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
An ISO 9001:2015 Certified Institution

DEPARTMENT OF COMMERCE

SUBJECT NAME: COMPANY LAW

SUBJECT CODE: BGE-CSC10

SEMESTER: IV

PREPARED BY: PROF. D.MANJU BHARKAVI

COMPANY LAW SYLLABUS

UNIT I: Joint Stock Company Meaning-Kinds of companies (Special Provisions with respect to Private Company, Public Company, One Person Company, Small Company, Dormant Company) Formation – Memorandum of Association- Contents- Restriction on "Other Objects"- Doctrine of Ultra Vires- Articles of Association-Contents- Prospectus-contents-Types(Statement in Lieu of Prospectus, Shelf Prospectus, Red Herring Prospectus)-Underwriting-Book Building Process-Green Shoe option- E-Flying – Dematerialisation.

UNIT II: Share Capital and Debentures Meaning of Shares – Kinds of Shares- Voting rights – Issue of Shares at a Premium and Discount – Partly paid shares- Bonus Shares- Rights shares – Sweat Equity Shares. Debentures – Meaning–Types.

UNIT III- Managerial Personnel Directors – Women Directors – Independent Directors- director Identification Number- Other Key Managerial Personnel- Related Party Transactions.

UNIT IV- Meetings and Resolutions Meeting - Statutory Meeting – Annual general meeting – Extraordinary general Meeting - Notice of meeting- Quorum- Proxy- Board of Directors Meeting- committee- Types of Committee- Corporate Social Responsibility committee. Resolutions – Ordinary & Special - Resolution requiring special notice.

UNIT V- Winding up of company Modes of winding up – winding up by the court – Voluntary winding up – Types – Members' voluntary winding up – Creditors' voluntary winding up. National company Law- Appellate Tribunal.

Unit I INTRODUCTION

MEANING OF JOINT STOCK COMPANY

The word ‘company’ is derived from the Latin word (Com=with or together; panis =bread), and it originally referred to an association of persons who took their meals together

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 (Act No. 18 of 2013) a “company” means a company incorporated under this Act or under any previous company law [Section 2(20)].

Definition of Company

Lord Justice Lindley has defined a company as “an association of many persons who contribute money or money’s worth to a common stock and employ it in some trade or business and who share the profit and loss arising therefrom. The common stock so contributed is denoted in money and is the capital of the company. The persons who contributed in it or form it, or to whom it belongs, are members. The proportion of capital to which each member is entitled is his “share”. The shares are always transferable although the right to transfer them may be restricted.”

Featuresof a company

1. Incorporated entity
2. Artificial person
3. Separate legal identity
4. Limited liability
5. Perpetual succession
6. Transferable shares
7. Separate property
8. Common Seal
9. Capacity to sue and be sued
10. Governance by majority

KINDS OF COMPANIES

1. Classification on the basis of Incorporation:

There are two ways in which companies may be incorporated.

(a) Statutory Companies: These are constituted by a special Act of Parliament or State Legislature. The provisions of the Companies Act, 2013 do not apply to them. Examples of these types of companies are Reserve Bank of India, Life Insurance Corporation of India, etc.

(b) Registered Companies: The companies which are incorporated under the Companies Act, 2013 or under any previous company law, with ROC fall under this category.

2. Classification on the basis of Liability:

Under this category there are three types of companies.

(a) Unlimited Liability Companies: In this type of company, the members are liable for the company's debts in proportion to their respective interests in the company and their liability is unlimited. Such companies may or may not have share capital. They may be either a public company or a private company.

(b) Companies limited by guarantee: A company that has the liability of its members limited to such amount as the members may respectively undertake, by the memorandum, to contribute to the assets of the company in the event of its being wound-up, is known as a company limited by guarantee. The members of a guarantee company are, in effect, placed in the position of guarantors of the company's debts up to the agreed amount.

(c) Companies limited by shares: A company that has the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them is termed as a company limited by shares.

3. Other Forms of Companies

(a) Associations not for profit having license under Section 8 of the Companies Act, 2013 or under any previous company law;

(b) Government Companies:

Section 2(45) defines a "Government Company" as any company in which not less than fifty one per cent. of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

(c) Foreign Companies:

As per section 2(42), "foreign company" means any company or body corporate incorporated outside India which— (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and (b) conducts any business activity in India in any other manner Sections 379 to 393 of the Act deal with such companies.

(d) Holding and Subsidiary Companies:

As per Section 2(46), holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies.

Section 2(87) provides that subsidiary company or subsidiary, in relation to any other company (that is to say the holding company), means a company in which the holding company—

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

(ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

(e) Associate Companies/Joint Venture Companies

As per Section 2(6), "Associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

(f) Investment Companies

As per explanation (a) to section 186, "Investment Company" means a company whose principal business is the acquisition of shares, debentures or other securities. An investment company is a company, the principal business of which consists in acquiring, holding and dealing in shares and securities. The word 'investment', no doubt, suggests only the acquisition and holding of shares and securities and thereby earning income by way of interest or dividend etc. But investment companies in actual practice earn their income not only through the acquisition and holding but also by dealing in shares and securities i.e. to buy with a view to sell later on at higher prices and to sell with a view to buy later on at lower prices.

(g) Producer Companies

Producer Companies are still governed by the Companies Act, 1956. According to the provisions as prescribed under Section 581A(l) of the Companies Act, 1956, a producer company is a body corporate having objects or activities specified in Section 581B and which is registered as such under the provisions of the Act. The membership of producer companies is open to such people who themselves are the primary producers, which is an activity by which some agricultural produce is produced by such primary producers.

(h) Nidhi Companies

As per section 406 of the Companies Act, 2013, "Nidhi" means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

PRIVATE COMPANY

As per Section 2(68) of the Companies Act, 2013, "private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,

(i) Restricts the right to transfer its shares;

(ii) Except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition, be treated as a single member:

Provided further that the following persons shall not be included in the number of members;

(A) Persons who are in the employment of the company; and

(B) Persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, and

(iii) Prohibits any invitation to the public to subscribe for any securities of the company;

Privileges and Exemptions of Private Company

The following privileges and exemptions are available to a private company:

1. The provisions of Sec. 81 dealing with the further issue of shares do not apply to a private company. So, the shares of a private company, in the event of further issue of capital, need not first be offered to the existing shareholders.

2. A certificate for commencement of business is not necessary for a private company (Sec. 149). It can commence its business as soon as the certificate of incorporation is obtained.

3. A private company need not hold a statutory meeting and file a statutory report [Sec. 165(10)].

4. In case of a private company, under Sec. 179, in a general meeting of the company, a demand for poll on a resolution, may be made by only one member.

5. At the time of getting the company incorporated with the Registrar of companies, the directors of a private company are not required to file with the Registrar their consent in writing to act in that capacity and the undertaking to take up qualification shares.

6. It can proceed to allot shares without having to wait for any such thing as minimum subscription.

7. A life director appointed by a private company on or before April 1, 1952, cannot be removed by the company in general meeting.

8. A private company need not keep an index of members (Sec. 151).

9. Financial assistance to acquire own shares. A private company is not prohibited from giving financial assistance to any one for purchasing or subscribing for its own shares (Sec. 77).

10. Share capital and voting rights. The provisions that there should be only two kinds of share capital i.e. equity share capital and preference share capital, and that voting rights should be proportionate to the capital paid-up, are not applicable to a private company.

11. Provisions as to general meetings. The provisions of sections 171 to 186 relating to the holding of general meetings do not apply on a private company.

12. Managerial remuneration. A private company is exempted from the provisions of Sec. 198 which fixes the overall limit to the managerial remuneration at 11% of net profits.

13. Appointment of firm or body corporate. A private company may appoint a firm or body corporate to any office or place of profit under it for any period.

14. Restriction on disclosure of profit and loss. No person other than a member of the company is entitled to inspect the profit and loss account of a private company in the office of the Registrar (Sec. 220).

PUBLIC COMPANY

By virtue of Section 2(71), a public company means a company which:

(a) is not a private company;

(b) has a minimum paid-up share capital, as may be prescribed.

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles

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

A public company may be said to be an association consisting of not less than 7 members, which is registered under the Act. In principle, any member of the public who is willing to pay the price may acquire shares in or debentures of it. The securities of a public company may be quoted on a Stock Exchange. The number of members is not limited to two hundred.

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

The concept of free transferability of shares in public and private companies is very succinctly discussed in the case of Western Maharashtra Development Corpn. Ltd. V. Bajaj Auto Ltd [2010] 154 Com Cases 593 (Bom). It was held that the Companies Act, makes a clear distinction in regard to the transferability of shares relating to private and public companies. By definition, a “private company” is a company which restricts the right to transfer its shares. In the case of a public company, the Act provides that the shares or debentures and any interest therein, of a company, shall be freely transferable.

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

ONE PERSON COMPANY (OPC)

With the implementation of the Companies Act, 2013, a single person could constitute a Company, under the One Person Company (OPC) concept. The new Companies Act, 2013 has done away with redundant provisions of the previous Companies Act, 1956, and provides for a new entity in the form of one person company (OPC), while empowering the Central Government to provide a simpler compliance regime for small companies. The introduction of OPC in the legal system is a move that would encourage corporatisation of micro businesses and entrepreneurship.

Difference between a Sole Proprietorship and an OPC

The fundamental difference between a sole proprietorship and an OPC is the way liability is treated in the latter. A one-person company is different from a sole proprietorship because it is a separate legal entity that distinguishes between the promoter and the company. The promoter's liability is limited in an OPC in the event of a default or legal issues. On the other hand, in sole proprietorships, the liability is not restricted and extends to the individual and his or her entire assets.

Position of OPC in India under the Companies Act 2013

The Companies Act, 2013 classifies companies on the basis of their number of members into One Person Company, private company and public company. As stated above, a private company requires a minimum of 2 members. In other words, a One Person Company is a kind of private company having only one member. As per section 2(62) of the Companies Act, 2013, "One Person Company" means a company which has only one person as a member. Section 3(1)(c) lays down that a company may be formed for any lawful purpose by one person, where the company to be formed is to be One Person Company that is to say, a private company. In other words, one person company is a kind of private company. A One person company shall have a minimum of one director. Therefore, a One Person Company will be registered as a private company with one member and one director. By virture of section 3(2), an OPC may be formed either as a company limited by shares or a company limited by guarantee; or an unlimited liability company.

Rule 3 of Companies (Incorporation) Rules, 2014 - One Person Company

(1) Only a natural person who is an Indian citizen and resident in India- (a) shall be eligible to incorporate a One Person Company; (b) shall be a nominee for the sole member of a One Person Company. Explanation-For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one calendar year.

(2) A natural person shall not be a member of more than a One Person Company at any point of time and the said person shall not be a nominee of more than a One Person Company.

(3) Where a natural person, being member in One Person Company in accordance with this rule becomes a member in another such Company by virtue of his being a nominee in that One Person Company, such person shall meet the eligibility criteria specified in sub rule (2) within a period of one hundred and eighty days.

(4) No minor shall become member or nominee of the One Person Company or can hold share with beneficial interest.

(5) Such Company cannot be incorporated or converted into a company under section 8 of the Act.

(6) Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporates.

(7) No such company can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of One Person Company, except threshold limit (paid up share capital) is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

SMALL COMPANY

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

As per section 2(85) ‘‘small company’’ means a company, other than a public company,—

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

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

Provided that nothing in this defintion shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act;

Privileges of a Small Company

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

1. The financial statement, with respect to Small Company may not include the cash flow statement;

2. Financial assistance can be given for purchase of or subscribing to its own shares or shares in its holding company

3. The annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company. In other words it need not be signed by the company secretary in practice.

4. Need not prepare a report on Annual General Meeting

5. Need not prepare a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors;

6. Small company need not have more than two directors in its Board.

7. Need not appoint Independent directors on its Board

8. A proportion of directors need not to retire every year.

9. Additional grounds for disqualification for appointment as a director may be specified in the articles.

10. Restrictive provisions regarding total number of directorships which a person may hold in a public company do not include directorships held in small company which are neither holding nor subsidiary company of a public company.

11. Additional grounds for vacation of office of a director may be provided in the Articles.

12. It is required to hold at least one meeting of the Board of Directors in each half of a calendar year and the gap between the two meetings should not be less than ninety days.

13. The provisions relating to contract of employment with managing or whole-time directors do not apply to a Small Company

14. Total managerial remuneration payable by a small company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year may exceed eleven per cent of the net profits

DORMANT COMPANIES

The Companies Act 2013 has recognized a new set of companies called as dormant companies. As per section 455(1) where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

Explanation appended to section 455(1) says that for the purposes of this section,—

(i) "inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;

(ii) "significant accounting transaction" means any transaction other than— (a) payment of fees by a company to the Registrar; (b) payments made by it to fulfil the requirements of this Act or any other law; (c) allotment of shares to fulfil the requirements of this Act; and (d) payments for maintenance of its office and records.

As per section 455(2), the Registrar on consideration of the application shall allow the status of a dormant company to the applicant and issue a certificate in form MSC-1.

Section 455(3) provides that the Registrar shall maintain a register of dormant companies in such form as may be prescribed.

According to section 455(4), in case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.

A dormant company shall have a minimum of three directors in case of public company and two in case of private company and one in case of One Person Company. The dormant company shall have to file a Return of Dormant company annually, inter alia, indicating financial portions duly by chartered accountant in practice alongwith prescribed annual fee within thirty days from the end of each financial year. The provisions relating to rotation of auditor do not apply to a dormant company.

The Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section. [Section 455(6)]

Privileges of a Dormant Company

The privileges and exemptions enjoyed by a dormant company or its advantages over other companies are as follows:

1. The financial statement, with respect to a dormant company, may not include the cash flow statement;

2. It is required to hold at least one meeting of the Board of Directors in each half of a calendar year and the gap between the two meetings should not be less than ninety days.

FORMATION OF COMPANIES:

Section 3(1) states that a company may be formed for any lawful purpose by— (a) seven or more persons, where the company to be formed is to be a public company; (b) two or more persons, where the company to be formed is to be a private company; or (c) one person, where the company to be formed is to be One Person Company that is to say, a private company by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

Incorporation of Companies – Procedural Aspects

(a) Application for Availability of Name of company

As per section 4(4) a person may make an application, in such form and manner and accompanied by such fee, as may be prescribed, to the Registrar for the reservation of a name set out in the application as—

(a) the name of the proposed company; or

(b) the name to which the company proposes to change its name.

As per Rule 9 of Companies (incorporation) Rules 2014, an application for the reservation of a name shall be made in Form No. INC-1 which may be approved or rejected by, Central

Registration Centre along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.

(b) Preparation of Memorandum and Articles of Association

The Memorandum of Association is the charter of a company. It is a document, which amongst other things, defines the area within which the company can operate. Section 4(1) states that the memorandum of a company shall state— (a) the name of the company with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company. (This clause does not apply to a Section 8 Company); (b) the State in which the registered office of the company is to be situated; (c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof; (d) the liability of members of the company (e) in the case of a company having a share capital.

(c) Declaration from professional Section 7(1)((b) requires filing of a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with;

(d) Affidavit from the Subscribers to the Memorandum Section 7(1)(c) requires the filing of an affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

(e) Furnishing verification of Registered Office Under Section 12, a company shall, on and from the 15th day of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it. The company can furnish to the registrar verification of registered office with in 30 days of incorporation in the manner prescribed. As per rule 25(1) of Companies (Incorporation) Rules 2014, the verification of registered office shall be filed in Form No INC-22

(f) Particulars of Subscribers Section 7(1)(e) requires the filing of the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed;

(g) Particulars of first directors along with their consent to act as directors Section 7(1)(f) requires filing of the particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity as may be prescribed. Section 7(1)(g) states that the particulars of the interests of the persons in form MGT 14 , mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors in form DIR 2 of the company in such form and manner as may be prescribed.

(h) Power of Attorney With a view to fulfilling the various formalities that are required for incorporation of a company, the promoters may appoint an attorney empowering him to carry out the instructions/requirements stipulated by the Registrar. This requires execution of a Power of Attorney on a non-judicial stamp paper of a value prescribed in the respective State Stamp Laws.

Issue of Certificate of Incorporation by Registrar Section 7(2) states that the Registrar on the basis of documents and information filed under sub-section (1) of section 7, shall register all the documents and information referred to in that sub- section in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.

Allotment of Corporate identity number Section 7(3) states that on and from the date mentioned in the certificate of incorporation issued under subsection (2), the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate. The Certificate of Incorporation issued in Form INC-11 as per Companies (Incorporation) Rules, 2014 shall also mention permanent account number of the company which is issued by the Income Tax Department.

MEMORANDUM OF ASSOCIATION

The Memorandum of Association is a document which sets out the constitution of a company and is therefore the foundation on which the structure of the company is built. It defines the scope of the company's activities and its relations with the outside world.

According to Section 2(56) of the Act "memorandum" means the memorandum of association of a company as originally framed and altered, from time to time, in pursuance of any previous company law or this Act. Section 4 of the Act specifies in clear terms the contents of this important document which is the charter of the company. The memorandum of association of a company contains the objects of the company which it shall pursue. It not only shows the objects of formation of the company but also determines the scope of its operations beyond which its actions cannot go. "THE MEMORANDUM OF ASSOCIATION", as observed by Palmer, "is a document of great importance in relation to the proposed company".

CONTENTS OF MEMORANDUM

Name Clause

A company being a legal entity must have a name of its own to establish its separate identity. The name of the company is a symbol of its independent corporate existence. The first clause in the memorandum of association of the company states the name by which a company is to be known. The company may adopt any suitable name provided it is not undesirable. According to section 4(2), the name stated in the memorandum shall not— (a be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law; or (b) be such that its use by the company— (i) will constitute an offence under any law for the time being in force; or (ii) is undesirable in the opinion of the Central Government

Situation Clause

The name of the State in which the registered office of the company is to be situated must be given in the memorandum. But the exact address of the registered office is not required to be stated therein. According to section 12 of the Act within 15 days of company's incorporation, and at all times thereafter, the company must have a registered office to which all communications and notices may be sent. The company must also furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation in such manner as may be prescribed. (e-form INC-22)

Objects Clause

The third compulsory clause in the memorandum sets out the objects for which the company has been formed. Under section 4(1)(c) of the Act, all companies must state in their memorandum the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof. The objects clause is of great importance because it determines the purpose and the capacity of the company. It indicates the purpose for which the company has been set up and its actual capability, besides its sphere of activities. It states affirmatively the ambit and extent of powers of the company and, stated negatively, that nothing should be done beyond that ambit and that no attempt shall be made to use the company for any other purpose than that which is specified. The purpose of the objects clause is to enable the persons dealing with the company to know its permitted range of activities. The acts beyond this ambit are ultra vires and hence void. Even the entire body of shareholders cannot ratify such acts.

Liability Clause

Section 4 sub-section 1(d) of the Act, states that the liability of members of the company is to be specifically mentioned in the MoA. It is provided that the liability of member may either be limited or unlimited, further it shall also state that,— (i) in the case of a company limited by shares, the liability of its members is limited to the amount unpaid, if any, on the shares held by them; and (ii) in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute— (A) to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and (B) to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves;

Capital Clause

This clause shall state the amount of the capital with which the company is registered. The shares into which the capital is divided must be of fixed value, which is commonly known as the nominal value of the share. The capital is variously described as "nominal", "authorised" or "registered". The amount of nominal capital is determined having regard to the present as well as future requirements of the company with reference to its objects. The usual way to state the capital in the memorandum is: "The capital of the company is `10,00,000 divided into 1,00,000 equity shares of `10 each". This amount lays down the maximum limit beyond which the company cannot issue shares without altering the memorandum as provided by Section 61 of the Companies Act, 2013.

RESTRICTION ON OTHER OBJECTS

On 1st April, 2014, the Companies Act, 2013 has taken effect and the provisions of Section 4(1)(c) says that-

The memorandum of the company shall state-

"the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof"

By analysing the above provision we can conclude that the new companies act, is not going to give any shelter to the concept of OTHER OBJECTS, which can be carried on by the company.

In the said clause it can also be observed that-

As long as the 1956 Act stipulates, the new act also stipulates that, the promoter having any thought of incorporating a company have to be very clear about the activity line or business to be carried on by the company in the future to earn growth.

Now only two category of objects exists-

1. Main objects;
2. Matter considered necessary for the furtherance thereof.

The said clause (c), the words have been used-

'any matter considered necessary in the furtherance of the main objects.'

This means any objects which is not necessary for the furtherance of the main objects, even though the said object is lawful, cannot be carried on by the company.

It is to be noted that the said clause has not used any words like 'incidental' or 'ancillary'. It stipulates that the activity can or cannot be 'incidental' or 'ancillary', but it should be for pursuing the main objects of the Company.

If at any-time, company intends to change its business activity, it is required to alter the object clause of the Memorandum of the company after obtaining the shareholders' approval by way of SPECIAL RESOLUTION**,** even if the activity belongs to the lawful activity.

Provided that in case a company proposes to pursue any specific object or objects or restrict its objects, the Memorandum shall state the said object or objects for which the company is incorporated and any matter considered necessary in furtherance thereof and in such case the company shall not pursue any act or activity or business, other than specific objects stated in the Memorandum*;"*

By the proposed amendment the government seeks to provide the following three options

a) The promoter can engage in any lawful object, and mention such in the Memorandum of Association of the company, or

b) The company can specifically mention the objects to be carried out by the Company in the Memorandum of the Company, if the company want itself to restrict to particular activity, or

c) It can specifically mention the object which will not be carried out by the Company.

It has been provided that the main object of the company can be anything and may not restrict to any specific object unless the promoters itself wants to restrict themselves.

DOCTRINE OF ULTRA VIRES

In the case of a company whatever is not stated in the memorandum as the objects or powers is prohibited by the doctrine of ultra vires. As a result, an act which is ultra vires is void, and does not bind the company. Neither the company nor the contracting party can sue on it. Also, as stated earlier, the company cannot make it valid, even if every member assents to it. The general rule is that an act which is ultra vires the company is incapable of ratification. An act which is intra vires the company but outside the authority of the directors may be ratified by the company in proper form [RajendraNath Dutta v. ShilendraNath Mukherjee, (1982) 52 Com Cases 293 (Cal.)]. The rule is meant to protect shareholders and the creditors of the company. If the act is ultra vires (beyond the powers of) the directors only, the shareholders can ratify it. If it is ultra vires the articles of association, the company can alter its articles in the proper way.

Effects of ultra vires Transactions

(i) Void ab initio – The ultra vires acts are null and void ab initio. The company is not bound by these acts. Even the company cannot sue or be sued upon [Ashbury Railway Carriage and Iron Company v. Riche]. Ultra vires contracts are void ab initio and hence cannot become intra vires by reason of estoppel or ratification.

(ii) Injunction: The members can get an injunction to restrain a company wherein ultra vires act has been or is about to be undertaken [Attorney General v. Gr. Eastern Rly. Co., (1880) 5 A.C. 473].

(iii) Personal liability of Directors: It is one of the duties of directors to ensure that the corporate capital is used only for the legitimate business of the company and hence if such capital is diverted to purposes alien to the company's memorandum, the directors will be personally liable to replace it. In Jehangir R. Modi v. ShamjiLadha, [(1866-67) 4 Bom. HCR (1855)], the Bombay High Court held, "A shareholder can maintain an action against the directors to compel them to restore to the company the funds of the company that have by them been employed in transactions that they have no authority to enter into, without making the company a party to the suit". In case of deliberate misapplication, criminal action can also be taken for fraud. However, a distinction must be drawn between transactions which are ultra vires the company and the transactions which are ultra vires the directors. Where the directors exceed their authority the same may be ratified by the general body of the shareholders. Provided the company has the capacity to do that transaction as per its memorandum of association.

(iv) Where a company's money has been used ultra vires to acquire some property, the company's right over such property is held secure and the company will be the right party to protect the property. This is because, though the property has been acquired for some ultra vires object, it represents the money of the company.

(v) Ultra vires borrowing does not create the relationship of creditor and debtor [In Re. Madras Native Permanent Fund Ltd., (1931) 1 Com Cases 256 (Mad.)].

ARTICLES OF ASSOCIATION

According to Section 2(5) of the Companies Act, 2013, 'articles' means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act. It also includes the regulations contained in Table A in Schedule I of the Act, in so far as they apply to the company. In terms of section 5(1), the articles of a company shall contain the regulations for management of the company. The articles of association of a company are its bye-laws or rules and regulations that govern the management of its internal affairs and the conduct of its business. The articles play a very important role in the affairs of a company. It deals with the rights of the members of the company inter se. They are subordinate to and are controlled by the memorandum of association.

CONTENTS OF ARTICLES

The articles set out the rules and regulations framed by the company for its own working. The articles should contain generally the following matters:

1. Exclusion wholly or in part of Table F.

2. Adoption of preliminary contracts.

3. Number and value of shares.

4. Issue of preference shares.

5. Allotment of shares.

6. Calls on shares.

7. Lien on shares.

8. Transfer and transmission of shares.

9. Nomination.

10. Forfeiture of shares.

11. Alteration of capital.

12. Buy back.

13. Share certificates.

14. Dematerialisation.

15. Conversion of shares into stock.
16. Voting rights and proxies.
17. Meetings and rules regarding committees.
18. Directors, their appointment and delegations of powers.
19. Nominee directors.
20. Issue of Debentures and stocks.
21. Audit committee.
22. Managing director, Whole-time director, Manager, Secretary.
23. Additional directors.
24. Seal.
25. Remuneration of directors.
26. General meetings.
27. Directors meetings.
28. Borrowing powers.
29. Dividends and reserves.
30. Accounts and audit.
31. Winding up.
32. Indemnity.
33. Capitalisation of reserves.

Utmost caution must be exercised in the preparation of the articles of association of a company. At the same time, certain provisions of the Act are applicable to the company "notwithstanding anything to the contrary in the articles". Therefore, the articles must contain provisions in respect of all matters which are required to be contained therein so as not to hamper the working of the company later.

PROSPECTUS

Section 2(70) of the Companies Act, 2013 defines a prospectus as “any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.” On the basis of aforesaid definition, it may be said that a document should have following ingredients to constitute a prospectus: (a) There must be an invitation to the public; (b) The invitation must be made “by or on behalf of the company or in relation to an intended company"; (c) The invitation must be "to subscribe or purchase"; (d) The invitation must relate to any securities of the company.

CONTENT OF PROSPECTUS

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

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

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

iv) Details about underwriting of the issue

(v) The consent in writing of the directors, the auditors, bankers to the issue, expert's opinion, if any, all the persons named in the prospectus and of such other persons, as may be prescribed;

(vi) The authority for the issue and the details of the resolution passed therefor;

(vii) Procedure and time schedule for allotment and issue of securities;

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

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

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

(xi) Particulars relating to—

(A) Management perception of risk factors specific to the project; (B) gestation period of the project; (C) extent of progress made in the project; (D) deadlines for completion of the project; and (E) any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company;

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

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

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

TYPES OF PROSPECTUS

1. STATEMENT IN LIEU OF PROSPECTUS

All public companies either issue a prospectus or file a statement in lieu of prospectus. A private company is prohibited from inviting monetary participation of the public. But the promoters of a public company need not necessarily go to the public for money. The promoters may be confident of obtaining the required capital, through private sources. In such a case no prospectus need be issued to the public, but promoters must prepare a document, akin to the prospectus known as 'Statement in lieu of prospectus.' This document must be in the form set out in Schedule III of the Act and must contain practically the same information as is required in the prospectus.

2. SHELF PROSPECTUS

"Shelf Prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

Accordingly as per Section 31-

1. Any class of companies, as prescribed by the Securities and Exchange Board may file a shelf prospectus with the Registrar at the stage of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under such prospectus. Further, in respect of a second or subsequent offer issued during the period of validity of shelf prospectus, no further prospectus is required.

2. A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer and other prescribed changes, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under such prospectus. Where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, they shall intimate the changes to such applicants. If the applicants express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days.

3. Where an information memorandum is filed, every time an offer of securities is made as aforesaid, such memorandum together with the shelf prospectus shall be deemed to be a prospectus. The concept of shelf prospectus will save expenditure and time of the companies in issuing a new prospectus every time they wish to issue securities to the public within a period of one year.

Information Memorandum to be filed before the issue of a second or subsequent offer of securities under the shelf prospectus Rule 10 of Companies (Prospectus and Allotment of Securities) Rules, 2014 states that the information memorandum shall be prepared in Form PAS-2 and filed with the Registrar along with the fee as provided in the Companies (Registration

Offices and Fees) Rules, 2014 within one month prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

3. RED-HERRING PROSPECTUS

"Red Herring Prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities included therein. Section 32 of the Act deals with Red Herring Prospectus. It provides that−

1. As per this section, a company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.

2. A company proposing to issue a red herring prospectus shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer.

3. A red herring prospectus shall carry the same obligations as are applicable to a prospectus. Any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.

4. Upon the closing of the offer of securities, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.

Red herring prospectus is issued during book building process. Red herring prospectus contains either the floor price of securities offered or a price band along with the range within which the Bids can move. The applicants bid for the shares quoting the price and the quantity that they would like to bid at. SEBI (ICDR) Regulations prescribe certain disclosures to be made in the red-herring prospectus.

Once the offer for securities is closed, a final prospectus stating therein the total capital raised whether by way of debt or share capital, the closing price of the securities and any other details which are not complete in the red-herring prospectus shall be filed with SEBI in the case of listed public company and in any other case with the Registrar of companies only.

The compliances under SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009 relating to shelf prospectus and red-herring prospectus is covered under chapter 'Issue of Securities' in paper Capital Markets and Securities Laws of Executive programme.

UNDERWRITING

Undertaking a responsibility or giving a guarantee that the shares or debentures offered to the public will be subscribed for.There are firms which undertake this sort of work and are very useful to companies which want to raise funds by the issue of shares or debentures. If the shares or debentures are not taken up by the public wholly, the underwriters will have to take them up and pay for them.

For this service, they charge a commission which is generally calculated at a specified rate on the issue price of the whole of the shares or debentures underwritten.

Even if the public takes up all the shares or debentures offered and the underwriters are not called upon to take up any share, commission will be payable on the whole of the shares or debentures underwritten. A company cannot pay any commission on issue of shares unless it is permitted by its Articles.

Commission cannot be paid to any person on shares or debentures which are not offered to the public for subscription [section 76 (4A)]. The amount or rate per cent of the commission paid or payable as also the number of shares (or debentures) which a person has agreed to subscribe for commission has to be disclosed in the prospectus or the statement in lieu of prospectus, as the case may be.

The directors must also state in the prospectus that, in their view, the underwriters are capable of meeting their obligations under the underwriting contrac

The law limits the commission in case of issue of shares to 5% (or a lower rate if the Articles so state) of the issue price of shares and in case of issue of debentures to 2½% or such lower rate as is provided in the Articles.

Sub-underwriters:
In addition to the underwriter, there may be several underwriters working under him. These will be called sub-underwriters. They are responsible only to the underwriter and generally have no privacy of contract with the company.

For subscriptions procured by the sub- underwriters, the underwriter receives a small commission payable, called overall commission. The limits for commission cover commission to the sub-underwriters and the overall commission.

BOOK BUILDING PROCESS

Book building is the process by which an underwriter attempts to determine the price at which an initial public offering will be offered. An underwriter, normally an investment bank, builds a book by inviting institutional investors (such as fund managers and others) to submit bids for the number of shares and the price(s) they would be willing to pay for them.

Book building has surpassed the 'fixed pricing' method, where the price is set prior to investor participation, to become the de facto mechanism by which companies price their IPOs. The process of price discovery involves generating and recording investor demand for shares before arriving at an issue price that will satisfy both the company offering the IPO and the market. It is highly recommended by all the major stock exchanges as the most efficient way to price securities.

The book building process comprises these steps:

1. The issuing company hires an investment bank to act as an underwriter who is tasked with determining the price range the security can be sold for and drafting a prospectus to send out to the institutional investing community.
2. The investment bank invites investors, normally large scale buyers and fund managers, to submit bids on the number of shares that they are interested in buying and the prices that they would be willing to pay.
3. The book is 'built' by listing and evaluating the aggregated demand for the issue from the submitted bids. The underwriter analyzes the information and uses a weighted average to arrive at the final price for the security, which is termed the cutoff price.
4. The underwriter has to, for the sake of transparency, publicize the details of all the bids that were submitted.
5. Shares are allocated to the accepted bidders.

Even if the information collected during the book building process suggests a particular price point is best, that does not guarantee a large number of actual purchases once the IPO is open to buyers. Further, it is not a requirement that the IPO be offered at that price suggested during the analysis.

GREEN SHOE OPTION

A greenshoe option is an over-allotment option. In the context of an initial public offering (IPO), it is a provision in an underwriting agreement that grants the underwriter the right to sell investors more shares than initially planned by the issuer if the demand for a security issue proves higher than expected.

- A greenshoe option is an over-allotment option in the context of an IPO.
- A greenshoe option was first used by the Green Shoe Manufacturing Company (now part of Wolverine World Wide, Inc.)
- Greenshoe options typically allow underwriters to sell up to 15% more shares than the original issue amount.
- Greenshoe options provide price stability and liquidity.
- Greenshoe options provide buying power to cover short positions if prices fall, without the risk of having to buy shares if the price rises.

Greenshoe options typically allow underwriters to sell up to 15% more shares than the original amount set by the issuer for up to 30 days after the IPO if demand conditions warrant such action. For example, if a company instructs the underwriters to sell 200 million shares, the underwriters can issue if an additional 30 million shares by exercising a greenshoe option (200 million shares x 15%). Since underwriters receive their commission as a percentage of the IPO, they have the incentive to make it as large as possible. The prospectus, which the issuing company files with the ROC before the IPO, details the actual percentage and conditions related to the option.

Underwriters use greenshoe options in one of two ways. First, if the IPO is a success and the share price surges, the underwriters exercise the option, buy the extra stock from the company at the predetermined price, and issue those shares, at a profit, to their clients. Conversely, if the price starts to fall, they buy back the shares from the market instead of the company to cover their short position, supporting the stock to stabilize its price.

Some issuers prefer not to include greenshoe options in their underwriting agreements under certain circumstances, such as if the issuer wants to fund a specific project with a fixed amount and has no requirement for additional capital.

E-FILING

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

AOC4- For Filing Balance Sheet

AOC 4 CFS- For Filing Statement containing features of consolidated financial statements of Group Companies

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 100crores and above, or

4) All companies which are required to maintain their accounts as per Companies (Indian Accounting Standards) 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- with in 180 days from closure of Financial Year

In all other Cases – with in 30 days from the Date of Annual General Meeting.

MGT-7

With in 60 days from date of Annual General Meeting.

CRA-4

With in 30 days from the date of receiving Cost Audit Report.

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.

(1) If case a document required to be filed under section 92 (Annual return)and Section 137 (Financial Statements) 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

DEMATERIALISATION

Dematerialization is the process of converting Physical Securities into electronic format. It should be related to Listing of securities. A Shareholder intending to dematerialize its securities needs to open a Demat account with Depository Participant. Investor Deface and surrenders his Physical Securities and in turn gets Electronic Shares in his Demat Account:

Ministry of Corporate affairs (MCA) has inserted a whole new compliance for Unlisted Public companies dated 10th September, 2018. The new compliance has been inserted under Rule 9A-

'Issue of securities in dematerialised form by unlisted public companies', after the existing rule 9 of The Companies (Prospectus and Allotment of Securities) Rules, 2014**.**

- Every unlisted Public company can issue shares only in dematerialised form in accordance with provisions of the Depositories Act, 1996 and regulations made there under
- Every unlisted Public company shall facilitate the conversion of physical shares into dematerialised form in accordance with provisions of the Depositories Act, 1996 and regulations made there under
- Every Public company shall ensure to convert entire physical shareholding of its promoters, directors, key managerial personnel into dematerialised form in accordance with provisions of the Depositories Act 1996 and regulations made there before going for any of below given events:-
- any offer for issue of any securities or
- buyback of securities or
- issue of bonus shares or
- rights offer
- Every security holder of unlisted public company shall get its shares in dematerialised form, if below given events are acted on and after 2nd October, 2019:
- If he/she wants to transfer their securities
- If he/she wants o any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer)
- Every unlisted public company shall facilitate dematerialisation of all its existing securities by making necessary application to a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 and shall secure International security Identification Number (ISIN) for each type of security and shall in-form all its existing security holders about such facility.
- Every unlisted public company shall ensure that:-
- it makes timely payment of fees (admission as well as annual) to the depository and registrar to an issue and share transfer agent in accordance with the agreement executed between the parties;
- it maintains security deposit at all times, of not less than two years, fees with the depository and registrar to an issue and share transfer agent in such form as may be agreed between the parties; and
- it complies with the regulations or directions or guidelines or circulars, if any, issued by the securities and Exchange Board or Depository from time to time with respect to dematerialisation of shares of unlisted public companies and matters incidental or related thereto;
- The provisions of the Depositories Act 1996 the securities and Exchange Board of India (Depositories and participants) 3[Regulations, 2018] and the securities and Exchange Board of India (Registrars to an Issue and share Transfer Agents) Regulations, 1993 shall apply mutatis mutandis to dematerialisation of securities of unlisted public companies.
- Every unlisted public company governed by this rule shall submit Form PAS-6 to the Registrar with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 within sixty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice
- The grievances, if any, of security holders of unlisted public companies under this rule shall be filed before the Investor Education and protection Fund Authority and shall initiate any action against a depository or participant or registrar to an issue and share transfer agent after prior consultation with the securities and Exchange Board of India (SEBI).
- Note that this rule shall not apply to:

- A Nidhi Company
- A government company
- A wholly owned subsidiary even if it public company.

UNIT II: SHARE CAPITAL AND DEBENTURED

MEANING OF SHARES:

Section 2(84) of the Act defines a share 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."

Nature of a Share

(a) A share is a right to a specified amount of the share capital of a company, carrying with it certain rights and liabilities while the company is a going concern and in its winding up.

(b) A share is the interest of a shareholder in the company measured by a sum of money, for the purposes of liability in the first place, and of interest in the second, but also consisting of a series of mutual covenants entered into by all the shareholders interest

(c) A share is a right to participate in the profits made by a company, while it is a going concern and declares a dividend and in the assets of company when it is wound up.

(d) A share is not a sum of money but a bundle of rights and liabilities; it is an interest measured by a sum of money. These rights and liabilities are regulated by the articles of a company.

(e) Section 44 of the Companies Act provides that a share or other interest of any member in a company is a movable property transferable in the manner provided by the articles of the company.

(f) In India, a share is regarded as goods. According to the Sale of Goods Act, 1930, "Goods" means any kind of movable property other than actionable claim and money, and includes stock and shares.

(g) According to Section 45 of the Companies Act, 2013 every share in a company having a share capital shall be distinguished by its distinctive number but this provision shall not apply to a share held by a person whose name is entered as holder of beneficial interest in such share in the records of a depository.

KINDS OF SHARES

Section 43 of the Companies Act, 2013 permits a company limited by shares to issue two classes of shares, namely:

I. Equity share capital— (a) with voting rights; or (b) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed. Equity share capital may be with similar rights or equity shares with different voting rights as described in Rule 4 of Companies (Share Capital and Debentures) Rules, 2014.

II. Preference Share Capital.

Section 43 of the Act shall not apply to private companies, unless Article of the Company so provides.

I. Equity Share

Equity shares capital means all share capital which is not preference share capital. In other words, a share or share capital which does not give the definition of preference shares or preference share capital is equity share capital. Equity shareholders receive dividend out of profits as recommended by the Board of directors and as declared by the shareholders in an annual general meeting but after preference shares have been paid their fixed dividend. Moreover, equity shareholders have a right to vote on every resolution placed in the meeting and the voting right shall be in proportion to the paid up equity capital. Unless a company issue equity shares with differential rights.

II. Preference Shares

Preferences shares with reference to any company limited by shares are those which carry: (a) A right to be paid a fixed amount of dividend or the amount of dividend, calculated at a fixed rate. (b) A right to be paid the amount of capital paid up as such shares in the event of winding up of the company. Types of Preference Shares These may be of the following types:

1. Cumulative Preference Shares: These share are entitled to dividend at a fixed rate whether there are profits or not. The company pays dividend if it has sufficient profits. In case the company does not have sufficient profits, dividend on cumulative preference shares will go on accumulating till it is fully paid off, such arrears are carried forward to the next year and are actually paid out of the subsequent years' profits. In the case of winding up of the company, the arrears of dividend on these shares are payable only if the article of association contains express provision in this respect. It may be noted, that all preference shares are presumed to be cumulative unless expressly stated in the articles to be non-cumulative.

2. Non-cumulative Preference Shares: Non-cumulative preference shares are those shares on which the arrears of dividend do not accumulate. If in a particular year there are no profits are inadequate, the shareholders shall not get anything or receive a partial dividend and they cannot claim the arrears of dividends in the subsequent year. In simple words, on such shares the unpaid dividends do not accumulate but lapse, i.e., the shareholders lose them forever.

3. Participating Preference Shares: The holders of such shares are entitled to receive dividend at a fixed rate and, in addition, they have a right to participate in the surplus profits along with equity shareholders after dividend at a certain rate has been paid to equity shareholders, there are surplus assets, then the holders of such shares shall be entitled to share in the surplus assets as well. Such shares can be issued only if there is a clear provision in the memorandum or articles of association or the terms of issue.

4. Non-participating Preference Shares: The holders of such shares are entitled to only a fixed rate of dividend and do not participate further in the surplus profits. If the articles are silent, all preference shares are deemed to be non-participating.

5. Convertible Preferences Shares: The holder of such shares have a right to convert these shares into equity shares within a certain period.

6. Non-convertible Preference Shares: The preference shares, where the holders have no right to convert their shares into equity shares are known as non-convertible preferences shares. Unless otherwise stated preference shares are assumed to be non-convertible.

7. Redeemable Preference Shares: Ordinarily, the amounts received by the company on shares is not returned except on the winding up of the company. A company limited by shares, if authorised by its articles, may issue preference shares which are to be redeemed or repaid after a certain fixed period. Thus, the amounts received on such shares can be returned during the life-time of the company. Such shares are termed as redeemable preferences shares.

CLASSES OF CAPITAL

In view of the stages involved in collecting the money on shares, the shares capital of a company may be classified as follow:

(1) Authorised Capital: It is the capital which is stated in company's memorandum of association with which the company intends to be registered. It is called the nominal or registered capital. It is the maximum amount of shares capital which a company is authorised to raise by issuing the shares.

(2) Issue Capital: It is that part of the authorised capital which is actually offered (issued) to the public for subscription. Therefore, the issued capital can never be more than the authorised capital. It can at the most be equal to the nominal capital. The balance of nominal capital remaining to be issued is called 'unissued capital'.

(3) Subscribed Capital: It is that part of the issued capital which has been actually subscribed by the public. In other words, it is that part of issued capital for which the applications have been received from the public and shares allotted to them.

(4) Called-up Capital: It is that part of nominal value of issued capital which has been called-up or demanded on the shares by the company. Normally, a company does not collect the full amount of shares it has allotted.

(5) Paid-up Capital: It is that part of the called-up capital which has actually been received from the shareholders.

(6) Reserve Capital: It is that part of the uncalled capital which cannot be called by the company except in the event of its winding up.

VOTING RIGHTS

(a) on a show of hands, every member present in person shall have one vote; and
(b) on a poll, the voting rights of members shall be in proportion to his share in the paid-up equity.

A member may exercise his vote at a meeting by electronic means in accordance with section 108 and shall vote only once.

In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.

(ii) For this purpose, seniority shall be determined by the order in which the names stand in the register of members.

A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

Any business other than that upon which a poll has been demanded may be proceeded with, pending the taking of the poll.

No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid

No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes

Any such objection made in due time shall be referred to the Chairperson of the meeting, whose decision shall be final and conclusive.

ISSUE OF SECURITIES AT A PREMIUM

A company may issue securities at a premium when it is able to sell them at a price above par or above nominal value. The Companies Act, 2013, does not stipulate any conditions or restrictions regulating the issue of securities by a company at a premium. However, the Companies Act does impose conditions regulating the utilization of the amount of premium collected on securities.

Share Premium to be transferred to 'Securities Premium Account' Section 52 (1) states that when a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paidup share capital of the company.

Utilisation of Securities Premium

In accordance with the provisions of Section 52(2) of the Act, the securities premium can be utilised only for:

(a) issuing fully paid bonus shares to members;

(b) writing off the balance of the preliminary expenses of the company;

(c) writing off commission paid or discount allowed, or the expenses incurred on issue of shares or debentures of the company;

(d) for providing for the premium payable on redemption of any redeemable preference shares or debentures of the company; or

(e) for the purchase of its own shares or other securities under section 68.

PROHIBITION TO ISSUE THE SHARES AT DISCOUNT

Section 53 states that except as provided in section 54 (i.e. issue of sweat equity shares), a company shall not issue shares at a discount. Any share issued by a company at a discounted price shall be void. When a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

PARTLY PAID SHARES

A partly paid share is a share in a company which has only partial been paid compared to the par value, with the understanding that as the company requires more funds, calls will be made from time to time until the shares are fully paid, when no further calls can be made.

Ex: A company issues 10000 Equity shares at INR 10 each wherein, INR 5 is called as the application money, INR 2.5 is to be the 1st call and the balance INR 2.5 as the 2nd call. In the above example when the shareholder pays INR 5 as the application money and remaining on a call. At this very situation, the shares are partly paid-up. The balance amount when paid will convert partly paid-up shares to fully paid shares.

Features of partly paid shares:

i) Partly paid shares can be converted to fully paid shares on payment of call money

ii) It carries voting rights

iii) It cannot be traded in the market Fluctuating rate of return

iv) Even partly paid shares are transferrable as per Section 56 of the CA, 2013 & Rule 11 of Companies (Share Capital and Debentures) Rules, 2014 and they can be listed too.

v) The company can convert partly paid shares into fully paid shares without calling for the uncalled amount on shares through capitalization of profits.

vi) As per Section 63(2) (e) of Companies Act, 2013 it cannot issue bonus shares although, company can issue bonus shares in the form of converting partly paid to fully paid.

Mode of Issuance	Partly paid Shares (Equity & Preference)		
	Minimum upfront payment	Period within which to be made fully paid	

		up (Months)	
Public	25%	12	
Rights	Not Specified	12	
Preferential	Not Applicable		

BONUS SHARES

A company may, if its Articles provide, capitalize its profits by issuing fully-paid bonus shares. The issue of bonus shares by a company is a common feature. When a company is prosperous and accumulates large distributable profits, it converts these accumulated profits into capital and divides the capital among the existing members in proportion to their entitlements. Members do not have to pay any amount for such shares. They are given free. The bonus shares allotted to the members do not represent taxable income in their hands.

Issue of bonus shares is a bare machinery for capitalizing undistributed profits. The vesting of the rights in the bonus shares takes place when the shares are actually allotted and not from any earlier date.

Advantages of Issuing Bonus Shares

1. Fund flow is not affected adversely.

2. Market value of the Company's shares comes down to their nominal value by issue of bonus shares.

3. Market value of the members' shareholdings increases with the increase in number of shares in the company.

4. Bonus shares is not an income. Hence it is not a taxable income.

5. Paid-up share capital increases with the issue of bonus shares. Sources for issue of Bonus shares According to section 63(1), a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of— (i) its free reserves; (ii) the securities premium account; or (iii) the capital redemption reserve account. No issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

Conditions for issue of Bonus Shares

In terms of section 63(2), no company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—

(a) it is authorised by its articles;

(b) it has, on the recommendation of the Board, been authorised in the general meeting of the company;

(c) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;

(d) it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;

(e) the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;

(f) No Bonus shares in lieu of dividend. [Section 63(3)].

RIGHTS SHARES:

Section 62 of the Companies Act provides for the issue of "Rights Shares" and states that whenever at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered to the existing holders of equity shares in proportion to the paid-up share capital on their shares at the time of further issue by sending a letter of offer. For listed companies, the information as regards the quantum of such issue and the proportion in which rights shall be offered shall be supplied to the concerned Stock Exchanges in advance.

The company must give notice to each of the equity shareholders, giving him option to take the shares offered to him by the company. The shareholder must be informed of the number of shares he has opted to buy giving him at least 15 days but not more than 30 days to decide. The said notice shall be dispatched through registered post or speed post or through electronic mode to all the existing shareholders at least 3 days before the opening of the issue. If the shareholder does not convey to the company his acceptance of the company's offer of further shares he shall be deemed to have declined the offer. Unless the articles of the company otherwise provide, the directors must state in the notice of offer of rights shares the fact that the shareholder has also the right to renounce the offer in whole or in part, in favour of some other persons. However in case of a private company case ninety per cent of the members of a private company have given their consent in writing or in electronic mode, the periods lesser than those specified in the said sub clause or subsection shall apply. Accordingly time limit for acceptance of offer by existing shareholders may be less than 15 days if 90% of the members a private limited company have given their consent either in writing or through electronic mode.

If a shareholder has neither renounced in favour of another person nor accepted the shares, the Board of directors may dispose of the shares so declined in such manner which is not dis-advantageous to the shareholders and the company.

Section 62(1)(b) provides that a company may issue further shares to its employees under a scheme of employees' stock option, subject to special resolution passed by company and subject to such conditions as may be prescribed. However in case of private limited companies if it passes the ordinary resolution then it will be sufficient.

Section 62(1)(c) deals with issue of shares to persons other than existing shareholders and provides that a company can issue further shares to persons other than existing shareholders either for cash or for a consideration other than cash, if - (1) the company in General Meeting passes a special resolution to this effect; and (2) the price of such shares is determined by the valuation report of a registered valued subject to such conditions as may be prescribed.

SWEAT EQUITY SHARES

According to section 2(88), sweat equity shares mean equity shares issued by a company to its directors or employees at a discount or for consideration, other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

Conditions for Issue of Sweat Equity Shares

Section 54(1) provides that notwithstanding anything contained in Section 53, a company can issue sweat equity shares, of a class of shares already issued, if the following conditions are satisfied:

(i) the issue has been authorised by a special resolution passed by the company in the general meeting.

(ii) the following are clearly specified in the resolution: (a) number of shares; (b) current market price; (c) consideration, if any; and (d) class or classes of directors or employees to whom such equity shares are to be issued.

(iii) as on the date of issue, at least one year should have elapsed from the date on which the company had commenced business.

(iv) a company whose shares are listed on a recognized stock exchange issuing sweat equity shares should comply with the regulations made in this behalf by SEBI.

(v) a company whose shares are not so listed should issue sweat equity shares in compliance with the rules made in this behalf by the Central Government (i.e., Rule 8 of Companies (Share Capital and Debentures) Rules, 2014)

DEBENTURES

Meaning of debentures

According to Section 2(30) of Companies Act 2013 “debenture” includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not; It is evident from the definition that the term debentures covers both secured and unsecured debentures.

TYPES OF DEBENTURES

Debentures are generally classified into different categories on the basis of:

(1) Convertibility of the Instrument

(2) Security of the Instrument

(3) Redemption ability

(4) Registration of Instrument

1. On the basis of convertibility, Debentures may be classified into following categories:

(A) Non Convertible Debentures (NCD): These instruments retain the debt character and can not be converted into equity shares.

(B) Partly Convertible Debentures (PCD): A part of these instruments are converted into Equity shares in the future at notice of the issuer. The issuer decides the ratio for conversion. This is normally decided at the time of subscription.

(C) Fully convertible Debentures (FCD): These are fully convertible into Equity shares at the issuer's notice. The ratio of conversion is decided by the issuer. Upon conversion the investors enjoy the same status as ordinary shareholders of the company.

(D) Optionally Convertible Debentures (OCD): The investor has the option to either convert these debentures into shares at price decided by the issuer/agreed upon at the time of issue.

2. On the basis of Security, debentures are classified into:

(A) Secured Debentures: These instruments are secured by a charge on the fixed assets of the issuer company. So if the issuer fails on payment of either the principal or interest amount, his assets can be sold to repay the liability to the investors. Section 71(3) of the Companies Act, 2013 provides that secured debentures may be issued by a company subject to such terms and conditions as may be prescribed by the Central Government through rules.

(B) Unsecured Debentures: These instrument are unsecured in the sense that if the issuer defaults on payment of the interest or principal amount, the investor has to be along with other unsecured creditors of the company, they are also said to be naked debentures.

3. On the basis of Redeemability, debentures are classified into:

(A) Redeemable Debentures: It refers to the debentures which are issued with a condition that the debentures will be redeemed at a fixed date or upon demand, or after notice, or under a system of periodical drawings. Debentures are generally redeemable and on redemption these can be reissued or cancelled. The person who has been re-issued the debentures shall have the same rights and priorities as if the debentures had never been redeemed.

(B) Perpetual or Irredeemable Debentures: A Debenture, in which no time is fixed for the company to pay back the money, is an irredeemable debenture. The debenture holder cannot demand payment as long as the company is a going concern and does not make default in making payment of the interest. But all debentures, whether redeemable or irredeemable become payable on the company going into liquidation. However, after the commencement of the Companies Act, 2013, now a company cannot issue perpetual or irredeemable debentures.

4. On the basis of Registration, debentures may be classified as

(A) A Registered Debentures: Registered debentures are made out in the name of a particular person, whose name appears on the debenture certificate and who is registered by the company as holder on the Register of debenture holders. Such debentures are transferable in the same manner as shares by means of a proper instrument of transfer duly stamped and executed and satisfying the other requirements specified in Section 56 of the Companies Act, 2013.

(B) Bearer debentures: Bearer debentures on the other hand, are made out to bearer, and are negotiable instruments, and so transferable by mere delivery like share warrants. The person to whom a bearer debenture is transferred become a “holder in due course” and unless contrary is shown, is entitled to receive and recover the principal and the interest accrued thereon.

UNIT III- MANAGERIAL PERSONNEL

DIRECTORS

The Companies Act 2013 does not contain an exhaustive definition of the term “director”. Section 2(34) of the Act prescribed that “director” means a director appointed to the Board of a company. Section 2(10) of the Companies Act, 2013 defined that “Board of Directors” or “Board”, in relation to a company, means the collective body of the directors of the company. The term ‘Board of Directors’ means a body duly constituted to direct, control and supervise the affairs of a company. As per Section 149 of the Companies Act, 2013, the Board of Directors of every company shall consist of individual only. Thus, no body corporate, association or firm shall be appointed as director. Again Section 166 of Companies Act, 2013, prohibits assignment of office of director to any other person. Any assignment of office made by a director shall be void.

Minimum/Maximum Number of Directors in a Company [Section 149(1)]

Section 149(1) of the Companies Act, 2013 requires that every company shall have a minimum number of 3 directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company. A company can appoint maximum 15 fifteen directors. A company may appoint more than fifteen directors after passing a special resolution in general meeting and approval of Central Government is not required.

WOMAN DIRECTOR

Second Proviso to section 149(1) read with Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014, prescribes the following class of companies shall appoint at least one woman director-

(i) every listed company;

(ii) 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 .

A company, which has been incorporated under the Act and is covered under provisions of second proviso to sub-section (1) of section 149 shall comply with such provisions within a period of six months from the date of its incorporation: However any intermittent vacancy of a woman director shall be filled-up by the Board at the earliest but not later than immediate next Board Meeting or three months from the date of such vacancy whichever is later

APPOINTMENT OF DIRECTORS [Section 152]

First Director

The first directors of most of the companies are named in their articles. Regulation 60 of Table F provides that the number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them. If they are not so named in the articles of a company, then subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed. In the case of a One Person Company, an individual being a member shall be deemed to be its first director until the director(s) are duly appointed by the member in accordance with the provisions of Section 152. Section 152(1) of the Act is applicable to all companies, whether public or private.

General provisions relating to appointment of directors

1. Except as provided in the Act, every director shall be appointed by the company in general meeting. Where any provision contained in the Act requires or specifies any other manner of appointment of directors, the appointment may be made in such manner.

2. Director Identification Number (DIN) is compulsory for appointment of director of a company.

3. Every person proposed to be appointed as a director shall furnish his Director Identification Number and a declaration that he is not disqualified to become a director under the Act.

4. A person appointed as a director shall on or before the appointment give his consent to hold the office of director in physical form DIR-2 i.e. Consent to act as a director of a company.

5. Company shall file Form DIR-12 (particulars of appointment of directors and KMP along with the form DIR-2 as an attachment within 30 days of the appointment of a director and necessary fee.

6. The consent to act as director and intimation to Registrar is not required in case of section 8 company and where appointment of such director is done by the Central or State Government, as the case may be.

Retirement by Rotation [Section 152(6)]:

Articles of the Company may provide the provisions relating to retirement of the all directors. If there is no provision in the article, then not less than two-thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement by rotation and eligible to be reappointed at annual general meeting. 'Total number of directors' shall not include independent directors appointed on the Board of a company. Nominee directors appointed by a financial institution or by Central Government under section 408 of the Companies Act, 2013 shall not be included in the 'total number of directors' for the purpose of section 152(6) of the Act. At the annual general meeting of a public company one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office. The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment. As between the persons who became directors on the same day, the directors who shall retire may be determined by agreement among themselves. In the absence of any such agreement the persons liable to retire shall be chosen by lot. Government companies have been exempted vide notification dated June 5, 2015 from the applicability of this section. Accordingly, directors in Government Companies are not liable to retire by rotation.

(a) Vacancy in case of retiring director [Section 152 (7)]

At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto. If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place. (b) If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been reappointed at the adjourned meeting, unless—

(i) a resolution for the re-appointment of such director has been put to the meeting and lost;

(ii) the retiring director has expressed his unwillingness to be so re-appointed;

(iii) he is not qualified or is disqualified for appointment;

(iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or

(v) section 162 i.e. appointment of directors to be voted individually is applicable to the case.

INDEPENDENT DIRECTORS

Companies Act 2013 mandates appointment of independent directors by listed companies and other class of companies. It also prescribes other aspects such as maximum tenure of independent directors, separate meeting of independent directors, tenure, their qualifications, liability, appointment, remuneration etc. The Central Government has exempted section 8 companies from the requirement of appointment of Independent Director.

Who can be an Independent Director

Section 149(6) of the Companies Act, 2013, provides that: Independent Director, in relation to a company, means a director other than a managing director or a whole time director or a nominee director –

(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company; (ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

(c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year.

(d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(e) who, neither himself nor any of his relatives— (i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed; (ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of— (A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm; (iii) holds together with his relatives two per cent. or more of the total voting power of the company; or (iv) is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or

(f) who possesses such other qualifications as may be prescribed.

Number of Independent Directors

Every listed public company shall have at least one-third of the total number of directors as independent directors. Any fraction contained in such one third numbers shall be rounded off as one.

According to Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014 the following class or classes of companies are required to have at least two directors as independent directors –

(i) the Public Companies having paid up share capital of ten crore rupees or more; or

(ii) the Public Companies having turnover of one hundred crore rupees or more; or

(iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees. A small shareholder’s director may also be considered as an independent, if he fulfills the eligibility criteria and if he gives the declaration of his independence under section 149(6).

Code for Independent Directors (Schedule IV of the Companies Act 2013)

Section 149 (8) of the Act prescribes that the company and independent directors shall abide by the provisions specified in Schedule IV regarding code for independent directors. It is a guide to professional conduct for independent directors. Adherence to these standards by independent directors and fulfilment of their responsibilities in a professional and faithful manner will promote confidence of the investment community, particularly minority shareholders, regulators and companies in the institution of independent directors. Code of Conduct includes

• guidelines of professional conduct,

• role,functions and duties,

• manner of appointment and re-appointment,

• resignation or removal,

• separate meetings,

• evaluation mechanism.

I. Guidelines of professional conduct: An independent director shall: (1) uphold ethical standards of integrity and probity; (2) act objectively and constructively while exercising his duties; (3) exercise his responsibilities in a bona fide manner in the interest of the company; (4) devote sufficient time and attention to his professional obligations for informed and balanced decision making; (5) not allow any extraneous considerations that will vitiate his exercise of objective independent judgment in the paramount interest of the company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision making; (6) not abuse his position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person; (7) refrain from any action that would lead to loss of his independence; (8) where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly; (9) assist the company in implementing the best corporate governance practices.

II. Role and functions: The independent directors shall: (1) help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct; (2) bring an objective view in the evaluation of the performance of board and management; Lesson 15 Independent Directors 381 (3) scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance; (4) satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible; (5) safeguard the interests of all stakeholders, particularly the minority shareholders; (6) balance the conflicting interest of the stakeholders; (7) determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management; (8) moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.

III. Duties: The independent directors shall— (1) undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company; (2) seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company; (3) strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member; (4) participate constructively and actively in the committees of the Board in which they are chairpersons or members; (5) strive to attend the general meetings of the company; (6) where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting; (7) keep themselves well informed about the company and the external environment in which it operates; (8) not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board; (9) pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company; (10) ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use; (11) report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy; (12) acting within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees; (13) not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.

IV. Manner of appointment: (1) Appointment process of independent directors shall be independent of the company management; while selecting independent directors the Board shall ensure that there is appropriate balance of skills, experience and knowledge in the Board so as to enable the Board to discharge its functions and duties effectively. (2) The appointment of independent director(s) of the company shall be approved at the meeting of the shareholders. (3) The explanatory statement attached to the notice of the meeting for approving the appointment of independent director shall include a statement that in the opinion of the Board, the independent director proposed to be appointed fulfils the conditions specified in the Act and the rules made thereunder and that the proposed director is independent of the management. (4) The appointment of independent directors shall be formalised through a letter of appointment, which shall set out : (a) the term of appointment; (b) the expectation of the Board from the appointed director; the Board-level committee(s) in which the director is expected to serve and its tasks; (c) the fiduciary duties that come with such an appointment along with accompanying liabilities; (d) provision for Directors and Officers (D and O) insurance, if any; (e) the Code of Business Ethics that the company expects its directors and employees to follow; (f) the list of actions that a director should not do while functioning as such in the company; and (g) the remuneration, mentioning periodic fees, reimbursement of expenses for participation in the Boards and other meetings and profit related commission, if any. (5) The terms and conditions of appointment of independent directors shall be open for inspection at the registered office of the company by any member during normal business hours. (6) The terms and conditions of appointment of independent directors shall also be posted on the company's website.

V. Re-appointment: The re-appointment of independent director shall be on the basis of report of performance evaluation.

VI. Resignation or removal: (1) The resignation or removal of an independent director shall be in the same manner as is provided in sections 168 and 169 of the Act. (2) An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within a period of not more than one hundred and eighty days from the date of such resignation or removal, as the case may be. (3) Where the company fulfils the requirement of independent directors in its Board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of Lesson 15 Independent Directors 383 replacement by a new independent director shall not apply.

VII. Separate meetings: (1) The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management; (2) All the independent directors of the company shall strive to be present at such meeting; (3) The meeting shall: (a) review the performance of non-independent directors and the Board as a whole; (b) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors; (c) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

VIII. Evaluation mechanism: (1) The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated. (2) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

Tenure of Independent Director

Section 149(10) provides that subject to the provisions of section 152 (Appointment of Directors),

(a) an independent director shall hold office for a term up to five consecutive years on the Board of a company.

(b) He shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.

(c) No independent director shall hold office for more than two consecutive terms.

(d) An independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director. During the said period of three years, an independent director shall not be appointed in or be associated with the company in any other capacity, either directly or indirectly.

DIRECTOR IDENTIFICATION NUMBER (DIN)

The Companies (Appointment and Qualification of Directors) Rules, 2014, provides for the procedure for making application for allotment of DIN. Procedure for application for allotment of DIN - Section 153 & Rule 9

(1) Every individual, who is to be appointed as director of a company shall make an application electronically in Form DIR-3 (Application for allotment of Director Identification Number) to the Central Government for the allotment of a Director Identification Number (DIN) along with such fees as may be prescribed.

(2) The Central Government shall provide an electronic system to facilitate submission of application for the allotment of DIN through the portal on the website of the Ministry of Corporate Affairs.

(3) (a) The applicant shall download Form DIR-3 from the portal, fill in the required particulars and attaching photograph; proof of identity; proof of residence; and specimen signature duly verified and sign the form digitally. (b) Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified digitally by -: (i) a chartered accountant in practice or a company secretary in practice or a cost accountant

in practice; or (ii) a company secretary in full time employment of the company or by the managing director or by director of the company in which the applicant is to be appointed a director;

(4) Rule 9(4) provides that in case the name of a person does not have a last name, then his or her father's or grandfather's surname shall be mentioned in the last name along with declaration in Form-DIR-3A. This declaration will be submitted along with Form DIN-3.

Procedure for Allotment of DIN- Section 154 and Rule 10

The Central Government shall, within one month from the receipt of the application under section 153, allot a Director Identification Number to an applicant in such manner as mentioned below:

(1) On the submission of the Form DIR-3 on the portal and payment of the requisite amount of fees through online mode an application number shall be generated by the system automatically.

(2) After generation of the application number, the Central Government shall process the application received for allotment of DIN under Sub-rule (2) of Rule 9 decide on the approval or rejection thereof and communicate the same to the applicant along with DIN allotted. In case of approval by way of a letter by post or electronically or in any other mode within a period of one month from the receipt of such application.

(3) If the Central Government, on examination, finds such application to be defective or incomplete in any respect, it shall give intimation of such defect or incompleteness, by placing it on the website and by email to the applicant who has filed such application, directing the applicant to rectify such defects or incompleteness by resubmitting the application within a period of fifteen days of such placing on the website and email. Provided that Central Government shall- (a) reject the application and direct the applicant to file fresh application with complete and correct information, where the defect has been rectified partially or the information given is still found to be defective; (b) treat and label such application as invalid in the electronic record in case the defects are not removed within the given time; and (c) inform the applicant either by way of letter by post or electronically or in any other mode.

(4) In case of rejection or invalidation of application, the fee so paid with the application shall neither be refunded nor adjusted with any other application.

(5) All Director Identification Numbers allotted to individual(s) by the Central Government before the commencement of Companies (Appointment and Qualification of Directors) Rules, 2014 shall be deemed to have been allotted to them under these rules.

(6) The Director Identification Number so allotted under these rules is valid for the life-time of the applicant and shall not be allotted to any other person.

(7) Every director, functioning as a director in one or more companies on or before the 30th June, 2007 and who has not yet intimated his DIN to such company or companies shall, within one month of the receipt of Director Identification Number from the Central Government, intimate his Director Identification Number to the company or all companies wherein he is a

director as per Form DIR-3B (New Form). The intimation by the company of Director Identification Number of its directors under section 157 of the Act shall be furnished in Form DIR-3C (New Form) within fifteen days of receipt of intimation under section 156 (Sub rule 10A).

Cancellation/Surrender/Deactivation of DIN [Rule 11]

The Competent Authority (Central Government/RD (North),Noida/ Authorised Officer by the RD) may, upon being satisfied on verification of particulars or documentary proof attached with the application along with specified fee received from any person, cancel or deactivate the DIN in case –

(a) the DIN is found to be duplicated in respect of the same person provided the data related to both the DIN shall be merged with the validly retained number;

(b) the DIN was obtained in a wrongful manner or by fraudulent means;

(c) of the death of the concerned individual;

(d) the concerned individual has been declared as a lunatic or of unsound mind by a competent Court;

(e) if the concerned individual has been adjudicated an insolvent. Provided that before cancellation or deactivation of DIN pursuant to clause (b), an opportunity of being heard shall be given to the concerned individual;

(f) on an application made in Form DIR-5 by the DIN holder to surrender his or her DIN along with declaration that he has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority, the Central Government may deactivate such DIN but after verification of e-records.

General Provisions regarding DIN

Prohibition to obtain more than one DIN: According to Section 155, No individual shall apply for/obtain/ possess another Director Identification Number who has already been allotted a Director Identification Number under section 154.

Director to intimate DIN: Section 156 stipulated that Every existing director shall intimate his DIN to the company or all companies wherein he is a director within one month of the receipt of DIN from the Central Government.

Company to inform DIN to Registrar: Every company shall, within fifteen days of the receipt of intimation of DIN from director, furnish the DIN to the Registrar/authorised office by the Central Government in e-form DIR-3C. The e-form is to be digitally signed by Company Secretary of the company or Company Secretary in Practice. If a company fails to furnish Director Identification Number under section 157 (1), before the expiry of the 270 days period from the date by which it should have been furnished with additional fee, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Obligation to obtain DIN: Section 158 specified that every person or company shall mention the DIN in return, information or particulars as required to be furnished under this Act, in case such return etc. relate to the director or contain any reference of any director.

Intimation of reasons of resignation on behalf of foreign Director: Rule 15 of Companies (Appointment and Qualification of Directors) Rules, 2014, requires that a company shall intimate resignation of a director to Registrar in Form DIR-12 within 30 days from the date of receipt of notice of resignation and to post such information on its website. Further, Rule 16 of above rules requires that a resigning director shall forward a copy of his resignation along with reasons for such resignation to the Registrar within 30 days from the date of resignation in Form DIR-11 with the prescribed fees. In case a company has already filed Form DIR-12 with the Registrar under rule 15, a foreign director of such company resigning from his office may authorise in writing a practicing chartered accountant or cost accountant in practice or company secretary in practice or any other resident director of the company to sign Form DIR-11 and file the same on his behalf intimating the reasons for the resignation."

Punishment for Contravention: Section 155 of the Act provides that no individual who has already been allotted a Director Identification Number under section 154, shall apply for, obtain or possess another Director Identification Number. Section 159 of the Act, further provides that for contravention of the provisions relating to appointment, obtaining more than one DIN or non-intimation of DIN, the individual shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues.

OTHER KEY MANAGERIAL PERSONNEL

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

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

Chief Executive Officer/Managing Director

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

Company Secretary

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

Whole Time Director

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

Chief Financial Officer

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

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 the KMP 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 is required 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.

RELATED PARTY TRANSACTION

Related Party:

Companies (Specification of definitions details) Amendment Rules, 2014 provides for the purposes of sub-clause (ix) of clause (76) of section 2 of the Act, a director other than an independent director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

Definition of Related Party Transaction

According to SEBI (Listing Obligations And Disclosure Requirements) Regulations, 2015 Regulation 2(1) (zc) defines that "related party transaction" means a transfer of resources, services or obligations between a listed entity and a related party, regardless of whether a price is charged and a "transaction" with a related party shall be construed to include a single transaction or a group of transactions in a contract. Provided that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s).

Nature of Related Party Transactions

The scope of dealing with Related Party Transactions has been widened in Companies Act, 2013. Section 188 (1) of the Act provides that except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as prescribed under Rule 15 of the Companies (Meetings of board and its Powers) Rules, 2014, no company shall enter into any contract or arrangement with a related party with respect to—

(i) sale, purchase or supply of any goods or materials;

(ii) selling or otherwise disposing of, or buying, property of any kind;

(iii) leasing of property of any kind;

(iv) availing or rendering of any services;

(v) appointment of any agent for purchase or sale of goods, materials, services or property;

(vi) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and

(vii) underwriting the subscription of any securities or derivatives thereof, of the company

Conditions to be fulfilled before entering into Related Party Transactions

Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014 provides that a company shall enter into any contract or arrangement with a related party subject to the following conditions, namely:-

(1) The agenda of the Board meeting at which the resolution is proposed to be moved shall disclose- (a) the name of the related party and nature of relationship; (b) the nature, duration of the contract and particulars of the contract or arrangement; (c) the material terms of the contract or arrangement including the value, if any; (d) any advance paid or received for the contract or arrangement, if any; (e) the manner of determining the pricing and other commercial terms, both included as part of contract and not considered as part of the contract; (f) whether all factors relevant to the contract have been considered, if not, the details of factorsLesson 16 Board and its Powers 411 not considered with the rationale for not considering those factors; and (g) any other information relevant or important for the Board to take a decision on the proposed transaction.

(2) Where any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement.

UNIT 4 MEETINGS AND RESOLUTIONS

COMPANY MEETINGS

GENERAL PROVISION: A meeting may be generally defined as a gathering or assembly or getting together of a number of persons for transacting any lawful business. For proper working of the company, it is necessary that the shareholders meet as often as possible and discuss matters of mutual interest and take important decision, there must be at least two persons to constitute a meeting. But every assembly or gathering do not constitute a meeting. Company meetings must be convened and held in perfect compliance with the various provisions of the Companies Act, 2013, and the rules framed there under

Requisites of Valid Meeting: A meeting to be held valid, must satisfy the provisions laid down in the Act. Any irregularities in the procedure followed for convening and conducting the meeting will make the meeting invalid. So meeting must be properly convened and legally constituted.

NOTICE :

'Notice' means an advance intimation of the meeting so as to enable the person concerned to prepare himself for it. The notice must be clear and should state the purpose for which the meeting is called and the notice must be in writing. It must be given at least 21 clear days before the date of the meeting. In case notice is sent by post, service of notice shall be deemed to have been effected at the expiry of 48 hours after it is posted. Contents of Notice: Every notice must specify the date, day, place, hour of the meeting. In case, the particulars provided in the section 172 are not specified in the notice, the meeting will be held invalid.

(i) Place of Meeting : In case of AGM: at registered office of the company or at some other place within the same town, city, village, in which registered office of the company is situated.

In case of any other meeting : not subject to aforesaid restriction.

(ii) Day of Meeting: In case of AGM: any day which is not a public holiday.

In case of any other meeting : not subject to aforesaid restriction.

(iii) Time of Meeting: In case of AGM: during business hours, but it may continue beyond usual hours.

(iv) Type of business: Ordinary Business and Special Business

QUORUM :

Quorum is the minimum number of members who are personally present and their presence is necessary to constitute meeting and to validates the transactions and resolutions passed in the meeting.

Requisite Quorum:

(i) Public Companies : 5 members personally present.

(ii) Other Companies : 2 members personally present. Articles may provide higher number to constitute a valid quorum but, when all members of the company are present in person, the quorum is present even if quorum required by articles is more than the number of members.

PROXIES :

The term ‘Proxy’ is used both for the person who is authorised to act and vote for another at a meeting of the company and the instrument through which such as person is named and authorised to attend the meeting

Appointment of Proxy:

Section 176 gives every shareholder, who is entitled to attend and vote, a statutory right to appoint another person as his Proxy to attend and vote for him. But the proxy so appointed has no right of audience, i.e, he cannot speak. The proxy may demand or join demanding a poll but (unless the articles otherwise provide) may vote only on a poll.

MINUTES:

Minutes may be defined as the written record of the business transacted at a meeting. Section 193 imposes a statutory obligation on every company to cause minutes to all proceedings of General meetings, Board meetings and meeting of the Committee of the Board to be recorded.

(a) Writing of minutes: For this purpose, every company is required to make entries of the proceedings of its meetings in books kept for the purpose within 30 days of the conclusion thereof. Minutes have to be written by hand and typed minutes cannot be posted in the Minute Books.

(b) Signing of minutes: Every page of the book, with pages consecutively numbered, should be initialed or singed and the last page shall be dated and singed: (i) in the cases of Board or Committee minutes, by the Chairman of the meeting or the Chairman of the succeeding meeting; (ii) in the case of minutes of general meeting, by the Chairman o the meeting within the aforesaid period of 30 days of the conclusion of the meeting or in the event of death or inability of the Chairman, by the Director duly authorised for the purpose.

KINDS OF MEETINGS

1. STATUTORY MEETINGS:

Every Company limited by shares, and every company limited by guarantee and having a share capital, shall, within a period of not less than one month or not more than six months from the date at which the company is entitlted to commence business, hold a general meeting of the memebers of the country, which shall be called “the satatutorymeeing.” [Sec. 165(1)]

Legal provisions regarding statutory meeting

1. Obligation – Every company limited by shares and every co. limited by guarantee and having share capital is required to hold S.M.

2. Exempted companies Companies exempted from holding statutary meeting – (i) Private company (ii) Company Limited by Guarantee having no share capital (iii) Companies with unlimited liabilities (iv) Government Co.

3. Time period of holding meeting- not less than one month or not more than six months from commencement.

4. Notice – at least 21 days

5. Statutory report certified by the directors

6. Certification by auditor

7. Forwarding statutory report to members

8. Delivery of report to Registrar

9. List of members to be kept open for inspection

10. Discussion by the members

11. Penalty- It default is made up to five thousand Rs. Winding up- If a company fails to hold statutory meeting any contributory on the Registrar may apply to the Tribunal for winding up of the company.

Statutory Report :

The Board of directors shall, at least 21 days before the day of the meeting, forward a statutory report inform No. 22 to every member of the company.

Contents of the report

(1) Total shares allotted and consideration

(2) Cash received

(3) Abstract of receipts and payments

(4) Particulars of directors, auditors, manager and secretary

(5) Particulars of contracts

(6) Underwriting contract

(7) Calls in arrears from directors and manager

(8) Commission and brokerage

2. ANNUAL GENERAL MEETING

Every public as well as private company is required to hold at least one meeting of its members during every year. This meeting is called an annual general meeting. Thus annual general meeting is a mandatory for every company. The notice calling such meeting must specify in that it shall be the annual general meeting of the company. Applicability – Every company whether public or private having share capital or not, limited or unlimited must hold AGM.

Legal Provisions Regarding AGM [Sec. 166(1)]

(1) To be held every year

(2) Time for holding first AGM within 18 months of incorporation

(3) Gap between two AGMs – should not be more than 15 months

(4) Extension in Time- The Registrars may extend the time by a period not exceeding three months (not being the first AGM)

(5) Time of meeting – during business hours [Sec. 166(3)]

(6) Day of the meeting – on a day that is not a public holiday.

(7) Place of meeting – At any place within the postal limits and local limits of the city in which its registered office is situated.

(8) Notice of meeting – 21 days notice [Sec. 171]

(9) Quorum – in case of public Co. 5 members personally present and in case of a private Co. 2 members [Sec. 174]

3. EXTRAORDINARY GENERAL MEETING (EGM)

Meaning and Needs for EGM:

All general meetings other than annual general meetings are known as extraordinary general meetings. [Regulation 47 Table A] A public company limited by shares and a company limited by guarantee and having a share capital, is required hold a statutory meeting. This general meeting is also not included in extraordinary general meetings. Therefore, it can be said that all general meetings than the statutory general meetings and annual general meetings are extraordinary general meetings.

Extraordinary general meetings are called for transaction some urgent or special business. Therefore, all business transacted at such a meeting is a special business. Any business other than ordinary business is called special business. Illustrations of special business are as follows:

1. Alternation of any of the clauses of the memorandum.

2. Alternation of the clauses of articles of the company.

3. Reconstitution of the Board of directors.

Who can call EGM?

(A) By the Board of Directors –

(i) By the Board of Directors on its own motion

(ii) By Board of directors on the requisition of members.

(B) By the Requisitionists –

(i) By the requisitionists themselves or

(ii) In case of a company having a share capital by the requisitionists who hold at least one-tenth of the total paid up share capital or

(iii) In case a company not having share capital, by such of the Requisitionists as represent not less than one tenth of the voting power of the members of the company.

(C) By the Tribunal –

(i) Either on its own motion or

(ii) On the application of any directors of the company or

(iii) On an application of any member entitled to vote at that meeting

4. CLASS MEETINGS :

Class meetings are those meetings which are held by the holders of particular type or class of shares, e.g., preference shareholders class. Such meetings are held when it is proposed to vary the rights of a particular class of shareholders

5. MEETING OF CREDITORS :

Sometimes, company calls meetings of its creditors. Such meetings may be called either during life of the company or in the event of its being wound up.

6. MEETING OF DEBENTURE HOLDERS :

When a company issues secured debentures, it executes a trust deed. The deed empowers the debenture holder to hold meetings and to pass resolutions to vary their rights in certain cases. All matters relating to holding, conduct, and proceedings of the meetings are given in the trust deed. The decisions arrived at such meetings with requisite majority are binding up all the debenture holders.

7. BOARD MEETINGS :

Meaning:- The affairs of a Company are managed by the Board of Directors. In other words, powers delegated by a company to its directors must be exercised at properly convened and duly constituted meeting generally referred to as Board meeting. Only acts done at duly constituted meetings are therefore valid, unless the articles provide otherwise.

Legal provisions regarding Board meetings

1. Right to convene meeting – Usually, the chairman of the Board has the power to convene the meeting. However the articles may authorise any director to call the meeting.

2. Period and frequency- At least one meeting of the Board in a period of three months and four in a year.

3. Notice of Meeting – Notice shall be given in writing to every director for the time being in India.

4. Time limit, form and mode of notice- Act does not prescribe the time limit, form and mode of notice of a Board meeting. But companies generally give at least one weeks notice.

5. Time, place and day of meeting – The meeting of the Board of directors may be held at any time, any day and place which is convenient to the members.

6. Agenda- The Act does not require a formal agenda in advance but it is a general practice with the wellmanaged companies to forward formal agenda in advance.

7. Quorum- One third of its total strength or two directors whichever is higher.

8. Adjournment of meeting- If a meeting cannot be held for want of quorum, it stands adjourned till the same day in the next week, at the same time and place. If that day is a public, holiday, it shall stand adjourned till the next day which is not a public holiday.

9. Voting and decision- Unless the articles otherwise provide, questions arising at any meeting of the Board of directors shall be decided by a simple majority.

10. Proxy- A director cannot appoint a proxy to attend the meeting. However, the Board has the power to appoint alternate director in place of a director who is absent or had gone out for more than three months.

11. Chairman- The Board may elect a chairman of its meeting and determine the period for which he is to hold office. If no such chairman is elected or the chairman is not present within five minutes from the schedules time then the directors present may choose one from amongst them to be chairman of the meeting.

12. Minutes- Every company must cause minutes of all proceedings within 30 days of the conclusion of such meeting.

COMMITTEES

A committee is a small working group identified by the board, consisting of board members, for the purpose of supporting the board's work. Committees are generally formed to perform some expertise work. Members of the committee are expected to have expertise in the specified field. Committees are usually formed as a means of improving board effectiveness and efficiency, in areas where more focused, specialized and technical discussions are required. These committees prepare the groundwork for decision-making and report at the subsequent board meeting. Committees enable better management of full board's time and allow in-depth scrutiny and focused attention. However, the Board of Directors are ultimately responsible for the acts of the committee. Board is responsible for defining the committee role and structure.

Mandatory Committees of the Board are prescribed under Companies Act, 2013 (for certain class of companies) and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for listed companies. Mandatory Committees under the Companies Act 2013 are:

• Audit Committee

• Nomination and Remuneration Committee

• Stakeholders Relationship Committee

• Corporate Social Responsibility Committee

Audit Committee

Audit Committee is one of the main pillars of the corporate governance mechanism in any company. The Committee is charged with the principal oversight of financial reporting and disclosure and aims to enhance the confidence in the integrity of the company's financial reporting, the internal control processes and procedures and the risk management systems. The constitution of Audit Committee is mandated under the Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

The Nomination and Remuneration Committee

The Nomination and Remuneration Committee helps the Board of Directors in the preparations relating to the election of members of the Board of Directors, and in handling matters within its scope of responsibility that relate to the conditions of employment and remuneration of senior management, and to management's and personnel's remuneration and incentive schemes. The responsibilities of the Nomination and Remuneration Committee are defined in its policy document. Except for certain large listed companies, the importance of constitution of the Nomination and Remuneration Committee has not been realised fully in India.

The Stakeholders Relationship Committee

Section 178(5) of the Companies Act, 2013 provides for constitution of the Stakeholders Relationship Committee. The Board of a company that has more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year is required to constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board. The Stakeholders Relationship Committee shall consider and resolve the grievances of security holders of the company.

Corporate Social Responsibility Committee

India has one of the richest traditions of CSR. Much has been done in recent years to make Indian entrepreneurs aware of social responsibility as an important segment of their business activity but CSR in India has yet to receive widespread recognition. If this goal has to be realised then the CSR approach of corporates has to be in line with their attitudes towards mainstream business- companies setting clear objectives, undertaking potential investments, measuring and reporting performance publicly. One of the key changes in the Companies Act, 2013 is the introduction of a Corporate Social Responsibility section making India the first country to mandate CSR through a statutory provision. While CSR is not mandatory for companies, the rules are in line with the 'Comply or Explain' principle with penalties applicable only if an explanation is not offered.

The provisions of the Section 135 of the Act may be summarized as under:

1. The Section applies to the following classes of companies during any financial year: (i) Companies having Net Worth of rupees five hundred crore or more; (ii) Companies having turnover of rupees one thousand crore or more; (iii) Companies having Net Profit of rupees five crore or more

2. The companies specified above shall constitute a Corporate Social Responsibility Committee (CSR Committee) of the Board. A Company which ceases to be a company covered under the above three threshold requirement to constitute CSR Committee for three consecutive financial years shall not be required to constitute CSR Committee till such time it meets the threshold as specified above. [Rule 3(2)]

3. The CSR Committee shall consist of three or more Directors, out of which at least one Director shall be an Independent Director.

4. After taking into account the recommendations of the CSR Committee, the Board shall approve the CSR Policy for the company.

5. The contents of the Policy shall be disclosed in the Board's report.

6. It shall also be placed on the Company 's website, if any, in a manner to be prescribed by the Central Government.

7. The Board shall ensure that the activities as are included in the CSR Policy (from the activities as specified in Schedule VII) are undertaken by the Company.

The following additional features of the Section are relevant:

1. While spending the amount earmarked for CSR activities, the company shall give preference to the local area and areas around it where it operates;

2. If the Company fails to spend the amount, the Board shall specify the reasons for not spending the amount in the Board's Report.

3. The eligible companies are required to spend in every financial year, at least two per cent of the Average Net Profits of the Company made during the three immediately preceding financial years in pursuance of its CSR Policy. For this purpose, "Average Net Profit" shall be calculated in accordance with the provisions of Section 198 of the Companies Act, 2013.

Resolutions

Decisions of a company are taken by resolution of its members, passed at their meetings. Also, the Board of directors takes certain decisions at its meeting by passing certain resolutions after due deliberations. The term 'motion' indicates a proposition made at a meeting by any member. Such a motion may be passed without any change or modification. But if some members feel that the motion in the form proposed needs some change or modification, they may move an amendment. A motion when passed with or without amendment is called a resolution. A motion should always be in writing and before it is brought before the meeting, the necessary notice must be given. A person proposing a motion is called the mover and the motion should be signed by him. Once the motion has been put to the members and they have voted in favour of it, it becomes a resolution. In the case of a company, there are three kinds of resolutions:

1. Ordinary resolution;

2. Special resolution;

3. Resolution requiring special notice.

1. Ordinary Resolution [s.189(1)]

When a motion is passed by a simple majority of the members voting at a general meeting, it is said to have been passed by an ordinary resolution. In other words, votes in favour of the resolution are more than 50%. Still in other words, a resolution shall be an ordinary resolution where the votes cast in favour of the resolution are more than the votes cast against the resolution. According to s.189(1), "A resolution shall be an ordinary resolution when at a general meeting of which the notice required under the Act has been duly given, the votes cast (whether on show and Proceedings of hands, or on poll, as the case may be), in favour of the resolution (including the casting vote, Notes if any, of the chairman) by members who, being entitled to do so, vote in person or where proxies are allowed, by proxy, exceed the votes, if any, cast against the resolution by members so entitled and voting." All matters which are not required either by the Act or the company's Articles to be done by a special resolution can be done by means of an ordinary resolution. Some of the cases in which only ordinary resolution is required are: alteration of authorised capital, declaration of dividend, appointment of auditors, election of directors.

2 Special Resolution [s.189 (2)]

A resolution is a special resolution in regard to which: (a) the intention to propose the resolution as a special resolution has been specifically mentioned in the notice calling the general meeting; (b) 21 days notice has been duly given for calling the meeting; (c) the number of votes cast in favour of the resolution is three times the number cast against it. Some of the cases in which a special resolution is necessary: alteration of objects clause; change of registered office from one State to another; alteration of the Articles; changes in the name of the company; reduction of share capital.

3 Resolution Requiring Special Notice (s.190)

Some resolutions require special notice. The object of special notice is to give the members sufficient time to consider the proposed resolution and also to give the Board of directors an opportunity to indicate views, on the resolution if it is not proposed by them but by some other shareholders. Under this, a notice of intention to move the resolution should be given to the company not less than 14 days before the date of the meeting at which it is proposed to be moved. The company in turn must immediately give notice by advertisement in a newspaper or in any other mode allowed by the Articles, but not less than seven days before the meeting. Some of the cases in which a special notice is necessary are: appointing an auditor, a person other than a retiring auditor; moving a resolution that a retiring auditor will not be re-appointed; removing a director before his term expires. Section 192 requires that a printed or a type written copy of each special resolution should be sent to the registrar within 30 days of passing thereof.

(i) Passing of Resolutions by Postal Ballot (s.192A)

Section 192A contains the following provisions for passing of resolution by postal ballot:

(i) A listed company may and in the case of resolution relating to such business as the Central Government may, by notification, declare to be conducted only by postal ballot, shall, get any resolution passed by means of a postal ballot, instead of transacting the business in general meeting of the company.

(ii) Where a company decides to pass any resolution by resorting to postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons therefor, and requesting them to send their assent or dissent in writing on a postal ballot within a period of 30 days from the date of posting of the letter.

(iii) The notice shall be sent by registered post acknowledgement due, or by any other method as may be prescribed by the Central Government in this behalf and shall include with the notice, a postage pre-paid envelope for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period.

(iv) If a resolution is assented to by a requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

(ii) Circulation of Members’ Resolution (s.188)

When some members of a company want (i) to propose a resolution at the company’s next AGM; or (ii) desire to circulate to members any statement with respect to the matter referred to in any proposed resolution or any business to be dealt with at any general meeting, the Act allows them to use the administrative machinery of the company for the purpose.

If the requisite number of members make a requisition as aforesaid, the company shall be bound to: (i) give a notice of the resolution intended to be moved at the next AGM; (ii) circulate the statement among the members entitled to notice of any general meeting. However, before the obligation of the company in respect of the above may arise, the following conditions shall have to be satisfied:

(a) The requisition must have been signed by at least: (a) members having 1/20th of the total voting rights of all the members having the right to vote on the resolution; or (b) members, numbering 100 (having the right to vote at the resolution) and commanding a paid-up share capital of 1 lakh or more.

(b) The requisition must have been deposited at the registered office of the company: (a) at least 6 weeks before the meeting in case of a requisition requiring notice of a resolution; and (b) at least 2 weeks before the meeting in case of any other requisition.

(c)The statement to be circulated should not contain more than 1000 words.

(d) The requisitions must have deposited with the company a sum reasonably sufficient to meet the expense of the requisition

UNIT 5 WINDING UP OF COMPANY

Winding up of a company

Winding up of a company is defined as a process by which the life of a company is brought to an end and its property administered for the benefit of its members and creditors. An administrator, called the liquidator, is appointed and he takes control of the company, collects its assets, pays debts and finally distributes any surplus among the members in accordance with their rights. At the end of winding up, the company will have no assets or liabilities. When the affairs of a company are completely wound up, the dissolution of the company takes place. On dissolution, the company's name is struck off the register of the companies and its legal personality as a corporation comes to an end.

Modes of Winding Up

The Companies Act provides for two modes of winding up a registered company:

I. Winding up by the Court

II. Voluntary Winding Up

I. Winding up by the Court or Grounds for Compulsory Winding Up

The petition for winding up to the Court may be made by:-

a) The company, in case of passing a special resolution for winding up.
b) A creditor, in case of a company's inability to pay debts.
c) A contributory or contributories, in case of a failure to hold a statutory meeting or to file a statutory report or in case of reduction of members below the statutory minimum.
d) The Registrar, on any ground provided prior approval of the Central Government has been obtained.
e) A person authorized by the Central Government, in case of investigation into the business of the company where it appears from the report of the inspector that the affairs of the company have been conducted with intent to defraud its creditors, members or any other person.
f) The Central or State Government, if the company has acted against the sovereignty, integrity or security of India or against public order, decency, morality, etc.

The following circumstances for the winding up of accompany by the court:

a) If the company has, by a Special Resolution, resolved that the company be wound up by the Tribunal.

b) If default is made in delivering the statutory report to the Registrar or in holding the statutory meeting. A petition on this ground may be filed by the Registrar or a contributory before the expiry of 14 days after the last day on which the meeting ought to have been held. The Tribunal may instead of winding up, order the holding of statutory meeting or the delivery of statutory report.

c) If the company fails to commence its business within one year of its incorporation, or suspends its business for a whole year. The winding up on this ground is ordered only if there is no intention to carry on the business and the Tribunal's power in this situation is discretionary.

d) If the number of members is reduced below the statutory minimum i.e. below seven in case of a public company and two in the case of a private company.

e) If the company is unable to pay its debts.

f) If the tribunal is of the opinion that it is just and equitable that the company should be wound up.

g) Tribunal may inquire into the revival and rehabilitation of sick units. It its revival is unlikely, the tribunal can order its winding up.

h) If the company has made a default in filing with the Registrar its balance sheet and profit and loss account or annual return for any five consecutive financial years

i) 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.

II. Voluntary Winding Up of a Registered Company

When a company is wound up by the members or the creditors without the intervention of Tribunal, it is called as voluntary winding up. It may take place by:-

By passing an ordinary resolution in the general meeting if: -

(i) the period fixed for the duration of the company by the articles has expired; or

(ii) Some event on the happening of which company is to be dissolved, has happened.

By passing a special resolution to wind up voluntarily for any reason whatsoever. Within 14 days of passing the resolution, whether ordinary or special, it must be advertised in the Official Gazette and also in some important newspaper circulating in the district of the registered office of the company. The Act provides two methods for voluntary winding up:-

1. Members' voluntary winding up

2. Creditor's voluntary winding up

1. Members' voluntary winding up

It is possible in the case of solvent companies which are capable of paying their liabilities in full. There are two conditions for such winding up:-

a) A declaration of solvency must be made by a majority of directors, or all of them if they are two in number. It will state that the company will be able to pay its debts in full in a specified period not exceeding three years from commencement of winding up. It shall be made five weeks preceding the date of resolution for winding up and filed with the Registrar. It shall be accompanied by a copy of the report of auditors on Profit & Loss Account and Balance Sheet, and also a statement of assets and liabilities upto the latest practicable date; and

b) Shareholders must pass an ordinary or special resolution for winding up of the company.

The provisions applicable to members' voluntary winding up are as follows:-

a) Appointment of liquidator and fixation of his remuneration by the General Meeting.

b) Cessation of Board's power on appointment of liquidator except so far as may have been sanctioned by the General Meeting, or the liquidator.

c) Filling up of vacancy caused by death, resignation or otherwise in the office of liquidator by the general meeting subject to an arrangement with the creditors.

d) Sending the notice of appointment of liquidator to the Registrar.

e) Power of liquidator to accept shares or like interest as a consideration for the sale of business of the company provided special resolution has been passed to this effect.

f) Duty of liquidator to call creditors' meeting in case of insolvency of the company and place a statement of assets and liabilities before them.

g) Liquidator's duty to convene a General Meeting at the end of each year.

h) Liquidator's duty to make an account of winding up and lay the same before the final meeting.

2.Creditor's voluntary winding up

It is possible in the case of insolvent companies. It requires the holding of meetings of creditors besides those of the members right from the beginning of the process of voluntary winding up. It is the creditors who get the right to appoint liquidator and hence, the winding up proceedings are dominated by the creditors. The provisions applicable to creditors' voluntary winding up are as follows:-

a) The Board of Directors shall convene a meeting of creditors on the same day or the next day after the meeting at which winding up resolution is to be proposed.
b) A statement of position of the company and a list of creditors along with list of their claims shall be placed before the meeting of creditors.
c) A copy of resolution passed at creditors' meeting shall be filed with Registrar within 30 days of its passing
d) It shall be done at respective meetings of members and creditors. In case of difference, the nominee of creditors shall be the liquidator.
e) A five-member Committee of Inspection is appointed by creditors to supervise the work of liquidator.
f) Fixation of remuneration of liquidator by creditors or committee of inspection.
g) Cessation of board's powers on appointment of liquidator.

As soon as the affairs of the company are wound up, the liquidator shall call a final meeting of the company as well as that of the creditors through an advertisement in local newspapers as well as in the Official Gazette at least one month before the meeting and place the accounts before it. Within one week of meeting, liquidator shall send to Registrar a copy of accounts and a return of resolutions.

National Company Law Appellate Tribunal (NCLAT)

National company law appellate tribunal was constituted under Section 410 of the Companies Act, 2013.

Functions:

1. It hears appeals against the orders of National Company Law Tribunal(s) (NCLT), with effect from 1st June, 2016.
2. It is the Appellate Tribunal for hearing appeals against the orders passed by NCLT(s) under Section 61 of the Insolvency and Bankruptcy Code, 2016 (IBC).
3. It is the Appellate Tribunal for hearing appeals against the orders passed by Insolvency and Bankruptcy Board of India under Section 202 and Section 211 of IBC.
4. It is the Appellate Tribunal to hear and dispose of appeals against any direction issued or decision made or order passed by the Competition Commission of India (CCI).

Composition:

The President of the Tribunal and the chairperson and Judicial Members of the Appellate Tribunal shall be appointed after consultation with the Chief Justice of India.

The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on the recommendation of a Selection Committee consisting of:

1. Chief Justice of India or his nominee—Chairperson.
2. A senior Judge of the Supreme Court or a Chief Justice of High Court— Member.
3. Secretary in the Ministry of Corporate Affairs—Member.
4. Secretary in the Ministry of Law and Justice—Member.
5. Secretary in the Department of Financial Services in the Ministry of Finance—Member.

NCLT Functions

- All proceedings under the Companies Act such as arbitration, arrangements, compromise, reconstruction, and winding up of the company will be disposed of by the Tribunal.
- The NCLT is also the Adjudicating Authority for insolvency proceedings under the Insolvency and Bankruptcy Code, 2016.
- In the above-mentioned subjects, no civil court will have jurisdiction.
- The NCLT has the authority to dispose of cases pending before the Board for Industrial and Financial Reconstruction (BIFR), as well as, those pending under the Sick Industrial Companies (Special Provisions) Act, 1985.
- Also to take up those cases pending before the Appellate Authority for Industrial and Financial Reconstruction.
- It can also take up cases relating to the oppression and mismanagement of a company.