary-ship is not just an occupation—it is a profession. People engage themselves in certain occupations in order to earn their living. But all occupations are not professions. A profession is an occupation involving something more than earning a living.

POWERS, DUTIES AND RESPONSIBILITIES OF SECRETARY

Powers and Rights of Company Secretary

A company secretary is a high-level officer. He enjoys certain rights and power as per the contract madewith the company, which are as follows:

1. **Supervision and control:** As the head of the office, a company secretary has the right tosupervise, direct, and control all office activities of subordinate offices.

2. **Singing authority:** Being a principal officer, a company secretary can sign contracts, proceedings of the company meeting, files, and documents on behalf of the company.

3. **Exercising power:** He has the right to apply power as authorized by the board of directors.

4. **Issuing testimonial:** A company secretary can issue testimonials to employees on behalf ofthe company.
5. **Claiming salary and damages:** As per the contract, he has the right to claim his salary and otherallowances. He can also take legal action against the company if there is any breach of contract.
6. **Preferential creditor:** During the winding up of a company, the company secretary can claim his legal dues as like as a preferential creditor.

7. **Attending meeting:** He has the right to be present in the meetings of the shareholders and boardof directors.

Restrictions on the Powers and Rights of Company Secretary

A Company secretary enjoys certain rights and power but there are some restrictions to his rightsand power, which are given below:

1. **Distribution and transfer of shares:** A company secretary can't distribute or transfer any shareif he is not authorized by the board of directors.

2. **Company agent:** A company secretary cannot attend any meeting as a company agent without any consent from the board of directors. He requires authority from the board of directors to signany contract on behalf of the company.

3. **Taking loan:** A company secretary cannot take a loan in the name of the company. If he does so, the company will not be liable for such a loan.

Company Secretary Duties and Responsibilities

The duties and responsibilities of the company secretary vary, due to the nature, size, and scopeof the company. The following headings can describe the duties and responsibilities:

1. Statutory duties

The statutory duties are set by the company act and other related laws, which are:

1. Comply with the rules of the company Act 1994; stamp Act and Income Tax Act.
2. Sign the Annual Report.
3. Maintenance of statutory books or different registers of the company.
4. Preparation, validation, and filing of resolutions, agreements, documents, notices, and various returns with the company Registrar.
5. Attending the meetings and record their proceedings.

6. Keep the common seal in safe custody.

2. Duties to the board of directors

The company secretary is the spokesperson of the board of director and performs the below duties:

Make sure that all actions of the board of directors are in accordance with the company's memorandum and articles of association.

1. Deal with the correspondence as per instruction from the directors.
2. Provide necessary advice and information to the board to formulate company policy.
3. Arrange board meetings, issuing notice, and preparing the agenda of such meetings alsorecording the minutes and resolutions of the meeting.
4. Draft the director's report and presenting it in the annual general meeting in favor of thedirectors.

3. Duties towards shareholders

The company secretary acts as a link between the company and the shareholders. He executesthe following duties to the shareholders:

1. Circulate prospectus, invite and receive share application, issue allotment letter' and sharecertificates and arrange, distribution of dividend warrants to the shareholders.
2. Sending notice and agenda to the shareholders for their respective meetings and makearrangements to hold the meeting.
3. Record the proceedings of the meeting in the minute's book.
4. Allowing shareholders to inspect various books and registers as permissible under thecompany Act 1994.
5. Communicate the decisions of the board of directors to the shareholders and deal with thequery and complaints of the shareholders.
6. Protect (3%) the interest of the shareholders.

4. Duties towards the office and staff

The company secretary is a high profile administrative officer of the company and therefore heneeds to:

1. Supervise and coordinate the activity of various departments like share department, correspondence department, accounts department, filings & recording department, etc.
2. Act like a friend and guide to the staff and ensure equal opportunity for all.
3. Handle with queries and complaints of the staff.

5. Duties to the public

The Company secretary is the principal officer who acts on behalf of the company. Thecompany secretary should ensure:

1. Supply of necessary information 'to any public body or member as and when required by theCompany Act or other relevant laws,

2. The company is not involved in any anti-social affair.

6. Others

Besides the above duties and responsibilities, the Company secretary should be:

1. Responsible and confident in the company.
2. Maintaining secrecy of the company affairs and to act within the authority.
3. Ensuring the legal interest of the company.

Company Secretary Duties and Responsibilities

The flow chart given above will give an idea about the company secretary duties and responsibilities at a glance. Click on the image for a large view.

RESIGNATION AND REMOVAL OF COMPANY SECRETARY

A company secretary has a great role in every stage of company formation. But a company needsto dismissal a secretary some time. We are going to describe those reasons for dismissal of company secretary.

DISMISSAL OF COMPANY SECRETARY

A company secretary may be dismissed due to the below reasons:

- **Disqualification of company secretary**: Employee-Employer relationship exists between a company secretary and the company. If the board of directors is not satisfied with the performance of the company secretary, they can remove him from giving prior written notice.

- **Irregularities of company secretary**: A company secretary can be fired at any time withoutany prior written notice if he has been proved:
  - As a fraud,
  - To break the code of conduct,
  - To have moral erosion,

- To neglect duties intentionally,
- To have permanent inability,

- **End of the contract of company secretary**: A company secretary is appointed for a fixed term. If the board of directors does not renew the contract then his contract ends up automatically.

- **Winding up of the company**: During the winding up of a company, the company secretary is discharged like other employees. If winding up takes place before the expiry of the fixedterm, he can claim damages for the breach of contract.

OFFICER IN DEFAULT

We have analyzed the impact of new **Companies Act, 2013** with respect to non-compliances and the penalties imposed for the same on the Directors and in this regard we found the following points:

(a) The working directors (viz. Managing Director, Whole-time Director, CEO, CFO, and Company Secretary) are responsible for all the activities of the Company including the Compliances.

(b) In case the Company does not have any working Directors, then all directors of Company are liable for all non-compliance under the Companies Act, 2013. In other words, in the absence of any Working Directors, all directors of the Company are held liable for all non-compliances under the Companies Act, 2013, resulting in huge amount of monetary penalties for all directors.

Hence the concept of **"Officer in Default" plays an important role for resolution of the above.** Section 2(60) of Companies Act, 2013 specifically defines the term Officer in Default which means an officer who shall be held responsible for any default in the Company.

Whole-Time Director, Key Managerial Personnel, Directors, Authorized Personnel, ShareTransfer Agents, Registrars and Merchant Bankers are brought under the ambit of Officers in Default.

However, if there is no Whole-Time Director or Key Managerial Personnel (MD/CEO/CS (Whole-time)/CFO) then the board may pass a resolution and appoint one Director as the officer in default.

Importance of having an Officer in Default:

It is important to have an Officer in Default, due to the following reasons:

i. To ensure that officers act in the best interest of the Company and its stakeholders and

ii. To perform the duties in good faith and

iii. Making the key officials of the Company more responsible;

Keeping in view the above, it is suggested to appoint an Officer in Default to have a single pointof responsibility, who shall be responsible for the non-compliance/ misconduct and will be obliged to bear the penalties/ punishment imposed by the regulatory authorities.

Appointment of Officer in Default:

An Officer in Default can be appointed by passing a **Board Resolution** provided the person hasgiven his consent in this behalf to the Board. Further, appointment of the same has to be informed to Registrar of Companies by filing **Form GNL-3** with MCA within **30 (Thirty) days** of passing Board Resolution.

The provisions of the Companies Act, 2013 are produced below for more clarity-

For the purpose of any provision in Companies Act, 2013 which enact that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine orotherwise, means any of the following officers of a company, namely:—

(i) Whole-time director;

(ii) key managerial personnel;

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

(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively

participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

(iv) Any person in accordance with whose advice, directions or instructions the Board Of Directors of the company is accustomed to act, other than a person who givesadvice to the Board in a professional capacity;

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

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

UNIT II

PROSPECTUS & SHARECAPITAL PROSPECTUS

A prospectus is a formal document provided by the company when a company wants to sell its securities or bonds to the public, it contains all the necessary details about the sale, that includes the company's financial position, the number of shares offered and types of securities being offered, etc (Section 2(70) of the Company Act, 2013). Prospectus in Company Act is defined as a document that describes or issues as a prospectus or any other document inviting offers from the general public for the subscription or purchase of any securities of a body corporate. A prospectus is mandatory to be issued or in lieu by a public company (Section 70 Company Act, 2013)

For a document to be called a prospectus, it should satisfy two conditions.

1. The document invites the subscription to public share or debentures, or deposits.

2. The invitation is made to the public.

3. The invitation is made by the company or on behalf the company.

4. The invitation is related shares, debentures or such other instruments.

Section 30 of the Companies Act 2013 contains the provisions regarding the advertisement of the prospectus. In any manner where an advertisement of any prospectus of a company is published, it shall be necessary to specify therein the contents of its memorandum as regards the objects, the liabilityof members and the amount of share capital of the company, and the names of the signatories to the memorandum and the number of shares subscribed for by them, and its capital structure.

Types of Prospectus

1. Red Herring Prospectus
2. Shelf Prospectus
3. Abridged prospectus
4. Deemed Prospectus

RED HERRING PROSPECTUS

Specified under Art 31 of the Companies Act 2013 a red herring prospectus is issued prior to theprospectus when a company is proposing to make an offer.

It shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer. A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variationsin the prospectus.

SHELF PROSPECTUS

A prospectus that has been issued by any public financial institution, company, or bank for oneor more issues of securities or class of securities as mentioned in the prospectus is known as Shelf prospectus. When a shelf prospectus is issued then the issuer does not need to issue a separate prospectus for each offering he can offer or sell securities without issuing any further prospectus.

The provisions related to shelf prospectus have been discussed under section 31 of the Companies Act,2013.

A shelf prospectus is a type of prospectus that allows a single short form prospectus to be filed a public offering where the issuer has no present intention to immediately sell all of the securities being qualified as soon as a receipt for the final short form prospectus has been obtained. A shelf prospectus can be used to qualify multiple types of securities, any of which can be issued at a later date. A primary advantage of a shelf prospectus is that an issuer fulfills all qualification-related procedures beforehand, so that it can offer securities quickly when funds are needed or when market conditions are more favourable.

The preliminary base shelf prospectus is essentially the first draft of the base shelf prospectus filed with the applicable securities regulatory authorities in Canada and may omit certain information relating to the offering.

The final base shelf prospectus is an updated version of the preliminary base shelf prospectus, containsmost but not all final offering information (such as pricing and underwriting details) and reflects amendments to the base shelf prospectus subsequent to the date of the preliminary base shelf prospectus.The shelf prospectus supplement contains all final offering information once the particulars for an offering have been determined.

Abridged prospectus

A summary of a prospectus filed before the registrar. It contains all the features of a prospectusknown as abridged prospectus. An abridged prospectus contains all the information of the prospectus in brief so that it should be convenient and quick for an investor to know all the useful information in short.

Section33 (1) of the Companies Act, 2013 also states that when any form for the purchase of securities of a company is issued, it must be accompanied by an abridged prospectus.

Deemed Prospectus

A deemed prospectus has been stated under section 25(1) of the Companies Act, 2013.

A document will be considered as a deemed prospectus through which the offer is made to the public for sale when any company offers securities for sale to the public, allots or agrees to allot securities. Thedocument is deemed to be a prospectus of a company for all purposes and all the

provision of content and liabilities of a prospectus will be applied upon it.

Objectives of Issuing the Prospectus

1. To bring to the notice of the public that a new company has been formed.
2. To preserve an authentic record of the terms and allotment on which the public have been invitedto buy its shares or debentures.
3. To secure that the directors of the company accept responsibility for the statements in theprospectus.
4. Contents of Prospectus
5. The contents of the prospectus have been specified in Schedule II of the Companies Act. Theimportant contents in the prospectus include the following.
6. Name and address of the company
7. Objects of the company
8. Full particulars of the signatories to the Memorandum and number of shares taken by them.
9. The names, addresses, and occupations of the directors, managing directors or managers, etc.
10. The number and classes of shares.
11. The minimum subscription
12. The qualification shares of a director and the remuneration of the directors.
13. The amount payable on application, on the allotment, and on calls.
14. The names of the underwriters.
15. The estimated amount of preliminary expenses.
16. The names and addresses of the auditors of the company
17. Particulars about reserves and surplus
18. Voting rights of the different classes of shares.
19. Reports of the auditors regarding profits and losses of the company.

A similar report by the Chartered Accountant regarding the Profits and Losses and Assets and Liabilitiesof the Company.

CIVIL & CRIMINAL LIABILITY FOR MIS- STATEMENT IN PROSPECTUS

Consequences of Misstatement in Prospectus

Civil and Criminal liabilities shall be faced by any person who provides with misstatement in aprospectus.

Civil liability

In case, misleading prospectus amounts to misrepresentation, the aggrieved persons can repudiate the contract. They can claim a refund of their money. Damages can also be claimed by the persons found guilty.

Criminal liability

In case any deliberate concealment is made, directors will be punished with a fine of Rs. 5,000 or imprisonment up to two years or both. If it is a fraud the fine will extend to Rs. 10,000 or 5 years imprisonment or both.

STATEMENT IN LIEU OF PROSPECTUS

When the prospectus is not issued by the company a statement in lieu of a prospectus must be filed with the Registrar at least three days before the allotment of shares. The contents of the statementin lieu of prospectus are very much similar to the prospectus. The statement must be signed by all the directors or their agents authorized in writing. These provisions do not apply to a private company.

Statement in lieu of Prospectus

The statement in lieu of prospectus is a document issued by the company when it does not offerits securities for public subscription. The Statement in Lieu of Prospectus is a document filed with the Registrar of the Companies (ROC) when the company has not issued a prospectus to the public for inviting them to subscribe for shares. Its objective is to be filed with the registrar if the company does not issue prospectus. The statement must contain the signatures of all the directors or their agents authorized in writing. It is similar to a prospectus but contains brief information.

Statement in lieu of prospectus is a document issued by the company when it does not offer its securities for public subscription. It is mandatory for the Public Limited Company to distribute the Prospectus but it is not compulsory in all aspects. It gives practically the same information as a prospectus and is signed by all the directors or proposed directors. It is also possible to adopt an alternative to the prospectus. It is not necessary to distribute prospectus for the company if the directors are able to raise the required funds by selling the shares and debentures to their friends and relatives. Ifthe company used the alternative of the prospectus, it will be necessary to submit that copy to the registrar. It is called a substitute prospectus or substitute circular. This substitute holds all the items that are being required in the original prospectus and it needs to be signed or attested by the directors. In casethe company has not filed a statement in lieu of prospectus with the registrar, it is then not allowed to allot any of its shares or debentures. Such a statement must be signed by all the directors of the companyand then filed with the registrar.

A statement in lieu of prospectus contains the following information

- Name of the company
- Account of capital
- Explanation of the business
- Names, addresses, and occupations of directors
- Probable preliminary expenses
- Names of vendors and information of the property
- Substance contracts
- Director’s interests
- Least subscription.

The object of these documents is to convince the public to make an application for shares or

debentures in the company. It is essential for a public company to issue prospectus only if they wish to invite public to raise the company's capital. It must be submitted to the registrar's office before publication. If they don't necessitate public for raising capital and can formulate arrangements of raising capital with the facilitate of their friends, relatives or underwriters, it is not necessary for them to issue a prospectus. But as a substitute, they have to file a statement in lieu of Prospectus with the Registrar.

A public company is entitled to subscribe to its shares by means of a prospectus after receiving the certificate of incorporation. Every copy issued to the public must, on the face of it state that a copy hasbeen so submitted to registrar's office.

Comparison Chart

BASIS FOR COMPARISON	PROSPECTUS	STATEMENT IN LIEU OF PROSPECTUS
Meaning	Prospectus refers to a legal-document published by the company to invite general public for subscribing its shares and debentures.	Statement in lieu of prospectus is a document issued by the company when it does not offer its securities for public subscription.
Objective	To encourage public subscription.	To be filed with the registrar.
Used when	Capital is raised from general public.	Capital is raised from known sources.
Content	It contains details prescribed by the Indian Companies Act.	It contains information similar to a prospectus but in brief.
Minimum subscription	Required to be stated	Not required to be stated

Filing of copy with the registrar

As stated under sub-section 4 of section26 of the Companies Act, 2013, the prospectus is not tobe issued by a company or on its behalf unless on or before the date of publication, a copy of the prospectus is delivered to the registrar for registration.

The copy should be signed by every person whose name has been mentioned in the prospectus as adirector or proposed director or the assigned attorney on his behalf.

Delivery of copy of the prospectus to the registrar

As per section26 (6) of the Companies Act 2013, the prospectus should mention that its copy has been delivered to the registrar on its face. The statement should also mention the document submitted to the registrar along with the copy of the prospectus.

Registration of prospectus

Section26 (7) states about the registration of a prospectus by the registrar. According to this section, when the registrar can register a prospectus when:

It fulfils the requirements of this section, i.e., section 26 of the Companies Act,

2013; and It contains the consent of all the persons named in the prospectus in

writing.

Issue of prospectus after registration

If a prospectus is not issued before 90 days from the date from which a copy was delivered beforethe registrar, then it is considered to be invalid.

Contravention of section

If a prospectus is issued in contravention of the provision under section 26 of the Companies Act2013, then the company can be punished under section 26(9). The punishment for the contravention is:

Fine of not less than Rs. 50,000 extending up to 3, 00,000.

If any person becomes aware of such prospectus after knowing the fact that such prospectus is being issued in contravention of section 26 then he is punishable with the following penal provisions.

Imprisonment up to a term of 3 years, or

Fine of more than Rs. 50,000 not exceeding Rs. 3, 00,000.

SECRETARIAL DUTIES IN THE ISSUE OF PROSPECTUS.

One of the foremost duties of a Company Secretary is to handle the affairs related to shares. A company limited by shares has a share capital. It means that the total capital is divided into some equalparts, each part is called a share.

The promoters of a company are the first shareholders and then other shareholders join the company by purchasing shares. An intending person applies for shares and he becomes a shareholder when shares are allotted to him.

Each shareholder is entitled:

(a) To get a Share Certificate as an evidence of his shareholding and

(b) To get his name entered into the Register of Members so that he becomes a member. ‘Subsequently a shareholder may transfer his shares to another person tor the shares may be transmitted to another person by operation of ‘law.

According to the Companies Act, the Board of Directors is empowered by the Articles to decide on allotment, transfer and transmission of shares. Shares of a public company are freely transferable while shares of a private company are transferable under restrictions as mentioned in the Articles of Association of the company.

A company in its Articles of Association provides the procedure of allotment, transfer and transmission of shares. Table A provides a model procedure. The Company Secretary, who is conversant with the procedure, helps the Board of Directors in the process of allotment, transfer and transmission of shares.

Allotment:

A person intending to buy shares of a company has to make a written application in the prescribed form supplied by the company, together with application money either covering full value of the sharesor in part or together with premium if as desired by the company, in case of a widely held public company a share application form is attached to the Prospectus.

The term 'allotment' means acceptance of share application by the Board of Directors by passing a resolution at a Board meeting. The Companies Act makes provisions for allotment of shares.

There are three different situations under which allotment takes place and the Company Secretary has to act accordingly. (I) When a new company is promoted and shares are issued or offered for sale then as and when applications together with application money are coming in, the Company Secretary has to do the following:

(a) To make a chronological (i.e., date and time-wise) record of the applications and sending the moneyto a scheduled bank.

(b) To help the Board of Directors in the act of allotment. If applications for shares are received less than the number of shares offered for sale then there is no problem and all the applicants will get sharesallotted to them. But problem arises when more applications have come.

Then the Secretary will do, on behalf of the Board of Directors, allotment which may take place under any of the following three methods as to be mentioned in the Articles of Association of the company: They are:

(i) Priority Basis:

Shares will be allotted to those applicants who have applied for shares first, according to chronologicalorder as recorded,

(ii) Pro-Rata Basis:

It i s not always justifiable that shares should be allotted on priority basis. And so allotment is made on pro rata basis. Suppose, applications have been received for twice the number of the shares offered for sale. Then each applicant will get half of the shares applied by him accepted and shares are allotted accordingly and the remaining half rejected.

(iii) Lottery Basis:

Applications are drawn at random out of the total number of applications thoroughly mixed up such drawings will continue until all the available shares are allotted and the remaining applications willbe rejected. Out of the three systems, the second one is the best.

It has to be noted that allotment of shares cannot be undertaken:

(i) Before the Minimum Subscription is received in case of a widely held public company (Sec. 69) and

(ii) Unless before at least three days a Statement in lieu of Prospectus has been filed (showing the list of allotments) with the Registrar of Companies in case of a closely held public company (Sec. 70).

(c) At the instance of the Board of Directors the Company Secretary shall (i) issue Letters of Allotmentto all the applicants to whom shares have been allotted asking them to pay allotment money within a stipulated time or (ii) issue Letters of Regret to those share applicants whose applications have been rejected. Together with regret letters, cheques shall be sent as refund of applications money.

(d) Within 3 months from the date of allotment of shares, share certificates (Sees. 84, 113) containing the names of the shareholders, the number and value of shares held, serial number of the certificate, dateof issue, common seal of the company and signatures of at least two Directors and of the Secretary himself, if any, shall be made ready for delivery and the names of the shareholders with all other detailsshall be entered into the Register of Members (Sec 150).

Every company must maintain a Register of Members, with alphabetical name index, which hasabout 20 columns showing the name and description of each member, no. of shares held, date of paymentof money, record of transfer of shares, if any, etc.

A separate Register has to be maintained for shareholders in foreign countries. The Company Secretary shall prepare and maintain the Register of Members. The name of the shareholder shall not beentered into the Register of Members if a share warrant is issued to him in place of a share certificate.

(e) The Company Secretary, as an officer of the company and responsible in the process, shall be personally liable and punishable if there is any irregular allotment of shares.

Irregular allotment takes place in many ways:

(i) If allotment is made before submitting a Statement in lieu of Prospectus to the Registrar in case of aclosely held public company.

(ii) If allotment is made, in case of a widely held public company, before minimum subscription is raised. Or

(iii) Before fifth day from the date of issue of Prospectus to the public while counting days public holidays shall not be counted.

(f) After the allotment is over, the Company Secretary shall submit, within 30 days after allotment, a Return on allotments to the Registrar of Companies (Sec. 75).

(2) When an Existing Company Issues Rights Shares:

If an existing company, after two years from its formation or after one year from the date of firstallotment of shares, wants to raise fresh capital by offering for sale new shares out of the shares not yetissued, then it should first offer the shares to the existing shareholders on pro rata basis (Sec 81.)

Such shares are called Rights Shares,

(a) The Company Secretary has to send letters to all the shareholders making such offer expecting replywithin 15 days,

(b) Some of the shareholders may send Letters of Acceptance while others may send Letters of Renunciation. It means some shareholders accept the offer while others reject or renounce it. Those whoagree have to pay for the shares. Accordingly the Company Secretary has to take steps for the allotmentof shares to the former group of shareholders and to make arrangement for the issue of rejected shares to outside public.

(3) When an Existing Company Issues Bonus Shares:

The members of a company by passing a resolution may convert the reserves of the company into share capital divided into shares. Such shares are called Bonus Shares. Such shares are offered to the existing shareholders on pro rata basis on their shareholdings.

The shareholders have not to pay anything for such shares nor can they renounce such shares. Itis the duty of the Company Secretary to send necessary notices to all the shareholders and to make necessary changes in the Register of Members. Fresh share certificates shall be issued for the additionalshares.

Transfer:

It is an inherent right of a shareholder to transfer his shares to another person freely in case of apublic company and under restrictions in case of a private company as provided in its Articles of Association. The Companies Act provides the guidelines for transferring of shares (Sees 108 to 113). Regulations 19 to 24 of the Table A provide a model of procedure.

According to the Act, a shareholder or transferor has to obtain a Share Transfer Deed or Instrument of Share Transfer (purchasable in the market) duly certified by a public servant, on which the shareholder as the transferor has to make endorsement of the shares in favour of the transferee and sign his name on necessary stamp.

The transferor shall hand over the share certificate together with the instrument to the transferee and take the money from the transferee by way of consideration. The transferee will send these documents to the company for acceptance and other necessary actions.

On receiving these documents the duties of the company secretary will be:

(a) To inspect and to verify-the correctness of the instrument and genuineness of the share certificate. He will issue a Transfer Receipt to the transferee.

(b) To write a letter to the transferor and the transferee each, called the 'notice of lodgment of transfer', inviting objections to the transfer, if any. This is very important particularly when shares are rot fully paid.

(c) If no objection is received within two weeks from the sending of above notice, the matter will be placed by the Company Secretary at the next meeting of the Board of Directors for approval or disapproval of transfer. Normally, disapproval is not made unless there are strong reasons in the interestsof the company.

(d) Within two months from the approval, the Company Secretary shall issue a new share certificate tothe transferee in exchange of Transfer Receipt, remove the name of the transferor from the Register of Members and enter the name of the transferee in it. Instead of issuing a new share certificate the old certificate duly endorsed by the transferor may be given to the transferee.

Some complications may arise in the process of issuing share certificate:

(i) When all the shares mentioned in a share certificate are transferred, there is no problem. But problem arises when a few shares out all (say 5 out of 10) mentioned in the certificate are transferred by the transferor retaining the remaining ones. In that case two share certificates have to be prepared by the Company Secretary, one for the transferor (for 5 shares) and the other for the transferee (for 5 shares),

(ii) When a transferor wants to transfer his shares to joint holders, problem arises. Shares of a companycannot be allotted for the first time to joint holders but shares can be transferred to joint holders. In the latter case the company recognises the first name as the member. The Company Secretary has to do necessary records keeping this point in view.

A company may appoint a Committee of Transfers consisting of a few Directors arid the Secretary. In that case the approval of transfer shall be by the Committee. A company may maintain a Register of Transfers and the Company Secretary has to make necessary entries in it.

No transfer can be possible during the time when Register of Members remains closed (not more than 45 days in a year and not more than 30 days at a time). Such closure is necessary generally at the time of annual general meeting to get a final list of members who shall get dividend.'

(e) Sometimes loan capital may be transferred to share capital. For example, debentures are repaid by shares or loan given by a public financial institution is converted into equity capital by the order of the Central Government. Such a transfer is a completely different affair consisting of an elaborate accounting process and is a case of fresh allotment. The Company Secretary has to function in collaboration with the accounts department.

(f) Another kind of transfer takes place when share warrants are exchanged for share certificates and vice versa. In the former case the Company Secretary has to insert the name of the transferee afresh in the Register of Members and in the latter case the name of the transferor is removed from the Register of Members but no new name is inserted. In each case, the approval by the Board of Directors has to besecured.

(g) In a Government Company, shares are often held by the Central Government in the name of the President of India and also in. the names of some responsible officers either of the Central Government or of the Slate Governments. With the change of the President or of the officers, changes have to be brought about by the Company Secretary in the Register of Members.

Transmission:

Transmission of shares means transfer of shares by operation of Law. For example, when a shareholder dies, his shares are transferred to his inheritor. The inheritor may hold the shares in his ownname or before that he may transfer the shares to any other person.

When a creditor, being unable to get payment from his debtor starts a case and gets a decree on the assets of the debtor including some shares held by the debtor, there is a case of transmission. The Companies Act does not provide any specific Sections for Transmission of shares. But Table A providesRegulations 25 to 28 for the same.

The Company Secretary has the following duties to do in connection with transmission of shares:

(a) To examine all the legal documents and evidences as to the claim made by a transferee. In case of inheritance, the Probate of Will (i.e., a copy of the Will certified by the Court) of the deceased shareholder entitling the inheritor to the shares shall be demanded. If there has been no Will then a Letterof Administration has to be received from the person claiming transmission.

(b) The Company Secretary has to obtain the approval of transmission by the Board of Directors. The Board of Directors has powers to reject transfer of shares but it cannot normally reject transmission because it is by operation of law.

(c) After that the Company Secretary has to take all other steps, as in case of a transfer, with regard to issue of new share certificates and necessary changes in the Register of Members. It has to be noted thatrules regarding transfer and transmission, of shares also apply to debentures.

SHARE CAPITAL

Meaning:

The Joint Stock Company is a big form of business organization. The amount required by the company for its business activities is raised by the issue of shares. The amount so raised is called 'Share Capital' (or capital) of the company. It may be noted that a company limited by shares will have share capital. A company limited by guarantee or an unlimited company may

not have any share capital. Thepersons who buy the shares of company are called 'Shareholders'.

The capital of a company is divided into a number of equal parts known as shares.

"The interest of a shareholder in the company, measured by a sum of money, for the purpose of liability in the first place and of interest in the second, but also consisting of a series of mutual covenants enteredinto by all shareholders." — Farewel, J.

Section 2(46) of Companies Act. 1956, defines it as "a share in the share capital of a company, and includes stock except, where a distinction between stock and shares is expressed or implied."

Types of Share Capital:

(i) Authorized, registered or nominal capital:

This is the amount of capital with which the company intends to get itself registered. This is theamount of share capital which a company is authorized to issue. Nominal capital is divided into shares of a fixed amount. It must be set out in the memorandum of association. It can be increased or decreasedby following the prescribed procedure.

(ii) Issued capital:

It is that part of the nominal capital which is actually issued by the company for public subscription. A company need not issue the entire authorized capital at once. It goes on raising the capitalas and when the need for additional funds is felt.

The difference between the nominal and the issued capital is known as 'unissued capital', whichcan be issued to the public at a later date. Where the whole of authorized capital is offered to the public, the authorized and issued capital will be the same. Issued Capital cannot be more than the authorized capital. Issued capital includes the shares allotted to public, vendors, signatories to memorandum of association etc.

(iii) Subscribed capital:

It is that amount of the nominal value of shares which have actually been taken up by the public.It is that part of the nominal capital which has actually been taken up by shareholders who have agreed to give consideration in kind or in cash for shares issued to them. Where shares issued for subscription are wholly subscribed for, issued capital would mean the same thing as 'subscribed capital'. That part of issued capital which is not subscribed by the public is called 'Unsubscribed Capital'. Subscribed capital cannot be more than issued capital.

(iv) Called-up Capital:

After the receipt of share applications, the Board of Directors makes allotment of shares to the applicants. Certain amount is payable on application and the balance is called at the time of allotment and calls. The capital is called up as per requirements for funds. The amount of capital is called called-up capital.

(v) Paid-up Capital:

The amount of capital actually received is termed as Paid-up Capital. The shareholders are asked to pay the calls within a certain period. In case whole of the called-up money has been received from the shareholders, called-up and paid-up capital will be the same. There may be some defaulters and themoney which has not been received is called calls-in-arrears.

(vi) Reserved Capital:

A limited company may earmark a part of uncalled capital as Reserved Capital. The reserved capital is called-up only in case of winding up of the company. This is done in order to create confidence in the minds of the creditors. Capital can be reserved by passing a special resolution by the shareholders.

ALTERATION OF SHARE CAPITAL

Section 2(8) of c defines the Authorized share capital:-

"Authorized capital" or "Nominal capital" means such capital as is authorized by the memorandum of a company to be the maximum amount of share capital of the company.

What Is Alteration Of Authorized Share Capital Of The Company

In general, alteration means bringing change in the character of something, however, when we talk about the alteration of the share capital of the limited company having share capital we mean following.

a. Increase in the authorized share capital;

b. Consolidation and division of share into shares of larger value. However, such consolidation and division shall not impact the voting percentage of shareholders. In case it does then the approval of NCLT will be required;

c. Converting fully paid-up shares into stock and stock into fully paid-up shares;

d. Sub-division of shares or any class of shares or type of shares into smaller amount, however, such division should be in the same proportion as existing paid-up shares are;

For example, if any company has the current structure of 10 shares of 10 Rs. each out which 1 share is unpaid then when these shares are sub-divided into the 100 of shares of Re. 1 each then 90 shares will be fully paid-up remain 10 shares will be un-paid.

e. Cancellation of unsubscribed shares, shares which are not taken by anyone or agreed to be taken by anyone, may be cancelled and the share capital will be reduced by such cancelled shares and such reduction will not be deemed to be the reduction of share capital under section 66 of the Companies Act,2013.

Alteration Authorized Share Capital

Authorized share capital is the maximum amount of share capital of the company, so one of the most fundamental reasons to alter share capital is to increase the authorized share capital of the company so that company can receive more capital for its growth.

The other form of alteration of share capital is sub-division of shares i.e. 1 share of Rs. 10 each may be divided into 10 shares of Re. 1 each. There primary two-fold reason to do this kind of sub- division, first such division increase the liquidity of shares in the market and second it will increase the participation of small shareholders in the market since buying these shares does not need huge invest due to lower value without impacting the real value of the shares. Other two form of alteration is not that common.

Alteration of the share capital involves alteration of the capital clause of Memorandum of Association, and alteration of Memorandum can be done under **Section 13** of the Act, however, section 13 provides that share capital can be altered as provided under section 61 of the Companies Act, 2013.

Extract of Section 61 of the Companies Act, 2013- Power of Limited Company to Alter its Share Capital

"Power of Limited Company to Alter its Share Capital

(1) A limited company having a share capital may, if so authorized by its articles, alter its memorandumin its general meeting to—

(a) increase its authorized share capital by such amount as it thinks expedient;

(b) Consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares:

*Provided that no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;

(c) Convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;

(d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reducedshare is derived;

(e) Cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) the cancellation of shares under sub-section (1) shall not be deemed to be a reduction of share capital.**"**

Section 61 provides for the power of the limited liability company having share capital to alter its sharecapital.

For the altering the share capital of the company, first, we have to check whether the Article of Association has such power, if such power is not there then we have to first amend the Article of the company.

Once we have power in Article, we can amend the share capital of the company by passing Ordinary Resolution. It is to be noted that amending capital clause is less cumbersome than altering other clauses since other clause required passing of Special Resolution and other approval for example if the company is moving its registered office from one state to another state.

Unlimited Company

As we discussed above, Section 61 deals with the only limited company so what about the unlimited company, can they alter their share capital.

For the answer to the question of alteration of the share capital of the unlimited company we have to go to Section 65, which deals with the "Reserve of the share capital on conversion to a limited company". For the unlimited company to alter its share capital it first has to convert itself and then it can alter the share capital in the following ways;

1. It can increase the nominal amount of share capital by increasing nominal amount of each share, subject to the condition that no part of the increased capital shall be capable of being called-up except in the event the company being wound-up.

This means that the company can increase its share capital without increasing the number of shares. They can increase the nominal value of existing shares to increase the share capital, not the number of shares subject to the condition that such amount can be called-up only during the wound-up meeting theliability of the company.

2. Reserving the uncalled up share capital for the wound-up of the company. The Company may providethat any uncalled share capital may be called only in case of winding up of the company for meeting theliability of the company.

There are two important points are here, first, there is no concept of reserve capital for the limited company under **Companies Act, 2013,** however, reserve capital is there in case of the unlimited company. The second conversion into a limited company under this section is limited for only these twoactions and should not be treated at part with the conversion of section 18.

Procedure For Altering The Share Capital

1. Sending Notice of Board Meeting; Notice of Board Meeting to be sent to every director at least 7 daysbefore the meeting, shorter notice is possible subject to fulfilment of condition subject to which it can be issued.

2. Board Meeting: Board Meeting will be called for calling the general meeting. Board of Director willfix the date, day, time and place of the general meeting. Notice of general meeting to be accompanied by an explanatory statement as per section 102.

3. Notice of general meeting: At least 21 clear days' notice to be given, however, shorter notice may begiven subject to compliance of the given condition. Notice to be given as per section 101 and shall be given to every director, auditor of the company, members of the company. Notice shall provide the date, day, time and place of the meeting and also specify the business to be transacted. Since alteration of capital is a special business so notice to be accompanied by an explanatory statement.

4. General Meeting: In the general meeting, the company will pass an ordinary resolution to alter the share capital.

Filing Of Form To Registrar Of Companies

In the case where the company is already authorized by the Article of Association of the company, the company only need to file SH-7 under section 64 within 30 days of alteration of share capital. Following documents need to be attached with SH-7;

1. Certified True Copy of the Resolution altering the share capital of the company.

2. Altered Memorandum of the company

3. In case the change in share capital is due to the order of the centre government or NCLT, then such order needs to be attached.

Penalty

Section 61 and 65 does not provide any specific penalty hence penalty will be imposed under section 450. In case of non-compliance, the Company and every officer in default shall be punishable with fine up to Rupees Ten Thousand (Rs. 10,000). In case of continuous default Rupees One thousandper day, till such default continues.

In case of default in filing SH-7 within 30 days, section 64 provides the following penalties. Penalty for the company and every officer in default;

Rupees one thousand per day till such default continues or Rupees Twenty Five Lakh (Rs. 25,00,000) whichever is less.

RIGHTS ISSUE, BONUS ISSUE, PRIVATE AND PREFERENTIAL ALLOTMENT

Rights Issue Meaning

A rights issue is a **primary market offer to the existing shareholders to buy additional sharesof the company** on a pro-rata basis within a specified date at a discounted price than the current marketprice.

It is important to note that the rights issue offer is an invitation that provides an opportunity forexisting shareholders to increase their shareholding. It is a right that a shareholder may or may not choose to exercise and not an obligation to buy the shares.

Rights Issue Eligibility

Unlike initial and follow-up public offering, the rights issue is not open for the general public but only to existing shareholders of the company. A company announces a record date in case of a rightsissue. To be eligible to qualify as an existing shareholder for the rights issue, one must own the shares of the company as on the record date. The shares become ex-rights one day before the record date. If you buy the shares on or after the ex-date, you will not be eligible to receive rights entitlements as you would not qualify as an existing shareholder of the company as on record date. (considering Trade date
+2 settlement)

For example, a company offering a rights issue announces 18th August 2020 as the record date,one must own the shares of the company in their Demat account as on that date. If one buys the shares on 17th August, the person will not be considered as an existing shareholder in company books even when he buys stock before the record date as the credit of shares in Demat will happen on 19th August.The shares become ex-rights from 17th August.

Rights Issue

DateRecord

Date

A record date is a cut-off date to determine eligible shareholders for the rights issue.

Issue Opening Date

The issue opening date is a date when one can start applying for the rights issue.

Issue Closure Date

The issue closing date is the cut-off for applying for the rights issue. No applications can be made post the issue closure date.

Rights Entitlement Trading Dates

These are the on-market renunciation of rights entitlements dates within which the rights entitlements can be traded on the stock exchange. The trading commences with issue opening date andgenerally closes 3-4 working days before the issue closure date.

Allotment Date

The allotment date is when the company finalizes the allotment based on the applications received and the Demat holding list of the rights entitlements.

Date of credit

The credit date is when the rights shares are credited to the Demat account once the allotment isfinalized.

Date of commencement of trading or Listing date

This is the date when the rights issue shares will get listed on the stock exchange and trade alongwith other equity shares.

Rights issue

- A company issues rights shares to raise additional capital. The most common reasons for acompany to prefer rights issue over other public offerings is as follows.
- To reduce the debt-equity ratio of the company.
- Cash strapped companies in need of capital and not wanting to increase the debt burden by takingany loans.
- For company expansion, acquisition, takeovers or other general corporate purposes.

Rights Entitlements

A company offering rights issue will credit the rights entitlement to eligible shareholders in proportion of their existing holdings. Rights entitlements (RE) is a temporary credit of shares done to the eligible shareholder's Demat account that allows the shareholders to apply or trade for that many numbers of shares.

The credit of RE in the Demat account does not put an obligation on the shareholder to compulsorily buy the rights.

Rights Issue Options

- A right issue is an offer for shareholder to increase their shareholder of the company which hecan accept or reject and has every right to choose from one of the below options:
- Exercise the right in full and apply for the eligible rights share.
- Exercise the right in full and apply for the eligible rights share as well as additional rights share.
- Ignore the RE fully and let the rights lapse. No action is required in this case.
- Exercise partial rights and let the remaining rights lapse.
- Exercise partial rights and transfer the remaining rights to other interested investors. This processof transfer or sale of RE is called renunciation of rights.
- Transfer or sell the entire RE to other interested investors.

The credit of RE does not mean you own the rights share. The existing shareholder or the buyer ofthe RE (known as renouncee) need to apply for the rights share based on the RE in their account.

The allotment for additional rights share in option 2 will be based on the issue subscription

statusand thus not guaranteed.

Rights Issue Procedure

Earlier the rights issue was a long duration process taking about two months for a company to complete the entire issue . Recently in January 2020, SEBI has issued new guidelines to streamline the rights issue process and reduce the timeframe for rights issue completion to 31 days by cutting on the timelines for various processes and introducing the dematerialization of RE.

Steps in a Rights Issue Process:

- Dispatch/Upload of application forms by the issuer, registrar, exchanges on their website.
- The credit of RE in Demat account of eligible shareholders.
- Interested investors/renouncees to submit the application form to apply for rights issues.
- Allotment and credit of rights issue shares in Demat account post reconciliation of RE Dematholding list and applications received.

Rights Issue Benefits

The rights issue offers various benefits to the shareholder as well as the company.

Benefits for the company

- Rights issue is the **fastest mode of raising capital** for the company.
- It is a **low-cost affair for the company** as company can save on the underwriters fees,advertisement expenses.
- The **confidence of the existing shareholders is retained** by making the discounted offer toexisting owners as payback for being part of the company.
- The company can raise additional funds **without increasing the debt burden**.
- Benefits for the Shareholders
- Rights issues provide an opportunity for existing shareholders **to increase their stake in thecompany at a lesser price** than the current market price.
- The rights issue **retains the control of the company with existing shareholders** when subscribed by the existing shareholders without renouncing their rights to outsiders.

Rights Issue Disadvantages

The rights issue would result in dilution in the value of holdings of the existing shareholders.

One of the reasons, the company looks to issue rights share is the need for cash on account of being cash strapped. This may sometimes give a wrong signal to investors that a company is strugglingwhich may impact the reputation of the company and the share price.

The rights issue would increase the number of shares of a company spreading the profit across that many shares impacting earning per share (EPS).

Types of rights issue

The rights issue can be classified into 4 types:

Fully paid rights issue

A fully paid rights issue is where an applicant is required to pay the entire issue amount at the time of application.

Partly paid rights issue

A partly paid rights issue is where an applicant is required to pay only a partial amount at the time of application. The balance amount is to be paid as and when subsequent calls are made by the company.

The above types of rights issue decide the terms of payment of an issue.

Renounceable rights issue

A renounceable rights issue can be easily transferred or sold to other investors in the open market. A RE holder can opt to transfer his rights in case he does not want to subscribe to his rights.

Non-renounceable rights issue

A non-renounceable rights issue cannot be transferred or sold to anyone. In such cases, a RE holder not willing to exercise his right to buy the rights share will have the only option to give up his rights and let the RE lapse.

BONUS SHARE

FUNDS WHICH CAN BE USED FOR ISSUING BONUS SHARES: –

A company may issue fully paid-up bonus shares to its members, out of

only—Its free reserves;

The securities premium account; or

The capital redemption reserve account.

The bonus shares are generally issued in a ratio i.e. for instance, if an investor holds 100 sharesof a Company and a Company declares 2:1 bonus offer that would mean that the investor would get 2 shares for every 1 share held by him in such Company. Therefore, he will get 200 additional shares as per this example and his total shareholding in the Company would be increased to 300 shares.

It is also pertinent to mention that bonus shares shall not be issue by capitalizing reserves createdby the revaluation of assets.

There are a lot of Companies who has surplus profits and intends to capitalize such profits by issue of bonus shares. Bonus shares are basically gift to the shareholders in the ratio of shares already owned by them. These are a **free share** of stock given to the existing shareholders in a Company, based upon the number of shares that the shareholder already owns. While the issue of bonus shares increasesthe total number of shares issued and owned by an investor, it has no liquidity effect on the Company as there is no cash involvement as such.

REGULATORY PROVISIONS:

Section 63 of the **Companies Act, 2013** read with Rule 14 of the **Companies (Share Capital and Debentures) Rules, 2014.**

IMPORTANT GUIDELINES BEFORE ISSUE OF BONUS SHARES: –

The most important guideline is that such shares can be issued by a Company only if the Articles of Association of the Company authorizes the issue of bonus shares and if not, the Articles of Association shall be amended before passing special resolution for issue of bonus shares.

- The Company after announcing such issue in its Board meeting cannot withdraw such issue.
- The bonus shares shall not be issued in lieu of dividend.
- The partly paid-up shares, if any outstanding on the date of allotment, shall be made fully paid-up before such issue.
- The Company has not defaulted in payment of interest or principal in respect of fixed depositsor debt securities issued by it.
- The Company has not defaulted in respect of the payment of statutory dues of the employees,such as contribution to provident fund, gratuity and bonus.

PROCESS FOR ISSUE OF BONUS SHARES: –

Step 1: Sending notice and agenda items to the Directors to hold board meeting as per SecretarialStandard-1.

Step 2: – Holding Board Meeting to decide and for sending notice for convening general meeting.

Pass Board Resolution and decide ratio and quantum for such issue.

Issue notice for general meeting attaching explanatory statement thereto and in compliance to SecretarialStandards-2.

Step 3: Holding general meeting

Passing **Special Resolution** approving the issue of bonus shares. File eForm **MGT-14** within **30 days** of passing special resolution.

Step 4: Issue of bonus shares and pass board resolution for allotment of such shares.

Step 5: File eForm PAS-3 within 30 days of passing of resolution of allotment by the board.

Step 6: The Company shall issue the share certificates to members to whom bonus shares has beenissued within two months from the date of allotment.

India companies in order to invest funds in its business operations, explore many options like Issue of Shares, Debentures, Zero Coupon Bonds, Public Deposits, Loans from Banks and Financial Institutions and other traditional sources.

One of the common and cheap costs of borrowings is by "Issue of Equity shares". While dealingwith issue of equity shares other than issue to Public, we came across many phases as well as modalities like Private Placement, Preferential allotment, Right issue, Bonus Issue, issue by ESOP, Sweat equity etc .

We will confine our discussion only on preferential allotment, Issue by way of Private Placementand Right issue by **Unlisted Companies**.

The below table explains the detail of the parameters in line with the **Companies Act 2013** readwith applicable rules made there under :-

Preferential Allotment Vs Private Placement Vs Right Issue

Sl No	Parameters	Private Placement	Preferential Allotment	Right issue
1	**Meaning**	Offer made to specified investor to invest fund. They are not the members of the company.	Allotment of shares to some other persons who are given "preference" over existing members.	Allotment of shares to "existing" shareholders.
2	**Sections & Rule of Companies Act, 2013**	Section 42 & Rule 14 of the **Companies (Prospectus & Allotment of Securities) Rules, 2014**	Section 62(1)(c) & section 42 read with rule 13 ofthe **Companies (Share Capital & Debentures) Rules, 2014** and rule 14 of the Companies (Prospectus & Allotment of Securities) Rules, 2014	Section 62(1)(a)
3	**Board Approval**	Required	Required	Required
4	**Share Holders approval**	Prior approval by special resolution	Authorised by Special resolution	Not required
5	**Valuation certificate**	Required from Regd Valuer	Required from Regd Valuer	Required from a practicing CA

7	**Any other form to be filed-MGT-14**	Required to be filed with ROC within 30 days of passing of special resolution	Required to be filed with ROC within 30 days of passing of special resolution	Only applicable to public companies who file MGT-14 within 30 days passing Borad Resolution
8	**Offer Letter**	Offer letter is required	Applicable only if offer is made to other persons including existing members	Offer Letter is required
9	**Form Required for Offer Letter**	PAS-4	PAS-4	No such prescribed format
10	**Right of Renunciation**	Not available	Not available	Available
11	**Opening of Separate Bank A/c**	Required	Required	Not Required
12	**Utilisation of Money**	Cannot utilise the money unless the shares are allotted	Cannot utilise the money unless the shares are allotted	No such restriction
13	**Allotment time period**	60 days from the date of receipt of application money	60 days from the date of receipt of application money	60 days from the date of receipt of application money
14	**Return of allotment –PAS-3**	Within 15 days from the date of allotment	Within 30 days from the date of allotment	Within 30 days from the date of allotment
15	**Restrictions on number of persons to whom offer can be made**	Not more than 200 in aggregate in a financial year	Not more than 200 in aggregate in a financial year	No such restriction
16	**Issue Price**	Not more than Valuation made	Not more than Valuation made	Can be at Face Value

17	**Sending of Notice (Mode)**	Regd post/speed post/E-mail/Courier within 30 days of recording the name of such persons	Regd post/speed post/E-mail/Courier within 30 days of recording the name of such persons	Regd post/speedpost/E-mail/Courier /hand delivery atleast 3 days before the issue made.

DIVIDEND

Meaning of Dividend

The term 'dividend' has been defined under Section 2(35) of the Companies Act, 2013. The term '**Dividend** 'includes any interim dividend. It is an inclusive and not an exhaustive definition. According to the generally accepted definition, '**dividend** 'means the profit of a company, which is not retained in the business and is distributed among the shareholders in proportion to the amount paid-up on the sharesheld by them.

Dividends are usually payable for a financial year after the final accounts are ready and the amount of distributable profits is available. Dividend for a financial year of the company (which is called 'final dividend') are payable only if it is declared by the company at its annual general meeting on the recommendation of the Board of directors. Sometimes dividends are also paid by the Board of directorsbetween two annual general meetings without declaring them at an annual general meeting (which is called 'interim dividend').

The companies having licence under Section 8 of the Act are prohibited by their constitution from paying any dividend to its members. They apply the profits in promoting the objects of the company.

2. Dividend under the Companies Act, 2013

The Companies Act, 2013 lays down certain provisions for declaration of dividend, which are:

(i) Section 51 permits companies to pay dividends proportionately, i.e. in proportion to the amount paid-up on each share when all shares are not uniformally paid up, i.e. pro rata. Pro rata means in proportion or proportionately, according to a certain rate. The Board of Directors of a company may decide to pay dividends on pro rata basis if all the equity shares of the company are not equally paid- up. However, in the case of preference shares, dividend is always paid at a fixed rate.

The permission given by this section is, however, conditional upon the company's articles of associationexpressly authorising the company in this regard.

(ii) Final Dividend is generally declared at an annual general meeting [Section 102(2))] at a rate not more than what is recommended by the directors in accordance with the articles of association of a company.

(iii) An interim dividend is declared by the Board of directors at any time before the closure of financial year, whereas a final dividend is declared by the members of a company at its annual general meeting ifand only if the same has been recommended by the Board of directors of the Company.

(iv) In accordance with Section 134(3)(k), Board of directors must state in the Directors' Report the amount of dividend, if any, which it recommends to be paid.

The dividend recommended by the Board of directors in the Board's Report must be 'declared' at the annual general meeting of the company. This constitutes an item of ordinary business to be transacted at every annual general meeting. This does not apply to interim dividend.

(iv) No dividend shall be declared or paid by a company for any financial year except out of the profitsof the company for that year arrived at after providing for depreciation in accordance with section 123
(2) of the Act or out of profits of the company for any previous financial year/years arrived at after providing for depreciation in accordance with the provisions of above sub section and remaining undistributed or out of both or out of moneys provided by the Central Government or a State Government for payment of dividend in pursuance of a guarantee given by the concerned Government [Section 123(1)].

(v) A company may before the declaration of any dividend in any financial year, transfer such percentageof its profits for that financial year as it may consider appropriate to the reserves of the company.

(vi) If owing to inadequacy or absence of profits in any year, a company proposes to declare dividend out of the accumulated profits earned by it in any previous financial years and transferred to reserves, such declaration of dividend shall not be made except in accordance with the **Companies (Declarationand Payment of Dividend) Rules, 2014.**

(vii) Depreciation, as required under Section 123(1) of the Companies Act has to be provided in accordance with the provisions of Schedule II to the Act.

(viii) A company which fails to comply with Section 73 and 74 of the Companies Act shall not declareany dividend on its equity shares till such default continues.

(ix) The amount of dividend (final as well as interim) shall be deposited in a separate bank account within 5 days from the date of declaration. [Section 123(4)]

(x) Dividend has to be paid within 30 days from the date of declaration.

(xi) In case of listed companies, Section 24 of the Companies Act, 2013 confers on SEBI, the power of administration of the provisions pertaining to non-payment of dividend. In any other case, the powers remain vested in Central Government.

(xii) If dividend has not been paid or claimed within the 30 days from the date of its declaration, the company is required to transfer the total amount of dividend which remains unpaid or unclaimed, to a special account to be opened by the company in a scheduled bank to be called "Unpaid Dividend Account". Such transfer shall be made within 7 days from the date of expiry of the said period of 30 days.

(xiii) In accordance with Section 70, a company cannot buy its own shares if apart from other things provided in the section, it makes default in payment of dividend to any shareholder.

(xiv) Any money transferred to the unpaid dividend account of a company in pursuance of section 124 which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company to the Investor Education and Protection Fund and the company shall file astatement in "Form DIV-5" to the Authority constituted under the Act to administer the fund and such authority shall issue a receipt to the company as evidence of such transfer. [Section 124(5)]

(xv) Where a dividend has not been paid by the company within 30 days from the date of declaration, every director shall, if he is knowingly a party to the default, be punishable with imprisonment for a term which may extend to 2 years and shall also be liable to a fine of rupees

1000 for every day during which default continues and the company shall be liable to pay simple interest @ 18% per annum during the period for which such default continues. [Section 127]

(xvi) If the company delays the transfer of the unpaid/unclaimed dividend amount to the unpaid dividend account, it shall pay interest @ 12% p. a. till it transfers the same and the interest accruing on such amount shall ensure to the benefit of the members of the company in proportion to the amount remaining unpaid to them. [Section 124(3)]

(xvii) Any dividend payable in cash may be paid by cheque or warrant through post directed to the registered address of the shareholder who is entitled to the payment of the dividend or to his order or in any electronic mode sent to his banker. [Section 123(5)]

3. PROCEDURE FOR DECLARATION AND PAYMENT OF FINAL DIVIDEND

The following steps are required to be taken by a company in respect of declaration and payment of final dividend:

1. Issue notice for holding a meeting of the Board of directors of the company to consider the matter. The notice must be in accordance with Section 173 of the Companies Act. It must state time, date and venue of the meeting and details of the business to be transacted thereat and be sent to all the directors for the time being in India and to all other directors, at their usual address in India either by post or by hand delivery or by electronic means.

2. In case of listed companies, notify stock exchange(s) where the securities of the company are listed, at least 2 working days in advance of the date of the meeting of its Board of Directors at which the recommendation of final dividend is to be considered [Clause 19 of listing agreement] and will immediately after the meeting of its Board of Directors intimate declaration of dividend to the Stock Exchanges where the company is listed (within 15 minutes of the closure of the board meeting) by phone, fax, telegram, e-mail.

3. Hold Board meeting for the purpose of passing the following resolutions:

i. approving the annual accounts (balance sheet and profit and loss account of the company for the year ended);

ii. recommending the quantum of final dividend to be declared at the next annual general meeting and the source of funds for the payment thereof and amount to be transferred from the current profits to reserves as the board may deem appropriate.

(The Board may also carry forward any profits which it may consider necessary not to divide, without setting them aside as a reserve)

4. Fixing time, date and venue for holding the next annual general meeting of the company, inter alia, for declaration of dividend recommended by the Board;

5. Approving notice for the annual general meeting and authorising the company secretary or any other competent person if company does not have a company secretary to issue the notice of the AGM on behalf of the Board of directors of the company to all the members, directors and auditors of the company and other persons entitled to receive the same.

6. Determining the date of closure of the register of members and the share transfer register of the company as per requirements of Section 91 of the Companies Act, 2013 and the listing agreements (in the case of listed companies) signed by the company with the stock exchanges where the securities of the company are listed. In the case of listed companies, the date of commencement of closure of the transfer books should not be on a day following a holiday. The dates so fixed should also not clash with the clearance programme in the stock exchanges. It is

advisable to consult in advance the regional stockexchange and then fix the dates for closure of books.

7. Ensure that the required percentage of profits as decided by the Board is transferred to company's reserves.

8. In case of listed company, publish notice of book closure in a newspaper circulating in the district inwhich the registered office of the company is situated at least seven days before the date of commencement of book closure. Further:

(i) To give notice of book closure to the stock exchange at least 7 working days or as many days as thestock exchange may prescribe, before the closure of transfer books or record date, stating the dates of closure of its transfer books/record date.

(ii) To send the copies of notice stating the date of closure of the register of transfers or record date, and specifying the purpose for which the register is closed or the record date is fixed, to other recognised stock exchanges.

(iii) Time gap between two book closures and record date would be at least 30 days (Clause 16 of ListingAgreement).

(iv) To declare and disclose the dividend on per share basis only.

[Clause 16, 20A of listing agreement read with Section 91 of Companies Act, 2013].

9. Close the register of members and the share transfer register of the company.

10. The amount of dividend as recommended by the Board of directors shall be shown in the Directors'Report.

11. Hold a Board/committee meeting for approving registration of transfer/ transmission of the shares of the company, which have been lodged with the company prior to the commencement of book closure. In compliance with the Board resolution, register transfer/transmission of shares lodged with the company prior to the date of commencement of the closure of the register of members and mail the sharecertificates to the transferees after endorsing the shares in their names.

12. Hold the annual general meeting and pass an ordinary resolution declaring the payment of dividend to the shareholders of the company as per recommendation of the Board. The shareholders cannot declare the final dividend at a rate higher than the one recommended by the Board. However, they maydeclare the final dividend at a rate lower than the one recommended by the Board. The following shouldbe noted in this regard:

(i) Once a company has declared a dividend for a financial year at an annual general meeting, it cannot declare further dividend at an extraordinary general meeting in relation to the same financial year; it is beyond the powers of the company to do so, although the Companies Act does not prohibit the declaration of a dividend at a general meeting other than an annual general meeting.

(ii) Pro-rata means in proportion or proportionately, according to a certain rate. It denotes a method ofdividing something between a number of participants in proportion to some factor. The profits of a company are shared, pro rata, among the shareholders, i.e. in proportion to the number of shares each shareholder holds.

(iii) Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the

amounts of the shares [Table F, Article83].

13. Prepare a statement of dividend in respect of each shareholder.

14. Ensure that the dividend tax is paid to the tax authorities within the prescribed time.

15. Open a separate bank account for making dividend payment and credit the said bank account with the total amount of dividend payable within five days of declaration of dividend.

16. If the company is listed, then for payment of dividend it has to mandatorily use, either directly or through its Registrars to an Issue and Share Transfer Agents (RTI & STA), any Reserve Bank of India approved electronic mode of payment such as Electronic Clearing Services (ECS), National ElectronicFund Transfer (NEFT), etc.

17. Make arrangements with the bank and in collaboration with other banks if required, for payment ofthe Dividend Warrants at par. Instructions to all the specified branches of the bank that dividend shouldbe paid at par should be sent by the Bank.

18. No RBI approval is required for payment of dividend to shareholders abroad, in case of investmentmade on repatriation basis.

19. Where an instrument of transfer has been received by company prior to book closure but transfer ofsuch shares has not been registered when the dividend warrants were posted, then keep the amount of dividend in special A/c called "Unpaid Dividend Account" opened under section 124 unless the registered holder of these shares authorises company in writing to pay dividend to the transferee specified in the said instrument of transfer.

20. Dispatch dividend warrants within thirty days of the declaration of dividend. In case of joint shareholders, dispatch the dividend warrant to the first named shareholder.

21. Arrange for transfer of unpaid or unclaimed dividend to a special account named "Unpaid dividend Account" within 7 days after expiry of the period of 30 days of declaration of final dividend. (Section 124)

22. Identify the unclaimed amounts as referred to in sub-section (1) of section 124 of the Act and, separately furnish a statement and upload on company's own website or any other website as may be specified by the Government in such form as may be prescribed. The company shall prepare the abovestatement within a period of 90 days of making any transfer to unpaid dividend account.

23. Transfer unpaid dividend amount to Investor Education and Protection Fund (IEPF) after the expiry of seven years from the date of transfer to unpaid dividend A/c. The company while effecting credit to the Fund, should separately furnish a statement with the authority constituted to administer the fund in Form DIV-5 of Companies (Declaration and Payment of Dividend) Rules, 2014 and obtain a receipt from the authority as evidence of such transfer.

24. Company shall also transfer all the shares in the name of Investor Education and Protection Fund (IEPF) on which unpaid or unclaimed dividend has been already transferred to IEPF and any lawful claimant of those shares/dividend shall be entitled to claim the transfer of shares/dividend from IEPF inaccordance with such rules, procedure and submission of documents as may be prescribed by the CentralGovernment in this regard. [Section 124 (5)/(6) & Section 125(3)(a)]

5. PAYMENT OF DIVIDEND WITHOUT PROVIDING FOR DEPRECIATION

Section 123 (1)(a) of the Companies Act, 2013 provides that no dividend shall be declared or paid by a company for any financial year except out of the profits of the company for that year or out of the profits of the company for any previous financial years arrived at after providing for depreciation in accordance with the provisions of Schedule II to the Act and remaining undistributed, or out of both.

Further, rule 3(5) of Companies (Declaration and Payment of Dividend) Rules, 2014 provides that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year are set off against profit of the company of the current year the loss or depreciation, whichever is less, in previous years is set off against the profit of the company for the year for which dividend is declared or paid.

6. DECLARATION OF DIVIDEND OUT OF COMPANY'S RESERVES

In the event of inadequacy or absence of profits in any year, a company may declare dividend out ofsurplus reserves subject to the fulfillment of the following conditions, namely:-

a. The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the three years immediately preceding that year. However, this condition shall not apply to a company, which has not declared any dividend in each of the three preceding financial year.

b. The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the paid- up share capital and free reserves as appearing in the latest audited financial statement.

c. The amount so drawn shall first be utilised to set off the losses incurred in the financial year in whichdividend is declared before any dividend in respect of equity shares is declared.

d. The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital asappearing in the latest audited financial statement.

The procedure is as follows:

(1) Give notice as per Section 173 to all the directors of the company for holding a Board meeting. In the meeting, take decision to declare dividend out of company's reserves because of inadequacy or absence of profits and also fix the date, time and place of the Annual General Meeting. Authorise the Company Secretary or any competent person if company does not have a company secretary to issue the notice of the AGM on behalf of the Board of directors of the company to all the members, directorsand auditors of the company and other persons entitled to receive the same.

(2) Ensure that the conditions prescribed under Companies (Declaration and Payment of Dividend) Rules, 2014 are complied with.

Rest of the procedural steps are same as in case of payment of final dividend.

INTERIM DIVIDEND

PROCEDURE FOR DECLARATION AND PAYMENT OF INTERIM DIVIDEND

1. Verify from company's Articles of Association that they authorise the directors to declare interim dividend; if not then alter the Articles of Association accordingly.

2. Issue notice for holding a meeting of the Board of directors of the company to consider the matter. The notice must be in accordance with Section 173 of the Companies Act. It must state time, date and venue of the meeting and details of the business to be transacted thereat and be sent to all the directors for the time being in India and to all other directors, at their usual address in India either by post or by hand delivery or by electronic means.

3. In case of listed companies, notify stock exchange(s) where the securities of the company are listed, at least 2 working days in advance of the date of the meeting of its Board of Directors at which the declaration of interim dividend is to be considered [Clause 19 of listing agreement] and will immediatelyafter the meeting of its Board of Directors intimate declaration of dividend to the Stock Exchanges where the company is listed (within 15 minutes of the closure of the board meeting) by phone, fax, telegram, e-mail.

4. At the Board meeting, the Board of Directors considers in detail all the matters with regard to the declaration and payment of an interim dividend including:

(a) Before declaring an interim dividend, the directors must satisfy themselves that the financial position of the company allows the payment of such a dividend out of profits available for distribution.

(b) The Board of Directors of a company may declare interim dividend during any financial year out ofthe surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

(c) In case the company has incurred loss during the current financial year up to the end of the quarterimmediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years

(d) The directors of a company may be held personally liable in the event of wrong declaration of an interim dividend. Therefore, it is prudent on the part of the directors to have a proforma profit and loss account and balance sheet of the company prepared upto the latest possible date of the financial year inrespect of which interim dividend is proposed to be declared and provision must be made for all the working expenses and depreciation for the whole year.

(e) The board should pass a suitable resolution for declaration and payment of interim dividend on equity shares of the company.

(f) Authority for signing the dividend warrants and pass appropriate resolutions covering all these aspects of the matter.

(g) Interim dividend on preference shares: Generally, dividend on preference shares is paid annually. However, the dividend at a fixed rate on the preference shares can be paid more than once during a year,in proportion to the period of completion of current financial period over the whole financial year, by declaring it as interim dividend, in the Board meeting by the Board of directors. A suitable resolution should be passed to the effect that the dividend will be paid to the registered preference share holders whose names appear in the register of preference shareholders as on the date of commencement of closure of share transfer books.

5. In case of listed company, publish notice of book closure in a newspaper circulating in the district inwhich the registered office of the company is situated at least seven days before the date of commencement of book closure. Further:

(i) To give notice of book closure to the stock exchange at least 7 working days or as many days as thestock exchange may prescribe, before the closure of transfer books or record date, stating the dates of closure of its transfer books/record date.

(ii) To send the copies of notice stating the date of closure of the register of transfers or record date, and specifying the purpose for which the register is closed or the record date is fixed, to other recognized stock exchanges.

(iii) Time gap between two book closures and record date would be at least 30 days.

(iv) To declare and disclose the dividend on per share basis only.

[Clause 16, 20A of listing agreement read with Section 91 of Companies Act, 2013].

6. Close the register of members and the share transfer register of the company.

7. Hold a Board/committee meeting for approving registration of transfer/ transmission of the shares ofthe company, which have been lodged with the company prior to the commencement of book closure. In compliance with the Board resolution, register transfer/transmission of shares lodged with the company prior to the date of commencement of the closure of the register of members and mail the share certificates to the transferees after endorsing the shares in their names.

8. Round off the amount of interim dividend to the nearest rupee and where such amount contains part of a rupee consisting of paise then if such part is fifty paise or more, it should be increased to one rupeeand if such part is less than fifty paise, it should be ignored.

9. Open the "Interim Dividend Account of.....Ltd." with the bank as resolved by the Board and deposit the amount of dividend payable in the account within five days of declaration and give a copy of the Board resolution containing instructions regarding opening of the account and give the authority to Bank to honour the dividend warrants when presented.

If the company is listed, then for payment of dividend it has to mandatorily use, either directly or throughits Registrars to an Issue and Share Transfer Agents (RTI & STA), any Reserve Bank of India approvedelectronic mode of payment such as Electronic Clearing Services (ECS), National Electronic Fund Transfer (NEFT), etc. In order to enable usage of electronic payment instruments, the company (or its Registrar & Share Transfer Agent) shall maintain requisite bank details of its investors as under-

(a) For investors that hold securities in demat mode, company or its RTI & STA shall seek relevantbank details from the depositories.

(b) For investors that hold physical share / debenture certificates, company or its RTI & STA shall take necessary steps to maintain updated bank details of the investors at its end.

(c) In cases where either the bank details such as MICR (Magnetic Ink Character Recognition), IFSC (Indian Financial System Code), etc. that are required for making electronic payment are not available or the electronic payment instructions have failed or have been rejected by the bank, company or its RTI& STA may use physical payment instruments for making cash payments to the investors. Company shall mandatorily print the bank account details of the investors on such payment instruments.

(d) Depositories are directed to provide to companies (or to their RTI & STA) updated bank details oftheir investors. [Refer SEBI Circular No. CIR/MRD/DP/10/2013 dated March 21, 2013]

10. Make arrangements with the bank and in collaboration with other banks if required, for payment ofthe Dividend Warrants at par.

11. Prepare a statement of dividend in respect of each shareholder containing the following details:

(a) Name and address of the shareholder with ledger folio

(b) No. of shares held.

(c) Dividend payable.

12. Ensure that the dividend tax is paid to the tax authorities within the prescribed time.

13. To have sufficient number of dividend warrants printed in consultation with the company's banker appointed for the purpose of dividend. To get approval of the RBI for printing the warrants with MICR facility. Get the dividend warrants filled in and signed by the persons authorised by the Board.

14. No RBI approval is required for payment of dividend to shareholders abroad, in case of investmentmade on repatriation basis.

15. Prepare two copies of the list of members with names and addresses only for mailing purposes – oneto cut and paste on envelopes which could even be printed on self sticking labels and the other for securing receipt from the Post Office.

16. Where an instrument of transfer has been received by company prior to book closure but transfer ofsuch shares has not been registered when the dividend warrants were posted, then keep the amount of dividend in special A/c called "Unpaid Dividend Account" opened under section 124 unless the registered holder of these shares authorises company in writing to pay dividend to the transferee specified in the said instrument of transfer.

17. Dispatch dividend warrants within thirty days of the declaration of dividend. In case of joint shareholders, dispatch the dividend warrant to the first named shareholder.

18. Instructions to all the specified branches of the bank that dividend should be paid at par should be sent by the Bank.

19. Publish a Company notice in a newspaper circulating in the district in which the registered office of the company is situated to the effect that dividend warrants have been posted and advising those members of the company who do not receive them within a period of fifteen days, to get in touch with the company for appropriate action (in the case of listed companies, as a good practice).

20. Issue bank drafts and/or cheques to those members who inform that they received the dividend warrants after the expiry of their currency period or their dividend warrants were lost in transit after satisfying that the same have not been encashed.

21. Arrange for transfer of unpaid or unclaimed dividend to a special account named "Unpaid dividend Account" within 7 days after expiry of the period of 30 days of declaration of final dividend. (Section 124)

22. Confirm the interim dividend in the next Annual General Meeting.

23. Identify the unclaimed amounts as referred to in sub-section (1) of section 124 of the Act and, separately furnish a statement and upload on company's own website or any other website

as may be specified by the Government in such form as may be prescribed containing the following:

(a) The names and last known addresses of the persons entitled to receive the sum;

(b) The nature of amount; (c) the amount to which each person is entitled;

The company shall prepare the above statement within a period of 90 days of making any transfer tounpaid dividend account.

24. Transfer unpaid dividend amount to Investor Education and Protection Fund (IEPF) after the expiry of seven years from the date of transfer to unpaid dividend A/c. The company while effecting credit to the Fund, should separately furnish a statement with the authority constituted to administer the fund in Form DIV-5 of Companies (Declaration and Payment of Dividend) Rules, 2014 and obtain a receipt from the authority as evidence of such transfer.

25. Company shall also transfer all the shares in the name of Investor Education and Protection Fund (IEPF) on which unpaid or unclaimed dividend has been already transferred to IEPF and any lawful claimant of those shares/dividend shall be entitled to claim the transfer of shares/dividend from IEPF inaccordance with such rules, procedure and submission of documents as may be prescribed by the Central Government in this regard. [Section 124 (5)/(6) & Section 125(3)(a)]

PROCEDURE FOR TRANSFER OF UNPAID OR UNCLAIMED DIVIDEND TO THE INVESTOR EDUCATION AND PROTECTION FUND*

The following procedure should be followed by the company:

(1) Section 124(5) of the Act, provides that any money transferred to the unpaid dividend account of a company which remains unpaid or unclaimed for a period of seven years from the date of such transfer is required to be transferred by the company alongwith interest accrued, if any, thereon to the Investor Education and Protection Fund (IEPF) established under Section 125.

(2) The amount shall be remitted into the specified branches of State Bank of India or any other nationalized bank along with challan (in triplicate) within a period of 90 days of such amount becoming due to be credited to the IEPF. The Bank will return two copies duly stamped to the Company as token of having received the amount and the company shall file one such copy of challan to the authority.

(3) The company shall send a statement of amount credited to Investor Education and Protection Fund in Form DIV 5 to the authority which administer the fund and the authority shall issue a receipt to the company as evidence of such transfer.

(4) On receipt of this statement, the authority shall enter the details of such receipts in a register maintained by it in respect of each company every year and reconcile the amount.

(5) The company shall keep a record consisting of names, last known addresses of the persons entitled to receive the same, the amount to which each person is entitled, folio number/ client ID, certificate number, beneficiary details etc. of the persons in respect of whom amount has been remain unpaid or unclaimed for 7 years and transferred to IEPF. Such record shall be maintained for a period of 8 years from the date of such transfer to IEPF and authority shall have the powers to inspect such records.

PROCEDURE FOR TRANSFER OF SHARES IN RESPECT OF WHICH UNPAID OR UNCLAIMED DIVIDEND HAS BEEN TRANSFERRED TO IEPF*

Section 124 (6) provides that all shares in respect of which unpaid or unclaimed dividend has been transferred under sub-section (5) of section 124 shall also be transferred by the company in the name of the IEPF. In case shares are held in electronic mode in any depository and the beneficial owner has encashed any dividend warrant during the last seven years, such shares shall not be required to be transferred to IEPF even though some dividend warrants may not have been encashed.

The following procedure is required to be followed in this regard:

(1) The shares shall be credited to an IEPF Suspense Account (name of the company) with one of the Depository Participants as may be notified by the Fund within a period of thirty days of such shares becoming due to be transferred to the Fund. For the purposes of effecting transfer of such shares, the Board shall authorise the company secretary or any other person to sign the necessary documents. The company shall follow the procedure as stated below:

(a) For the purposes of effecting the transfer where the shares are dealt with in a depository:

(i) The company secretary or the person authorised by the Board shall sign on behalf of such shareholders, the delivery instruction slips of the depository participants where the shareholders had their accounts for transfer in favour of IEPF Suspense Account (name of the company).

(ii) On receipt of the delivery instruction slips, the depository shall effect the transfer of shares in favourof the Fund in its records.

(b) For the purposes of effecting the transfer where the shares are held in physical form:

(i) The company secretary or the person authorised by the Board shall make an application, on behalf of the concerned shareholders, to the company, for issue of duplicate share certificates.

(ii) on receipt of the application, a duplicate certificate for each such shareholder shall be issued and itshall be stated on the face of it and be recorded in the Register maintained for the purpose, that the duplicate certificate is "Issued in lieu of share certificate No for purpose of transfer to IEPF". Further, the word "duplicate" shall be stamped or punched in bold letters across the face of the share certificate.

(iii) Particulars of every share certificate issued as above shall be entered forthwith in a Register of Renewed and Duplicate Share Certificates maintained in the prescribed format.

(iv) After issue of duplicate share certificates, the company secretary or the person authorised by the Board, shall sign the necessary securities transfer form in prescribed form, for transferring the shares infavour of the Fund.

(v) On receipt of the duly filled transfer forms along with the duplicate share certificates, the Board or its committee shall approve the transfer and thereafter the transfer of shares shall be effected in favour of the Fund in the records of the company.

(2) The company/depository, as the case may be, shall preserve copies of the depository instruction slips,transfer deeds and duplicate certificates for its records.

(3) While effecting such transfer, the company shall send a statement in prescribed form to the Authority.

(4) The voting rights on shares transferred to the Fund shall remain frozen until the rightful owner claimsthe shares.

(5) All benefits accruing on such shares e.g. bonus shares, split etc. shall also be credited to such IEPFsuspense account (name of the company).

(6) The IEPF suspense account (name of the company) with depository participant, shall be maintained by the Fund, on behalf of the shareholders who are entitled for the shares and shares held in such account shall not be transferred or dealt with in any manner whatsoever except for the purposes of transferring the shares back to the claimant as and when he/ she approaches the Fund. However in case the company is getting delisted IEPF shall surrender shares on behalf of the shareholders in accordance with the Securities and Exchange Board of India (Delisting of Equity Shares Regulations), 2009 and the proceedsrealized shall be credited to the account of the shareholder.

(7) Any further dividend received by IEPF on such shares shall be credited to respective accounts of theshareholders maintained by IEPF.

9. CLAIMING OF UNCLAIMED/UNPAID DIVIDEND*

The claimant shall make an application in prescribed form under his own signature or through aperson holding a valid power of attorney granted by him.

The application shall be accompanied by the following documents

(i) Indemnity Bond in prescribed format (not required in case applicant is Central/State Government, a Government Company or a public financial institution within the meaning of Companies Act, 2013

(ii) Authority may on its satisfaction about the title to the money, allow the claim upto rupees 5 000/- without Indemnity bond

(iii) Documents in support of the claim i.e. dividend warrant/ letter issued by the company etc.

(iv) A stamped advance receipt bearing the signature of claimant and two witnesses.

(v) Proof of Identity & Proof of Address

(vi) In case of deceased person, legal representative shall furnish a succession certificate/probate/letter of administration. If the securities have to be transmitted in the name of claimant, a certificate from thecompany may be furnished.

On receipt of application the authority shall verify and certify whether the claimant is entitled to the money claimed by him.

After certification of the title of the claimant to the amount claimed, the authority shall issue a payment order in prescribed form sanctioning the payment and issue and deliver the cheque in favour of the claimant.

10. CLAIM FOR SHARES TRANSFERRED TO IEPF *

Section 124 provides that shares transferred in the name of Investor Education and Protection Fund (IEPF) can be claimed back by

the lawful claimant. Following is the procedure to claim back the shares transferred to IEPF:

(i) Claimant should file its claim before the fund.

(ii) The fund shall refer the claim to the respective company for verification of details of the claim including the Identity of claimant and verification of numbers of shares.

(iii) After the verification, the fund shall either credit the shares which are lying with Depository Participant in IEPF suspense account to the demat account of the claimant to the extent of his entitlement and pay the unpaid dividend or in case of physical certificate, transfer the shares in favor of the claimantand pay the unpaid dividend.

Secretarial standard on Dividend

Declaration and distribution of dividends is a complicated task involving both financial and non- financial considerations. The Secretarial Standard lays down a set of principles in relation to the declaration and payment of dividend, interim dividend, and treatment of unpaid dividend, revocation ofdividend as well as the preservation of dividend warrants, maintenance of dividend registers, disclosure requirements and matters incidental thereto. The Standard, by stipulating requirements in regard to all allied and significant matters such as intimation to members before transferring unpaid dividend to Investor Education and Protection Fund, preservation of dividend registers, validity of dividend warrants etc. attempts to give the right direction to the corporate sector, promote uniformity of practices and ensure effective corporate governance.

The salient features of this standard are:\

Dividend can be declared out of free reserves and surplus in the profit and loss account of thecompany.

However, dividend should not be declared out of the Securities Premium Account or the CapitalRedemption Reserve Account or Revaluation Reserve or Amalgamation Reserve or out of profit on reissue of forfeited shares or out of profit earned prior to the incorporation of the company.

Interim Dividend may be declared after the Board has considered the Interim financialstatements for the period for which Interim Dividend is to be declared.

Interim Dividend should not be declared out of reserves.

In case a company has issued equity shares with differential rights as to Dividend, Interim Dividend (if so decided by Board) may be declared on all or anyone or more of the classes of such shares.

If preference shares have not been redeemed, then no Dividend should be declared until such preference shares are redeemed.

Preference shareholders should be paid dividend before dividend is paid to equity shareholders of the company. However, in the case of Interim Dividend, while preference shareholders need not necessarily be paid dividend before interim dividend is paid to equity shareholders, the Board should set aside such sum as would be necessary to pay dividend to preference shareholders at the contracted rate.

Arrears of dividend on cumulative preference shares should be paid before paying any dividend.

Dividend should not be declared on equity shares for previous years in respect of which annual accountshave been adopted at the respective Annual General Meeting.

Dividend may be paid by cash, cheque, warrant, demand draft, pay order or directly through ECS butnot in kind.

Initial validity of Dividend warrant is for three months. The Duplicate dividend warrant should be issued only after expiry of the validity of the Dividend warrant and the reconciliation of the paid amountsthereof.

Calls in arrears and any other sum due from a member may be adjusted against Dividend payable tothe member.

Dividend, whether interim or final, once declared becomes a debt and should not be revoked.

Unpaid/Unclaimed Dividend should be transferred to the Investor Education and Protection Fund onexpiry of seven years from the date on which such Dividends were transferred to Unpaid Dividend Account.

Any interest earned on Unpaid Dividend Account should also be transferred to Investor Education and Protection Fund.

Paid Dividend warrant instruments returned by the Bank and Dividend Registers should be preservedfor a period of eight years.

The Balance Sheet, Annual Report and Annual Return of the company should make separate disclosures of the amount of Dividend lying in the unpaid or unclaimed Dividend account for seven years. Annual Return and Annual Report should also disclose the amount transferred to Investor Education and Protection Fund.

Dividend Warrant - an order of payment (such as a check payable to a shareholder) in which a dividend is paid bill of exchange, draft, order of payment - a document ordering the payment of money; drawn by one person or bank on another Dividend is the part of profits payable to the owners of the company i.e., Shareholders. Some companies issues warrants to its shareholders instead of paying dividends in the form of cash in the form of document by mentioning the Warrant Price and other details. The price mentioned in it is also called exercise price. Some times company may not specify the name of the holder. The holder of the document can fill it. Advantages: It helps to the issuing company from paying the Tax. It is easy to transfer from one person to other without any formalities It helps to increase the share/capital of the company

One of the foremost duties of a Company Secretary is to handle the affairs related to shares. A company limited by shares has a share capital. It means that the total capital is divided into some equalparts, each part is called a share.

The promoters of a company are the first shareholders and then other shareholders join the company by purchasing shares. An intending person applies for shares and he becomes a shareholder when shares are allotted to him.

Each shareholder is entitled:

(a) To get a Share Certificate as an evidence of his shareholding and

(b) To get his name entered into the Register of Members so that he becomes a member. ‘Subsequently a shareholder may transfer his shares to another person tor the shares may be transmitted to another person by operation of ‘law.

According to the Companies Act, the Board of Directors is empowered by the Articles to decide on allotment, transfer and transmission of shares. Shares of a public company are freely transferable while shares of a private company are transferable under restrictions as mentioned in the Articles of Association of the company.

A company in its Articles of Association provides the procedure of allotment, transfer and transmission of shares. Table A provides a model procedure. The Company Secretary, who is conversant with the procedure, helps the Board of Directors in the process of allotment, transfer and transmission of shares.

Allotment:

A person intending to buy shares of a company has to make a written application in the prescribed form supplied by the company, together with application money either covering full value of the sharesor in part or together with premium if as desired by the company, in case of a widely held public company a share application form is attached to the Prospectus.

The term 'allotment' means acceptance of share application by the Board of Directors by passing a resolution at a Board meeting. The Companies Act makes provisions for allotment of shares.

There are three different situations under which allotment takes place and the Company Secretary has to act accordingly. (I) When a new company is promoted and shares are issued or offeredfor sale then as and when applications together with application money are coming in, the Company Secretary has to do the following:

(a) To make a chronological (i.e., date and time-wise) record of the applications and sending the moneyto a scheduled bank.

(b) To help the Board of Directors in the act of allotment. If applications for shares are received less than the number of shares offered for sale then there is no problem and all the applicants will get sharesallotted to them. But problem arises when more applications have come.

Then the Secretary will do, on behalf of the Board of Directors, allotment which may take place under any of the following three methods as to be mentioned in the Articles of Association of the company: They are:

(i) Priority Basis:

Shares will be allotted to those applicants who have applied for shares first, according to chronological order as recorded,

(ii) Pro-Rata Basis:

It i s not always justifiable that shares should be allotted on priority basis. And so allotment is made on pro rata basis. Suppose, applications have been received for twice the number of the shares offered for sale. Then each applicant will get half of the shares applied by him accepted and shares are allotted accordingly and the remaining half rejected.

(iii) Lottery Basis:

Applications are drawn at random out of the total number of applications thoroughly mixed up such drawings will continue until all the available shares are allotted and the remaining applications willbe rejected. Out of the three systems, the second one is the best.

It has to be noted that allotment of shares cannot be undertaken:

(i) Before the Minimum Subscription is received in case of a widely held public company (Sec. 69) and

(ii) Unless before at least three days a Statement in lieu of Prospectus has been filed (showing the list of allotments) with the Registrar of Companies in case of a closely held public company (Sec. 70).

(c) At the instance of the Board of Directors the Company Secretary shall (i) issue Letters of Allotmentto all the applicants to whom shares have been allotted asking them to pay allotment money within a stipulated time or (ii) issue Letters of Regret to those share applicants whose applications have been rejected. Together with regret letters, cheques shall be sent as refund of applications money.

(d) Within 3 months from the date of allotment of shares, share certificates (Sees. 84, 113) containing the names of the shareholders, the number and value of shares held, serial number of the certificate, dateof issue, common seal of the company and signatures of at least two Directors and of the Secretary himself, if any, shall be made ready for delivery and the names of the shareholders with all other detailsshall be entered into the Register of Members (Sec 150).

Every company must maintain a Register of Members, with alphabetical name index, which hasabout 20 columns showing the name and description of each member, no. of shares held, date of paymentof money, record of transfer of shares, if any, etc.

A separate Register has to be maintained for shareholders in foreign countries. The Company Secretary shall prepare and maintain the Register of Members. The name of the shareholder shall not beentered into the Register of Members if a share warrant is issued to him in place of a share certificate.

(e) The Company Secretary, as an officer of the company and responsible in the process, shall be personally liable and punishable if there is any irregular allotment of shares.

Irregular allotment takes place in many ways:

(i) If allotment is made before submitting a Statement in lieu of Prospectus to the Registrar in case of aclosely held public company.

(ii) If allotment is made, in case of a widely held public company, before minimum subscription is raised. Or

(iii) Before fifth day from the date of issue of Prospectus to the public while counting days public holidays shall not be counted.

(f) After the allotment is over, the Company Secretary shall submit, within 30 days after allotment, a Return on allotments to the Registrar of Companies (Sec. 75).

(2) When an Existing Company Issues Rights Shares:

If an existing company, after two years from its formation or after one year from the date of firstallotment of shares, wants to raise fresh capital by offering for sale new shares out of the shares not yetissued, then it should first offer the shares to the existing shareholders on pro rata basis (Sec 81.)

Such shares are called Rights Shares,

(a) The Company Secretary has to send letters to all the shareholders making such offer expecting replywithin 15 days,

(b) Some of the shareholders may send Letters of Acceptance while others may send Letters of Renunciation. It means some shareholders accept the offer while others reject or renounce it. Those whoagree have to pay for the shares. Accordingly the Company Secretary has to take steps for the allotmentof shares to the former group of shareholders and to make arrangement for the issue of rejected shares to outside public.

(3) When an Existing Company Issues Bonus Shares:

The members of a company by passing a resolution may convert the reserves of the company into share capital divided into shares. Such shares are called Bonus Shares. Such shares are offered to the existing shareholders on pro rata basis on their shareholdings.

The shareholders have not to pay anything for such shares nor they can renounce such shares. It is the duty of the Company Secretary to send necessary notices to all the shareholders and to make necessary changes in the Register of Members. Fresh share certificates shall be issued for the additionalshares.

Transfer:

It is an inherent right of a shareholder to transfer his shares to another person freely in case of a public company and under restrictions in case of a private company as provided in its Articles of Association. The Companies Act provides the guidelines for transferring of shares (Sees 108 to 113). Regulations 19 to 24 of the Table A provide a model of procedure.

According to the Act, a shareholder or transferor has to obtain a Share Transfer Deed or Instrument of Share Transfer (purchasable in the market) duly certified by a public servant, on which the shareholder as the transferor has to make endorsement of the shares in favour of the transferee and sign his name on necessary stamp.

The transferor shall hand over the share certificate together with the instrument to the transferee and take the money from the transferee by way of consideration. The transferee will send these documents to the company for acceptance and other necessary actions.

On receiving these documents the duties of the company secretary will be:

(a) To inspect and to verify-the correctness of the instrument and genuineness of the share certificate. He will issue a Transfer Receipt to the transferee.

(b) To write a letter to the transferor and the transferee each, called the 'notice of lodgment of transfer', inviting objections to the transfer, if any. This is very important particularly when shares are rot fully paid.

(c) If no objection is received within two weeks from the sending of above notice, the matter will be placed by the Company Secretary at the next meeting of the Board of Directors for approval or disapproval of transfer. Normally, disapproval is not made unless there are strong reasons in the interestsof the company.

(d) Within two months from the approval, the Company Secretary shall issue a new share certificate to the transferee in exchange of Transfer Receipt, remove the name of the transferor from the Register of Members and enter the name of the transferee in it. Instead of issuing a new share certificate the old certificate duly endorsed by the transferor may be given to the transferee.

Some complications may arise in the process of issuing share certificate:

(i) When all the shares mentioned in a share certificate are transferred, there is no problem. But problem arises when a few shares out all (say 5 out of 10) mentioned in the certificate are transferred by the transferor retaining the remaining ones. In that case two share certificates have to be prepared by the Company Secretary, one for the transferor (for 5 shares) and the other for the transferee (for 5 shares),

(ii) When a transferor wants to transfer his shares to joint holders, problem arises. Shares of a companycannot be allotted for the first time to joint holders but shares can be transferred to joint holders. In the latter case the company recognises the first name as the member. The Company Secretary has to do necessary records keeping this point in view.

A company may appoint a Committee of Transfers consisting of a few Directors arid the Secretary. In that case the approval of transfer shall be by the Committee. A company may maintain a Register of Transfers and the Company Secretary has to make necessary entries in it.

No transfer can be possible during the time when Register of Members remains closed (not more than 45 days in a year and not more than 30 days at a time). Such closure is necessary generally at the time of annual general meeting to get a final list of members who shall get dividend.'

(e) Sometimes loan capital may be transferred to share capital. For example, debentures are repaid by shares or loan given by a public financial institution is converted into equity capital by the order of the Central Government. Such a transfer is a completely different affair consisting of an elaborate accounting process and is a case of fresh allotment. The Company Secretary has to function in collaboration with the accounts department.

(f) Another kind of transfer takes place when share warrants are exchanged for share certificates and vice versa. In the former case the Company Secretary has to insert the name of the transferee afresh in the Register of Members and in the latter case the name of the transferor is removed from the Register of Members but no new name is inserted. In each case, the approval by the Board of Directors has to besecured.

(g) In a Government Company, shares are often held by the Central Government in the name of the President of India and also in. the names of some responsible officers either of the Central Government or of the Slate Governments. With the change of the President or of the officers, changes have to be brought about by the Company Secretary in the Register of Members.

Transmission:

Transmission of shares means transfer of shares by operation of Law. For example, when a shareholder dies, his shares are transferred to his inheritor. The inheritor may hold the shares in his ownname or before that he may transfer the shares to any other person.

When a creditor, being unable to get payment from his debtor starts a case and gets a decree on the assets of the debtor including some shares held by the debtor, there is a case of transmission. The Companies Act does not provide any specific Sections for Transmission of shares. But Table A providesRegulations 25 to 28 for the same.

The Company Secretary has the following duties to do in connection with transmission of shares:

(a) To examine all the legal documents and evidences as to the claim made by a transferee. In case of inheritance, the Probate of Will (i.e., a copy of the Will certified by the Court) of the deceased shareholder entitling the inheritor to the shares shall be demanded. If there has been no Will then a Letterof Administration has to be received from the person claiming transmission.

(b) The Company Secretary has to obtain the approval of transmission by the Board of Directors. The Board of Directors has powers to reject transfer of shares but it cannot normally reject transmission because it is by operation of law.

(c) After that the Company Secretary has to take all other steps, as in case of a transfer, with regard to issue of new share certificates and necessary changes in the Register of Members. It has to be noted thatrules regarding transfer and transmission, of shares also apply to debentures.

UNIT III

MEMBERS AND SHAREHOLDERS<u>MEMBERS</u>

Members of a Company

In the ordinary commercial usage, the term '**Member**'denotes a person who holds shares in a company. The members or the shareholders are the real owners of a company. They collectively constitute the company as a corporate body.

The ultimate authority in matters relating to the appointment and removal of the directors, auditors and other managerial personnel lies with shareholders. The powers of the Board are also subject to the control and supervision of the general body of the members.

Definition of Member

A person whose name is entered in the register of members of a company becomes a member ofthat company. The register includes every single detail about the member like name, address, occupation, date of becoming a member, etc. It also includes every person who holds company's sharesand whose name is entered as the beneficial owners in depository records.

The liabilities of members are limited to the amount of shares held by them in the case of a company having share capital while in the case of a company limited by guarantee the liability of members is limited to the amount of guarantee given by them. But, in the case of an unlimited companythe members have to contribute from his personal assets to pay the debts.

The members cannot take part in the management of the company, i.e. the management of the company is looked after by the Board of Directors. Although the right to appoint and remove the directors is in the hands of members.

How to become the member of a company

If a person subscribes the memorandum of association of a company, he becomes a member bysigning it.

If a person becomes the beneficial owner of shares whose name is registered in the record of thedepository, then also he becomes a member.

If a person gets shares by way of transfer and the transfer is recorded by the company, along with the entry of the name of the transferee in the register of members.

If a person gets shares by way of transmission and the transmission is recorded by the companyalong with the entry of the name in the register of members.

If a person agrees to take the qualification shares of the company and pay for it then also he becomes a member of the company.

The Companies Act divides the members into three classes. According to Sec. 41 of the Companies Act, the three classes of members are:

1. The persons who have subscribed to the Memorandum of a company.

2. Every other person who has agreed in writing to become a member of the company and whose name has been entered in the Register of Members.

3. Every person holding equity share capital of a company and whose names are recorded as beneficial owner in the depository records are considered as members of the concerned company.

The second category of members, the criteria of membership are-

1. The person must have agreed in writing to become a member, and

2. His name must have been entered in the Register of Members. If any one of the conditions is not satisfied, the person shall not be a member under this Act.

For the third category of members also 2 conditions are to be fulfilled to become the member of thecompany such as

The person must hold equity shares of the company.

His name must be entered as beneficial owner in the records of the depository.

A member can be distinguished from a shareholder in the following circumstances:

1. A registered member of a company having no share capital is not a shareholder since the company itself has no share capital.

2. A person who holds a share warrant is a shareholder but he is not a member of the company.

3. The legal representative of a deceased member is only a shareholder but not a member. To acquire membership, the legal representative of the deceased member should apply to the company and get hisname registered in the register.

The company law does not prescribe any disqualification, which would depart a person from becoming a member of a company. It appears that any person who is competent to enter into valid contract can become a member of a company. The reason is obvious. Subscribing for shares is basically a contract between the company and the shareholder. However, the Memorandum or Articles may impose certain restrictions or restrain certain persons from acquiring membership in a company. In the absence of any express provision regarding the capacity of a person, the provisions of the Contract Actshall apply.

As regards to certain special category of persons, the judiciary has laid down certain principles foracquiring membership in a company. They are as follows:

1. **Minors**: A minor, is not a competent person to enter into a valid contract. As such, he is disqualified to acquire membership. However, minors may be allotted shares. On attaining majority, the minor can avoid the contract. But the minor should repudiate the contract within a reasonable time.

2. **Lunatic and Insolvent**: A lunatic cannot become a member. An insolvent, however, can become a member and is entitled to vote at the meetings of the company. But his shares vest in the Official Receiver when he is adjudged insolvent.

3. **Partnership Firm**: A partnership firm may hold shares in a company in the individual name of partners as joint holders. But the shares cannot be issued in the name of the partnership firm, as it is nota legal person in the eye of law.

4. **Company**: A company, being a legal person, can become the member of another company in its own name. But a company can subscribe for the shares of another company only when it is authorized by Memorandum. Similarly, a subsidiary company cannot buy the shares of its holding company.

5. **Foreigners**: Foreign national can be members of companies registered in India. For that permission of RBI is mandatory. When he turns an alien enemy, his right as a member will be suspended.

6. **Fictitious Person**: A person who takes the shares in the name of fictitious person becomes liable as a member. Besides, such a person can be punished for impersonation under section 68-A.

Modes of acquiring membership

As per Sec. 41 of the Companies Act, a person may acquire the membership of a company

1. By subscribing to the Memorandum before the registration of the company.
2. By agreeing to become a member.
3. By applying for the shares offered by a company.
4. By becoming a transferee of a share or shares and being placed on the register of members.
5. By transmission of shares on succession to a deceased or bankrupt member and the consequentregistration in the register of the company.
6. By holding out shares and by allowing his name to be retained on the register.

Besides, there is another method of becoming a member of a company i.e. "**Membership by Qualification Shares**". If a person agrees to become a director of a company, he is deemed to have accepted to become a member of that company. On his appointment, certain shares should be allotted tohim. The Companies Act provides that any one who agrees to become a director of a public company should take at least one share before his appointment. Such shares are known as qualificationshares.

RIGHTS OF THE MEMBERS

The members of a company enjoy several rights and they are the ultimate authority in the mattersof the company and its management. Their rights can be grouped under three heads. They are detailed below:

1. **Statutory Rights**: These are the rights conferred upon the members by the Companies Act. These rights cannot be taken away by the Articles of Association or Memorandum of Association. Someof the important statutory rights are given below

Right to receive notice of meetings, attend, to take part in the discussion and vote at the meetings.Right to transfer the shares [in case of public companies].

Right to receive copies of the Annual Accounts of the company.

Right to inspect the documents of the company such as register of members, annual returns, etc. Right to participate in appointments of directors and auditors in the Annual General Meetings. Rights to apply to the Government for ordering an investigation into the affairs of the company.Right to apply to the Court for winding up of the company.

Right to apply to the National Company Law Tribunal for relief in case of oppression and mismanagement under Secs. 397 and 398.

2. **Documentary Rights**: In addition to the statutory rights, there are certain rights that can be conferred upon the shareholders by the documents like the Memorandum and the Articles of Association.

3. **Legal Rights**: These are the rights, which are given to the members by the General Law.

SHAREHOLDER:

A shareholder can be a person, company, or organization that holds stock(s) in a given company. A shareholder must own a minimum of one share in a company's stock or mutual fund to make them a partial owner. Shareholders typically receive declared dividends if the company does well and succeeds.

Also called a stockholder, they have the right to vote on certain matters with regard to the company and to be elected to a seat on the board of directors.

If the company is getting liquidated and its assets are sold, the shareholder may receive a portionof that money, provided that the creditors have already been paid. When such a situation arises, the advantage of being a stockholder lies in the fact that they are not obliged to shoulder the debts and financial obligations incurred by the company, which means creditors cannot compel stockholders to pay them.

Definition of Shareholder

An individual who owns the share of a public or a private company is known as a 'Shareholder.' A subscriber of shares is not regarded as the shareholder until the shares are actually allotted to him.

The shareholders are the owners of the company, i.e. to the extent of the share capital held by them. Thelegal representative of the deceased member, is a shareholder, not the member, until and unless his nameis recorded in the register of members of the company. Hence, it can be said that every shareholder is amember but every member, is not a shareholder.

The following are the rights of a shareholder:

Right to transfer or sell their

shares. Right to get the

dividend.

Right to attend the general meeting and vote.

Right to take copies of Memorandum and Articles of

Association.Right to receive the copy of the statutory report.

TRANSFER AND TRANSMISSION OF SHARES

Free transferability of ownership is one important features of a private limited company or limited company. Since private limited companies are closely held, the transfer of shares in a private limited company is subject to some restrictions under the Companies Act, 2013. In this article, we lookat the transfer and transmission of securities, process of transfer and transmission of shares, delivery ofcertificate of securities as per Companies Act, 2013.

Transfer of Shares

A company will register a transfer of shares only when an instrument of share transfer that is duly stamped, dated and executed by the transferor in support of the transferee with name, address andoccupation has been delivered to the company by either party within a period of sixty days from date ofexecution.

In the case of the instrument of transfer has been lost or has not been delivered, the company can register the transfer on an indemnity bond. On receiving of intimation, a company has power to register transmission of some right to securities by operation of law from any person to whom such righthas been transmitted.

The transfer of any security or of other interest of a deceased person in a company that is beingmade by his legal representative will be legally binding as if he had been the holder during the time of the execution of the instrument of transfer.

Delivery of Share Certificates

All companies are required to deliver the certificate of shares of all securities allotted, transferredor transmitted:

Within a period of 2 months from the date of incorporation, in the event of subscribers to the memorandum;

Within a period of 2 months from the date of allotment, in case of any allocation of any of its shares;

Within a period of 1 month from the date of receipt by the company of the mechanism of transfer or intimation of transmission; and

Within a period of 6month from the date of allotment in event of any allotment of debentures.

Nevertheless, where the securities are dealt with in a depository; the company will intimate the details of allotment of securities to depository right away on allotment of such securities

Process for Transfer of Shares

According to Companies Act, 2013, there is an 8-step process to follow to execute a transfer ofshares. It involves the transferor first intimating the company of his or her intention to transfer shares

upon his/her death, followed by a valuation exercise and a contribution to existing shareholders for said shares. In the event of no existing shareholder want to use this option, the transferor's shares are able tothen be offered to a legal representative of the owner. Only at this point can the company's Board of Directors register this claim and pass a resolution to transfer the shares.

ROLE OF A SHAREHOLDER

Being a shareholder isn't all just about receiving profits, as it also includes other responsibilities. Let's look at some of these responsibilities.

Brainstorming and deciding the powers they will bestow upon the company's directors, including appointing and removing them from office

Deciding on how much the directors receive for their salary. The practice is very tricky because stockholders must make sure that the amount they will give will compensate for the expenses and cost of living in the city where the director lives, without compromising the company's coffers.

Making decisions on instances the directors have no power over, including making changes to the company's constitution

Checking and making approvals of the financial statements of the company.

TYPES OF SHAREHOLDERS

There are basically two types of shareholders: the **common shareholders** and the **preferred shareholders**.

Common shareholders are those that own a company's common stock. They are the more prevalent type of stockholders and they have the right to vote on matters concerning the company. As they have control over how the company is managed, they have the right to file a class-action lawsuit against the company for any wrongdoing that can potentially harm the organization.

Preferred shareholders, on the other hand, are more rare. Unlike common shareholders, they own a share of the company's preferred stock and have no voting rights or any say in the way the company is managed. Instead, they are entitled to a fixed amount of annual dividend, which they will receive before the common shareholders are paid their part.

Though both common stock and preferred stock see their value increase with the positive performance of the company, it is the former that experiences higher capital gains or losses.

Shareholder become a director

The shareholder and director are two different entities, though a shareholder can be a director atthe same time.

The shareholder, as already mentioned, is a part-owner of the company and is entitled to privileges such as receiving profits and exercising control over the management of the company. A director, on the other hand, is the person hired by the shareholders to perform responsibilities that are related to the company's daily operations with the intent of improving its status.

Shareholder vs. Stakeholder

Shareholder and Stakeholder are often used interchangeably, with many people thinking that they are one and the same. However, the two terms don't mean the same thing. A shareholder is an owner of a company as determined by the number of shares they own. A stakeholder does not own partof the company but does have some interest in the performance of a

company just like the shareholders.However, their interest may or may not involve money.

For example, a chain of hotels in the US that employs 3,000 people has several stakeholders, including its employees because they rely on the company for their job. Other stakeholders include thelocal and national governments because of the taxes the company must pay annually.

Shareholder vs. Subscriber

Before a company becomes public, it starts out first as a private limited company that is run, formed, and organized by a group of people called "subscribers." The subscribers are considered the first members of the company whose names are listed in the memorandum of association. Once the company goes public, their names continue to be written in the public register and they remain as such even after their departure from the company.

DISTINGUISH BETWEEN: MEMBER AND SHAREHOLDER.

Basis of comparison	Member	Shareholders
Meaning	A person whose name is written in the register of a company is the registered member of the company.	The person who owns the shares of a company is called as sharholders
Defined in	Section 2 (27)	Not defined.
Share warrent	The holder of a share warrent is not a member	The holder of a share warrent is a shareholder.
Company	Every company must have a minimum number of members.	The company limited by shares can have shareholders.
Memorandum	The person who signs the memorandum ofmemorandum associaton with the company becomes a member.	After signing the a person can be a shareholder only when the shares are allotedto him.

RIGHTS AND DUTIES OF SHAREHOLDERS OF A COMPANY

A shareholder, commonly referred to as a stockholder, is any person, company, or institution that owns at least one share of a company's stock. Because shareholders are a company's owners, theyreap the benefits of the company's successes in the form of increased stock valuation. Shareholders playan important role in the framing and profits of the company. Shareholders are the owner of the company. They are the main stakeholders in the company. There are two types of shareholders:

Equity Shareholders

Equity shareholders are the main stakeholders in a company and when the time of dividend distribution comes the preference shareholders would get the first.

Preference shareholders

Preference shareholders generally have no voting rights because of their preferred status. Theyreceive fixed dividends, generally larger than those paid to common stockholders, and their dividends are paid before common shareholders.

The number of shareholders in a company depends upon the type of company which they are opening.For a one-person company, one person is required.

For a private limited company, two persons are needed.

For a public limited company, a minimum of seven persons are required.Shareholders' Rights

There are various rights available to a shareholder. Different type of rights has been discussed below:

Appointment of directors

Shareholders play an important role in the appointment of directors. An ordinary resolution is requiredto be passed by the shareholders for the appointment. Apart from this, shareholders can also appoint various types of directors.

They are:

- An additional director who will hold the office until the next general body meeting;
- An alternate director who will act as an alternate director for a period of 3 months;
- A nominee director;
- Director appointed in the case of a casual vacancy in the office of any director appointed in ageneral meeting in a public company.
- Apart from this shareholder also can challenge any resolution passed for the appointment of adirector in the general body meeting.
- **Legal action against directors**

Shareholders also can bring legal action against director by the rules laid down in the Companies Act2013. They are:

Any act done by the director in any manner which is prejudicial against the affairs of the company.Any act done which is beyond the law or against the constitution.

Fraud.

When the assets of the company are being transferred at an undervalued rate.When there is a diversion of funds of the company.

Any act done in a mala fide manner.

Appointment of company auditors

Shareholders also have a right to appoint the company auditors. Under Companies Act 2013, the first auditor of the company is to be appointed by the board of directors. Further the shareholders at the annual general body meeting at the recommendation of directors and audit committee. The appointment is generally done for five years and further can be ratified by passing a resolution in the annual generalbody meeting.

Voting rights

Shareholders also have the right to attend and vote at the annual general body meeting. Every company registered in India should comply with the provisions of the Companies Act 2013. It is mandatory for every Indian company to hold an annual general meeting once in every year. The meetingcan be held anywhere at the head office of the company or any other place as given by the company. At the meeting, there are various mandatory agendas which are to be discussed. These include the adoption of financial statements, appointment or ratification of directors and auditors etc.

When a resolution is brought by members of a company then according to companies act 2013 it can be passed only by the means of voting by the shareholders. Companies Act 2013 recognizes following types of voting:

Voting by the showing of hands – Every member present in the meeting has one vote. So, in this typeof voting shareholders vote just by showing of hands.

Voting done by polling – In this type of voting the chairman or the shareholders' demand for apoll. However, in case of differential rights as to voting, a particular class of equity shares may also have weighted voting rights.

Voting done by electronic means– every company who has more than 1000 shareholders has to put up a facility of voting through online means. Every member should be provided with the means of voting of online.

Voting by means of postal ballot– any resolution in the meeting can also be passed by means of a postal ballot.

A shareholder also has a right to appoint proxy on his behalf when he is unable to attend the meeting. Though the proxy is not allowed to be included in the quorum of the meeting in case of voting, it is allowed by following a procedure mentioned in the Companies Act 2013.

Right to call for general meetings

Shareholders have the right to call a general meeting. They have a right to direct the director of a company to can all extraordinary general meeting. They also can approach the Company Law Board for the conduction of general body meeting, if it is not done according to the statutory requirements.

Right to inspect registers and books

As shareholders are the main stakeholders in a company, they have the right to inspect the accounts register and also the books of the firm and can ask questions about the same if they feel so.

Right to get copies of financial statements

Shareholders have the right to get copies of financial statements. It is the duty of the company to send the financial statements of the company to all its shareholders either in a quarterly or annual statement.

Winding up of the company

Before the company is wound up the company has to inform all the shareholders about the sameand also all the credit has to be given to all the shareholders.

Other Shareholders' Rights

When the sale of any material of any company is done then the shareholders should get the amount which they are entitled to receive;

When a company is converted into another company then it requires prior approval of shareholders. Also, all the appointment has to be done according to all the procedures and also auditorsand directors have to be done;

Right to approach the court in case of insolvency.

Shareholders' Duties

There are also responsibilities and duties of shareholders which they should perform. Besides severalrights which they have, there exists several duties. They are:

Shareholders should participate in the general body meetings so that they can see and also can advise onthe matters which they feel is not going good.

Shareholders should consult on the matters of finance and other topics.

Shareholders should be in touch with other members of the company so that they can see the workprogress of the company.

Shareholders are also known as the members of a company. Under the Companies Act, 2013, any person can become a member and a person could mean an individual, body corporate or an association.

The company law does not prescribe any disqualification, which would debar a person from becoming a shareholder of a company.

It appears that any person who is competent to enter into a valid contract (as per the Contract Act, 1872) can become a member of a company. Subscribing for shares is a contract between the company and the shareholder.

However, the **MOA & AOA** may restrain certain persons from acquiring membership in a company. In the absence of any express provision about the capacity of a person, the provisions of the Contract Act will apply.

With regards to the certain special categories of persons, the judiciary has laid down some principles for acquiring membership in a company. They are as follows:

Company

A company may become a member of another company if it is authorized by its MOA or AOA,or if it takes the shares of another company by way of a Compromise or Arrangement.

A company cannot, however, buy its shares. Also, subject to some exceptions i.e., a

company cannot buy shares of its holding company.

Limited Liability Partnership

LLP registration is a way to create a legal organization that can hold assets and properties on its name. It can become a shareholder of a company by agreeing to the MOA of the company or by thesubsequent purchase of shares in the company.

Hindu Undivided Family

A HUF is considered as a person but not a juristic person for all purposes. Shares of a company can be registered in the name of Karta (head of HUF). Hence, an HUF can become a member of a company.

Firm

A partnership firm cannot become a shareholder of a company, since it is not a legal person having a separate entity from that of partners. Partners can be registered as joint holders in which case each of them becomes a member.

Joint Holders

The shares of a company can be held jointly by two or more persons. As per Companies Act, 2013 in the case of a public company every joint shareholder is counted as a separate member but in thecase of a private company, joint holders are treated as a single member.

Registered Society

A society registered under the Society Registration Act, I860, can hold shares in a company in its own name if it is so authorized by its MOA & AOA.

Insolvent

An insolvent may be a member of the company although the beneficial interest in his shares willbe with the Official Receiver. He does not cease to be a member of becoming insolvent unless providedotherwise by the articles of association.

Minor

A minor or lunatic, being incompetent to enter into a contract cannot become a member of a company. But a guardian can become a shareholder on behalf of the minor. If directors, in ignorance of the fact of minority, allot shares to a minor, and enter his name on the register of members, the company can reject the allotment and remove his name from the register, when the fact of applicant's minority comes to its information.

The minor can also repudiate the allotment of shares at any time during his minority. In either case, the company will repay to minor all money received from him for the allotted shares, and whether or not the minor should restore to the company the benefits he might have derived from the shares wouldbe for the court to decide given the facts and circumstances of each case.

Foreign National / NRI

A foreign national or non-resident Indian can become a member of an Indian company subject to Foreign Direct Investment regulations and FEMA guidelines.

State or Central Government

Any of the SGs or the CGs can become a shareholder of a company through the President of India or the Governor of a state. The Act states that either President or Governor could nominate any person to be present at any meeting of the company.

The person selected could be considered as a shareholder of a company entitled to exercise rightsand powers in the same manner the President of India or Governor of the State would have discharged as a shareholder.

PERSONS LIABLE AS CONTRIBUTORIES:

The following persons are liable as contributories:

(a) Past and Present Members:

A member of a limited company shall be liable to contribute the unpaid amount of shares on which he is a contributory, or the amount he has guaranteed to pay in the event of winding-up. A past member is also liable to contribute if he ceased to be a member within one year before the commencement of winding- up and the present members fail to meet their liabilities.

But a past member is not liable to contribute if he has ceased to be member for the year or upwards before the commencement of winding-up. It must be remembered that a past member is not liable after he ceases to be a member. At the same time, a past member is not liable to pay provided thepresent members fail to contribute the fullest extent.

(b) Legal Representatives of a Deceased Member:

The legal representatives of a deceased member shall be liable to contribute to the assets of the company if a contributory dies either before or after he has been placed on the list of contributories.

(c) The Official Assignee or Receiver of a Contributory:

When a contributory is adjudged insolvent, his assignees in insolvency must be the contributories(Sec. 431).

(d) Liquidator of a Body Corporate:

Sec. 432 states that if a Body Corporate which is a contributory is ordered to be wound-up, its liquidator shall be the contributory.

(e) Directors/Managers whose Liabilities are unlimited:

Sec. 427 provides that when a Limited Company is wound-up, any director or manager, past or present, whose liabilities are unlimited, must be liable as if he were a member of an unlimited companywhich requires a court's order. But he shall not be liable if he has ceased to hold office for a year or more before the commencement of winding-up.

Settlement of List of Contributories:

Sec. 467(1) lays down that as soon as may be after making a winding-up order, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectificationis required in pursuance of this Act.

Where it appears to the Court that it will not be necessary to make calls on, or adjusts the right of contributories, the Court may dispense with the settlement of the list of contributories. Sec. 467(2) states that in settling the list of contributories, the Court shall distinguish between

those who are contributories in their own right and those who are contributories as being representatives or liable for debt of others.

Lists of Contributories:

It includes List A and

List B:List A:

It includes the present members of the company, i.e., members whose names appear on the company's Register of Members at the time of winding-up, i.e., members at the commencement of winding-up.

The liability of the present members (i.e., List A contributory) is limited:

(i) In case of a company limited by a guarantee, the contribution shall be limited to the guarantee.

(ii) In case of a company limited by shares, they shall not be required to pay exceeding theamount, if any, unpaid on the shares in respect of which he is liable to contribute.

List B:

It includes the past members of the company, i.e., those who have ceased to be members withinone year preceding the commencement of the winding-up.

Liability of the Past Members:

A member in List B (i.e., a past member) is not liable to contribute:

(i) If he has ceased to be a member, for one year or upwards before the commencement of thewinding-up;

(ii) In respect of any debt or liability of the company contracted after he ceased to be a member;and

(iii) Unless it appears to the court that the present members are unable to satisfy the contributionsrequired to be made by them.

DIFFERENCE BETWEEN SHARE TRANSFER AND SHARE TRANSMISSION

The act of movement of an asset is termed as a transfer. The movement can be physical movement or the ownership of the title of the asset or both. For securities, this movement can be voluntary or operational by law. The transfer of shares is a voluntary act by the holder of shares and takes place by way of contract. Whereas, the transmission of shares takes place due to the operation of law that is on the death of the holder of shares or in an event where the holder becomes insolvent/lunatic.

Meaning of Transfer of Shares

Transfer of shares refers to the intentional transfer of title of the shares between the transferor (one who transfers) and the transferee (one who receives). The shares of a public company are freely transferable unless the company has a valid reason to disallow the same. The shares of a private limitedcompany are not transferable subject to certain exceptions. A transfer deed is executed for the transfer of shares.

Meaning of Transmission of Shares

Transmission of shares takes place due to the operation of law that is when the holder is no more or has become lunatic or insolvent. It can also take place when the holder of shares is a

company, and it has wound up. There is no transfer deed executed, and the transferee will be given the rights to the shares, and the transmission is recorded only when the transferee gives proof of entitlement to the shares. In case of the death of the holder the shares, it will be transferred to the legal representative and in case of insolvency to the official assignee. The following table illustrates the differences between the transfer of shares and transmission of shares:

Details	**Transfer of Shares**	**Transmission of Shares**
What is it?	Voluntary Act	Operational by law
Who can initiate?	Transferor or Transferee	Legal heir or receiver
How is it affected?	A deliberate act of parties	Insolency, lunacy, death, or inheritance
Is there a consideration?	Yes	No
Is a transfer deed compulsory?	Yes	No
Is stamp duty compulsory?	Yes. Payable on the market value of shares	No
Who is liable?	Liability of transferor ceases to exist post the transfer	Original liability of shares continues to exist

Provisions Under Companies Act, 2013 and Companies (Share Capital & Debenture) Rules, 2014

As per Section 56 of the Companies Act, 2013 read with Rule 11 of Companies (Share Capital & Debenture) Rules, 2014 **Transfer of shares:** It will be affected only if a proper instrument of transfer, in Form SH -4, as given in sub-rule 1 of Rule 11 of Companies (Share Capital & Debenture) Rules 2014 duly stamped, dated, and is executed by or on behalf of the transferor and the transferee and specifies all the details like name, address, occupation if any of the transferee. It has to be delivered to the company by either parties within 60 days from the date of execution along with a certificate of securitiesor letter of allotment of securities as available. If the transferor makes an application for the transfer ofpartly paid shares, then the company gives notice of the application Form SH-5 as given in sub-rule 3 of Rule 11 of Companies (Share Capital & Debentures) Rules 2014, to the transferee and the transferee must give no objection to the transfer within 2 weeks from the receipt of the notice.

Transmission of shares: It will be affected when the application of transmission of shares alongwith relevant documents is valid. Execution of transfer deed is not required. The following are the relevant documents for the transmission of shares

- Certified Copy of Death Certificate

- Self Attested Copy of PAN
- Succession certificate/ Probate of Will/Will/ Letter of Administration/ Court Decree
- Specimen signature of successor

Time limit for delivery of a certificate in both cases Every company must deliver the certificates of all securities transferred or transmitted within 1 month from the date of receipt of the instrument of transfer in case of transfer or intimation of transmission as applicable unless prohibited byany provision of law or any order of Court, Tribunal, or other authority.

Penalty in case of non-compliance Where any default is made in complying with the above, the company shall be punishable with a fine not be less than Rs. 25,000 but which may extend to Rs. 5,00,000, and every officer of the company who is in default shall be punishable with a fine not be lessthan Rs.10,000 but which may extend to Rs.1,00,000. While the transfer of shares and transmission of shares intend a change in ownership of the title of the shares, the distinction lies in the fact that the transfer of shares is voluntary and initiated by the transferee or transferor while transmission of shares is operational by law and is initiated by the legal representative or receiver.

NOMINEE AND IMPORTANCE:

Nomination by Securities Holders

Section 72 of the Companies Act, 2013 allows the shareholders of a company to nominate securities of a company to a nominee. The term securities shall include the shares of a company. The nomination of shares is made through a written instrument. The person described in the written instrument is called as a nominee. The nomination shall act as a direction to the company regarding theownership of shares after the death of the shareholder. A nominee shall have interest over the shares held by the shareholders on their death. This devoids the complexity faced by the companies regarding the ownership of shares of the deceased shareholder. A nomination can be filed by the shareholder anytime during his lifetime.

It is not mandatory to appoint a nominee. Only individuals holding shares singly or jointly can nominate their shares. Non-individuals such as body corporates, trusts, societies, Karta of Hindu undivided families and holder of power of attorney cannot nominate the shares. If the shares are being held jointly, then the joint owners have to select a single nominee for their shares. The Act does not lay down any criteria or requirements for being a nominee. Even a minor can become a nominee. In such case the guardian signs on behalf of the minor in addition to the name, address and photograph of the minor and the guardian. However, the shareholder nominating minor should also appoint a person in theevent that the nominee dies during his/her minority.

Applicable rules in relation to the nomination are enumerated in the Rule 19 Companies (ShareCapital and Debenture Rules) 2014.

Nomination of Shares

The nomination of shares has to be filed in writing in the prescribed Form SH-13. Share certificates need not be attached to the nomination form. A person making the nomination can request for making a nomination. The share transfer agent of the company, upon receipt of such request, shall register the name of the nominee by allotting a registration number along with the date of registration.

The company have to main the register for nominations and shall get it authenticated by a Company Secretary from time to time. Any alterations or cancellation can be made to the

nomination by filing Form SH-14 which shall take effect from the date which the company receives such alterationor cancellation. If a joint owner of shares die and the new owner comes in his place, the joint owners can request for cancellation and make a fresh nomination by repealing the existing nomination.

On receipt of the intimation of death of the shareholder, the nominee has the option to either register himself as the owner of the shares or to transfer the shares to a third party. If the nominee wishes to takeup the shares in his name, he shall mention the same in writing to the company. Stamp duty will not beapplicable in such transmission.

The nominee on the death of the deceased shareholder has to file a notice with the company along with the death certificate of the shareholder, proof of identity and specimen signature of the nominee. The company shall verify its nominee register and decide whether the nominee is a valid nominee. A nominee unwilling to take up the membership of the company can use his power as a nominee to transfer the shares to a third party.

Such transfer shall be subjected to all the limitations, procedures and restrictions imposed on the transfer of shares by the Act. All the usual procedures for the transfer of shares will apply to such transfers. The nominee should execute a transfer deed prescribed in the Form SH-4. The transfer deed should be properly executed and stamped. If the nominee dies before the shareholder, the nomination gets cancelled and the heirs of the nominee are not entitled to the shares.

If the shares are held in dematerialized form, the nomination made by the shareholder has to recorded by the Depository participant who is maintaining the Demat account.

At the time of opening a Demat account, the shareholder can fill in the details of the nominee along with the particulars, residential address and bank account for the transfer of dividend. If an investorhas not added the nominee for his Demat account he can add or change a nominee subsequently. In thiscase, the Demat account goes to the nominee after the death of the investor. The Demat account nomineeneed not inform the company separately about the death of the investor.

Rights of the Nominee

After the death of the shareholder, the nominee gets all the rights in the shares held by the deceased shareholder. He can deal with the shares by either registering the same in his name or by transferring the shares to a third party. If a nominee registers himself as a member of the company, he shall be entitled to get the dividends and all other interests paid to the shareholders of the company. He can exercise all the rights of membership described under the articles of association of the company. However, the ownership of the nominee has been put into question during various instances,especially during conflicts with the legal heirs of the deceased.

Appointment of a Nominee

(1) Any holder of securities of a company may, at any time, nominate, in Form No. SH.13, any person as his nominee in whom the securities shall vest in the event of his death.

(2) On the receipt of the nomination form, a corresponding entry shall forthwith be made in the relevantregister of securities holders, maintained under section 88.

(3) Where the nomination is made in respect of the securities held by more than one person jointly, all joint holders shall together nominate in Form No.SH.13 any person as nominee.

(4) The request for nomination should be recorded by the Company within a period of two months fromthe date of receipt of the duly filled and signed nomination form.

(5) In the event of death of the holder of securities or where the securities are held by more than one person jointly, in the event of death of all the joint holders, the person nominated as the nominee may upon the production of such evidence as may be required by the Board, elect, either-

(a) to register himself as holder of the securities ; or

(b) to transfer the securities, as the deceased holder could have done.

(6) If the person being a nominee, so becoming entitled, elects to be registered as holder of the securities himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects and such notice shall be accompanied with the death certificate of the deceased share or debentureholder(s).

(7) All the limitations, restrictions and provisions of the Act relating to the right to transfer and the registration of transfers of securities shall be applicable to any such notice or transfer as aforesaid as if the death of the share or debenture holder had not occurred and the notice or transfer were a transfer signed by that shareholder or debenture holder, as the case may be.

(8) A person, being a nominee, becoming entitled to any securities by reason of the death of the holder shall be entitled to the same dividends or interests and other advantages to which he would have been entitled to if he were the registered holder of the securities except that he shall not, before being registered as a holder in respect of such securities, be entitled in respect of these securities to exercise any right conferred by the membership in relation to meetings of the company:

Provided that the Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the securities, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends or interests, bonuses or other moneys payable in respect of the securities, as the case may be, until the requirements of the notice have been complied with.

(9) A nomination may be cancelled, or varied by nominating any other person in place of the present nominee, by the holder of securities who has made the nomination, by giving a notice of such cancellation or variation, to the company in Form No. SH.14.

(10) The cancellation or variation shall take effect from the date on which the notice of such variation or cancellation is received by the company.

(11) Where the nominee is a minor, the holder of the securities, making the nomination, may appoint aperson in [1][Form No. SH-13] specified under sub-rule (1), who shall become entitled to the securities ofthe company, in the event of death of the nominee during his minority.

UNIT IV

KEY MANAGERIAL PERSONNEL AND MEETINGS

DIRECTORS

Definition of Directors:

The directors are the persons elected by the shareholders to direct, conduct, manage or supervise the affairs of the company. The Companies Act does not precisely define the term 'director'.

But it has been defined under several sections of the Act, in the following manner:

According to Sec. 2 (13) of the Companies Act., "Director includes any person occupying the position of director by whatever name called." This definition given by the Companies Act does not give the clear meaning of the word director, but it means that a person who performs the duties of a director will be deemed to be a director irrespective of the name by which he is called.

"It does not matter what you call them, as long as you understand what their true position is, what is that they are commercial men managing a trading concern for the benefit of themselves and all other shareholders in it."

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

According to Sec.303 Explanation (1), "Any person, in accordance with whose directions or instructions, the Board of Directors of the company is accustomed to act, shall be deemed to be directorof the company."

Number of Directors:

Every public company by virtue of Sec. 43 A, shall have at least three directors, private company shall have at least two directors. [Sec. 252] ,Subject to this minimum number of directors, the articles may fix the minimum and maximum number of directors for its board of directors.

The company in the general meeting may by ordinary resolution, increase or reduce the numberof its directors within the limit fixed in that behalf by the articles. [Sec.258]

In the case of a public company or a private company which is a subsidiary of a public company any increase which is beyond the limit fixed by articles must be approved by the Central Government and such an increase shall become void if disapproved by the Central Government. However, no approval of Central Government shall be required if the increase in the number of directors does not exceed twelve. [Sec. 259]

This provision is not applicable to a Government Company and to a private company which is not asubsidiary to a public company.

KINDS OF DIRECTORS:

Ordinary or Non-Executive Director:

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

Managing Director:

According to Sec.2 (54) of the Indian Companies Act "managing director" means a director who, by virtue of the articles of a company or an agreement with the company or a **resolution** passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of **management of the affairs** of the company and includes a director occupying the position of managing director.

Whole-time directors or Executive directors:

A whole-time executive director includes a director in the whole-**time employment** of the company.

Alternate director or Additional director:

The Board Meeting may be held at a time when a director is, **absent for a period of more thanthree months from the state** and in such a situation, an '**alternate director' is appointed**. The Board of Directors can appoint the **additional director** in the absence of a director if so **authorized by articles** or by a **resolution passed** by the company in general meeting. The alternate director shall work until the original director return or up to the period permitted to the original director.

Nominee Directors:

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

Residential Director:

As per Section 149(3) of Companies Act,2013 every company shall **at one director who has stayed in India for a total Period of not less than 182 days in** the Previous calendar year.

Independent Director:

s per section 149(6) an independent director in relation to a company, means a director other than a Managing Director, Whole Time Director or Nominee Director. Companies which have to appointIndependent Director.

Women Director:

As per Section 149 (1) (a) second provision requires certain categories of companies to have **AtLeast One Woman** director on the board. Such companies are any **listed company**, and any public company having.

Legal Position/Status of Directors:

Act does not define the position/status of directors, and it is difficult to define the exact legal position of the directors of a company. Although, the directors have been referred as the trustees, or the managing partners of the company, but in real sense they are none of them. Directors may be considered as the agent, trustees or managing partner for a particular moment and for the particular purpose.

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

The legal position of directors can be better explained in the following manner:

1. Position of Directors as Trustees:

(i) Legally a director is not the trustee:

Legally speaking, a director is not the trustee of the company. In the case Smith vs. Anderson, James L.J. observed, "A trustee is a man who is the owner of property and deals with it as principal, asowner and as master, subject only to an equitable obligation to account to some persons to whom he stands in relation of a trustee. The office of director is that of a paid servant of the company. A directornever enters into a contract for himself, but he enters into a contract for his principal i.e., for the companyof which he is a director or for whom he is acting."

From this point of view, directors are not the trustees of the company, because they are not thelegal owners of the properties of the company.

(ii) Directors as trustees of the company's property and money:

Although the directors are not, properly speaking, the trustees, yet they are trustees of the company's money and property and they are bound to deal with capital under their control as a trust. They must act in good faith and exercise their powers in the interest and benefit of the company.

(iii) Directors as trustees to the powers entrusted to them:

The directors are the trustees in respect of powers entrusted to them. They must exercise thesepowers bonafide and for the benefit of the company as a whole.

Examples of such powers are as follows:

(a) The power of employing the funds of the company;

(b) The power to declare dividend in the general meeting;

(c) The power to make call;

(d) The power of forfeiting shares;

(e) The power of receiving payment of call in advance;

(f) The power of approving the transfer of shares;

(g) The power of accepting the surrender of shares;

(h) The power of issuing the unissued shares of the company and making allotments thereof.

(iv) Directors not as trustees to the shareholders:

It should be noted that directors occupy a fiduciary relationship only in relation to the companyand not in relation to an individual shareholder. They are not trustees for any particular shareholder.

In case of Percival vs Wright, "The Directors purchased shares from a shareholder when negotiations were being held by them for sale of the company at a very high price. They did not disclose this fact to the shareholder. It was held that the shareholder could not repudiate the contract on that ground."

(v) Directors not as trustees to the outsiders:

The directors are not as trustees to other persons entering into any contract with the Company.

The position of directors as Trustee can be briefly stated as under:

(i) They are not trustees in the legal sense of the term.

(ii) They occupy a fiduciary position in relation to the company and they are considered trustees with respect to the company's property and money.

(iii) They are also trustees as regards powers entrusted to them. They must exercise these powers bonafide in the interest of the company and they are accountable for secret profits made by them, if any.

(iv) They are not trusted of individual shareholders.

2. Position of Directors as Agents:

The company being an artificial person cannot manage its affairs itself but the management of the company is entrusted to some human agency known as directors. They are the selected representatives of the shareholders. They run the business on behalf of the shareholders and may be termed as the agent of the company.

In the case of Forguson vs. Wislon, Cairns L.J. stated the position of the directors as, "They aremerely agents of the company. The company itself cannot act in its own persons for it has no person, it can act 'only through directors' and the case is, as regards those directors, merely the ordinary case of principal and agent, for whenever an agent is liable, those directors would be liable. Where the liability would attach to the principal and the principal only, the liability is the liability of the company."

In Great Eastern Railway vs. Turner, it was held that the directors are agents in the transaction which they enter into on behalf of the company.

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

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

It is 'however' not correct to say that directors are the agents of the company because agents are not elected but appointed and second thing that agents have no independent power while the directors have independent powers on certain matters.

3. Position of Directors as Managing Partner:

Directors have been described as the managing partners because, on the one hand, they are entrusted with management and control of the affairs of the company, and on the other hand, they are usually important shareholders of the company.

However, directors are not partners in the ordinary partnership law sense in as much as the liability of a partner is unlimited whereas the liability of a director as a member is limited to the value of shares held by him (except in the case of unlimited companies). Further unlike a partner, director hasno authority to bind the other directors and shareholders.

4. Position of Directors as Officers:

Under Sec. 2 (30) of the Companies Act, the directors are the officers of the company. As officers, they may by held liable if the provisions of the Companies Act have not been fully complied with by them.

5. Position of Directors as Employees:

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

6. Position of Directors as Organs of the Company:

Directors have also been treated, in judicial decisions, organs of the company for whose action the company is to be held liable just as a natural person is liable for the actions of his limbs.

In Bath vs. Standard Land Co., Neville J. stated, "The board of directors are the brain and the only brainof the company which is the body and the company can and does act only through them."

Considering the above discussion, Gessel said: **"Directors are described as trustees, agents or managing partners, not as exhausting their powers or responsibilities, but as indicating useful points of view."**

According to L.J. Bowen, "Directors are described sometimes as agents, sometimes as trustees and sometimes as managing partners but each of this expression is used not as exhausting of their powers and irresponsibility's, but as indicating useful points of view which they may for the moment and forthe particular purpose be considered."

Thus, it is clear from the above discussion that directors are neither the agents, nor the trustees, nor managing partners, nor officers, nor employees of the company but they stand in a fiduciary position towards the company for the powers and company's property under their control.

Restrictions on Appointment of Directors:

A person shall not be capable of being appointed a director by the articles or named as a director of the company or intended company in a prospectus or statement in lieu of

prospectus unless he or his agent authorised in writing has:

(i) Signed and filed with the Registrar his consent in writing to act as such director; and
(ii) Either—

(a) Signed the memorandum for his qualification shares; or

(b) Taken his qualification shares from the company and paid or agreed to pay for them; or

(c) Signed and filed with the Registrar an undertaking in writing to take from the company hisqualification shares and pay for them; or

(d) Filed with the Registrar an affidavit that his qualification shares, if any, are registered in his name.[Sec. 266(1)]

The provisions of this section do not apply to:

1. A company not having a share capital;
2. A private company;
3. A company which was a private company before becoming a public company; or
4. A prospectus issued by or on behalf of a company after the expiry of one year from thedate on which the company was entitled to commence business.

If he does not vacate within fifteen days, new appointment shall be void. (Sec. 277) In calculatingthe number 20, the following shall be excluded:

1. An unlimited company.
2. A private company which is neither a subsidiary nor a holding company of a publiccompany.
3. An association not carrying on business for profit.
4. Alternate directorship.

If a person holds office for more than 20 companies, he shall be punishable with fine which mayextend to Rs. 5,000 for each company after the first 20 companies.

Vacation of Office by Directors:

The office of a director shall become vacant if:

(i) He fails to obtain or ceased to hold the qualification shares required of him by the articlesof the company;

(ii) He is found to be of unsound mind by a competent court;

(iii) He applies to be adjudicated an insolvent;

(iv) He is adjudged as insolvent;

(v) He is convicted by a court of an offence involving moral turpitude and sentenced to imprisonment for not less than six months;

(vi) He fails to pay any calls on the shares held by him within six months from the date fixed for payment; unless the Central Government has by notification in the official Gazette removed this disqualification;

(vii) He absents himself from three consecutive meetings of the Board of directors or from all the meetings of Board for a continuous period of three months (which energy is longer), without obtaining leave of absence from the Board;

(viii) He (whether by himself or by any person for his benefit or on his account) or any firm in which he is a partner or any private company of which he is a director; accepts a loan or guarantee or security for a loan from the company in contravention of Sec. 295;

(ix) He does not disclose to the Board of Directors his interest in any contract or proposed contract with the company;

(x) He is restrained by court from being a director for committing fraud or misfeasance in relation to the company under Sec. 203;

(xi) He is removed by the company in general meeting in pursuance of Sec. 284;

(xii) Having been appointed a director by virtue of his holding any office or other employment in the company, he ceases to hold such office or other employment in the company.

The grounds laid down above for vacating the office of director apply to all companies—publicand private. On the happening of any of the above events, the director will have to vacate the office automatically. The provisions of this section apply to all directors by whomsoever appointed and for whatsoever period appointed. The Board has no power to waive the event or condone the act.

The words 'absent himself' mean voluntary or deliberate absence and do not cover cases of voluntary absence such as that caused by illness etc. A director who lived in Belfast was seriously ill and unable to travel and failed to attend several meetings. It was held that he did not vacate his office asabsence was not deliberate.

Of the above grounds, the first six are similar to those which disqualify a director from holding the office under Sec. 274 of the Act. The grounds stated in (iv), (v) and (vi) above shall not disqualify adirector from holding his office immediately until thirty days have elapsed from the date of the adjudication, sentence or order where no appeal is preferred. But in case of an appeal the specified disqualification shall take effect on the expiry of the seven days from the date on which such appeal is finally disposed of.

The office of a director is also vacated if he or any of his relative hold any office or place of profit in the company or its subsidiary in contravention of Sec. 314.

A person who acts as a director knowing fully well of disqualification is subject to a penalty which may extend to five hundred rupees for each day on which he so acts as a director.

A private company which is not a subsidiary of a public company may by its Articles provide for additional grounds for vacating the office of a director.

Resignation by the Directors:

There is no provision relating to the resignation by a director in the Companies Act. If there is any provision in the articles of the company giving right to a director to resign at any time, a director may resign in the manner provided in the Articles of Association. If there is no provision in the Articles, then the director may submit the resignation by sending a reasonable notice.

In the absence of any provision relating to resignation in the articles, it is well settled that a resignation once made takes effect immediately when the intention to resign is made clear (T. Murari vs. State 1976)

The resignation may be oral.

Once a director has resigned, he is not entitled to withdraw except with the consent of directorsor the company.

It may be noted that a resignation by director will not relieve him from any liabilities and obligations which he may have incurred while in office.

WOMAN DIRECTOR

The concept of Women Directors and Independent Directors was introduced through **Companies Act, 2013**. Section 149 of the Companies Act, 2013 and the **Companies (Appointment and Qualifications of Directors) Rules, 2014** deal with the provisions pertaining to thedirectors on board of a company.

Second proviso to sub-section (1) of Section 149 of the Companies Act, 2013 prescribes that certain class of companies as prescribed shall at least have one woman director on its board.

Rule 3 of **Companies (Appointment and Qualifications of Directors) Rules, 2014** deals withWoman Director in detail and it also prescribes the class of companies as referred to in Section 149 of the Act on which this provision is applicable.

The said rule lays down the following:

1. The class of companies for which appointment of woman director is mandatory:

Every listed company;

Every other public company having: a) paid–up share capital of one hundred crore rupees or more; or b) turnover of three hundred crore rupees or more. The paid up share capital or turnover, as the case may be, as on the last date of latest audited financial statements shall be taken into account.

2. Time period given to the company for compliance with the provision.

When the provision of appointment of woman director is applicable to the company, the company shall comply with such provisions within a period of six months from the date of its incorporation.

3. Intermittent Vacancy of a Woman Director

Any intermittent vacancy of a woman director shall be filled-up by the Board at the earliest but notlater than:

i. Immediate next Board meeting; or
ii. Three months from the date of such vacancy.

Further, a Woman Director can be an executive director or a non-executive director. A woman director can hold the position of a director until the next Annual General Meeting from the date of appointment. She is also entitled to seek reappointment at the general meeting. It is pertinent to note that the tenure of a woman director is liable to retirement by rotation (Sub-section 6 of Section 152) similarto other types of directors.

PENALTY FOR NON–COMPLIANCE

Chapter XI of the Companies Act, 2013: Appointment and Qualifications of Directors – It has Sections 149 to 172 which exclusively deal with all the provisions related to directors.

By virtue of **Section 172** which prescribes punishment for contraventions of any of the provisions of this Chapter (Chapter XI of the Act) and for which no specific punishment is provided therein,

1. The Company; and

2. Every officer***** of the company who is in default

Shall be punishable with fine which shall not be less than Rs. 50,000 but which may extendto Rs. 5, 00,000.

The term ‘officer’ includes any director, manager or key managerial person (which includes the CFO and CS) or any other person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act.

As the penalty for non–compliance of the appointment of woman director is not mentioned separately, the punishment prescribed under Section 172 shall be applicable.

1. In the year 2015:

Almost 189 companies failed to comply with the mandatory provision of woman director on board:The Securities and Exchange Board of India (SEBI) in April 2015 announced a penalty of Rs. 50,000 for all listed companies that have failed to appoint a woman director on their Board by March 31, 2015.

It further warned to take action against the promoters and directors, if the companies remain non- compliant beyond six months. It stated that the penalty would rise with passage of time and for each dayof non-compliance there will be additional penalty of Rs. 1,000 per day beginning from July 1, 2015. SEBI proposed that the penalty for non-compliance would be Rs. 5,000 per day from October 1, 2015.[2]

Bombay Stock Exchange had issued notices to 530 companies in July 2015 for non-compliance of this provision by June 30, 2015, Thereafter, it imposed a fine on 370 companies for continuance of the non-compliance.[3]

2. In the year 2017

The following details were provided by Mr. P. P. Chaudhary, Minister of State for Corporate Affairs in the Lok Sabha. It is pertinent to note that the Minister has referred to the penalty prescribed under Section 172 of the Companies Act, 2013.

Listed and Unlisted companies penalised: The Registrar of Companies (ROC) has filed prosecutions against 202 non-compliant public unlisted companies. SEBI has levied fine on the companies listed onNSE and BSE, including the PSUs for non-appointment of women directors, as per the fine structure prescribed by SEBI.[4]

3. Penalty under Section 405 – Re ICOMM Tele Limited before National Company LawTribunal, Hyderabad Bench

In this case, the ROC had issued a show cause notice on August 10, 2015 to the company and its directors questioning the applicants as to why penal action under Section 405 of the Companies Act, 2013 should not be initiated against the applicants for not appointing a woman director on the board.

The main question raised in this petition was whether the NCLT had the power to permit the applicants to compound the offence when there is no penalty under Section 149 for non-compliance of provisions of this section.

Section 450 of the Companies Act states as follows:

If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matterhas been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

INDEPENDENT DIRECTOR AND WHOLE TIME KEY MANAGERIAL PERSONNEL

INDEPENDENT DIRECTORS

The concept of Independent Directors is laid down in Sub-section (6) of Section 149 of the Companies Act, 2013. The said Section has been amended by the Companies (Amendment) Act, 2017 and the amendment has been notified and is applicable with effect from May 7, 2018.

The Class of Companies for which the appointment of Independent Director is mandatory:

Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 prescribes that the following class or classes of companies shall have **at least two** directors as independent directors

1. Every other public company having –
2. Paid up share capital of ten crore rupees or more; or
3. Turnover of hundred crore rupees or more; or
4. In aggregate, outstanding loans or borrowings or debentures or deposits, exceeding fifty crorerupees.

In case a company covered under this rule is required to appoint a higher number of independent directors due to **composition of its audit committee**, such higher number of independent directors shallbe applicable to it.

Where a company ceases to fulfil any of three conditions laid down herein for three consecutive years, it shall not be required to comply with these provisions until such time as it meets any of such conditions.

The paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account.

Exemption to Certain Unlisted Public Companies:

The following classes of unlisted public company shall not be covered under Sub-rule (1), namely, i.e. the class of companies who have to mandatorily appoint an independent director:

- A joint venture;
- A wholly owned subsidiary; and
- A dormant company as defined under section 455 of the Act.

Intermittent Vacancy:

Any intermittent vacancy of an independent director shall be filled-up by the Board at the earliestbut not later than:

Immediate next Board meeting; or

Three months from the date of such vacancy.

A company belonging to any class of companies for which a higher number of independent directorshas been prescribed in or under the law/regulations governing such class of companies, shall comply with the requirements specified in such law/regulation.

Every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable,comply with these requirements.

Tenure:

As per Sub-sections (10) and (11) of Section 149 of the Act, 2013 an Independent Director can be appointed for a term up to five consecutive years and thereafter can be re-appointed for another term of up to five consecutive years only after passing of a special resolution in general meeting.

The reappointment shall happen only after performance evaluation is done by the entire board. However, an independent director cannot hold office for more than two consecutive terms. The Act, 2013 also provides for a cooling off period of three years after which he can again be appointed as the independent director.

In view of the representations received by Ministry of Corporate Affairs asking whether an Independent Director can be appointed for a term of less than 5 years, the clarification circular specifies that the same is permissible. However, any appointment whether of 5 or less than 5 years will be regarded as 'one term'.

Penalty For Non–Compliance

Chapter XI of the Companies Act, 2013: Appointment and Qualifications of Directors – It has Sections 149 to 172 which exclusively deal with all the provisions related to directors.

By virtue of **Section 172** which prescribes punishment for contraventions of any of the provisions of this Chapter (Chapter XI of the Act) and for which no specific punishment is provided therein,

1. The Company; and

2. Every officer***** of the company who is in default

Shall be punishable with fine which shall not be less than Rs. 50,000 but which may extendto Rs. 5, 00,000.

The term 'officer' includes any director, manager or key managerial person (which includes the CFO and CS) or any other person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act.

As the penalty for non–compliance of the appointment of an independent director is not mentioned separately, the punishment prescribed under Section 172 shall be applicable.

IMPACT OF NON–COMPLIANCE ON OTHER PROVISIONS OF THE COMPANIES ACT,2013 AND THE RULES LAID THEREUNDER

1. AUDIT COMMITTEE

Section 177 as amended by the Companies (Amendment) Act, 2017 read with Rule 6 of the Companies (Meetings of the Boards and its Powers) Rules, 2014 amended vide MCA Notification No. GSR 880(E), dated July 13, 2017 provides that every listed company and a company covered under Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 shall constitute an AuditCommittee of the Board.

Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 lays down the classes of companies.

1. Every other public company having –
2. paid up share capital of ten crore rupees or more; or
3. turnover of hundred crore rupees or more; or
4. in aggregate, outstanding loans or borrowings or debentures or deposits, exceeding fiftycrore rupees.

2. CONSTITUTION OF THE COMMITTEE:

The Audit Committee shall consist of a minimum of 3 directors with independent directors forming a majority. Provided that majority of the members of the Audit Committee including its Chairperson shall be persons with the ability to read and understand the financial statement.

2. Disclosure of the Composition of the Audit Committee in the Board's Report:

The Board's Report shall disclose the composition of an Audit Committee.

3. Penalty:

In case of any contravention of Section 177 (Audit Committee), Sub-section (8) of Section 178 prescribes as follows:

1. The Company – shall be punishable with a fine which shall not be less than one lakh rupees but whichmay extend upto five lakh rupees; and

2. Every officer of the company who is in default – shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty five thousand rupees butwhich may extend upto one lakh rupees or both.

3. NOMINATION AND REMUNERATION COMMITTEE

Section 178 of the Companies Act, 2013 read with Rule 6 of the Companies (Meetings of the Boards and its Powers) Rules, 2014 amended vide MCA Notification No. GSR 880(E), dated July 13, 2017 provides that every listed company and a company covered under Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 shall constitute a Nomination and Remuneration Committee of the Board.

Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 lays down the classes of companies.

1. Every other public company having –

2. Paid up share capital of ten crore rupees or more; or

3. Turnover of hundred crore rupees or more; or

4. In aggregate, outstanding loans or borrowings or debentures or deposits, exceeding fiftycrore rupees.

5. Constitution of the Committee:

The Nomination and Remuneration Committee shall consist of three or more non-executive directors out of which not less half should be independent directors. Provided that the chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.

2. Penalty:

In case of any contravention of Section 178 (Nomination and Remuneration Committee), Sub- section (8) of Section 178 prescribes as follows:

i. The Company – shall be punishable with a fine which shall not be less than one lakh rupees but whichmay extend upto five lakh rupees; and

ii. Every officer of the company who is in default – shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty five thousand rupees butwhich may extend upto one lakh rupees or both.

COMPOUNDING OF OFFENCES UNDER THE COMPANIES ACT, 2013

Section 441 notified vide Notification No. S.O. 1934(E), dated June 1, 2016 and amended by the Companies (Amendment) Act, 2017 provides for the compounding of certain offences as under:

Scenario A [Applicable for Section 172 and compoundable by Regional Director]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by a company or any officer thereof) not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine, may,either before or after the institution of any prosecution, be compounded by—

1. The Tribunal; or

2. where the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, by the Regional Director or any officer authorised by the Central Government, on payment or credit, by the company or, as the case may be, the officer, to the Central Government of such sum asthat Tribunal or the Regional Director or any officer authorised by the Central Government, as the casemay be, may specify.

Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine whichmay be imposed for the offence so compounded.

Scenario B [Applicable for Sub–section (8) of Section 178 and compoundable by Special Courts]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

1. any offence which is punishable under this Act, with imprisonment or fine, or with imprisonment or fine or with both, shall be compoundable with the permission of the Special Court, in accordance with the procedure laid down in that Act for compounding of offences;

2. any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

1. Penalty for non–compliance of the Order:

Any officer or employee of the company who fails to comply with any order made by the Tribunal or Regional Director or any officer authorized by the Central Government, shall be punishable with imprisonment for a term which may extend to six months, or with fine upto one lakh rupees or withboth.

2. Effect of compounding of an offence:

Where such composition is done before the institution of any prosecution, no prosecution can belaunched in relation to such offence under the Companies Act.

Where the composition of the offence is made after the institution of any prosecution and such composition is brought by the Registrar in writing to the notice of the court in which the prosecution ispending, the company or its officer in relation to whom the offence is compounded shall be dischargedby the court.

Where the offence falls within the purview of Sub–section (6) (a) of Section 441, the composition shallhave the effect of an acquittal of the accused in the case as provided in Section 320(8)* of the Code of Criminal Procedure, 1973.

*Section 320(8) of the Code of Criminal Procedure, 1973 states as follows: “The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence hasbeen compounded.”

Compounding of an offence does not amount to conviction by a Court of Law.

KEY MANAGERIAL PERSONNEL

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

The term ‘personnel’ refers to a group of people working together, instead of one person. The Key Managerial Personnel are the decision makers. They are accountable for the smooth functioning of company operations.

The members of the Board of Directors do not necessarily get involved in the day to day operations of the company. Their job is to supervise the company as a whole, not micromanage. The Board of Directors sets goals and objectives for the company. The key managerial personnel is the one

who actually works on these goals and objectives to be achieved.

Key Managerial Personnel under Companies Act, 2013

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

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

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

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

Company Secretary

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

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

Whole Time Director

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

Chief Financial Officer

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

Appointment of Key Managerial Personnel

Section 203 of the Companies Act 2013 has the provisions for the appointment of key managerial personnel. The Board appoints them. Also, the Board of Directors is responsible to fill any vacancies in theKMP within a period of six months.

It is mandatory for any listed company and any company with a paid up capital of more than or equal to 10 lakhs to appoint a whole time KMP. Further, a company with at least 5 lakhs paid-up capital isrequired to employ a full-time company secretary (who is also a KMP).

Roles and Responsibilities of Key Management Personnel

The KMPs are basically are basically responsible for taking the most important decisions and managing all the employees. They are also liable if they do not follow compliances laid down by the Companies Act 2013.

The growth and development of the company depend on the effectiveness of the KMPs at

their jobs.The main responsibilities and functions of the KMP are:

As per Section 170 of the Companies Act, the details about the securities held by the KMPs in the company or its holdings and subsidiaries must be disclosed and thus recorded in the Registrar.

KMPs have a right to voice their opinion especially in meetings of the Audit Committee. However, they don't have a voting right.

According to Section 189, Companies Act, KMPs should disclose their interests in other companies and associations, at least within 30 days of the start of the employment period.

DIRECTOR IDENTIFICATION NUMBER AND ITS SIGNIFICANCE DIRECTOR IDENTIFICATION NUMBER OR DIN

Director Identification Number or DIN (MCA) is an **8-digit unique identification numbe**r, which is **allotted by the central government** to each individual who wants to be a director of any company or who already is a director of any company. Once allotted the **DIN**

number has lifetime validity.

Company, being a legal entity, doesn't have any physical appearance. To run its affair, **natural persons are required**. Directors are the individuals appointed to manage day to day affairs of company.

Directors are the professionals who play an important role in running the company on behalf ofthe shareholders who appoint them.

Directors are the officers of company. Every individual, who intends to become a director in a company or who already is director of company, is required to obtain Directors Identification Number (DIN) as per Companies Act, 2013. Rather the provisions of the Companies Act, 2013 mandate obtaining of DIN before appointment of an individual as a director of company and also mandates indication of DIN in any return, information or particulars wherein there is a reference of the Director or such return, information or particulars is related to the director.

DIN

Director Identification Number (DIN) is a unique 8-digit number that is allotted by Central Government to the individuals who intend to become a director in a company or who already are directors of company. It is unique to the existence of every individual director i.e. the director does not have to obtain DIN to stand for the directorship of different companies. Perhaps, the provisionsof Company Laws prohibit application for or possession of another DIN and contain the punishment for the individual/ director who contravenes this provision that includes **imprisonment up to 6 months.**

DIN once allotted is valid for lifetime of a director until cancelled, surrendered or deactivated.

Application for allotment of DIN

Making application for allotment of DIN is very simple.

Section 153 of the Companies Act, 2013 read along with Rule 9 of the Companies (Appointment and Qualification of Director) Rules 2014 provides for the provision for applying for allotment of DIN.

The following are the steps for DIN application:

Go to the Ministry of Corporate Affairs (MCA) website and follow this path- Home> MCA Services> E-Filing>Company Forms Download.

2. Download Form_DIR-3 and fill the form with required information and attach the copy of

- Photograph;
- Identity proof;
- Proof of residence; and
- Specimen signature duly verified

3. After filling the form and attaching the required documents, sign the documents using DigitalSignature Certificate (DSC)

4. Signed form has to be verified digitally by the director/ Company Secretary/ Manager, CEO/ CFO ofthe company. Earlier, it was verified by the practicing CA or CS or CMA.

Application for allotment of DIN has to be filed with the prescribed fees.

Allotment of DIN:

The central government through its delegated authority process the application filed by an individual inForm DIR-3.

Section 154 of the Companies Act, 2013 read along with Rule 10 of the Companies (Appointment and Qualification of Director) Rules 2014 provides for the provision for DIN allotment.

As per these provisions, the processing of the application made for allotment of DIN is to be done **within one month from the date of receipt of application along with the fees.**

The Central Government as part of DIN application processing approves/rejects and communicates the same to the applicant by post/electronically or by any other mode. In case of approval of the application submitted by an individual, Central Government communicates the DIN allotted to the applicant within a month.

Rejection of DIN

In case, the application for DIN allotment is rejected because of the wrong/ incomplete information provided therein, the Central government permits a time limit of 15 days to rectify it.

Within the given 15 days, the applicant is required to file a fresh application as per the process explained above **but no fee is required for filing such rectification**.

However, if the applicant fails to make the required rectification, the application becomes invalidand the fee paid thereon is forfeited by the Central Government. C

Changes in details/ particulars in DIN

Whenever there are changes in the details provided in Form DIR 3, the DIN holder is required to **intimate such changes to the Central Government**. To amend the existing details Form DIR- 6 is used. The DIN holder has to fill the Form DIR-6, verify it using Digital Signature Certificate (DSC) andget it digitally signed by the practicing CA or CS or CMA.

Other provisions:

1. The director has to intimate about his DIN to all the companies where he is working as a **directorwithin one month from receiving DIN by** the Central Government.

2. On receiving the intimation of DIN from director, the company will intimate about the DIN of thedirector to the Registrar of Company within 15 days.

3. Failure to comply with these provisions leads to contravention of the law and are **liable to punishment under the act.**

DUTIES, QUALIFICATION AND DISQUALIFICATION DUTIES OF THE DIRECTORS

A company director's duties can include:

- Determining and implementing policies and making decisions.
- Preparing and filing statutory documents with the Companies Office or other agencies.
- Calling **meetings**, including an annual meeting of shareholders.

Maintaining and keeping records.

The duties of directors and the Board are primarily responsible for leading the organisation on behalfof the stakeholders.

As well as they are responsible for ensuring the legal entity of the company. It means that the company must remain viable and properly functioning in the present and the future as well.

Under the common law, directors have to be honest, exercise delicacy and skill when dealing withcompany issues, while working on behalf of the company.

DUTIES OF DIRECTORS

- Deciding the company's future goals and priorities.
- Communicating with the stakeholders to inform them of the company's growth and ensuring theirinput plays a part in the company's future.
- Checking the external market conditions to ensure that the company is headed in the rightdirection.
- Monitoring the performance of employees and encouraging them to achieve their targets is oneof the primary duties of directors.
- Setting the budget for the company's operations and keeping tabs on the profit and loss margin.
- Reporting back to the stakeholders at the Annual General Meeting (AGM).
- Establishing rules and regulations and forming policies that everyone in the company wouldfollow.
- Making sure the organisation has a good system of governance and that there is no gap incommunication.
- Being in an advisory capacity to the CEO.
- Doing effective risk management assessment

QUALIFICATIONS OF DIRECTORS:

The Act does not lay down any academic or shareholding qualification for a director. There is a widespread misconception that a director must necessarily be a shareholder of the company. But if it isnot so, unless the articles of the company provide otherwise, a director need not be a shareholder of the company. But usually the articles provide for certain qualification shares for the directors.

1. Qualification Shares:

If the articles of the company so provide then as per Sec. 270, the directors must obtain their

qualification shares as follows:

(i) The directors must obtain qualification shares within two months after their appointment unlessthey already hold shares.

(ii) If any provision in the articles requiring a person to hold the qualification shares before his appointment as a director or to obtain them within a period shorter than two months shall be void.

(iii) The nominal value of one qualification share must not exceed Rs. 5,000.

(iv) Bearer share warrants will not be counted for the purposes of qualification shares.

(v)If a director does not obtain qualification shares within two months of his appointment or thereafter does not possess such shares at any time, he ceases to be a director automatically.

(vi) The director should not obtain shares by way of gift from a promoter. He should make the payment for his qualification shares.

(vii) A director is required to hold qualification shares in his own right. It is also sufficient if he holds them as a trustee provided it does not appear on the register of members that he is a trustee.

(viii) Unless the articles provide otherwise, a joint holding will be sufficient for share qualification.

(ix) A person who acts as a director of a company without holding qualification shares even afterthe expiry of the period of two months from the date of his appointment shall have to vacate his office as a director and be punishable with a fine extending to Rs. 50 for every day from the date of expiry of the period of two months till the date he continues to act as a director. [Sec. 272]

(x)The above provisions as to qualification shares do not apply to a non- subsidiary private company, [Sec. 273]

2. Written Consent:

Every person proposed as a candidate for the office of a director has to sign and file with thecompany his consent to act as a director, if appointed (Sec. 264).

However, the following persons have not to file such consent:

(i) A person who is retiring from directorship by rotation or otherwise.

(ii) A person who has given notice of his candidature for directorship at the registered office of the company under Sec. 257.

However, a newly appointed director shall not act as a director unless he has also within 30 daysof his appointment signed and filed with the Registrar his consent to act as such director.

Filing of such a consent is not necessary in the case of following person:

(i) A director reappointed after retirement by rotation or immediately on the expiry of his term of office.

(ii) Additional or alternate director, or a person filling a casual vacancy in the office of a directorunder section 262 or appointed as a director or reappointed as an additional or alternate director immediately on the expiry of his term of office.

(iii) A person named as a director under its articles of association as first registered.

It is to be noted that only persons newly seeking appointment as directors have to file their consent to act as such. A person who is already a director and who is retiring at the annual general meeting but immediately seeking reappointment is exempted from filing the consent.

The provisions of this section are not applicable to an independent private company.

3. Only Individuals: can be Directors:

Nobody corporate, association or a firm can be appointed director of a company. Only individuals can be appointed as directors. [Sec. 253]

DISQUALIFICATIONS OF DIRECTORS:

The circumstances in which a person cannot be appointed as a director of a company are enumerated in Section 274. According to this section, a person cannot be appointed as a director of company, if—

(i) He has been found to be of unsound mind by a competent court and the finding is in force;

(ii) He is an undischarged insolvent;

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

(iv) He has been convicted of an offence involving moral turpitude and sentenced to imprisonment fornot less than six months and a period of five years has not elapsed since the expiry of his sentence;

(v) He has not paid any call in respect of shares of the company held by him for a period of six monthsfrom the last day fixed for the payment;

(vi) He has been disqualified by an order of the Court under Sec. 203 of an offence in relation topromotion, formation or management of the company or fraud or misfeasance in relation to the company.

The Central Government may by notification in the Official Gazette remove the disqualifications enumerated in clause (iv) and (v) above. [Sec.274(2)]

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

A private company which is not a subsidiary of public company may by its Articles provide for additional grounds for disqualification.

Restriction of Number of Directorship:

According to Secs. 275 to 279, a person cannot be appointed as a director for more than 20 companies at a time. If any person holds office for 20 companies as a director of a company, then no appointment can be made in any other company unless he vacates his office within fifteen days.

BOARD MEETING

Section 173(1) of the Companies Act, 2013 prescribes that every company shall hold the first meeting of the Board of Directors within 30 days of the date of its incorporation. Directors canparticipate in Board Meeting either in Person or through Video Conferencing or other audio visual means.

The board of directors is the supreme authority in a company and they have the powers to take all major actions and decisions for the company. The board is also responsible for managing the affairsof the whole company.

For the effective functioning and management, it is imperative that board meetings be held atfrequent intervals. For this, Section 173 of Companies Act, 2013 provides

In the case of a Public Limited Company, the first board meeting has to be held within the first 30 days, since the incorporation date. Additionally, a minimum of 4 board meetings must be held in a span of one year. Also, there cannot be a gap of more than 120 days between two meetings.

In the case of small companies or one person company, at least two meetings must be conducted,one in each half of the financial year. Additionally, the gap between the two meetings must be at least 90 days. In a situation where the meeting is held at a short notice, at least one independent director mustbe attending the meeting.

Notice of Board Meeting

The notice of Board Meeting refers to a document that is sent to all directors of the company. This document informs the members about the venue, date, time, and agenda of the meeting. All types of companies are required to give notice at least 7 days before the actual day of the meeting.

Quorum for the Board Meeting

The quorum for the Board Meeting refers to the minimum number of members of the Board to conduct a valid Board Meeting. According to Section 174 of Companies Act, 2013, the minimum number of members of the board required for a meeting is 1/3rd of a total number of directors.

At any rate, a minimum of two directors must be present. However, in the case of One Person Company, the rules of Section 174, do not apply.

Participation in Board Meeting

All directors are encouraged to actively attend board meetings and in case that's not possible atleast attend the meetings through a video conference. This is so that all directors can take part in the decision-making process.

COMPLIANCE OF LEGAL REQUIREMENT

Requirements for Conducting a Valid Board Meeting

Right Convening Authority

The board meeting must be held under the direction of proper authority. Usually, the company secretary (CS) is there to authorize the board meeting. In case the company secretary is unavailable, thepredetermined authorized person shall act as the authority to conduct the board meeting.

Adequate Quorum

The proper requirements of the quorum or the minimum number of Directors required to conducta Board meeting must be present for it to be considered a valid board meeting.

Proper Notice

Proper notice is one of the major requirements to be fulfilled when planning a board meeting. Formal notice has to be served to all members before conducting a board meeting.

Proper Presiding Officer

The meeting must always be conducted in the presence of a chairman of the board.

Proper Agenda

Every board meeting has a set agenda that must be followed. The agenda refers to the topic of discussion of the board meeting. No other business, which is not mentioned in the meeting must be considered.

POWER OF DIRECTORS :

Section 179 of the company Act 2013 Provides for general powers of directors. The board of directors is entitled to exercise all such powers and does all such acts and things as the company is authorised to exercise and do. It may be noted that all such acts and power conferred to directors by thecompany should be within the provisions of the companies Act, 2013. Section 179(3) of the companiesAct 2013

provides that the following powers can be exercised by the board only by means of resolutionpassed at board meeting. They are:

- Power to make calls on shareholders in respect of money unpaid on their shares
- Power to issue debentures
- Power to authorise buy back of securities under section 68
- Power to approve financial statement and the Board' s report
- Power to approve amalgamation, merger or reconstruction
- Power to take over a company or acquire a controlling or substantial stake in another company
- Power to borrow money other than debentures
- Power to invest funds of the company
- Power to grant loans or give guarantee or provide security in respect of such loans • Power to fill casual vacancies
- To make political contribution
- To appoint or remove key managerial personnel
- To take note of the disclosure of the director's interest and shareholding
- To approve quarterly, half yearly annual financial statements or results
- To diversify the business of the company
- To invite or accept or renew public deposits
- To review or change the terms and conditions of public deposit
- To appoint internal audit and secretarial auditor Restrictions on the power of the Board Section180 of the companies Act2013 provides the Restrictions on the powers od Board in the general meeting.

The following powers can be exercised by the board by passing a special resolution.

- To sell, lease or dispose off the company's undertaking wholly or substantially
- To extend time for the repayment of debt due by a director
- To remit or borrow money in excess of the paid up capital and free reserves of the company
- To invest otherwise in trust Securities the amount of compensation received by it as a resultof merger or amalgamation.
- To contribute to charitable funds and political parties in excess of five percent of its averageprofits for the three immediately preceding previous years.

Place of Board Meeting

Normally, Board Meetings are conducted at the registered office of the company. If the Meeting is at a venue other than the Registered Office / Corporate Office of the company, detailed location of such venue should be given in the notice of board meeting.

SHAREHOLDER MEETING, COMMITTEE MEETING, MANDATORY COMMITTEE MEETING

COMMITTEE MEETING:

Audit Committee. (Section 177)

Nomination and Remuneration Committee. [Section 178(1) to (4)]

Stakeholder Relationship Committee. [Section 178(5) to (8)]

Corporate Sustainability Responsibility Committee (Section 135)

1. AUDIT COMMITTEE:

- Meeting of Audit Committee:
- Audit Committee should meet at least four times in a year.
- Maximum Gap between 2 Meetings is 4 Months.
- Minimum 2 Director must be present.
- The frequency of audit committee is provided as per revised clause 49 of listed agreement (applicable from 1st october 2014)
- Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries.
- The Auditor of a company and the key managerial personnel shall have a right to heard in the meeting of audit committee when it consider the auditor's report but shall not have right to vote.

- vigil mechanism:

Every LISTED company and company, which has:

Accepted deposits from public;

Borrowed money from Bank and Public Financial Institution in excess of Rs. 50 crore shall establish a Vigil Mechanism.

The Mechanism shall, be established for director and employee to report genuine concerns and also provide for adequate safe guards against victimization of persons using such mechanism.

The companies which are required to constitute an audit committee shall oversee the vigil mechanism through the committee and if any of the members of the committee have a conflict of interest in a given case, they should recuse themselves and the others on the committee would deal with the matter on In case of other companies, the Board of directors shall nominate a director to play the role of audit committee for the purpose of vigil mechanism.

2. NOMINATION & REMUNERATION COMMITTEE:

The Chairman of the nomination and remuneration committee could be present at the Annual General Meeting, to answer the shareholders' queries.

No specific frequencyof meeting of nomination & remuneration committee provided under the act.

GESTATION PERIOD FOR AUDIT, NOMINATION & REMUNERATION COMMITTEE:

According to the Companies (Meeting and Powers of Board) Amendment Rules, 2014 companies which were not required to have Audit Committee under CA-1956, but required under CA-2013 shall constitute the same within one year from 12th June, 2014 or appointment of independent director,whichever is earlier.

Similarly, Public Companies which are required to have Nomination & Remuneration committee under CA-2013 shall constitute the same within one year from 12th June, 2014 or appointment of independent director, whichever is earlier.

STAKEHOLDERS RELATIONSHIP COMMITTEE:

Every company having more than 1000 (One thousand) Share Holders + Debenture Holders + Deposit Holders + Other Security Holders shall constitute a Stakeholders Relationship Committee, which shall consider & resolve the grievance of security holders.

Chairperson: Non-Executive Director

Members: As may be decided by the

Board–

4. CORPORATE SOCIAL RESPONSIBILITY COMMITTEE:

Every Company:

having net worth of Rs. 500 crore or

more, or turnover of Rs. 1000 crore or

more or

a net profit of Rs. 5 crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board

5. COMPOSITION OF COMMITTEE:

At least 3 (three) directors, out of which at least 1 (one) director shall be an Independent Director.

In case of UNLISTED PUBLIC COMPANY Not required to have an Independent Director, thecommittee can be constituted without an Independent Director.

In case of PRIVATE COMPANY, the committee can be constituted without an Independent Director. Further, in case of a Private Company having 2 (two) Directors, the committee can be constituted with only 2 (two) Directors.

ROLE AND COMPOSITION

Duties & Responsibilities of Board of Directors

The duties and responsibilities of the board of directors are as follows

1. **Trusteeship**:

The board of directors act as trustees to the property and welfare of the company. Hence, the board must use the company's property for the long-run gain of the company, but not for their personaluse.

2. **Formulation of Mission, Objection and Policies**:

Board of directors must see the long run view and have long run perspective of the company. The board formulates, reviews and reformulates the company's mission, objectives and policies which forms the basis for strategy formulation and implementation.

3. **Designing Organizational Structure**:

The board designs the structure of the organization based on the objectives, policies, environmental factors, degree of competition, role of quality, expectations of employees etc.

4. **Selection of Top Executives**:

The board should assume the responsibility of screening and selecting the top executives whocan formulate and implement the strategies. Chief executives are key personnel in the process of strategy implementation.

5. **Financial Sanctions**:

The important financial decisions like sanctioning of finances to various projects, reserves, distribution of profit to shareholders and repayment of loans and advances etc., are taken by the board.Further, the board reviews the financial performance of the company from time to time and reformulatesthe financial policies.

6. **Feed forward and Feedback**:

The board has to obtain information from the external environmental factors and feed that information forward to various key points in the company in order to prevent possible hurdles and mistakes in the process of achieving organizational goals. Further, the board also obtains the information from internal sources of the organization, and feeds it forward to prevent possible failures in decision- making by the top level executives.

The board also feeds the information back to the executives regarding their failures in decision- making with a view to avoid the recurrence of such mistakes. Thus, feedback of information helps the board to check and control the activities as board has the ultimate

responsibility for the success of the company.

7. **Link between the Company and External Environment**:

The board acts a vital and continuous link between the company and external environment like government, other companies, social and economic institutions etc.

Responsibilities of BOD to Shareholders

1. **Monitoring**:

- Return on Investment
- Security of Investment
- Dividend Policy
- Social Accountability

2. Select and elect CEO

(usually the president) and delegate to him all the duties to manage the company not specificallyreserved to the board.

3. **Evaluate the performance of the CEOs** and division presidents for performance and compensation.

4. Evaluate performance of CEOs and division presidents quarterly in comparison with competitors.

5. **Review and approve major corporate objectives**, policies, budgets and strategies as initiated by the CEO. In reviewing the strategic plan, confirm its directors, or propose changes of direction.

6. **Monitor, review and appraise managemen**t:

- Provide for orderly succession of CEOs
- Duties and limits of CEOs
- Selection of outside legal counsel
- Select all officers
- Compensation of officers

7. Monitor, review and approve employee relations.

8. Monitor company's performance.

9. Management of the board.

10. Compliance with all laws affecting the business.

Changes in Boards:

Changes in boards were forecasted and are as follows:

1. Boards will shrink in size — become working boards.

2. Boards will meet less often instead board committees will meet quite often.

3. Proportion of outside nominated and/or appointed members will increase.

4. Age of directors will remain constant.

5. Executive searches for directors — more diversified experience.

6. Less emphasis on stature and more-on experience, competence and commitment of directors.

7. Appraisal of directors based on quality and extent of contribution to the firm.

8. Directors will demand sufficient time and information to make decisions and will exercise power tochange the company's course when considered necessary.

9. More scrutiny of possible conflicts of interest.

10. Increase compensation of directors, based on increased time and talent commitment."

Responsibilities of Board of Directors – International Scenario

A research study conducted by Jeremy Bacon and James K. Brown on, "The Board of Directors:Perspectives and Practices in Nine Countries," shows that the director's responsibilities are about the same in all the nine countries surveyed. They are

- Long-range corporate objectives.
- Corporate strategies or long range plans for meeting objectives.
- Allocation of major resources.
- Major financial decisions.
- Mergers, acquisitions, divestment.
- Top Management Performance Appraisal.

Role & Responsibilities of Board of directors in Smaller companies

Normally, the responsibilities of board of directors in small size companies vary from those of larger companies. However, certain responsibilities of the boards in small and large companies are common. They are compliance with legal requirements, formulation, evaluation and reformulation of objectives, policies and strategies etc. The need for outside help can be critical in small companies.

- As a consultant
- Helping handle government regulations
- Public relationships
- Mediating conflicts between management and investors and regarding objectives, strategy, executive appointment and dismissal and decisions about assets and financial matters
- planning and other areas.

Role of Board of Directors in Strategic Management

Board of directors of many companies, in recent times, have actively engaged themselves in strategy formulation. Added to this, with the appointment of outsiders as directors in the boards, more boards are involved with linking strategy with the consequent corporate action.

These boards are supporting new strategies, mobilizing resources, protecting the

organization from outside threats and linking the company with powerful outsiders."

Boards actively involve themselves in formulating vital strategies like mergers, acquisition, takeover, expansion, diversification, backward and forward linkages, etc., evaluation of corporate strategy and performance, advising, guiding and directing the chief executives in strategic management, feeding the data and information back and forward to the top level executives in strategy formulation and implementation.

Thus, the board of directors plays a crucial role in formulation, implementation, evaluation and reformulation of strategies by constituting various committee and help in policy making.

POWERS OF THE BOARD

POWERS OF THE BOARD OF DIRECTORS

The Board of Directors plays a central role in the strategic guidance of the Company and the Group as well as in supervising the overall business activities, with powers of guidance in overall administration and of direct intervention in decisions necessary or useful to the pursuit the business purpose.

The Board of Directors is the competent body designated to take the most important decisions in economic/strategic terms or in terms of structural impact on operations or impact on control and guidance of the Company and the Group.

The Board of Directors provides the management of the company and is, to this end, invested in all the broader powers of administration, except for those that, according to law or by the Bylaws, belongs to the Shareholders' Meeting.

In particular, the Board of Directors is solely responsible for the competence in relation to most important economic and strategic decisions and in terms of structural incidence on the management, or functional to the exercise of the Company's monitoring and management activities, including - taking into account the decision to grant the powers to the Chief Executive Officer of 22 June 2020 - the powers relating to any resolution concerning the following matters, to be implemented by Pirelli and/or any other company (including any foreign unlisted company) which is subject to Pirelli's management and coordination power but excluding intercompany transactions, it being understood that such matters shall be subject to the approval of the Board of Directors of Pirelli, not only if the relevant threshold amount specified for each of such matters has been met, but also if any of the matters from (i) to (viii) are considered as a single act or series of coordinated acts (performed in the context of a common executive program or strategic project) exceeds the annual budget/business plan or (only with respect to items from (i) to (viii) below) is not included in or listed or covered in the annual budget/business plan:

(i) the receiving and granting of loans having a value exceeding Euro 200,000,000 and having a duration exceeding 12 months;

(ii) the issuance of financial instruments to be listed on regulated European or non-European markets having a value exceeding Euro 100,000,000 and their delisting;

(iii) the issuance of guarantees in favour of third parties for amounts exceeding Euro 100,000,000.- For the sake of clarity the issuance of guarantees in the interest of third parties other than the Company, its subsidiaries and its joint ventures shall be subject, in any case, to the approval of the Board of Directors of Pirelli;

(iv) the entering into derivative agreements (a) having a notional value exceeding Euro 250,000,000, and (b) other than those which have as sole purpose and/or effect the hedging of corporate risks (e.g., hedging of interest rates, hedging of exchange rates, hedging of raw materials). For the sake of clarity, the entering into speculative derivative agreements shall be subject, in any case, to the approval of the Board of Directors of Pirelli;

(v) the acquisition or sale of control or connection shareholdings in other companies having a value exceeding Euro 40,000,000 which entail the entering (or exiting) geographic and/or commodities markets;

(vi) the acquisition or sale of shareholdings other than those described in point (v) above for amounts exceeding Euro 40,000,000;

(vii) the acquisition or sale of businesses or business divisions having a strategic importance or, however, a value exceeding Euro 40,000,000;

(viii) the acquisition or sale of assets or of other activities having a strategic importance or, however, a total value exceeding Euro 40,000,000;

(ix) the entering into material transactions with related parties. For the purpose of this Annex, material transactions with related parties are those transactions with related parties which satisfy the conditions set out under annex 1 of the "Procedure for Related-Party Transactions" approved by Pirelli's board of directors on 3 November 2010, as amended from time to time;

(x) the definition of Pirelli's general policy on remuneration;

(xi) the determination, in compliance with Pirelli's internal policies and the applicable laws, of the remuneration of managing directors and of those directors who are vested with special offices and, where required, the allocation among the members of the board of directors of the aggregate remuneration approved by the shareholders' meeting;

(xii) the approval of strategic, industrial and financial plans of Pirelli and its group;

(xiii) the adoption of the rules for the corporate governance of Pirelli and definition of the group's corporate governance guidelines;

(xiv) the definition of the guidelines of the internal control system, including the appointment of a director responsible for supervising the internal control system, defining his tasks and powers;

(xv) any other matter which should be vested with the competence of the board of directors of a listed company pursuant to the corporate governance code of Borsa Italiana (Codice di Autodisciplina), as amended from time to time.

NOTICE, AGENDA, MINUTES

NOTICE

The notice of Board Meeting refers to a document that is sent to all directors of the company. This document informs the members about the venue, date, time, and agenda of the meeting. All types of companies are required to give notice at least 7 days before the actual day of the meeting.

Time Frame for Issuing Notice of Board Meeting

Under Companies Act, a Meeting of the Board should be called by giving a Notice of Board Meeting in writing to every Director of the Company. The notice of board meeting must be in writing and should be given to every Director by hand or by speed post or by registered post or by facsimile or by e-mail or by any other electronic means.

Notice convening a Meeting should be given at least seven days before the date of the Meeting, unless the Articles of Association prescribe a longer period. In case the company sends the Notice by speed post or by registered post, an additional two days should be added for the service of Notice.

It is a best practice to send the agenda of the meeting along with the notice of board meeting. However, if the agenda is not available, the notice of board meeting can be sent before sending the agenda of the board meeting.

Procedure for Issuing Notice of Board Meeting

Notice of board meeting should preferably be sent on the letter-head of the company. If it is notsent on the letter-head or if it is sent by e-mail or any other electronic means, a copy of the letter on theletterhead can be scanned and sent as an attachment.

In case its sent only through email and/or company letterhead is not available, it should be sent from an official email id of the company and in the header or footer of the email, the name of the company and complete address of its registered office together with all its particulars such as CorporateIdentification Number (CIN) must be specified.

Finally, the date of Notice, authority and name and designation of the person who is issuing the Notice and preferably, the phone number of the Company Secretary or any other senior officer who could be contacted by the Directors for any clarifications or arrangements must be mentioned in the notice.

Place of Board Meeting

Normally, Board Meetings are conducted at the registered office of the company. If the Meeting is at a venue other than the Registered Office / Corporate Office of the company, detailed location of such venue should be given in the notice of board meeting.

AGENDA AND MINUTES

Agendas are the documents that give those attending meetings prior notice of what is being discussed. Minutes are the formal record of what was decided at the meeting. They also tell you who
was present.

The chairperson opens the meeting. If it is quorate (attended by a 'quorum', the minimum number of members required to make the decisions of the meeting binding), the meeting can proceed.

The minutes of the previous meeting may be read at the meeting or 'taken as read' (in this case,members were required to have read the minutes before the meeting). The chairperson asks if all present agree that the minutes are correct. If everyone agrees, the minutes are approved and signed by the chairperson. If something is deemed incorrect, it is discussed and corrected before the minutes are approved.

Following this, the chairperson addresses the items on the

agenda.Most meetings proceed as follows:

- The chairperson presides over the meeting, remaining as objective as possible;

- Before a decision is made, an item is thoroughly discussed. The chairperson decides when to stop discussion and proceed to the next item;
- Only one member may speak at a time;
- Before a decision is made, members must vote. This is done by a show of hands or by ballot;
- If an equal number of people are divided on a decision, the chairperson may make the final decision;
- If someone behaves inappropriately, the chairperson may ask him/her to leave;
- Once all items on the agenda have been discussed, the date of the next meeting is decided and the meeting is closed.

MINUTES

The minutes are a summary of the matters discussed by the committee, as well as any actions taken, or decisions made, with regard to the items on the agenda.

The minutes are usually taken and compiled by the secretary, and include the date and place of the meeting, as well as the names of all committee members (present or absent).

AGENDA

The agenda is a list of meeting activities in the order in which they should be discussed. Items may, however, be discussed ad hoc. The agenda is compiled by the secretary in consultation with the chairperson.

The minutes are a record of matters discussed and decisions made, as per the items on the agenda.

Below is an example of a typical layout.

Minutes of the meeting of the

[Name of group or committee] held at [venue] on [date] at

[time]. Present: [The names of all who attended the

meeting.]

Apologies: [The names of those who have excused themselves from the meeting. The cause of absenceis rarely listed.]

Absent: [Those who are absent, but have not excused themselves.]

1. Approval of the agenda: The agenda as distributed was unanimously approved.

2. Approval of minutes: [If there are no amendments to the minutes of the previous meeting:]

The minutes of the meeting on [date of previous meeting] were approved. [If the minutes are amended, the changes are recorded and approved. The amendments are indicated in the

minutes of thecurrent meeting.]

Matters arising from previous meeting:
New business: [Items listed as on the agenda]
Announcements
Date, time, and place of next meeting.

RESOLUTION

A company resolution is a legally binding decision made by directors or shareholders. If amajority vote is achieved in favour of any proposed resolution, the resolution is 'passed'.

Shareholders can pass ordinary resolutions or special resolutions at general meetings. Alternatively, certain resolutions can be passed in writing, without the need to call and attend a general meeting.

All types of collective decisions of directors are simply referred to as 'resolutions' or 'board resolutions'. These decisions can be made at board meetings or in writing.

Kinds of Resolutions

What are company resolutions?

A company resolution is a legally binding decision made by directors or shareholders. If a majority vote is achieved in favour of any proposed resolution, the resolution is 'passed'.

Shareholders can pass ordinary resolutions or special resolutions at general meetings. Alternatively, certain resolutions can be passed in writing, without the need to call and attend a generalmeeting.

All types of collective decisions of directors are simply referred to as 'resolutions' or 'board resolutions'. These decisions can be made at board meetings or in writing.

Types of resolutions

There are 3 types of resolutions available to limited company shareholders:

Ordinary resolutions – Passed by a simple majority (above 50%) of shareholders' votes. Members casttheir votes on a show of hands or poll. Used for all types of decisions, unless the Companies Act, the articles of association, and/or a shareholders' agreement stipulates the need for a special resolution. The majority of ordinary resolutions must be filed with Companies House.

Special resolutions – Passed by a 75% majority of shareholders' votes at a general meeting. Memberscast their votes on a show of hands or poll. Used for extraordinary business decisions that cannot be passed by an ordinary resolution.

Written resolutions – Used when a general meeting is not required to pass an ordinary resolution or special resolution. Any written ordinary resolution must be passed by a simple majority of shareholders' votes. Written special resolutions require a 75% majority vote.

Shareholders cast their votes by signing the written resolution (if it is distributed on paper) or indicating their decision via email or online (if it is distributed by email on on a website).

SECRETARIAL DUTIES IN MEETINGS.

Role of a company secretary:

A company secretary plays a largely supportive role, taking care of important tasks such as general administration, shareholder communication, corporate governance, and statutory compliance/filing of accounts. In short, the secretary acts as a bridge between the company, the shareholders and Companies House, ensuring all the relevant information is shared in compliance, on time and efficiently.

The role of company secretary involves lots of different tasks, and so an organised individual with prior experience in an administrative role is often a preferred candidate.

Company secretary duties

A company secretary will take care of a number of administrative tasks, including:

Filing confirmation statements

A company secretary will take over this responsibility from the limited company director. This means they are responsible for the completion and timely submission of the company's confirmation statement (previously know as annual return) and full accounts by the statutory deadline.

Keeping Companies House updated of changes:

Need to let Companies House know if the official details change about your company. These details include who the shareholders are and their share capital, the Directors details and any PSC (Persons of Significant Control), and the registered office address. The company secretary has to communicate these changes to Companies House in a timely manner. This is also known as event-drivenfiling as it happens after the event. They should also ensure these changes are on company communications such as your website or stationery.

Updating the Company's Statutory Books

It's really important to keep a record of any changes to the structure of the company. These records are also known the company's statutory registers, e.g. the Register of Directors and the Registerof Members. Should you ever decide to sell your company you will need to show these records as part of the transaction.

Communication with shareholders

As previously mentioned, the company secretary acts as the bridge between shareholders and the company. This means that they will be communicating any important announcements. The Secretary will be sending out news and liaising with shareholders to organise shareholder

meetings and the company's Annual General Meeting (AGM).

Maintaining paperwork

A company secretary is responsible for the security and accuracy of important company documents, which include the certificate of incorporation, share certificates and other important ones.

Signing paperwork

The duty of signing legal documents on behalf of the company director may sometimes fall to the company secretary. This can be anything from signing cheques and bank documents to other vital documents.

Compliance

The company secretary should take time to ensure the company remains compliant with legislation outlined in Companies Act 2006 at all times. They also need to keep up to date with any changes in compliance, such as the PSC register which came into effect in 2017.

Risks of being a company secretary

If you are considering becoming a company secretary for a small company or training to becomea chartered secretary, you should be aware of the pressure that can accompany the role.

A company secretary has legal requirements and responsibilities, such as compliance, paperworkand financial matters.If you are the business owner and are considering who to appoint as a company secretary, it is important that you select someone trustworthy and capable for the job.

According to the Companies Act, chartered secretaries of large public companies can face prosecution if they are neglectful or willingly act in violation of the law.

Company secretaries in smaller companies are unlikely to face the same severity of consequences, given that these roles are often loosely defined. If you are considering becoming a company secretary, you should be aware of the pressure that can sometimes accompany the role, along with the risk of joint liability in the event that there are breaches of the Companies Act 2006; for example, failing to file a confirmation statement can result in large penalties and possible criminal charges.

RULES RELATING TO ANNUAL GENERAL MEETING

Annual General Meeting (AGM) is a yearly meeting of stockholders or shareholders, members of company, firm and organizations. Annual General Meeting is held every financial year and it is mandatory for everyone. In AGM functions like reviewing company account, approving audited accounts, elections, fiscal records of the past year are discussed.

As per Companies Act, an annual general meeting must be held by every company once a year without fail. There cannot be a gap of more than 15 months between two AGMs.

However, the first AGM of a company can be held at any date, within a period of 18 months, since the date of incorporation of the company. Annual general meetings help members understand thecompany's rate of growth and potential for improvement.

An AGM gives insights into what steps made the company more successful and which steps caused loss. it helps the members and the board to decide the future course of action. An AGM must beheld on a working day.

If the Government declares a public holiday on the day of the meeting, it will be considered a working day by the members attending the meeting. The annual general meeting can be held at the registered office of the company.

Legal Requirements for holding an Annual General Meeting

Legally, a notice period of 21 days must be given to all the members before the meeting. However, there is an exception to this rule. If all the voting members consent, the meeting may be heldat an earlier date. Further, the following documents are also to be sent with the notice. Articles of Association, company bylaws, and jurisdiction specifies the rules that govern annual general meeting.

- Copy of annual accounts of the company
- Director's report on the company's position for the given year
- Report by the Auditor of the annual accounts.
- Quorum for Annual General Meeting
- Unless the articles of the company state otherwise, the quorum for an Annual General Meetingis as follows
- Public companies – At least 5 members must be present.
- Other companies – At least 2 members must be present within half an hour of the commencement of the meeting.

Issues Undertaken at Annual General Meeting

The functions of business undertaken at a typical annual general meeting are listed as follows:

- The declaration of dividend among shareholders
- Consideration of annual accounts
- Discussion of the director's report and the auditor's report
- Appointment and fixing of the remuneration of the statutory auditors
- Appointing replacement directors in place of existing directors retiring
- To address any issue other than the five mentioned above, a special notice regarding the issue isto be served to members before the meeting. This is sent with the notice for calling the meeting.

UNIT V

WINDING UP

MODES OF WINDING UP

WINDING UP

Winding up is the process of dissolving a company. While winding up, a company ceases to do business as usual. Its sole purpose is to sell off stock, pay off creditors, and distribute any remaining assets to partners or shareholders.

MODES OF WINDING UP OF A COMPANY:

A. Compulsory Winding-Up:

It takes place when a company is directed to be wound-up by an order of the

Court.Grounds for Compulsory Winding-up (Sec. 433):

A company may be wound-up by the Court under the following cases:

(i) Special Resolution of the Company:

If the company has, by special resolution, resolved that the Company be wound-up by the Court;

(ii) Default:

If a default is made in delivering the statutory report of the Registrar of Companies or in holdingthe statutory meeting of the company, the court may make a winding-up order;

(iii) Not commencing or suspending the Company:

If the company does not commence its business within a year from its incorporation, or suspendsits business for a whole year;

(iv) Reduction of Members:

If the number of members falls below seven in case of a public company or below two in case ofa private company;

(v) Inability to pay Debts:

If the company is unable to pay its debts;

(vi) The Just and Equitable Clause:

If the Court is of opinion that it is just and equitable that the company should be

wound-up.Petition:

i.e., who can apply for Winding-up? (Sec. 439)

A petition for the winding-up of a company may be presented by any one of the following entities:

(a) By the Company [Sec. 439(1) (a)];

(b) By any Creditor [Sec. 439(1) (b)];

(c) By any Contributory [Sec. 439(1) (c)];

(d) By a Registrar [Sec. 439(1)(e)]; and

(e) By any person authorized by the Central Government [Sec. 439(1) (f)].

Commencement of Winding-Up:

The winding-up of a company by the Court is deemed to commence from the time of the presentation of the petition for winding-up (Sec. 441). Where there is a resolution for voluntary winding-up, before the presentation of the petition to Court, the winding-up is deemed to commence from the date of the resolution. But the Court may direct otherwise in cases of fraud and mistake.

Powers of Court on Hearing Petition (Sec. 443):

The court may, on hearing a petition:

(a) Dismiss it with or without costs; or

(b) Adjourn the hearing conditionally or unconditionally; or

(c) Make any interim order that it thinks fit; or

(d) Make an order for winding-up of the company with or without costs or any other orderas it thinks fit.

Consequences of Winding-up Order:

If the court makes an order for winding-up, its consequences date back to the commencement of winding- up.

The other consequences of winding-up by the Court are:

(a) Intimation to official liquidator and Registrar (Sec. 444);

(b) Copy of Winding-up order to be filed with the Registrar;

(c) Order for winding-up deemed to be notice of discharge [Sec. 445(2)];

(d) Suits stayed [Sec. 446(1)];

(e) Powers of the Court [Sec. 446(2)];

(f) Effect of winding-up order (Sec. 447);

(g) Official Liquidator to be liquidator (Sec. 449).

Procedure of Winding-Up Order by the Court [Official Liquidator (Sec. 448)]:Appointment:

The Companies Act, 1956, provides that in each High Court there must be attached an officer known as the Official Liquidator appointed by the Central Government. There may also be Deputy or Assistant Official Liquidator. Upon the presentation of a petition for winding-up, the Court may appointthe official liquidator as the provisional liquidator. When the winding-up order is passed, the official liquidator becomes the liquidator of the company (Sec. 449).

Powers of the Liquidators (Sec. 457):

(1) The liquidator, in a winding-up by the Court, has power to do the following with the sanctionof the Court:

(a) To institute or defend any suit, prosecution or other legal proceedings, civil or criminal,in the name and on behalf of company;

(b) To carry on the business of the company so far as may be necessary for the beneficial winding-up of the company;

(c) To sell the immovable property and actionable claims of the company by public auctionor private contract, with power to transfer the whole thereof to any person or body corporateor to sell to the same in parcels;

(d) To raise on the security of the assets of the company any money requisites;

(e) To do all such other things as may be necessary for winding-up the affairs of the companyand distributing its assets.

According to Sec. 546, the liquidator can pay any class of creditors in full, make any compromise or arrangement with creditors; and compromise any call or liability, with the sanction of the Court.

The liquidator can disclaim any onerous property or unprofitable contract.

(2) The liquidator in a winding-up by the court has power to do the following things, withouttaking special permission from the court:

(a) To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal;

(b) To inspect the records and returns of the company on the files of the Registrar without payment of any fee;

(c) To prove, rank and claim in the insolvency of any contributory for any balance against his estate, and to receive dividends in the insolvency;

(d) To draw, accept make and endorse any bill of exchange, hundi or promissory note in thename and on behalf of the company;

(e) To take out, in his official name, letters of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of thecompany;

(f) To appoint an agent to do any business which the liquidator is unable to do himself.

The Court can limit or modify the exercise of any of the powers of the liquidator enumeratedunder (2) above.

Duties of Liquidator:

The duties of a liquidator are enumerated:

(i) Proceeding in Winding-up:

Sec. 451(1) states that the liquidator shall conduct the proceedings in winding-up the

companyand perform such duties as the Court may impose.

(ii) Report:

After receipt of the Statement of Affairs of the company the liquidator must submit a preliminaryreport to the Court not later than 6 months from the date of the order of winding-up.

(iii) Additional Reports:

ec. 455(2) also provides that the official liquidator may make, if he thinks fit, further report stating the manner in which the company was promoted or formed. He may also state if any fraud has been committed by any person relating to formation or any other matters which it is desirable to bring to the notice of the Court.

(iv) Custody of Company's Property:

Sec. 456 (1) states that where a winding-up order has been made or where a provisional liquidator has been appointed, the liquidator, or the provisional liquidator, as the case may be, shall take into his custody all the property, affects and actionable claims to which the company is entitled.

(v) Control of Powers:

Sec. 460(1) provides that the liquidator shall, in the administration of the asset of the company and the distribution thereof among creditors, have regard to any directions which may be given by the committee of inspection.

(vi) Meeting of Creditors and Contributories:

According to Sec. 460(3), the liquidator may summon general meeting of the creditors/contributories as soon as he thinks fit in order to ascertain their wishes. He shall summon such meeting at such times as the creditors/contributories may, by direct resolution or whenever requested in writing, to do so by not less than 1/10th in value of creditors/contributories, as the case may be.

(vii) Directions from the Court:

Sec. 460(4) (4) provides that the liquidator may apply to the Court for directions in relation to any particular matter arising in a winding-up.

(viii) Proper Books:

Sec. 461(1) states that the liquidator shall keep proper books for making entries or recording minutes of the proceeding at meetings and such other matters as may be prescribed.

(ix) Audit of Accounts:

Sec. 462(1) also provides that the liquidator shall, at such times as may be prescribed but at leasttwice each year during his tenure of office, present to the court an account of his receipts and payments as liquidators. The account must be in the prescribed form, shall be made in duplicate and duly verified[Sec. 462(2)].

(x) Appointment of Committee of Inspection:

Sec. 464(1) (b) provides that the liquidator shall, within two months from the date of duration by the Court, convene a meeting of the company's creditors to determine the members of the committeeof inspection.

Statement of Affairs:

When the liquidator has been appointed, a Statement of Affairs of the company is to be made tohim in the prescribed form, verified by an affidavit, and containing particulars regarding the assets, liabilities, names and addresses of the creditors, etc.

The statement shall be verified by a Director and the Manager, Secretary, or other chief officer of the company. The Statement of Affairs is required in both compulsory and voluntary winding-up [Section 454 and 511 A].

Statement of Affairs Contains:

(i) The assets of the company (showing separately cash in hand, cash at bank and negotiablesecurities);

(ii) Names, addresses, occupations of its creditors (showing separately the secured and unsecured debts);

(iii) Its debts and liabilities;

(iv) In case of secured debts, particulars of the securities held by the creditors, their value and dates on which they were given.

(v) The debts due to the company and names and addresses of persons from whom they aredue and the amount likely to be realized.

(vi) And any such further information as may be required by the official liquidators [Sec. 454(1)].

According to Sec. 455, the official liquidator must, after the receipts of the statement, within 6 months (or such extended time as may be allowed by the Court) of the order, submit to the Court a preliminary report as to the amount of capital issued, subscribed and paid-up, and the estimated amountsof the company's assets and liabilities if the company has failed, the causes of its failure and whether, in his opinion, any further enquiry is desirable.

Winding-Up of Unregistered Companies:

According to Sec. 582, the expression 'unregistered company:

(a) Shall not include:

(i) A railway company incorporated by any Act of Parliament of the U.K.;

(ii) A company registered under this Act; or

(iii) A Company registered under any previous companies' law and not being a company the registered office whereof was in Burma (Myanmar), Aden, or Pakistan immediately before the separation of that country from India, and

(b) Save as aforesaid, shall include any partnership, association or company consisting of more than 7 members at that time when the petition for winding-up the partnership, association, or company, as thecase may be, is presented before the Court.

An unregistered company can wind-up under the Companies Act. The procedure is similar to thecompulsory winding-up with certain minor exceptions. Such companies cannot be wound-up voluntarily. If a foreign company, carrying on business in India, ceases to do so, it can be wound-up according to the procedure applicable to unregistered companies.

WINDING UP BY THE TRIBUNAL

Winding up of a company is the process whereby the company's life comes to an end and its assets are administered for the benefit of its creditors and members. An administrator, called liquidator is appointed and he takes control of the company assets pays debts and finally distributes any surplus among the members in accordance their respective rights.

In the words of Pennington winding up is the procedure by which the affairs and management of company's assets are taken from the directors, its properties are managed by a liquidator, and its debtsand liabilities are discharged out of the proceeds of realisation and any surplus of assets remaining is returned to its members or shareholders. At the end of the winding up the Company it will have no assetsor liabilities, and it will take the formal step of dissolution.

Winding up of a company can be due to a number of reasons such as hardship, bankruptcy etc.The winding up of a company can be initiated intentionally by the shareholders or creditors or by a Tribunal.

The court on hearing the winding up application can either expel it or to make an interim requestas it thinks suitable. It may even appoint a liquidator for the company till the application has been passed.

Winding up order may be given by the court with or without cost. Thus, it a mechanism wherebythe assets of the company are utilized for the advantage of its shareholders and creditors. The person who manages the entire assets of the company when it is in winding up position is called as called Liquidator.

With the enactment of the **Insolvency and Bankruptcy Code, 2016**, it has become difficult to apply provisions simultaneously and to decide precedence. The IBC has also included a lot of amendments to the Act. The Code provides a constructive framework for companies. With the passing of the Insolvency and Bankruptcy Code, there are now two modes of winding up; either underthe Companies Act of 2013 or the IBC Code of 2016. Under Section 2(94A) winding up under this Act,
i.e. the Companies Act or the Insolvency and Bankruptcy Code, 2016.

Winding up Under Company's Act, 2013

Prior to the Insolvency and Bankruptcy Code, there were two forms of winding up, first being the voluntary winding up from sections 304 to 323 of Companies Act and the second being winding upby the tribunal? The first has been deleted with the passing of the code and presently, compulsory winding up, i.e. winding up but tribunal is the existing method under the 2013 Act.

Winding Up by the National Company Law Tribunal (Compulsory Winding Up)

Winding-up by the Tribunal, may be conducted if any of the circumstances mentioned in section 271 are fulfilled. The Tribunal can order for the winding up of the company on an application by any ofthe persons who are authorized under section 272.

A company can be wound up by the order of the tribunal;

1. If the company, by special resolution has resolved that the company should be wound upby the Tribunal;

2. If the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;

3. If an application is made by the Registrar or any other person who authorized by

the Central Government, and the Tribunal is of the opinion that the affairs of the company havebeen conducted in a fraudulent manner or

If the company was designed for fraudulent and unlawful purpose or

If the persons in the management of its affairs of the company are guilty of fraud, misfeasance or misconduct and in interest of justice it should be wound up;

1. The company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or

2. The company would be wound up if Tribunal is of the opinion that it is just and equitablethat it should no longer remain in function.

With the passing of Insolvency and Bankruptcy Code, grounds of inability to pay debt and winding up under have been deleted.

Winding Up by Special Resolution (Section 271)

The company special resolution can decide that it would be wound up by the Tribunal. The resolution can be passed for any reason. However, Tribunal must see that the winding up is not opposedto public interest or the interest of the company as a whole. The Tribunal is also to take into account thepossibility of the company to have a financial revival, when the company is incurring loss that led the company to pass special resolution for winding up. This clause is based on the premise that, the shareholders being corporate entities have the requisite skill to judge and decide as to whether or not thecompany should go out of existence. It is the shareholders who had formed themselves into the company and, therefore, it is for them to dissolve the company. The directors are not entitled to file a winding uppetition without the authority of the general meeting. The directors may file this application, subject tothe ratification of proposal

The company has to call general body meeting and pass a special resolution including therein specifically their resolve for winding up by Tribunal and setting out grounds in the explanatory statement attached thereon explaining why winding up of the company is needed. It may be noted that the court has the discretion and is not under any obligation to order winding up.

Company acting against the interests of sovereignty and integrity of India or of the security of theState or even of the friendly relations with foreign States(271):

The grounds like acting against the interests of sovereignty and integrity of India or of the security of the State or even of the friendly relations with foreign States are due to the geo-political scene and its contours, the remaining grounds of public order, decency and morality, do not appear to belong to the same strain. The other grounds remain a point of contention as the corporations if engage in public indecency there are regulatory agencies which should be governing them.

Company Affairs conducted in fraudulent and unlawful manner

Any person authorized by the Central Government or the Registrar can apply to the Tribunal forwinding up proceedings. The Tribunal may order winding up on grounds such as

The affairs and management of the company is being conducted in a fraudulent

manner;The company was formed for unlawful or fraudulent purpose; or

The persons concerned in the formation of the company or management of its affairs have beenguilty of fraud, misfeasance or misconduct in connection therewith.

Company has made a default in filing with the Registrar its financial statements:

Section 271(d) provides a ground of winding up of company in cases where it defaults in filing of the annual financial statements or annual returns. It is an indispensable attribute to ensure that non- accountability and indiscipline in running the management of the company is not rewarded and Government companies are no exceptions.

If default is made in respect of five consecutive financial years, the clause of winding up can be invoked. There can be default in either financial statements or annual return. Thus, if annual return hasbeen filed for five consecutive financial years but financial statements not filed regularly, this is applicable. The converse is also applicable. The crux and the primal test is that there should have been

a default in either of two cases for consecutive five financial years. Further emphasis has to be on 'immediately preceding five consecutive' years.

Just and Equitable

The Tribunal may also order for the winding up of a company if it is of the view that company should be wound up for justice and equity. This is a completely separate and independent ground for a winding up order. For this to be applicable, it is not pertinent that the circumstances should be corresponding to those which justify an order on one of the six grounds. In exercising its power on thisground, the Tribunal shall give due weightage to the interest of the company, its employees, creditors and shareholders and the interest of the general public. The relief is like a last resort when the other remedies are not efficacious enough to protect the general interests of the company.

Petitioners for Winding up of Company

According to Section 272 by the Companies Act, 2013 the following individuals have the authority to file for a compulsory winding up procedure under Companies Act.

Company as Petitioner (272(a)):

The Company may present a petition for Compulsory Winding Up if a special resolution has been passed to that effect[xi].

Contributory or contributories as Petitioners (272(b)):

A contributory shall be entitled to present the petition only if the shares were originally allottedto him; or he has held his shares for at least 6 months during the 18 months immediately preceding the commencement of winding up; or the shares have been devolved on him by reason of the death of a member. A contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares; or the company may have no assets at all; or the company may have no surplus assets left for distribution among the shareholders after the payment of its liabilities.

Registrar (272(d)):

The Registrar is allowed to present a petition for winding up only on the following grounds;

1. Company acting against the security of the country etc.

2. Where the affairs of the company have been conducted fraudulently

3. Non-filing of financial statements or annual returns by the company

The Registrar shall obtain the previous approval of the Central Government before making a petition for winding up. Further, the Central Government shall not grant the approval to the Registrar unless the company has been given a reasonable opportunity of making representations.

The Central Government or a State Government (272 (e) and (f)):

Any person authorised by the central government or**,** if the petition is made on the ground that the company has acted against the interests of the sovereignty and integrity of India; or the security of the State; or friendly relations with foreign States; or public order; or decency; or morality.

A copy of every petition made to the Tribunal for winding up of a company shall also be filed with the Registrar. Within 60 days of receipt of petition, the Registrar shall submit his views to the Tribunal. Every petition shall be filed according to Form No. NCLT. 1. Other attachments are to be accompanied in Form No. NCLT. 2. The verification of the same has to be done according to an affidavitunder Form No. NCLT. 6.

Procedure for Winding up of Company

The petition to the Tribunal for the winding up of a company shall be presented by the company, or any creditor or creditors, any person authorized by the Central Government in that behalf, or by the Central Govt. or state govt.. The winding up of a company by tribunal is deemed to begin at the time ofthe filing of petition for winding up. On receipt of a petition for winding up under section 272, the Tribunal may pass any of the following orders, namely:

1. Dismiss it, with or without costs;

2. Make any interim order;

3. Appoint a provisional liquidator of the company during the pendency of winding uppetition;

4. Make an order for the winding up of the company with or without costs; or any otherorder as it thinks fit.

The order has to be made within 90 days from the date of presentation of the petition. The Tribunal shall direct the company the opposite party before appointing a provisional liquidator and givethem opportunity to make their representations and file any objections if any. Such shall be filed according to Form No. NCLT. 5.

Since the powers of the tribunal are discretionary, if it is satisfies that a prima facie case exists for winding up, the tribunal may direct the company which is bound to be wound up, to file its objections along with a statement of affairs within 30 days of order under section 274 of The Act. The tribunal shallalso appoint a provisional liquidator or a company liquidator at the time of passing an order for windingup of the company. Such a liquidator on appointment under section 275 of the Act, such shall file a declaration within 7 days from the date of appointment if he has any conflicting interests in respect of his appointment.

If an order for winding up has been passed by the tribunal under section 273 (1) (d) , then the directors and such other officers of the company are mandated by law to submit the completed and audited books of accounts of the company within 30 days of such order being passed by the tribunal tothe provisional liquidator. If the same is contravened, the director shall

be personally liable for fine andimprisonment under the Act.

Once the tribunal appoints a provisional liquidator or passes an order for winding up, the tribunal within 7 days from the date of passing such order, shall intimate the same to the liquidator and the registrar. The registrar has the duty to endorse and notify about the order in the official gazette. If the company is a listed company, then the registrar has to notify it in the stock exchange where the securitiesof the company are listed. The liquidator has to submit a report to the tribunal within 60 days of passing of order of winding up. The report must consist of particulars such as the nature and details of the assets of the company, valuation of the assets, amount of capital issues etc. The liquidator may also have to make a report on the feasibility of the commercial aspects of the company and make any further reportsas he deems fit.

While passing the order of winding up, the tribunal shall pass an order to set up an advisory committee to advice the liquidator and report to the tribunal as directed. It shall consist of 12 members of which are shareholders, contributories and creditors of the company. The company liquidator shall convene a meeting of creditors and contributories of the company within 30 days from the date of order of winding up so that the tribunal can decide the composition of the committee. This committee shall beheaded by the Company Liquidator.

Within 3 weeks of such order of winding up, the liquidator shall also make an application to the tribunal to constitute a Winding up committee to assist and monitor the process of liquidation. The liquidator shall be the convener. He has the duty to place monthly reports before the tribunal and preparea draft final report for approval of the committee. The final report will be submitted by the Company liquidator to the tribunal to pass dissolution order for the company.

The tribunal after careful scrutiny of the report of the company liquidator, shall fix a time withinwhich the entire proceedings shall be completed and the company is to dissolved. It may also order the sale of the company. If the sale has to be affected a sale committee can be appointed to assist the company liquidator.

The company liquidator on the order of winding up of company shall take into his custody and control all the property, actionable claims to which the company is entitled. The property of the company shall be deemed to be in the custody of the tribunal from the date of passing of winding up order. Alongwith this, he has to submit periodic reports to the tribunal to update and keep the tribunal in loop of theprogress.

The liquidator is mandated by law under Section 294 to present the tribunal with account of receipts and payments of the company. These will then go through audit and one copy of the audit has to be given to the tribunal and to the registrar by the company liquidator. The summary of the audit shallalso be given to every creditor and every contributory through post.

The next stage called as set off is conducted whereby the contributories are called upon to pay debt .The tribunal orders the contributories to pay to the extent of their liabilities. Further it may even issue summons to persons who are suspected of having company property and examine such person summoned, reduce his answers to writing and require him to sign them. Apart from this, if any other person has some property of the company, a report of the same has to be filed by the Liquidator.

Within 60 days of his appointment, the official liquidator shall dispose all assets of the company. He shall serve a notice to the debtors to submit any outstanding amount. The amount that hereceives has to be deposited in RBI and the company account money in no circumstance be deposited in his own private accounts. He shall also call the creditors to prove their claims within 30 days of his appointment. Upon the claims, he shall prepare a list and each creditor shall be communicated as to whether their claims have been accepted or rejected. If any creditor is

aggrieved he can appeal to the central government. The official liquidator shall pay to those creditors whose claims have been enlistedand accepted.

After all the formalities, once the affairs of the company have been completely wound up, the company liquidator shall will submit a report to the central government and tribunal and make an application to the tribunal for dissolution of such company. The tribunal shall make an order that the company be dissolved from the date of the order and the company shall be dissolved accordingly. The registrar will strike off the company from the register of companies and publish a notification that the same has been removed. A copy of the order will be sent to the registrar by the company liquidator within 30 days and it is recorded in the register.

Every invoice, order or business letter when the company is being wound up should contain a statement that the company is being wound up. When the affairs of the company have been completely wound up, and it is about to be dissolved, its books and papers have to be completely disposed in the manner as the tribunal directs.

If any dissolution has been conducted with a malafide purpose, the tribunal has the power to declare such dissolution null and void. However, this must be passed within two years of the original dissolution.

VOLUNTARY WINDING UP

Voluntary Winding-Up:

According to Sec. 484 of the Companies Act, a company can be wound-up voluntarily under the following circumstances:

(1) By an Ordinary Resolution (passed in a general meeting in the following cases):

(a) Where the duration of the company was fixed by the articles and the period has expired;and

(b) Where the articles provided for winding-up on the occurrence of any event and thespecified event has occurred.

(2) By a Special Resolution (passed by the members in all other cases):

When a resolution is passed for voluntary winding-up it must be notified to the public by an advertisement in the Official Gazette and in a local newspaper (Sec. 485).

Types of Voluntary Winding-Up:

Voluntary winding-up is of two types:

(a) Members' Voluntary Winding-up; and

(b) Creditors' Voluntary Winding-up.

(a) Members' Voluntary Winding-up:

If the company is, at the time of winding-up, a solvent company, i.e., able to pay its debts and the directors make a declaration to that effect; it is called a Members' Voluntary Winding-up. The declaration must be verified by an affidavit.

The declaration must be:

(a) Made within the five weeks immediately preceding the date of passing of the resolution of winding-up by the company and delivered to the Registrar for registration before that date; and

(b) Accompanied by a copy of the report of the auditors of the company on the Profit and Loss Account of the company from the date of the last Profit and Loss Account to the latest practicable date immediately before the declaration of solvency, the Balance Sheet of the company; and a statement of the company's assets and liabilities as on the last mentioned date.

The Members' Voluntary Winding up is done by the following successive steps:

(i) Declaration of solvency;

(ii) Statutory Declaration to the Registrar;

(iii) A resolution in general meeting of the company within 5 weeks of declaration ofsolvency;

(iv) Appointment of Liquidator;

(v) Collecting the company's assets, pay the liabilities of the company and pay the balanceof the proceeds to the contributories.

(b) Creditors' Voluntary Winding Up:

If the declaration of solvency is not made and filed with the Registrar, it may be presumed that the company is insolvent. In that case, the company must call a meeting of its creditors (for the day or the day next following the day fixed for the company's general meeting) for passing the resolution for winding-up.

The Creditors' Voluntary Winding-up is done by the following successive steps:

(i) A resolution for the winding up of the company in a general meeting of the company.

(ii) On the same day or the following day there must be a meeting of the creditors and a listof creditors must be furnished by the Directors.

(iii) A liquidator or liquidators are appointed by the meeting of members and the meeting ofthe creditors.

(iv) A committee of inspection.

(v) The work of winding-up according to statute.

(c) Voluntary Winding-up under the Supervision of Court:

At any time after a company has passed a resolution for voluntary winding-up, the Court may make an order that the voluntary winding-up shall continue but subject to the supervision of the court (Sec. 522). A supervision order is usually made for the protection of the creditors and contributories ofthe company. A petition for the continuance of a voluntary winding-up subject to the supervision of theCourt is deemed to be a petition for winding-up by the Court (Sec. 523).

Consequences of Winding-Up:

The consequences of winding-up may be explained under the following heads:

(a) Consequences as to Shareholders:

A shareholder is liable to pay the full amount up to the face value of the shares held by him. Theliability of the shareholder on this account continues even after the company goes into liquidation although he is, in this case, unknown as a contributory. The liability of a present contributory is the amount remaining unpaid on the shares held by him. A past contributory can only be called upon to payif the present contributory is unable to pay.

(b) Consequences as to Creditors:

A company often goes into compulsory winding-up when it is unable to pay its debts. But it maybe wound-up on other grounds as well even though it is solvent. Where a solvent company is wound- up, all claims of its creditors, when proved, are fully met. When a company is insolvent and is wound- up, the same rule prevails as in the case of Law of Insolvency (Sec. 529). Creditors are of two types, viz. Secured and Unsecured.

An unsecured creditor may:

(1) Rely on security and ignore the liquidation, or

(2) Value his security and prove for the deficit, or

(3) Surrender his security and prove for the whole debt.

But as regards unsecured creditors and/or debts of an insolvent company, preferential paymentsare made first, and then other debts are paid pari passu.

The order of priority in paying-off debts in a winding-up is as:

(a) Secured Creditors;

(b) Costs and charges for winding-up;

(c) Preferential debts;

(d) Floating charges;

(e) Unsecured creditors.

At the same time, if there is any surplus, the same is returned first to preference shareholders andthen to equity shareholders.

(c) Consequences as to Proceedings against the Company:

If a winding-up order has been made or the official liquidator has been appointed as provisionalliquidator, no suit or other legal proceedings against the company can be commenced except by the leaveof the Court. Similarly, if a suit is pending against the company at the date of the winding-up order, it cannot be proceeded with against the company, except by the leave of the Court [Sec. 446(1)].

(d) Consequences as to Costs:

According to Sec. 476, if assets are insufficient to satisfy liabilities, the Court may order for payment for the costs, charges and expenses of the winding-up out of assets. The payment must be made in such order of priority, inter se, as the Court thinks just. Similarly, all costs, charges and expenses properly incurred in a voluntary winding-up, including the remuneration of the liquidator, are paid out of the assets of the company in priority to all other claims. The payment is, however, subject to the rightsof secured creditors (Sec. 520).

NCLT

NCLT – UNDERSTANDING NATIONAL COMPANY LAW TRIBUNAL AND ITS POWER

National Company Law Tribunal is the outcome of the Eradi Committee. NCLT was intended to be introduced in the Indian legal system in 2002 under the framework of Companies Act, 1956 however, due to the litigation with respect to the constitutional validity of NCLT which went for over 10 years, therefore, it was notified under the Companies Act, 2013.

It is a quasi-judicial authority incorporated for dealing with corporate disputes that are of civil nature arising under the Companies Act. However, a difference could be witnessed in the powers and functions of NCLT under the previous Companies Act and the 2013 Act. The constitutional validity of the NCLT and specified allied provisions contained in the Act were re-challenged. Supreme Court had preserved the constitutional validity of the NCLT, however, specific provisions were rendered as a violation of the constitutional principles.

NCLT works on the lines of a normal Court of law in the country and is obliged to fairly and without any biases determine the facts of each case and decide with matters in accordance with principles of natural justice and in the continuance of such decisions, offer conclusions from decisions in the form of orders.

The orders so formed by NCLT could assist in resolving a situation, rectifying a wrong done byany corporate or levying penalties and costs and might alter the rights, obligations, duties or privileges of the concerned parties. The Tribunal isn't required to adhere to the severe rules with respect to appreciation of any evidence or procedural law.

- Major Functions of NCLT
- Registration of Companies
- Transfer of shares
- Deposits
- Power to investigate
- Freezing assets of a company
- Converting a public limited company into a private limited company

Major Functions of

NCLTRegistration of

Companies

The new Companies Act, 2013 has enabled questioning the legitimacy of companies because of specific procedural errors during incorporation and registration. NCLT has been empowered in taking several steps, from cancelling the registration of a company to dissolving any company. The Tribunal could even render the liability or charge of members to unlimited. With this approach, NCLT can de- register any company in specific situations when the registration certificate has been obtained by wrongful manner or illegal means under section 7(7) of the Companies Act, 2013.

Transfer of shares

NCLT is also empowered to hear grievances of rejection of companies in transferring shares andsecurities and under section 58- 59 of the Act which were at the outset were under the purview of the Company Law Board. Going back to Companies Act, 1956 the solution available for rejection of transmission or transfer were limited only to the shares and debentures of a company but as of now theprospect has been raised under the Companies Act, 2013 and the now covers all the securities which areissued by any company.

Deposits

The Chapter V of the Act deals with deposits and was notified several times in 2014 and Company Law Board was the prime authority for taking up the cases under said chapter. Now, such powers under the chapter V of the Act have been vested with NCLT. The provisions with respect to thedeposits under the Companies Act, 2013 were notified prior to the inception of the NCLT. Unhappy depositors now have a remedy of class actions suits for seeking remedy for the omissions and acts on part of the company that impacts their rights as depositors.

Power to investigate

As per the provision of the Companies Act, 2013 investigation about the affairs of the company could be ordered with the help of an application of 100 members whereas previously the application of200 members was needed for the same. Moreover, if a person who isn't related to a company and is able to persuade NCLT about the presence of conditions for ordering an

investigation then NCLT has the power for ordering an investigation. An investigation which is ordered by the NCLT could be conducted

within India or anywhere in the world. The provisions are drafted for offering and seeking help from the courts and investigation agencies and of foreign countries.

Freezing assets of a company

The NCLT isn't just empowered to freezing the assets of a company for using them at a later stage when such company comes under investigation or scrutiny, such investigation could also be ordered on the request of others in specific conditions.

Converting a public limited company into a private limited company

Sections 13-18 of the Companies Act, 2013 read with rules control the conversion of a Public limited company into the Private limited company, such conversion needs an erstwhile confirmation from the NCLT. NCLT has the power under section 459 of the Act, for imposing specific conditions orrestrictions and might subject granting approvals to such conditions.

corporate governance

Corporate governance is the combination of rules, processes or laws by which businesses are operated, regulated or controlled. The term encompasses the internal and external factors that affect the interests of a company's stakeholders, including shareholders, customers, suppliers, government regulators and management.

SPECIALCOURTS

The definition of Court under **Section 2(29) the Companies Act, 2013**, (**the Act, 2013**) also includesa **'Special Court'** constituted under **Section 435** of the Act, 2013. **ChapterXXVIII** constituting **Sections 435 to 446B** deals with the Special Courts under the CA, 2013. The definition of Court under Section 2(29) the Act, 2013 may be read as under: –

"(29) "Court" means-

(i) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any district courts subordinate to that High Court under sub-clause (ii);

(ii) the district court, in cases where the Central Government has, by notification, empowered any district court to exercise all or any of the jurisdiction conferred upon the High Court, within the scope of its jurisdiction in respect of a company whose registered office is situated in the district.

(iii) the Court of Session having jurisdiction to try any offence under this Act or under any previous company law;

(iv) the Special Court established under section 435;

(v) any Metropolitan Magistrate or a Judicial Magistrate of the First-Class having jurisdiction to try anyoffence under this Act or under any previous company law."

It is submitted that aforesaid section 2(29) of the Act, 2013 has been notified on **12.09.2013 except clause (iv)**. Later on, in exercise of the powers conferred by Sub-section (3) of Section 1 of the Act, 2013, the Central Government has appointed the **18th day of May, 2016** vide **Notification No. S.O. 1795 (E) dt 18.05.2016**, as the date on which the

provisions of **clause**
(iv) of sub-section (29) of section 2, sections 435 to 438 (both sections inclusive) and section 440 of the Act, 2013 come into force. It means the provisions of **'Special Court'** under **Sections 435 to 438**

(both sections inclusive) and Section 440 were enforced first time in the year 2016 i.e. on **18th day ofMay, 2016**.

It is also pertinent to note that with the introduction of the Act, 2013, the provisions of **'Special Court'** were brought under **Chapter XXVIII** of the Act but was not notified then. Initially, **Section 435** brought by the Act, 2013 was as under: –

"435. Establishment of Special Courts

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

(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge."

Section 435 of the Act, 2013 was, therefore, introduced by the Government to expedite the trial and disposal of cases which have piled up under the Act. As the **'Special Courts'** are **exclusively constituted for companies**, they are more effective and efficient as general Session Courts. Such a step is a welcome move to further improve the ease of doing business, enforce Corporate Governance and reduce the number of litigations pending at various Courts.

It is also to be noted that even though original **Section 435** of the Act, 2013 was not notified, however, the Government had made the amendment in Act, 2013 through Companies (Amendment) Act, 2015 **("the Amendment Act, 2015") w,e.f. 29.05.2015** wherein amendment in Section 435 was brought in. Section 435 as amended by the Amendment Act , 2015 read as under-

"435. Establishment of Special Courts

(1) The Central Government may, for the purpose of providing speedy **trial of offences punishable under this Act with imprisonment of two years or more**, by notification, establish or designate as many Special Courts as may be necessary.

Provided that all other offences, shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First-Class having jurisdiction to try any offence under this Act orunder nay previous company law.

(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge."

It is submitted that **Section 435** was envisaged in the Act, 2013 to ensure speedy **"trial of offences"**. Later, the provision was amended vide Amendment Act, 2015 to ensure **"speedy trial of offences punishable under the Act with imprisonment of two years or more".**

Additionally, a **'proviso'** was added to **Section 435** of the Act, 2013 to state that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First-Class having jurisdiction to try any offence under this Act or under any previous company law.

It is pertinent to note that till the amendments by Amendment Act, 2015, no special Court was designated as Special Court by the Central Government having power to notify the same under **Section435(1)** of the Act, 2013.

The Ministry of Corporate Affairs **("MCA")** vide **Notification No. S.O. 1795 (E) dt 18.05.2016** has first time notified **Sections 435 to 438 (both sections inclusive) and section 440** of the Act, 2013 for the setting up of **'Special Courts'** to specifically deal with and dispose of criminal offences under the CA, 2013 **which are punishable with imprisonment of a period of 2 years or more in an expeditious manner**.

The main objective for the setting up of **'Special Courts'** is to divide the disposal mechanism i.e. **the grave offences would be tried by the 'Special Courts'**, whereas the **'minor contraventionsand violations would be tried by Magistrate Courts'**.

It is submitted that despite of holding the provision of **'Special Courts'** under the Act, 2013, the Courts have been designated by the Government after more than two years since provisions of this beganto take effect.

In exercise of the powers conferred by **sub-section (1) of section 435** of the Act, 2013, the Central Government, after obtaining the concurrence of the respective Chief Justices of the High Courts, had notified, vide **Notification Number S.O. 1796 (E) dated May, 18, 2016, 'Special Courts'** for the purposes of 'speedy trial' of offences punishable under the Act, 2013 **with imprisonment of two years or more** in terms of Section 435 in the following **8** States/Union

"435. Establishment of Special Courts

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

(2) A Special Court shall consist of-

(a) a single judge holding office as Session Judge or Additional Session Judge, in case of offencespunishable under this Act with imprisonment of two years or more; and

(b) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences.

who shall be appointed by the Central Government with the concurrence of the Chief Justice of the HighCourt within whose jurisdiction the judge to be appointed in working."

Before the Amendment Act, 2017, Metropolitan Magistrate or a Judicial Magistrate of the First Class could not be designated as **'Special Court'**. However, after this, these Courts can also be designated as **'Special Court'** for **speedy trail** of offence punishable under the Act, 2013 with imprisonment of less than two years.

MEDIATION AND CONCILIATION PANEL

Section 442 which was enacted on 1st April' 2014 authorizes Central Government to maintain a panel of experts to be called as "Mediation Panel" for mediation between parties during pendency of any proceedings before Regional Director, Central Government or Tribunal or Appellate Tribunal.

On 9th September'2016, Ministry of Corporate Affairs has come up with **Companies (Mediation and Conciliation) Rules, 2016** which provides rules and guidelines for empanelment as Mediators or Conciliators. This Article contains highlights of the above Rules in a precise manner.

FORMS UNDER THE COMPANIES (MEDIATION AND CONCILIATION) RULES

SL. NO.	FORM NUMBER	PURPOSE OF THE FORM
1.	Form MDC – 1	Application to the Regional Director by any person who intends to get empanelled as mediator or conciliator and possesses the requisite qualifications.
2.	Form MDC – 2	Application to Central Government or Tribunal or Appellate Tribunal for referring any matter pertaining to any pending proceeding.

Highlights of Companies (Mediation and Conciliation) Rules, 2016:

1. Regional Director shall prepare a panel of experts, willing and eligible to be appointed asmediators or conciliators.

2. Applications shall be received by the Regional Director during the month of February every year which shall be effective from 1st April of every year.

3. For the FY 2016-17, the Regional Director may call for application within 60 days from the date of publication of these Rules and prepare the panel for the current Financial Year within 30 days.

4. Qualifications for Empanelment:

A person shall not be qualified for being empanelled as mediator or conciliator unless:

a. he has been a Judge of the Supreme Court of India,

b. he has been a Judge of the High Court,

c. he has been a District or Sessions Judge,

d. he has been a Member or Registrar of a Tribunal constituted at the National level,

e. he has been am officer in the Indian Corporate Law Service or Indian Legal Service with15 years of experience,

f. he is a qualified legal practitioner for at least 10 years,

g. he is a professional in continuous practice for at least 15 years (CA, CS, or CWA),

h. he has been a Member or President of any State Consumer Forum,

i. he is an expert in mediation and conciliation & has successfully undergone training in mediation and conciliation

5. Disqualifications for Empanelment:

A person shall be disqualified for being empanelled as mediator or conciliator if he:

a. is an undercharged insolvent or has applied to be adjudicated as an insolvent and hisapplication is pending,

b. has been convicted of any offence involving moral turpitude,

c. has been removed or dismissed from the Government service or any Corporation ownedor controlled by the Government,

d. has been punished in any disciplinary proceeding,

e. has, in the opinion of the Central Government, such financial or other interest In thesubject matter of dispute which is likely to affect his functions as a mediator or conciliator

6. On receipt of application under Rule 6(2), the Central Government or the Tribunal or Appellate Tribunal shall appoint one or more experts from the panel.

7. The Regional Director may be recording reasons in writing and after giving an opportunity of being heard, remove any person from the panel.

8. Any person, who intends to withdraw his name from the Mediation and Conciliation panel, may make an application to the Regional Director indicating the reasons of withdrawal and the Regional Director shall take a decision within 15 days of receipt of such application and update the Panel accordingly.

9. The mediator or conciliator shall attempt to facilitate voluntary resolution of the dispute by the parties,and communicate the view of each party to the other, assist them in identifying the issues, reducing misunderstandings, clarifying priorities, emphasizing that it is the responsibility of the parties to take decision which affect them and he shall not impose any terms of settlement on the parties.

10. The process of any Mediation and Conciliation under these Rules shall be completed within a periodof 3 months from the date of appointment of expert or experts from the Panel.

11. All the parties in the proceeding shall act in good faith with the intention to settle the dispute.

12. The mediator or conciliator shall follow all the Ethics as prescribed in Rule 28.

13. The parties in any proceeding shall not initiate any arbitral or judicial proceeding which is the subjectmatter of the Mediation or Conciliation except where such proceedings are necessary for protecting hisrights.

Extract of Section 442 of Companies Act, 2013

442. Mediation and Conciliation Panel

(1) The Central Government shall maintain a panel of experts to be called as the Mediation and Conciliation Panel consisting of such number of experts having such qualifications as may be prescribed for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act.

(2) Any of the parties to the proceedings may, at any time during the proceedings before the Central Government or the Tribunal or the Appellate Tribunal, apply to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, in such form along with such fees as may be prescribed, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel and the Central Government or Tribunal or the Appellate Tribunal, as the case may be, shall appoint one or more experts from the panel referred to in sub-section (1).

(3) The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may, suo motu, refer any matter pertaining to such proceeding to such number of experts from the Mediation and Conciliation Panel as the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, deems fit.

(4) The fee and other terms and conditions of experts of the Mediation and Conciliation Panel shall be such as may be prescribed.

(5) The Mediation and Conciliation Panel shall follow such procedure as may be prescribed and dispose of the matter referred to it within a period of three months from the date of such reference and forward its recommendations to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

(6) Any party aggreived by the recommendation of the Mediation and Conciliation Panel may file objections to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

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