CORPORATE REGULATIONS
(BBA4C03)

STUDY MATERIAL

IV SEMESTER

Complementary Course

BBA
(2019 Admission)

UNIVERSITY OF CALICUT
SCHOOL OF DISTANCE EDUCATION
CALICUT UNIVERSITY P.O.
MALAPPURAM - 673 635, KERALA

19661

School of Distance Education
University of Calicut

Study Material

IV Semester

BBA (2019 Admission)

Complementary Course

BBA4C03 - CORPORATE REGULATIONS

Prepared by:

Dr. SUDHEESH S
Assistant Professor on Contract
School of Distance Education
University of Calicut

Scrutinised by

Dr. LAKSHMANAN M P
Assistant Professor and Head
PG Department of Commerce,
Govt: College, Chittur

CONTENTS

MODULE I

INTRODUCTION TO COMPANIES ACT 2013

The 1956 Act has been in need of a substantial revamp for quite some time now, to make it more contemporary and relevant to corporates, regulators and other stakeholders in India. While several unsuccessful attempts have been made in the past to revise the existing 1956 Act, there have been quite a few changes in the administrative portion of the 1956 Act. The most recent attempt to revise the 1956 Act was the Companies Bill, 2009 which was introduced in the Lok Sabha, one of the two Houses of Parliament of India, on 3 August 2009. This Companies Bill, 2009 was referred to the Parliamentary Standing Committee on Finance, which submitted its report on 31 August 2010 and was withdrawn after the introduction of the Companies Bill, 2011. The Companies Bill, 2011 was also considered by the Parliamentary Standing Committee on Finance which submitted its report on 26 June 2012. Subsequently, the Bill was considered and approved by the Lok Sabha on 18 December 2012 as the Companies Bill, 2012 (the Bill). The Bill was then considered and approved by the Rajya Sabha too on 8 August 2013. It received the President's assent on 29 August 2013 and has now become the Companies Act, 2013.

Companies Act 2013 is an Act of the Parliament of India which regulates incorporation ofa company, responsibilities of a company, directors, dissolution of a company. The 2013 Act is divided into 29 chapters containing 470 sections as against 658 Sections in the Companies Act, 1956 and has 7 schedules. The Act came into force on 12 September 2013 with few changes like earlier private companies maximum number of member was 50 and now it will be 200. A new term of "one person company" is included in this act that will be a private company and with only 98 provisions of the Act notified. On 27 February 2014, the MCA stated that Section 135 of the Act which deals with corporate social responsibility will come into effect from 1 April 2014. On 26 March 2014, the MCA stated that another 183 sections will be notified from 1 April 2014. The Ministry of Company Affairs thereafter proposed a draft notification for exempting private companies from the ambit of various sections under the companies act.

Purpose/Objective of the Act

The Act broadly seeks to achieve the following objectives:

a) To promote the development of the economy by encouraging entrepreneurship and enterprise efficiency and creating flexibility and simplicity in the formation and maintenance of companies;

b) To encourage transparency, accountability and high standards of corporate governance;

c) To recognize various new concepts and procedures facilitating ease of doing business while protecting interests of all the stakeholders;

d) To enforce stricter action against fraud and gross non-compliance with company lawprovisions;

e) To set up institutional structure in the form of various authorities, bodies and panels as well as by including recognition of various roles for professionals and other experts; and

f) To cater to the need for more effective and time bound approvals and compliance requirements relevant in the present context.

Salient Features of the Act

The Companies Bill 2013 contains 29 Chapters, 7 Schedules, 470 clauses as against the Companies Act, 1956 which consists of 658 sections under 13 Parts and 15 schedules. In so far assection numbers are concerned more than 200 sections have been deleted from the Companies Act, 1956. While this is on one side of it, number of provisions have been removed or discontinued or dispensed with in the existing but revised section/clause numbers. The clauses to the Companies Bill, 2013 have been categorized into Introduced, Amended sections for easy and quick reference.

Introduced

1. For the first time introduced the concept of One Person Company [Clause 2(62)].
2. Expert [Clause 2(38)]
3. Inclusive definition of Financial Statement [Clause 2(40)]
4. Entrenchment Provisions in Articles of Association (Clause 5)
5. Public Offer and Private Placement deals with issue of

securities by a public and a privatecompany (Clause 23)

6. Class Action Suits (Clause 37)
7. E-governance in all company processes (Clause 120)
8. Corporate Social Responsibility - 2% of average net profits of the previous three years(Clause 135)
9. Mandatory Internal Audit for prescribed classes of companies (Clause 138)
10. Mandatory Rotation of auditors for listed companies and other prescribed classes of companies after 1 terms of 5 consecutive years in case of individual auditor and after 2 terms of 5 consecutive years for audit firm (Clause 139)
11. 5 year tenure for auditor appointed at AGM of company (other than Government Company/ Government controlled Company) instead of annual appointment/ reappointment
12. Limited Liability Partnership eligible to be appointed as Auditor of Company (Clause 141)
13. Auditor not to render certain services (Clause 144)
14. Independent Directors [Clause 149] 1/3rd of the total number of directors as independent directors - listed public companies
15. Inclusion of at least one woman director on board (Clause 149)
16. Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year. (Clause 149(3))

17. Nomination and Remuneration committee [Clause 178(1)]
18. Stakeholders relationship committee [Clause 178(5)]
19. Key Managerial Personnel [Clause 2(51) and Clause 203] Key managerial personnel (KMP) to include Manager or Managing Director (MD) or Chief Executive Officer (CEO), Whole time director, Chief Financial Officer (CFO) and Company Secretary (CS).
20. Insider Trading of Securities Prohibited (Clause 195)
21. Statutory Status to the Serious Fraud Investigation Office (SFIO) (Clause 211)
22. Specific framework for Merger and Acquisitions of companies. Single forum for approval of mergers and acquisitions (Clause 233)
23. Merger or Amalgamation of a Company with Foreign Company (Clause 234)
24. Protection to minority shareholders, Class Action Suits for prevention of oppression andmismanagement [Clause 245]
25. Registered Valuers (Clause 247)
26. Interim administrators or Company administrators [Clause 259]
27. Mediation and Conciliation Panel (Clause 442)
28. Punishment for Fraud (Clause 447)

Following are the Important Highlights of Companies Act, 2013:

- New definitions have been introduced, some of which are auditing standards, associate company, CEO, CFO, control, employee stock option, financial statement, global depository receipt, Indian depository receipt, independent director, interested director, key managerial personnel, promoter, one person company, small company, turnover, voting right, etc.
- Number of existing definitions have been modified, for example, definitions of abridged prospectus, body corporate, director, expert, managing director, officer in default, etc.
- Definition of private company changed - the limit on maximum number of members increasedfrom 50 to 200.
- The concept of One Person Company introduced. It will be a private limited company.
- The concept of Small Company introduced. It will be subject to lesser stringent regulatory framework.

Meaning and Definition of Company

The term "Company" was originally derived from 2 Latin words

♦ Com (means together)

♦ Panis (means bread/meal)

Thus the term "Company" was originally used for that group of person who took their meal together.

According to Section 2(20) of Companies Act, 2013, company means a company incorporated (formed and registered) under this Act or under any of the previous companies laws. 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."

Features

Following are the main characteristics of company form of business:

1) Corporate personality: Being an artificial person, a company is a legal entity different and separate from its promoters, members, directors, and other stake holders. It has its own corporate name and work under that name. It

- can hold its assets in its own name,
- can sue or be sued in its own name,
- can borrow/lend funds, open bank accounts, enter into contracts in its own name
- Any of its shareholders or directors or other officers cannot be held liable for the acts of the company even if he/it holds the entire share capital. Further, the shareholders

or individual directors are not the agents of the company and so they cannot bind company by their personal acts. Company means a company incorporated (formed and registered) under this Act or under any of the previous companies laws (like Companies Act, 1956).

2) Limited liability: According to Section 3(2), a company may be

- <u>**a company limited by shares**</u>

A company limited by shares means the liability of the members towards the company is limited to amount unpaid on their shares only.

- <u>**a company limited guarantee**</u>

A company limited guarantee means the liability of the members towards the company is limited to the amount of guarantee prescribed in the MOA. Further, in such companies themembers can be made liable only in the event of winding up of the company.

- <u>**an unlimited company**</u>

An unlimited company means here the liability of the members is unlimited towards company.

But, in none of the above cases, members can be made liable to anyone else except company for any act of the company or directors.

3) Perpetual Succession: Perpetual Succession means existence forever. According to Section 9, from the date of incorporation mentioned in the certificate of incorporation, every company has perpetual succession. A company is an artificial person created by law; therefore it can bedissolved or wind up by law. In other words, members may come and go, but company can goforever.

4) **Separate Property:** A company is separate legal entity having its own corporate name. It canhold properties in its own name. No member can claim himself to be the owner of the company's property during its existence. In other words, the property of a company is not the property of the individual members.

5) **Transferability of Shares:** According to Section 44 of Companies Act, 2013

- the shares or debentures or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company.

According to Section 2(68) (i) of Companies Act, 2013, private company may restricts the right to transfer its shares through its AOA. But a generally, a public company cannot restrictthe transfer of its shares.

6) **Capacity to sue and be sued:** A company is separate legal entity having its own corporate name. Therefore, according to Section 9, company may sue or may be sued in its own name (not in the name of its directors or members).

7) **Contractual Rights:** A company is an artificial person created by law. Therefore like natural person, it can enter into contract in its own name through its agent (directors or other authorisedpersons).

8) **Demutualization (separation of management and**

ownership): Demutualization means separation of management and ownership. Under company form of business, management (directors) is different from owners (members). Members of the company do not get engaged into day-to-day business of the company. Members appoint directors who run company on their behalf. Such directors may or may not be members of the company.

9) **Common Seal:** On incorporation, a company may have a common seal. Since a company has no physical existence, therefore it has to act through its agents only. To put restriction on the misuse of the powers of those agents, contracts entered into by anyone on behalf of the company may be under the common seal of the company. Thus common seal acts as official signature of the company. Now, after Companies (Amendment) Act, 2015, it is not compulsory for the company to have common seal. Thus a company may or may not have common seal.

Kinds of Companies

The Companies Act, 2013 provides for the kinds of companies that can be promoted and registered under the Act. The three basic types of companies which may be registered under the Act are:

(a) **Private Companies;**

(b) **Public Companies; and**

(c) **One Person Company (to be formed as Private Limited).**

Section 3(1) of the Companies Act 2013 states that a company may be formed for any lawfulpurpose by—

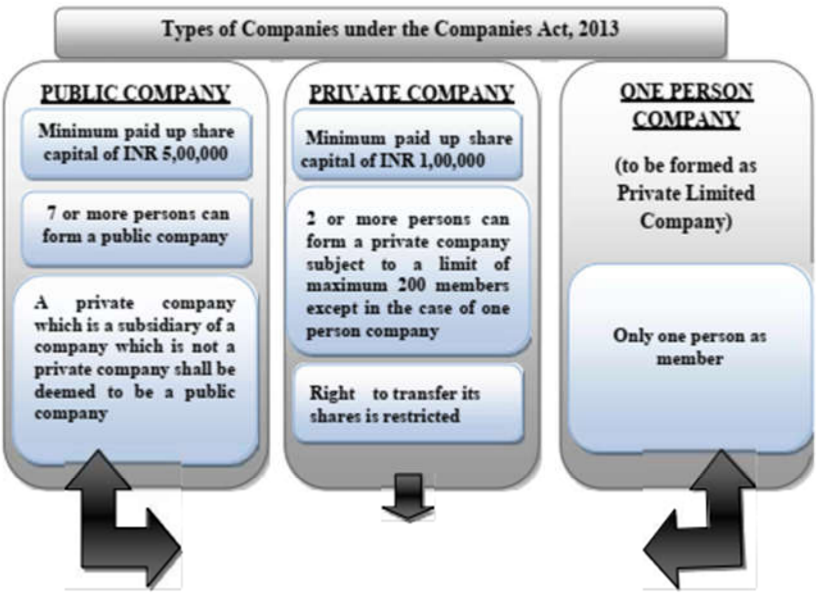
(a) seven or more persons, where the company to be formed is to be a public company;

(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 andcomplying with the requirements of this Act in respect of registration

Section 3 (2) A company formed under sub-section (1) may be either—

(a) a company limited by shares; or **(b)** a company limited by guarantee; or **(c)** an unlimited company.



Classification of Companies

(i) Classification on the basis of Incorporation: There are three ways in which companies maybe 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.

(ii) 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 beeither 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. For example, a shareholder who has paid Rs. 75 on a share of face value ` 100 can be called upon to pay the balance of Rs. 25 only. Companies limited by shares are by far the most common and may be either public or private.

(iii) 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;

(c) Foreign Companies;

(d) Holding and Subsidiary Companies;

(e) Associate Companies/Joint Venture Companies

(f) Investment Companies

(g) Producer Companies.

(h) Dormant Companies

Private Company

According to Section 2(68) of the Companies Act, 2013 "Private Company" means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles, –

a) restricts the right to transfer its shares;

b) 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 clause, be treated as a single member:

Provided further that –

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, shall not be included in the number of members; and

c) prohibits any invitation to the public to subscribe for any securities of the company;

Public Company

According to Section 2(71) of the Companies Act, 2013 "public company" means a company which –

a) is not a private company;

b) has a minimum paid-up share capital of five lakh rupees or such higher paid-up 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 purpose 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.

Associate Company

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.

Explanation to section 2(6) provides that “significant influence” means control of at least twenty per cent of total share capital, or of business decisions under an agreement.

Dormant Company

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 projector 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 maybe 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 twofinancial 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 such form as may be prescribedto that effect.
- 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 orannual 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.

- Further a dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed. [Section 455(5)]
- 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)]

One Person Company

The 2013 Act introduces a new type of entity to the existing list i.e. apart from forming a public or private limited company, the 2013 Act enables the formation of a new entity a 'one-person company' (OPC). An OPC means a company with only one person as its member [section 3(1) of2013 Act]. The draft rules state that only a natural person who is an Indian citizen and resident in India can incorporate an OPC or be a nominee for the sole member of an OPC.

Some Feature:

1. Single-member: OPCs can have only 1 member or shareholder, unlike other private companies.
2. Nominee: A unique feature of OPCs that separates it from other kinds of companies is that the sole member of the company has to mention a nominee while registering the

company. Since there is only one member in an OPC, his death will result in the nominee choosing or rejecting to become its sole member. This does not happen in other companies as they follow the concept of perpetual succession.

3. Special privileges: OPCs enjoys several privileges and exemptions under the Companies Act.

Small Company

A small company has been defined as a company, other than a public company.

1) Paid-up share capital of which does not exceed 50 lakh INR or such higher amount as may be prescribed which shall not be more than five crore INR

2) Turnover of which as per its last profit-and-loss account does not exceed two crore INR or such higher amount as may be prescribed which shall not be more than 20 crore INR:

As set out in the 2013 Act, this section will not be applicable to the following:

- A holding company or a subsidiary company
- A company registered under section 8
- A company or body corporate governed by any special Act [section 2(85) of 2013 Act]

Government Company

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. Explanation – "paid-up share capital" shall be construed as "total voting power", where shares with differential voting rights have been issued.

Lifting or Piercing of Corporate Veil

A company is an artificial person different for its members and directors. In the eyes of law it has a separate corporate personality. It has its own corporate name. It works under that name. In normal circumstances company cannot be considered as agent or trustee of its members. Therefore members and directors of a company cannot be held liable for any act of that company.

This concept is known as Corporate Veil. Means only company can be held liable for an act done in the name of the company. But, as per company laws, a company can be created for lawful purpose only. If a company is created for

- dishonest use
- fraudulent purpose
- unlawful purpose
- evading taxes
- any other purpose which is against the public interest than law can identify the persons who are behind it and are responsible for any fraud/unlawful act.

This concept is called **"Lifting of Corporate Veil".**

Lifting the corporate veil means disregarding the corporate personality and looking behind the real person who are in the control of the company. In other words, where a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality. In this regards the court will break through the corporate veil. According to the definition of Black Law Dictionary, "the piercing the corporate veil is the judicial act of imposing liability on otherwise immune corporate officers, Directors and shareholders for the corporation's wrongful acts".

In the following circumstances different courts found it necessary to lift the corporate veil and punish the actual persons who did wrong or unlawful acts under the name of company:

Protection of Revenue	The Court may ignore the Separate Legal Entity status of a Company, where it is used for tax invasion or circumventing tax obligation.
Determination of enemycharacter of the Company	Company being an artificial person cannot be enemy or friend. But during war, it may become necessary to lift the corporate veil and see the persons behind it to determine whether they are friends or enemy. This is due to the reason that though a company enjoys Separate Legal Entity but its affairs are run by individuals.

Prevention of fraud	Where a Company is used for committing frauds or improperconduct, Court may lift the corporate veil and look at the realities of the situation.
Protection of public policy	The Court shall lift the Corporate Veil without any hesitation to protect the public policy and prevent transaction opposed to publicpolicy.
Company mere sham orcloak	Where the Company is a mere sham and was really a ploy used for committing illegalities and to defraud people, the Court shall lift the Corporate Veil.
Where a Company acts as anagent of its shareholders	If there is an arrangement between the shareholders and a Companyto the effect that the Company will act as agent of shareholders for the purpose of carrying on the business, the business is essentially of that of the shareholders and will have unlimited liability.
Avoidance of Welfare Legislation	Where a Company tries to avoid its legal obligations, the corporateveil shall be lifted to look at the real picture.
To punish for contempt ofCourt	Company being an artificial person cannot disobey the orders ofthe Court. Therefore, the persons at fault should be identified.

******

MODULE II

FORMATION OF COMPANIES

1) 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:

Provided that the memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber‘s death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles:

Provided further that such other person may withdraw his consent in such manner as may be prescribed:

Provided also that the member of One Person Company may at any time change the name of such other person by giving notice in such manner as may be prescribed:

Provided also that it shall be the duty of the member of One Person Company to intimate the company the change, if any, in the name of the other person nominated by him by indicating in the memorandum or otherwise within such time and in such manner as may be prescribed, and the company shall intimate the Registrar any such change within such time and in such manner as may be prescribed:

Provided also that any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

2) A company formed under sub-section (1) may be either—

a) a company limited by shares; or

b) a company limited by guarantee; or

c) an unlimited company.

Promotion

The term 'promotion' is a term of business and not of law. It is frequently used in business. Haney defines promotion as "the process of organizing and planning the finances of a business enterprise under the corporate form". Gerstenberg has defined promotion as "the discovery of business opportunities and the subsequent organization of funds, property and managerial ability into a business concern for the purpose of making profits therefrom".

First of all the idea of carrying on a business is conceived by promoters. Promoters are persons engaged in, one or the other way; in the formation of a company. Next, the promoters make detailed study to assess the feasibility of the business idea and the amount of financial and other resources required. When the promoters are satisfied about practicability of the business idea, they take necessary steps for assembling the business elements and making provision of the funds required to launch the business enterprise. Law does not require any qualification for the promoters.

Promoter

Under Companies Act, 2013 promoter means a person who -

- who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act: Provided that nothing in sub-clauses (b) and (c) shall apply to a person who is acting in a professional capacity; (Clause 2(69))

Role of Promoters

The promoters stand in a fiduciary position towards the company about to be formed. From the fiduciary position of promoters, the following important results follow:

1. A promoter cannot be allowed to make any secret profits. If any secret profit is made in violation of this rule, the company may, on discovering it, compel the promoter to accountfor and surrender such profit.

2. The promoter is not allowed to derive a profit from the sale of his own property to the company unless all material facts are disclosed. If he contracts to sell his own property to the company without making a full disclosure, the company may either rescind the sale or affirm the contract and recover the profit made out of it by the promoter.
3. The promoter must not make an unfair or unreasonable use of his position and must take care to avoid anything which has the appearance of undue influence or fraud.

Incorporation of Company

A company is an association of both natural and artificial persons incorporated under the existing law of a country. In terms of the Companies Act, 2013 a "company means a company incorporated under the Companies Act, 2013 (the Act) or under any of the previous company law" [Section 2(20)].

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

Procedure for Incorporation of Company

(1) There shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the following documents and information for registration,namely:—

a) the memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;

b) 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;

c) 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;

d) the address for correspondence till its registered office is established;

e) 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;

f) 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; and

g) the particulars of the interests of the persons 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 of the company in such form and manner as may be prescribed.

(2) The Registrar on the basis of documents and information filed under sub-section (1) shall register all the documents and information referred to in that subsection 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.

(3) 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.

(4) The company shall maintain and preserve at its registered office copies of all documents and information as originally filed under sub-section (1) till its dissolution under this Act.

(5) If any person furnishes any false or incorrect particulars of any information or suppresses anymaterial information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action under section 447.

(6) Without prejudice to the provisions of sub-section (5) where, at any time after the incorporation of a company, it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action, the promoters, the persons named as the first directors of the company and the persons making declaration under clause (b) of subsection (1) shall each be liable for action under section 447.

(7) Without prejudice to the provisions of sub-section (6), where a company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants,—

a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or

b) direct that liability of the members shall be unlimited; or

c) direct removal of the name of the company from the register of companies; or

d) pass an order for the winding up of the company; or

e) pass such other orders as it may deem fit:

Provided that before making any order under this sub-section,—

- the company shall be given a reasonable opportunity of being heard in the matter; and
- the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

Capital Subscription

Kinds of share capital

The share capital of a company limited by shares shall be of two kinds, namely:—

a) equity share capital—

(i) with voting rights; or

(ii) with differential rights as to dividend, voting or otherwise in accordance with such rules asmay be prescribed; and

b) preference share capital:

Provided that nothing contained in this Act shall affect the rights of the preference shareholders who are entitled to participate in the proceeds of winding up before the commencement of this Act.

Explanation.—For the purposes of this section,—

- "Equity share capital", with reference to any company limited by shares, means all share capital which is not preference share capital;
- "Preference share capital", with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferentialright with respect to—

  a) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and

  b) repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company;

- Capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or both of the following rights, namely:—

a) that in respect of dividends, in addition to the preferential rights to the amounts specified in sub-clause (a) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;

b) that in respect of capital, in addition to the preferential right to the repayment, on a winding up, of the amounts specified in sub-clause (b) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

Commencement of Business

The provisions with regard to Certificate of Commencement of business have been dispensed withunder the Companies Bill, 2013. Only declaration and verification is required by the Public Company under the Companies Bill, 2013. These provisions were as follows:

(1) A company having a share capital shall not commence any business or exercise any borrowingpowers unless—

a) a declaration is filed by a director in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him and the paid-up share capital of the company is notless than five lakh rupees in case of a public company and not less than one lakh rupees in case of a private company on the date of making of this declaration; and

b) the company has filed with the Registrar a verification of its registered office as provided in sub- section (2) of section 12.

(2) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty which may extend to five thousand rupees and every officer who is in default shall be punishable with fine which may extend to one thousand rupees for every day during which the default continues.

(3) Where no declaration has been filed with the Registrar under clause (a) of subsection (1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.

Pre-incorporation and Provisional Contracts

The promoter is obligated to bring the company in the legal existence and to ensure its successful running; and in order to accomplish his obligation he may enter into some contract on behalf of prospective company. These types of contract are called ‘Pre-incorporation Contract’.

Nature of Pre-incorporation contract is slightly different to ordinary contract. Nature of such contract is bilateral, be it has the features of tripartite contract. In this type of contract, the promoter furnishes the contract with interested person; and it would be bilateral contract between them. But the remarkable part of this contract is that, this contract helps the perspective company,who is not a party to the contract.

Provisional contract as the expression `provisional' indicates, is a `contract in waiting'. Such contracts are meant only for public companies; because a public company has dual life span – one after incorporation and another after commencement of business; or in other words one before commencement of business and another after commencement of business. A contract entered into before commencement of business is `provisional' in nature but becomes `regular and enforceable' automatically on its obtaining the certificate of commencement of business. However, the company doesn't obtain the said certificate of commencement of business, the contract will continue to remain in abeyance.

Memorandum of Association

Memorandum of Association (MOA) is the supreme public document which contains all those information that are required for the company at the time of incorporation. It can also be said that, a company cannot be incorporated without memorandum. At the time of registration of the company, it needs to be registered with the ROC (Registrar of Companies). It contains the objects, powers and scope of the company, beyond which a company is not allowed to work, i.e. it limits the range of activities of the company.

Any person who deals with the company like shareholders, creditors, investors, etc. is presumed to have read the company, i.e. they must know the company's objects and its area of operations. The Memorandum is also known as the charter of the company. There are six conditions of the Memorandum:

- **Name Clause** – Any company cannot register with a name which CG may think unfit and also with a name that too nearly resembles with the name of any other company.
- **Situation Clause** – Every company must specify the name of the state in which the registered office of the company is located.
- **Object Clause** – Main objects and auxiliary objects of the company.
- **Liability Clause** – Details regarding the liabilities of the members of the company.
- **Capital Clause** – Total capital of the company.
- **Subscription Clause** – Details of subscribers, shares taken by them, witness etc.

Definition

As per Section 2(56) of the Companies Act, 2013 "memorandum" means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.

Alteration of Memorandum

(1) Save as provided in section 61, a company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its memorandum.

(2) Any change in the name of a company shall be subject to the provisions of subsections (2) and (3) of section 4 and shall not have effect except with the approval of the Central Government in writing: Provided that no such approval shall be necessary where the only change in the name of the company is the deletion therefrom, or addition thereto, of the word — Private, consequent on the conversion of any one class of companies to another class in accordance with the provisions of this Act.

(3) When any change in the name of a company is made under sub-section (2), the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.

(4) The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.

(5) The Central Government shall dispose of the application under sub-section (4) within a period of sixty days and before passing its order may satisfy itself that the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company or that the sufficient provision has been made by the company either for the due discharge of all its debts and obligations or that adequate security has been provided for such discharge.

(6) Save as provided in section 64, a company shall, in relation to any alteration of its memorandum, file with the Registrar—

- ***a)*** the special resolution passed by the company under sub-section (1);
- ***b)*** the approval of the Central Government under sub-section (2), if the alteration involves any change in the name of the company.

(7) Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same, and the Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.

(8) A company, which has raised money from public through prospectus and still has anyunutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and—

a) the details, as may be prescribed, in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change;

b) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securitiesand Exchange Board.

(9) The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution in accordance with clause (a) of sub-section (6) of this section.

(10) No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.

(11) Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

Doctrine of Ultravires

'Ultra' means beyond and 'vires' means powers. The term ultra vires a company means that the doing of the act is beyond the legal power and authority of the company. The doctrine of ultra vires is important in defining the limits of the powers conferred on the company by its Memorandum of Association. According to this doctrine, the vires (power) of a company to enterinto a contract or transaction is limited by the ambit of the Objects Clause of the Memorandum and the provisions of the Companies Act. Whatever is not permitted by the Objects Clause and the Act, is prohibited by the doctrine of ultra vires. If a company engages in any activity or enters into any contract which is ultra vires (outside the power conferred by) the Memorandum or Act, it will be null and void so far as the company is concerned and it cannot be subsequently ratified or validated even if all the shareholders give their consent. Thus under this doctrine, a company has powers to engage in only such activities or enter into such transactions:

- Which are essential to the attainment of the objects specified in the Memorandum;
- Which are reasonably and fairly incidental to the main objects; and
- Which are permitted by the provisions of the Companies Act.

Effects of Ultra Vires Transactions

If a company enters into transactions, which are ultra vires, it will have the following effects:

(1) Injunction: Whenever a company goes beyond the scope of the object clause, any of its members can get an injunction from the court to restrain the company from undertaking the ultra vires act.

(2) Personal Liability of Directors: If the transaction is ultra vires, for instance, if the funds of the company are misapplied, the directors will be held personally liable.

(3) Ultra Vires Contracts: Contracts entered into by a company, which are ultra vires, are void ab initio and unenforceable.

(4) Property Acquired Ultra Vires: If a company acquires any property under an ultra vires transaction, it has the right to hold the property and protect it against damage by other persons.

(5) Ultra Vires Torts: A company is not liable for torts committed by its agents or employees in the course of ultra vires transactions.

Articles of Association

Articles of Association (AOA) is the secondary document, which defines the rules and regulations made by the company for its administration and day to day management. In additionto this the articles contain the rights, responsibilities, powers and duties of members and directors of the company. It also includes the information about the accounts and audit of the company.

Every company must have its own articles, however, a public company limited by shares can adoptTable A instead of Articles of Association. It comprises of all the necessary details regarding the internal affairs and the management of the company. It is prepared for the persons inside the company, i.e. members, employees, directors, etc. The governance of the company is done according to the rules prescribed in it. The companies, can frame its articles of association as per their requirement and choice.

Definition

As per 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.

Alteration of Articles of Association of a Company

Section 14 of the Companies Act, 2013 lays down that subject to the provisions of the Act and to the conditions contained in its memorandum, a company may, by a special resolution, alter its articles.

Every alteration of articles shall be filed with the Registrar together with a printed copy of the altered articles within a period of fifteen days. [Section 14(2)].

Any alteration of the articles so registered, shall be valid as if it were originally in the articles. A company may alter its articles in accordance with the above provisions in any of the manners mentioned below:

(i) by adoption of new set of articles;

(ii) by addition/insertion of a new article;

(iii) by deletion of an article;

(iv) by amendment of a specific article; or

(v) by substitution of a specific article.

Procedure for Altering Articles of Association

A company which proposes to alter its articles of association has to follow the procedure detailedbelow:

(1) Convene and hold a Board meeting to –

- ***a)*** Consider and decide which of the articles are to be altered and pass a formal resolution inthis respect.
- ***b)*** Fix time, date and venue for holding a general meeting of the company for passing a special resolution as required by Section 14 of the Companies Act, 2013.
- ***c)*** Approve notice, agenda and explanatory statement to be annexed to the notice of thegeneral meeting as per 102 of the Act.
- ***d)*** Authorise the Company Secretary or any other competent officer of the company to issuenotice of the general meeting as approved by the Board.

(2) On the conclusion of the Board meeting, send to the stock exchanges, where the securities of the company are listed, particulars of the proposed alteration of the articles of association of the company.

(3) Issue notice of the general meeting along with the explanatory statement, to all the members, directors and the auditor of the company. Also forward three copies of the notice of the generalmeeting to the concerned stock exchanges as per the Listing Agreement.

(4) Hold the general meeting and have the special resolution passed.

Note: If the company is a listed company and the alteration of articles of association relates to insertion of the provisions defining a private company then ensure that the Special Resolutionas aforesaid is passed only through postal ballot.

(5) Forward a copy of the proceedings of the general meeting to the concerned stock exchanges asper the Listing Agreement.

(6) File with the ROC, Form MGT – 14 along with a certified copy of the special resolution and the explanatory statement annexed to the notice of the general meeting at which the resolutionwas passed and a copy of the Articles of Association, within fifteen days of the passing of theresolution along with the prescribed filing fee.

(7) Make necessary changes in all the copies of the articles of association of the company lying inthe office of the company.

Distinction between Memorandum and Articles

The major differences between memorandum of association and articles of association are given as under:

Basis	Memorandum of Association	Articles of Association
Condition	The memorandum contains the conditions upon which alone thecompany is granted incorporation. These conditions are fundamentals and unalterable.	The articles are the internal regulationsof the company and over these the members have full control and they canbe easily altered.

Basis	Memorandum of Association	Articles of Association
Power	The memorandum cannot give the company power to do anything contrary to the provision of the Companies Act.	The articles are not only limited by the act, but they are also subsidiary to the memorandum and cannot exceed the powers contained therein.
Contract	The memorandum is in the nature of a contract between the company and theoutsider dealing with it.	The articles do not create a contractbetween the company and the outsiders.
Objectives	The memorandum contains theobjectives and powers of the company.	The articles provide the regulations bywhich those objectives and powers are to be carried into effect.
Provision	A person dealing with a company is supposed to know the provisions of its memorandum.	A person dealing with a company issupposed to know the provision of its articles, if there is a breach of those provisions.
Alteration	The memorandum cannot be altered except as regards certain specified particulars and in accordance with the provisions of the law.	The articles can be altered by a specialresolution at any time.
Relation	The memorandum limits the areabeyond which articles cannot go.	In this sense, articles is subsidiary to the memorandum.

Basis	Memorandum of Association	Articles of Association
Validity	The memorandum is the dominantinstrument and controls articles.	Any provision, contrary to memorandum of association, is invalid.
Deed of the Company	Every company must have its memorandum of association.	A company limited by shares may haveits own articles of association.
Registration	Memorandum must be registered at the time of incorporation.	The articles may or may not beregistered.
Scope	The memorandum is the charter, which defines and confines powers and limitations of the company.	The articles indicate duties, rights and powers of members, who are entrusted with the responsibility of running the administration and management.

Constructive notice of Memorandum and Articles

Constructive notice is the legal fiction that signifies that a person or entity should have known, as a reasonable person would have, even if they have no actual knowledge of it. For example, if it isnot possible to serve notice personally then a summons may be posted on a court house bulletin board or legally advertised in an approved newspaper. The person is considered to have received notice even if they were not aware of it.

In companies law the doctrine of constructive notice is a doctrine where all persons dealing with a company are deemed (or "construed") to have knowledge of the company's articles of association and memorandum of association. The doctrine of indoor management is an exception to this rule.

Doctrine of Constructive Notice

The Memorandum and Articles, on registration, assume the character of public documents. The office of the Registrar is a public office and documents registered there are open and accessible to the public at large. Therefore, every outsider dealing with the company is deemed to have notice of the contents of the Memorandum and Articles. This is known as Constructive Notice of Memorandum and Articles.

Under the doctrine of ‘constructive notice’, every person dealing or proposing to enter into a contract with the company is deemed to have constructive notice of the contents of its Memorandum and Articles. Whether he actually reads them or not, it is presumed that he has read these documents and has ascertained the exact powers of the company to enter into contract, the extent to which these powers have been delegated to the directors and the limitations to such powers. He is presumed not only to have read them, but to have understood them properly. Consequently, if a person enters into a contract which is ultra vires the Memorandum, or beyond the authority of the directors conferred by the Articles, then the contract becomes invalid and he cannot enforce it, not-withstanding the fact that he acted in good faith and money was applied for the purposes of the company.

Doctrine of Indoor Management

The doctrine of indoor management follows from the doctrine of 'constructive notice' laid down in various judicial decisions. The hardships caused to outsiders dealing with a company by the rule of 'constructive notice' have been sought to be softened under the principle of 'indoor management'. It affords some protection to the outsiders against the company.

According to this doctrine, after satisfying themselves that the proposed transaction is intra vires the memorandum and articles, persons dealing with the company are not bound to enquire whether the internal proceedings were correctly followed. They are entitled to assume that the internal proceedings relating to the contract are regular as per the memorandum and articles. When an outsider enters into a contract with the company, he is presumed to have knowledge of the provisions of memorandum and articles as per the doctrine of constructive notice. But he is not required to go beyond that and to enquire whether the internal proceedings required by these documents have been regularly followed by the company. They need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner. This is known as the Doctrine of Indoor Management.

Exceptions to the Doctrine of Indoor Management

No benefit under the doctrine of indoor management can be claimed by a person under the following circumstances:

1) Where a person dealing with the company has actual or constructive notice of any irregularity in the internal proceedings of the company.
2) Where a person did not in fact consult the Memorandum and Articles of the company and consequently did not act on knowledge of these documents.
3) Where a person dealing with the company was negligent and, had he not been negligent, could have discovered the irregularity by proper enquiries.
4) Where a person dealing with the company relies upon a forged document or the act doneby the company is void.
5) Where a person enters into a contract with an agent or officer of the company and the act of the agent/officer is beyond the authority granted to him

Prospectus

According to Companies Act, 2013 define "prospectus" means 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 [Clause (70)of Section 2 of this Bill].

Matters to be stated in Prospectus (section 26):

A prospectus may be issued by or behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company.

Contents or Information in Prospectus:

Every prospectus shall state following information:-

1) 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 otherpersons as may be prescribed;

2) dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time;

3) a statement by the Board of Directors about the separate bank account where all monies receivedout 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;

4) details about underwriting of the issue;

5) consent of the directors, auditors, bankers to the issue, expert's opinion, if any, and of such other persons, as may be prescribed;

6) the authority for the issue and the details of the resolution passed there for;

7) procedure and time schedule for allotment and issue of securities;

8) capital structure of the company in the prescribed manner;

9) main objects of public offer, terms of the present issue and such other particulars as may beprescribed;

10) main objects and present business of the company and its location, schedule of implementationof the project;

11) 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;

12) minimum subscription, amount payable by way of premium, issue of shares otherwise than oncash;

13) details of directors including their appointments and remuneration, and such particulars of thenature and extent of their interests in the company as may be prescribed; and

14) Disclosures in such manner as may be prescribed about sources of promoter's contribution.

Statement in lieu of prospectus

Statement in lieu of prospectus is similar to actual prospectus but without the invitation to the public for subscribing to the shares of the company. This statement is prepared when a company issues shares by private placement. The statement in lieu of prospectus is prepared for the purpose of record, and it is filed with the Registrar of Companies before allotment of share.

1. The prospectus contains a summary of the past, present and prospects of the company
2. The prospectus expressly invites the public to buy shares issued by the company
3. It is the basis of share issue. The contents of prospectus are considered legal evidence in the event of dispute between share holder and the company.
4. A misleading clause in the prospectus will be taken seriously by the courts.

Liabilities for Misstatement

Where a prospectus, issued, circulated or distributed under this Chapter, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorizes the issue of such prospectus shall be liable under section 447: Provided that nothing in this section shall apply to aperson if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement wastrue or the inclusion or omission was necessary.

Civil liability for misstatements in Prospectus

(1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who—

a) is a director of the company at the time of the issue of the prospectus;

b) has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval oftime;

c) is a promoter of the company;

d) has authorised the issue of the prospectus; and

e) is an expert referred to in sub-section (5) of section 26, shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.

(2) No person shall be liable under sub-section (1), if he proves—

a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

(3) Notwithstanding anything contained in this section, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in subsection (1) shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

*****

MODULE III

SHARE CAPITAL

A company, being an artificial person, cannot generate its own capital that has to be collected fromseveral persons. These persons are called shareholders and their contribution is called share capital. In other words, when total capital of a company is divided into shares, then it is called share capital. It constitutes the basis of the capital structure of a company. In other words, the capital collected by a joint stock company for its business operation is known as share capital.

Meaning and Definition of shares

A share is the interest of a member in a company. Section 2(84) of the Companies Act, 2013 (hereinafter referred to as Act) "share" means a share in the share capital of a company and includes stock. It represents the interest of a shareholder in the company, measured for the purposes of liability and dividend. It attaches various rights and liabilities.

Definition

Section 2(84) of the Act defines a share as "a share in the share capital of a company, andincludes stock except where a distinction between stock and shares is expressed or implied.

Nature of Share

(a) A share is a right to a specified amount of the share capital of a company

(b) A share is the interest of a shareholder in the company measured by a sum of money

(c) A share is a right to participate in the profits made by a company

(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) 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. (Sec 44)

(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) Every share in a company having a share capital shall be distinguished by its distinctive number (Sec 45)

Kinds of Shares

Section 43 of the Act provides that the share capital of a company limited by shares shall be of twokinds:

(a) Equity share capital— (i) with voting rights; or (ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed ''Equity share capital'', with reference to any company limited by shares, means all share capital which is not preference share capital.

(b) Preference share capital: ''Preference share capital'', with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to—

(i) Payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and

(ii) Repayment, in the case of a winding up or repayment of capital, of the amount of the share capital Paid-up or deemed to have been paid-up, whether or not, there is a preferential right tothe payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the Company

According to section 55 of the Act, a company limited by shares cannot issue any preference shares which are irredeemable. However a company limited by shares may, if so authorised by its articles, issue preference shares which are liable to be redeemed within a period not exceeding twenty yearsfrom the date of their issue.

Difference between Equity and Preference Shares

1) Rate of Dividend: Preference shares are entitled to a fixed rate of dividend. The rate of dividend on equity shares depends upon (a) the amount of profit available (b) funds requirements of the company for future expansion etc.

2) Preference in Dividend payment: Dividend on the preference shares is paid in preference tothe equity shares. The dividend on equity shares is paid only after the preference dividend hasbeen paid.

3) Repayment of Capital: In case of winding up of company, preference share holders get preference over equity share holders as to the payment of capital.

4) **Nature of Dividend:** Dividend on preference share may be cumulative. It is not in case of equity shares.

5) **Voting Right:** The voting rights of preference shareholders are restricted. An equity shareholder can vote on all matters affecting the company.

6) **Bonus/Right Issue:** No bonus shares/right shares are issued to preference share holders while the same are issued to the company's existing equity shareholders.

7) **Redemption:** Redeemable preference shares may be redeemed by the company. Equity shares cannot be redeemed except under a scheme involving reduction of capital or buy back of its own shares.

8) **Nature of Voting right:** the Voting right of a preference shareholders on a poll shall be in proportion to his share in the paid-up preference share capital of the company. In case of an equity shareholder, it shall be in proportion to his share in the paid up equity share capital of the company.

Public Issue of Shares

Public Issue is the process of selling and marketing of securities for subscription by public by issue of prospectus. The Issuer has to comply with the provisions of the SEBI (ICDR) regulations, 2009 along with the provisions of the Companies Act, 2013 and the SCR Act, 1956 and the Listing agreement.

Types of Public Issue:

When the offer of securities is made to the general public inviting them to take up securities in the company and thereby enabling them to be a part of the shareholding of the Company, it becomes a public issue. Public Issues can be in the nature of an Initial Public Offering (IPO) or a Follow on Public Offering (FPO).

The issue of shares may be at premium, discount (as sweat equity shares)

A company may issue securities at a premium if 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 But the Act does impose conditions regulating the utilization of the amount of premium collected on securities.

Section 52 (1) of the companies Act 2013 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 paid up share capital of the company.

What are the purposes for which the securities premium amount may be used?

As per Section 52(2) of the Act, the securities premium can be utilized 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.

In addition the Section 52(3) states that the securities premium account may, notwithstanding anything contained in sub-Sections (1) and (2), be applied by such class of companies, as may beprescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133,—

(a) In paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or

(b) In writing off the expenses of or the commission paid or discount allowed on any issue ofequity shares of the company; or

(c) For the purchase of its own shares or other securities under section 68.

The peculiar features of securities premium are

(a) The premium cannot be treated as profit and as such the amount of premium is not available for distribution as dividend.

(b) The amount of premium whether received in cash or in kind must be kept in a separate account, known as the "Securities Premium Account".

(c) The amount of premium is to be maintained with the same sanctity as the share capital.

Whether a company can issue shares at discount?

Section 53 states that except as provided in section 54 (i.e. issue of sweat equity shares), a companyshall not issue shares at a discount. Any such issue 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 defaultshall 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.

Allotment of Shares & Irregular Allotment

Allotments of shares means acceptance by the company of the offer made by the applicants to take up the shares applied for. The information of allotment is given to the shareholders by a letter known as 'Allotment Letter', informing the amount to be called at the time of allotment and the date fixed for payment of such money. It is on allotment that share come into existence. Thus, the application money on the share after allotment becomes a part of share capital. Decision to allot the share is taken by the Board of Directors in consultation with the stock exchange. After the closure of the subscription list, the bank sends all applications to the company. On receipt of applications, each application is carefully scrutinized to ascertain that the application form is properly filled up and signed and the money is deposited with the bank. Allotment of shares not defined in the Act. Offer of shares made on an application form issued by the Company when accepted is the allotment of shares.

What is Irregular Allotment? When an Allotment is said to be Irregular?

The companies Act, 2013 doesn't separately provide for the term "irregular allotment". When theallotment of shares is made in contravention of the provision of the act then the allotment is termedas irregular. In Broad terms, an allotment of shares is deemed to be irregular when it has been made by a company in violation of sections 23, 26, 39 and 40. An allotment will be considered irregular in the following cases:-

i) Where minimum subscription is not received Section 39 or

ii) Where a copy of the prospectus has not been filed with the Registrar of Companies. Section26(4) or

iii) Where a copy of the statement in lieu of prospectus has not been delivered to the Registrarof Companies at least 3 days before the allotment or

iv) Where application money has not been received, kept in a scheduled bank or

v) Where subscription list is opened before the beginning of the 5th day from the date of issueof prospectus or

vi) Where application money to a minimum of 5% of the nominal value has not been receivedor

vii) Where the shares are not listed on a recognised stock exchange or have been refused listing within 10 weeks. Section 40 or

viii) When a company doesn't not issue a prospectus in a public issue as required by section 23 or

ix) Where the prospectus issued by the company doesn't include any of the matters requiredto be included there in under section 26(1) or the information given is misleading, faulty andincorrect

Effect of Irregular Allotment

The consequences of an irregular allotment depend on the nature of irregularity. However, the Companies Act 2013 doesn't specifically mention that in case of an irregular allotment the contractis voidable at the option of the allottee. Under section 26(9) of the companies act 2013, if a prospectus is issued in contravention of the provisions of section 26, the company shall bepunishable with fine which shall not be less than fifty thousand rupees but which may extend tothree lakh rupees and every person who is knowingly a party to the issue of such prospectus shallbe punishable with imprisonment for a term which may extend to three years or with fine whichshall not be less than fifty thousand rupees but which may extend to three lakh rupees or with both.Similarly in case the company has not received the minimum subscription amount within 30 days of the date of issue of the prospectus, it must refund the application money received by it within the stipulated time. Any allotment made in violation of this will be void and the defaulting company and officers will be liable to further punishment as provided in section 39(5). Under section 40(5) any default made in respect of getting the approval to listing of securities in one or more recognised stock exchange in case of a public issue, will render the company punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees or with both.

Hence , under various provisions of the companies act 2013, stringent punishment has been provided against irregular allotment of securities but the option of going ahead with such allotment even if desired by the allottee is not specifically permitted.

Book Building

Book building is a systematic process of generating, capturing, and recording investor demand for shares during an initial public offering (IPO), or other securities during their issuance process, in order to support efficient price discovery. Usually, the issuer appoints a major investment bank to act as a major securities underwriter or book runner. Book Building is an alternative method of making a public issue in which applications are accepted from large buyers such as financial institutions, corporations or high net- worth individual, almost on firm allotment basis, instead of asking them to apply in public offer.

Book building is essentially a process used by companies raising capital through public offerings— both initial public offers (IPOs) and follow-on public offers (FPOs) to aid price and demand discovery. It is a mechanism where, during the period for which the book for the offer is open, the bids are collected from investors at various prices, which are within the price band specified by the issuer. The process is directed towards both the institutional as well as the retail investors. The issue price is determined after the bid closure based on the demand generated in the process.

When a company wants to raise money, it plans on offering its stock to the public either through either an IPO (initial Public Offer) or an FPO (follow-on public offers). The book building process helps to determine the value of the security. Once a company determines to have an IPO, it will then contact a book runner or a lead manager who will determine the price range at which it is willing to sell the stock. The book runner will then send out the draft prospectus to potential investors and collects bids from investors at various prices, between the floor price and the cap price. Bids can be revised by the bidder before the book closes. The process aims at tapping both wholesale and retail investors. The final issue price is not determined until the end of the process when the book has closed. After the close of the book building period, the book runner evaluates the collected bids on the basis of certain evaluation criteria and sets the final issue price. If demand is high enough, the book can be oversubscribed. In these cases the green shoe option is triggered. Generally, the issue stays open for five days. At the end of the five days, the book runner determines the demand of the stock for its given price range. Once the cost of the stock has been determined, then the issuing company can decide how to divide its stock at the determined price to its bidders.

The key differences between acquiring shares via a book build (conducted off-market) and trading (conducted on-market) are:

The main difference between the book building method and the fixed price method is thatin the former, the issue price is not decided initially. The investors have to bid for the shares within the price range given. The issue price is fixed on the basis of demand and supply of the shares. On the other hand, in the fixed price method, the price is decided right at the start. Investors cannotchoose the price. They have to buy the shares at the price decided by the company. In the book building method, the demand is known every day during the offer period, but in fixed price method, the demand is known only after the issue closes.

Book Building Process

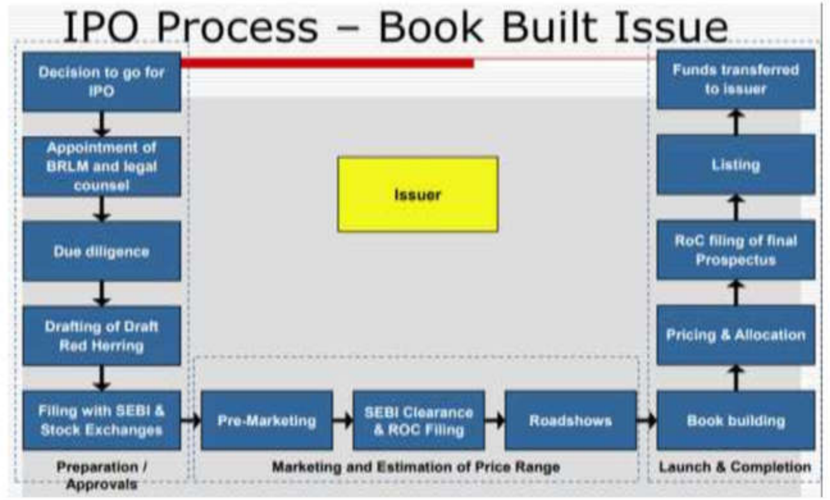
- The Issuer who is planning an offer nominates lead merchant banker(s) as 'book runners'.
- The Issuer specifies the number of securities to be issued

and the price band for the bids.

- The Issuer also appoints syndicate members with whom orders are to be placed by theinvestors.
- The syndicate members input the orders into an 'electronic book'. This process is called 'bidding' and is similar to open auction.
- The book normally remains open for a period of 5 days.
- Bids have to be entered within the specified price band.
- Bids can be revised by the bidders before the book closes.
- On the close of the book building period, the book runners evaluate the bids on the basis of the demand at various price levels.
- The book runners and the Issuer decide the final price at which the securities shall be issued.
- Generally, the number of shares are fixed, the issue size gets frozen based on the final priceper share.
- Allocation of securities is made to the successful bidders. The rest get refund orders.

Comparative Merits of BBM

The book building method is more efficient as it solves the "leakage" of value often seen with fixed priced IPOs. Here the issuer sets a price range within which the investor is allowed to bid for shares. The range is based on where comparable companies are trading and an estimate of the value of the company that the market will bear. The investors then bid to purchase an agreed number of shares for a price which they feel reflects fair value. By compiling a book of investors, the issuer can ascertain what price range the shares should be valued at, based on the demand of the people who are going to buy them, the investors. In this process supply and demand are matched.



Allotment of Shares

Allotment means an appropriation of a certain number of shares to an applicant in responseto his application for shares. Thus allotment means distribution of shares among those who have submitted written application.

Procedures regarding Allotment of Shares:

(1) Fulfillment of statutory conditions which need to be fulfilled: The company secretary has to see that the statutory conditions regarding the allotment of shares are fulfilled before the Boardproceeds to allot the shares.

The following are the statutory conditions which need to be fulfilled:

(*) Valid offer and acceptance: There should be a valid offer and acceptance for the allotment to be a valid one. Here the company is the offertory and the acceptors are the general public. If there is no company to offer then there would be no public to accept.

(*) Unconditional Allotment: The allotment must be absolute and unconditional and also as per the terms and conditions mentioned in the application. The allotment should be unbiased, and notaccording to the caste, creed, and religion. It is not that rich shareholders pay more on the shares and the poor share holders pay less on the shares. All have to pay the same price on the shares.

(*) Collection of minimum subscription amount and Receipt of application: The amount payable on application on every security shall not be less than five per cent of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf. If the stated minimum amount has not beensubscribed and the sum payable on application is not received within a period of thirty days fromthe date of issue of the prospectus, or such other period as may be specified by the Securities and Exchange Board, the amount received under section 39(1) shall be returned within such time andmanner as may be prescribed.

(*) Deposition of application of money in a scheduled bank:

All application money received along with the applications must be deposited in a scheduled bank. It cannot be withdrawn until the company gets trading certificate or where such certificate is already received or till the minimum subscription amount is received.

(*) Filing of prospectus with the registrar: A copy of the prospectus or statement in lieu of prospectus has been duly filed with the registrar and at least three days have elapsed after such filing before the allotment is taken up.

(*) Proper communication: The allotment must be duly communicated to the applicant through post i.e. registered post with necessary details.

(*) Allotment strictly as per documents issued: The Board of Directors have to make the allotment of shares strictly as per the documents issued which include the prospectus and the application form. The provisions made in the Memorandum of Association and the Articles of Association must also be given due consideration.

(*) SEBI nominee: If the issue is over subscribed, the shares are allotted on a proportionate basis. SEBI's nominee is associated while finalizing the basis of allotment. The purpose is to see that the allotment is done on a fair and just basis. The allotment also needs to be approved by a leading stock exchange.

(2) Appointment of allotment committee: The secretary informs the Board, that the share applications are received and are ready for allotment. If the issue is just subscribed or under subscribed, the Board will do the allotment of shares, but if the issue is over subscribed, the Board appoints an allotment committee to do the allotment work. The allotment committee will study the problem, prepare a report and submit to the Board.

(3) Board meeting for finalization of allotment formula: A meeting of the Board of Directors will be called to finalize the allotment formula, which is being prepared by the allotment committee. If the shares are listed, the allotment formula is to be finalized with the approval of the concerned Stock Exchange Authorities.

(4) SEBI's association with allotment work: A representative of SEBI need to be associated while finalizing the allotment formula. For this, the company has to request SEBI to nominate a public representation for allotment work. SEBI's nominee is necessary when the issue is over subscribed.

(5) Signature of chairman on application and allotment list: The secretary has to see that every sheet of application and allotment list is signed by the chairman. The secretary also has to sign the application and allotment lists.

(6) Resolution of the Board for allotment: The secretary has to see that the Board passes a resolution regarding the allotment of shares and authorizing him to issue letters of allotment and letters of regret.

(7) Issue of letters of allotment and letters of regret: After the Board's resolution to allot shares, the secretary prepares the allotment list. Then he will send allotment letters to those who have been allotted shares and regret letters to those who could not be allotted shares.

(8) Refund / Adjustment of application money: The secretary has to make suitable arrangementfor the repayment of application money sent by the applicant. The refunded application money is made to those share holders who could not be allotted shares. The refund order is sent along withthe letters of regret. If an applicant has been allotted a smaller number of shares than the number applied for, the secondary has to adjust the excess amount with the amount due on allotment.

(9) Collection of allotment money: The secretary has to make suitable arrangements with the Company's Bankers for collection of allotment money against the allotment letters.

(10) Arrangement relating to letters of renunciation: To renounce means to give up. Certain applicants who are being allotted shares do not want them, so they return the shares back to the company. This is known as renunciation. The blank form of letter of renunciation and letter of request for allotment along with the letter of renunciation duly executed and the original letter of allotment from the renounces, the secretary has to make necessary changes in the Application of Allotment list in order to enter the names of the new allot-tees.

(11) Arrangement relating to splitting of allotment letters: Splitting means putting the shares in one or more names. In case any allottee requests for a split of the allotment letter, the secretaryplaces such a request before the Board for approval. Once the Board approves the splitting of the allotment letter, the secretary has to enter the details of the split in a separate list of split allotmentsand issue the necessary 'split' letters.

(12) Submission of return of Allotment: Every company whether public or private and having ashare capital , within 30 days of allotment is required to send to the Registrar, a document known as the "Return of Allotment". The return of allotment contains various details on allotment of shares such as the nominal value of shares allotted, names and addresses of allotees, amount paid or payable on each share and particulars of bonus shares and shares issued at discount. The secretary has to see that these documents are prepared and submitted in time to the Registrar.

(13) Preparation of Register of members and issue of share certificates: The secretary has to prepare the Register of members from the Application and Allotment lists. He has to see that the shares certificates are properly printed, sealed, signed and distributed to all the allot-tees within three months after the allotment of shares. He has also to see that the share certificates are issued against the letters of allotment.

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. Sweat Equity Shares are mainly intended to be issued to build up equity for directors or promoters with technical capability. These shares can be issued at discounted price orfree for know-how and services to the company.

According to Explanation to Rule 8(1) of Companies (Share Capital and Debentures) Rules, 2014.

(i) the expressions ''Employee'' means-

(a) a permanent employee of the company who has been working in India or outside India, for at least last one year; or

(b) a director of the company, whether a whole time director or not; or

(c) an employee or a director as defined in sub-clauses (a) or (b) above of a subsidiary, in India or outside India, or of a holding company of the company;

(ii) the expression 'Value additions' means actual or anticipated economic benefits derived or to be derived by the company from an expert or a professional for providing know-how or making available rights in the nature of intellectual property rights, by such person to whom sweat equity is being issued for which the consideration is not paid or included in the normal remuneration payable under the contract of employment, in the case of an employee

What are the conditions to be satisfied 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 generalmeeting.

(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 thecompany 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., Companies (Share Capital and Debentures) Rules, 2014)

Important Provisions as to Sweat Equity

1. Information to be contained in the Explanatory Statement

Rule 8(2) of the Companies (Share Capital and Debentures) Rules, 2014 states that the explanatorystatement to be annexed to the notice of the general meeting pursuant to section 102 shall containthe following particulars, namely:-

(a) the date of the Board meeting at which the proposal for issue of sweat equity shares was approved;

(b) the reasons or justification for the issue;

(c) the class of shares under which sweat equity shares are intended to be issued;

(d) the total number of shares to be issued as sweat equity;

(e) the class or classes of directors or employees to whom such equity shares are to be issued;

(f) the principal terms and conditions on which sweat equity shares are to be issued, including basis ofvaluation ;

(g) the time period of association of such person with the company;

(h) the names of the directors or employees to whom the sweat equity shares will be issued and their relationship with the promoter or/and Key Managerial Personnel;

(i) the price at which the sweat equity shares are proposed to be issued;

(j) the consideration including consideration other than cash, if any to be received for the sweat equity;

(k) the ceiling on managerial remuneration, if any, be breached by issuance of such sweat equity and how it is proposed to be dealt with;

(l) a statement to the effect that the company shall conform to the applicable accounting standards; and

(m) diluted Earning Per Share pursuant to the issue of sweat equity shares , calculated in accordance with the applicable accounting standards.

2. Validity of Special Resolution – Rule 8(3)

The special resolution passed for authorizing the issue of sweat equity shares shall be valid for making the allotment within a period of not more than twelve months from the date of passing ofthe special resolution.

3. Limits on Issue of sweat equity shares – Rule 8(4)

The company shall not issue sweat equity shares for more than fifteen percent of the existing paidup equity share capital in a year or shares of the issue value of rupees five crores, whichever is higher. In any case, the issuance of sweat equity shares in the Company shall not exceed twenty five percent, of the paid up equity capital of the Company at any time.

4. Lock-in Period -

The sweat equity shares issued to directors or employees shall be locked in for a period of three years from the date of allotment. The fact that the share certificates are under lock-in and the periodof expiry of lock in shall be stamped in bold or mentioned in any other prominent manner on the share certificate.

5. Valuation -

Rule 8(6) states that the sweat equity shares to be issued shall be valued at a price determined by a registered valuer as the fair price giving justification for such valuation.

Rule 8(7) states that the valuation of intellectual property rights or of know how or value additionsfor which sweat equity shares are to be issued, shall be carried out by a registered valuer, who shall provide a proper report addressed to the Board of directors with justification for such valuation. Rule 8(8) states that a copy of gist along with critical elements of the valuation report obtained under Rule 8(6) and Rule 8(7) shall be sent to the shareholders with the notice of the generalmeeting.

6. Issue of sweat equity shares for non-cash consideration – Rule 8(9)

Where sweat equity shares are issued for a non-cash consideration on the basis of a valuation reportin respect thereof obtained from the registered valuer, such non-cash consideration shall be treated in the following manner in the books of account of the company-

(a) where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the accounting standards; or

(b) where clause (a) is not applicable, it shall be expensed as provided in the accounting standards.

7. Sweat equity shares forming part of managerial remuneration – Rule 8(10)

The amount of sweat equity shares issued shall be treated as part of managerial remuneration for the purposes of sections 197 and 198 of the Act, if the following conditions are fulfilled, namely.-

(a) the sweat equity shares are issued to any director or manager; and

(b) they are issued for consideration other than cash, which does not take the form of an asset which can be carried to the balance sheet of the company in accordance with the applicable accounting standards.

8. Sweat equity shares as compensation -

(a) if the shares are not issued pursuant to acquisition of an asset -

In respect of sweat equity shares issued during an accounting period, the accounting value of sweat equity shares shall be treated as a form of compensation to the employee or the director in the financial statements of the company, if the sweat equity shares are not issued pursuant to acquisition of an asset.

(b) if the shares are issued pursuant to acquisition of an asset -

If the shares are issued pursuant to acquisition of an asset, the value of the asset, as determined by the valuation report, shall be carried in the balance sheet as per the Accounting Standards and such amount of the accounting value of the sweat equity shares that is in excess of the value of the asset acquired, as per the valuation report, shall be treated as a form of compensation to the employee or the director in the financial statements of the company.

9. Board's Report to disclose the details of sweat equity shares -

The Board of Directors shall, inter alia, disclose in the Directors' Report for the year in which such shares are issued, the following details of issue of sweat equity shares namely:-

(a) the class of director or employee to whom sweat equity shares were issued;

(b) the class of shares issued as Sweat Equity Shares;

(c) the number of sweat equity shares issued to the directors, key managerial personnel or other employees showing separately the number of such shares issued to them , if any, for consideration other than cash and the individual names of allottees holding one percent or moreof the issued share capital;

(d) the reasons or justification for the issue;

(e) the principal terms and conditions for issue of sweat equity shares, including pricing formula;

(f) the total number of shares arising as a result of issue of sweat equity shares;

(g) the percentage of the sweat equity shares of the total post issued and paid up share capital;

(h) the consideration (including consideration other than cash) received or benefit accrued to thecompany from the issue of sweat equity shares;

(i) the diluted Earnings Per Share (EPS) pursuant to issuance of sweat equity shares.

(10) Maintenance of Register -

Rule 8(14) states that the company shall maintain a Register of Sweat Equity Shares in Form No. SH.3 and shall forthwith enter therein the particulars of Sweat Equity Shares issued under section 54. The Register of Sweat Equity Shares shall be maintained at the registered office of the company or such other place as the Board may decide. The entries in the register shall be authenticated by the Company Secretary of the company or by any other person authorized by theBoard for the purpose.

Bonus Shares

Bonus shares are additional shares given to the current shareholders without any additional cost, based upon the number of shares that a shareholder owns. A company may, if its Articles provide, capitalize its profits by issuing fully-paid bonus shares. 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. The bonus shares allotted to the members do not represent taxable income in their hands. The vesting of the rights in the bonus shares takes place when the shares are actually allotted and not from any earlier date.

There was no specific section under the companies act 1956, dealing with bonus shares that Table A contains provision relating to capitalization of profits. Companies were following the norms prescribed by the controller of capital issues. Once SEBI came into existence and controller of capital issues were abolished, unlisted private companies and public listed companies were free toissue Bonus shares if there had sufficient reserves to match the issue of Bonus shares. To bring insanctity to the issue of bonus shares, the Companies act 2013 has introduced section 63 to deal exclusively with bonus shares. Issue of bonus shares is covered under section 63 of companies act,2013, read with rule 14 of the companies (share capital and debentures) Rules 2014.

Source for issue of Bonus shares

As per section 63(1) a company may issue fully paid bonus shares to its members out of the following

(i) its free reserves;
(ii) the securities premium account; or
(iii) the capital redemption reserve account.

Sources that can't be used for issue of Bonus shares

** No issue of bonus shares shall be made capitalizing reserves created by the revaluation of assets. (ie No issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.)

** The company shall not issue shares in lieu of dividend

<u>Procedure for Issue of Bonus Shares</u>

Call the Board Meeting:

As per Section 173(3): Issue Notice of at least 7 days for calling meeting of Board of Directors.

Hold the Board Meeting:

- Check the Quorum as per Section 174(1): Quorum for the Meeting of Board of Directors is 1/3rd of total strength of Board or 2 directors, whichever is higher.

- Place before the Board Resolution for issue of Bonus Shares.
- Pass Board Resolution for issue of shares.
- Decide the Ration of Shares offering to share holders.
- Fixing the date, time, and venue of the general meeting and authorizing a director or any other person to send the notice for the same to the members.
- Provisions of the Section 101 of the Companies Act 2013 provides for issue of notice of EGM in writing to below mentions atleast 21 days before the actual date of the EGM :
- All the Directors.
- Members
- Auditors of Company
- The notice shall specify the place, date, day and time of the meeting and contain a statement on the business to be transacted at the EGM.
- Authorize a director to do all the work relating to issue notice of right issue.

File MGT-14:

File e-form- MGT-14 within 30 days of Passing of Board Resolution for issue of shares. (alongwith Resolution for issue of shares.

Convene a General Meeting:

- Check the Quorum.

- Check whether auditor is present, if not. Then Leave of absence is Granted or Not. (As perSection- 146).
- Pass Ordinary Resolution for bonus issue of shares.

Call the Board Meeting:

As per Section 173(3): Issue Notice of at least 7 days for calling meeting of Board of Directors.Hold the Board Meeting Pass Board Resolution for allotment of shares.

Filling of e-Forms

1. File PAS-3: File e-form PAS-3 within 30 days of passing of Board Resolution for allotment of shares.

The following documents are to be attached with the form

- Ordinary Resolution for Bonus issue of shares.
- Board Resolution for allotment of shares.
- List of Allotees. (as per annexure –B of PAS-3)- Mentioning Name, Address, occupation if any and number of securities allotted to each of the allotees and the list shall be certified by the signatory of the form pas-3.

Issue Share Certificates:

Company will issue share certificate to the shareholders with in 2 month from the date of allotmentof shares.

Before Bonus issue, a company has to ensure the following:

- Check whether Authorized capital is sufficient for issue of Bonus Shares.
- If authorized capital is not enough then first alter the

Capital of Company by alteration inMOA.

- Check Provision for Bonus issue in Article of Association of Company.
- If AOA not authorize to issue Bonus Shares then alter the Article of Association.
- Check availability of resources for issue of Bonus shares.
- Check Quantum of Bonus shares.
- Check no default in payment of interest or principle in respect of fixed deposit or debtsecurities issued by it.
- Check no default in payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus.
- Check is there any partly paid up share on the date of allotment.
- If there are partly paid up share, then first make them fully paid up shares.

Conditions for Issue of Bonus Shares

- Articles must contain provision for issue of bonus shares [As per Section-62(2) (a)].
- Bonus issue must be authorised by the members of the company (by passing of Ordinary Resolution) on recommendation of Board.
- Company should not have defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it and no defaulted in respect of the payment of statutory dues of the employees, such as, contribution to

provident fund, gratuity and bonus.

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 thecompany.
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.

Further issue of shares to existing shareholders/ Right Issue

When a company proposes to increase the share capital by issue of **equity, convertible debentures (fully or partly), convertible preference shares** to its **existing equity shareholders**, then companies (including private limited companies) have to comply with the new procedures laid out under Companies Act 2013. (Section 62 of Companies Act 2013 and Rule 13 of Companies (ShareCapital and Debentures) Rules 2014). A rights issue is directly offered to all existing shareholders of the Company in proportion to their current holding. The company also set a time limit for the shareholder to buy the shares. Companies pursue Rights Issue as an avenue to raise funds for various reasons, ranging from expansion or acquisitions to paying down debts.

Section 62 of Companies Act, 2013 contains provisions on "further issue of capital", and enacts the principle of pre-emptive rights of shareholders of a company to subscribe to new shares of the company. Provisions of Section 62 of Companies Act, 2013 are mandatory for all Privatecompanies, public companies, listed as well as unlisted companies.

Relevant provisions of Companies Act – 2013 as to Right Issue

Sec 62 (1) Where at any time, a company having a share capital proposes to increase its subscribedcapital by the issue of further shares, such shares shall be offered:

(i) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:—

(ii) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;

Provided in case of Private companies if ninety percent of the members of company give their consent in writing or in electronic mode, the time limit of fifteen days shall not apply.

(iii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed toinclude a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;

(iv) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimationfrom the person to whom such notice is given that he declines to accept the shares offered,the Board of Directors may dispose of them in such manner which is not dis-advantageousto the shareholders and the company;

Procedure for Allotment of Shares on Right Issue Basis:

- Issue notice in writing to every Director at least seven days' before convening the Board meeting. [Sec 173 (3)]
- Convene a Board Meeting
- Pass a Board resolution for approving "Letter of offer". The offer letter shall include right of renunciation also.
- Dispatch Letter of offer to all existing shareholders through registered post or speed post or through electronic mode at least three days before the opening of the issue. In case of Private companies ifninety percent of the members of company give their consent in writing or in electronic mode, the timelimit of three days before the opening of the issue shall not apply.
- Receive acceptance, renunciations, rejection of rights from shareholders.
- Issue notice in writing to every Director at least seven days' before convening the Board meeting.[Sec 173 (3)]
- Convene a Board Meeting
- Pass Board resolution for approving allotment and issue of shares.

- File with Registrar a return of allotment in E-Form PAS-3 within 30 days of allotment of shares.
- File E-form MGT 14 within 30 days of Issue of securities. [Not applicable in case of private companies]

Advantages of Right Issue of Shares

1. **Control in the hands of existing shareholders:** Control of company is retained in the hands of existing shareholders. Issue of rights shares makes possible equitable distribution of shares without disturbing the established equilibrium of shareholdings, because rights shares are offered to the persons who on the date of rights issue are the holders of equity shares of the company, proportionately to their equity shares on that date.

2. **No dilution in the value of existing shares:** The existing shareholders do not suffer on account of dilution in the value of their holdings if fresh shares are offered to them, because the value of shares is likely to fall with fresh issue. This decrease in the value of the shares will be compensated by getting new shares at a price lower than the market price. They are likely to suffer on account of the dilution in the value of their holdings if fresh shares are offered to the general public.

3. **Expenses Saved:** The expenses of public issue can be saved through right issue.

4. **Better Image:** Image of the company is bettered when rights issues are made from time to time and existing shareholders remain satisfied.

5. **More Certainty of getting shares:** There is more

certainty of getting shares, when fresh issue is made to the existing share holders, instead of general public.

6. No Misuse by directors: Directors cannot misuse the opportunity of issuing new shares to their friends and relatives at low price and at the same time retaining more control in their hands when right shares are issued because in right issue shares are offered proportionately to the existing shareholders according to their existing holdings.

Disadvantages of Right Issue

1. The value of each share will be diluted as a result of the increased number of shares issued.
2. It is awfully easy for investors to get tempted by the prospect of buying discounted Shares with a rights issue. But it is not always a certainty that you are getting a bargain. Besides knowing the ex-rights share price, shareholder should know the purpose of the additional funding before accepting or rejecting a rights issue.
3. A rights issue can offer a quick fix for a troubled balance sheet, but that doesn't necessarily mean management will address the underlying problems that weakened the balance sheet in the first place.

Employees Stock Option Scheme

Section 2(37) of the new Companies Act defines employees' stock option means (ESOP) as- "The option given to the **directors,** officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such **directors**, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price."

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. Rule 12 of Companies (Share Capital and Debentures) Rules, 2014 with regard to issue of Employee stock options covers issue of ESOPs.

For the purpose of clause (b) of sub-section (1) of section 62 and Rule 12 of the Companies (Share Capital and Debentures) Rules, 2014, ''Employee'' means–

** A permanent employee of the company who has been working in India or outside India; or

** A director of the company, whether a whole time director or not but excluding an independentdirector; or

** An employee as defined in clauses (a) or (b) of a subsidiary, in India or outside India, or of aholding company of the company or of an associate company but does not include-

- an employee who is a promoter or a person belonging to the promoter group; or
- a director who either himself or through his relative or through anybody corporate, directlyor indirectly, holds more than ten percent of the outstanding equity shares of the company.

Pricing ESOP

Rule 12(3) states that the companies granting option to its employees pursuant to Employees Stock Option Scheme will have the freedom to determine the exercise price in conformity with the applicable accounting policies, if any.

Vesting Period

Rule 12 (6) (a) states that there shall be a minimum period of one year between the grant of options and vesting of option. In a case where options are granted by a company under its Employees Stock Option Scheme in lieu of options held by the same person under an Employees Stock Option Scheme in another company, which has merged or amalgamated with the first mentioned company, the period during which the options granted by the merging or amalgamating company were held by him shall be adjusted against the minimum vesting period required under this clause;

Lock-in-Period

Rule 12 (6) (b) states that the company shall have the freedom to specify the lock-in period for the shares issued pursuant to exercise of option.

Conditions on ESOP

A company, other than a listed company, which is not required to comply with Securities and Exchange Board of India Employee Stock Option Scheme Guidelines shall not offer shares to its employees under a scheme of employees' stock option (hereinafter referred to as "Employees Stock Option Scheme"), unless it complies with the following requirements, namely:-

(i) The issue of Employees Stock Option Scheme has been approved by the shareholders of the company by passing a special resolution. Rule 12(8) states the following conditions:

- The option granted to employees shall not be transferable to any other person.
- The option granted to the employees shall not be pledged, hypothecated, mortgaged or otherwise encumbered or alienated in any other manner.
- No person other than the employees to whom the option is granted shall be entitled to exercise the option.

Contents in Board's Report as to ESOP

Rule 12 (9) states that the Board of directors, shall, inter alia, disclose in the Directors' Report for the year, the following details of the Employees Stock Option Scheme:

(a) options granted;

(b) options vested;

(c) options exercised;

(d) the total number of shares arising as a result of exercise of option;

(e) options lapsed;

(f) the exercise price;

(g) variation of terms of options;

(h) money realized by exercise of options;

(i) total number of options in force;

(j) employee wise details of options granted to;-

- Key managerial personnel;
- any other employee who receives a grant of options in any one year of option amounting to five Percent or more of options granted during that year
- identified employees who were granted option, during any one year, equal to or exceeding one Percent of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant;

Shares with Differential Rights

A Company can raise Capital through issue of Equity Shares. Equity Shares can be of different types such as equity shares with pari-pasu voting right or equity shares with differential voting right. Equity Shares with Differential Voting Rights (DVR) shares are like ordinary equityshares but with differential voting rights. They may be listed and traded in the same manner as anordinary equity shares. However, they are mostly traded at a discount as they provide fewer voting rights as compared to ordinary equity shares. Companies generally compensate DVR Shares investors with a higher dividend or with lower dividend. Shares with Differential Voting Rights means shares that give the holder differential rights so as to voting (either more or less voting right)as against the Ordinary shareholders of the company. Section 43 of the Companies Act, 2013 and Companies (Share Capital and Debenture) Rules, 2014 specify the law and procedure regarding Issue of Equity Shares with differential voting right as outlined below.

No company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions, namely:-

** The articles of association of the company authorizes the issue of shares with differential rights,

** The issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders, Provided that where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postalballot,

** The shares with differential rights shall not exceed twenty-six percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any pointof time,

** The Company having consistent track record of distributable profits for the last three years,

** The Company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares,

** The Company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend,

** The Company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government,

** The Company has not been penalized by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934, the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators,

** The explanatory statement to be annexed to the notice of the general meeting,

** The Company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice–versa.

** The Board of Directors shall, inter alia, disclose in the Board’s Report for the financial year in which the issue of equity shares with differential rights was completed, the following details, viz:-

a) The total number of shares allotted with differential rights,

b) The details of the differential rights relating to voting rights and dividends

c) The percentage of the shares with differential rights to the total post issue equity share capital with differential rights issued at any point of time and percentage of voting rights which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;

d) The price at which such shares have been issued

e) The particulars of promoters, directors or key managerial personnel to whom such sharesare issued,

f) The change in control, if any, in the company consequent to the issue of equity shares with differential voting rights

g) The diluted Earnings Per Share pursuant to the issue of each class of shares, calculated in accordance with the applicable accounting standards,

h) The pre and post issue shareholding pattern along with voting rights in the format specified under sub-rule (2) of rule 4.

The holders of the equity shares with differential rights shall enjoy all other rights such as bonus shares, rights shares etc., which the holders of equity shares are entitled to, subject to the differential rights with which such shares have been issued.

** Where a company issues equity shares with differential rights, the Register of Members maintained under section 88 shall contain all the relevant particulars of the shares so issued alongwith details of the shareholders.

Calls

A company issuing shares to its members may call the money due on shares at intervals depending upon the requirements for funds for implementing the project and the shareholders also prefer to pay the nominal value on their shares in installments as and when demanded by the company. A call is a demand, by the company in pursuance of a Board resolution and in accordance with the articles of the company, upon its shareholders to pay the whole or part of the balance still due on each class of shares allotted or held by them made at any time during the life of the company. A call may also be made by the liquidator in the course of winding up of the company. The amount payable in application on each share shall not be less than five per cent of the nominal amount of the share. The balance may be payable as and when called for in one or more calls. The prospectusand the articles of a company generally specify the amount payable at different times, as call(s).

Under Section 10(2) of the Act all moneys payable by any member to the company on the shares held by him under the memorandum or articles is a debt due from him to the company. In the event of default in payment of a valid call, the company can enforce payment of such moneys by legal process and forfeit the shares in case the call is not paid. The liability of members is enforceable only after a proper notice which is called 'call letter' or call notice as 1st, 2nd and final or so on, is given to him in accordance with the articles.

1. Board of Directors to make call(s) on shares

The power to make calls is exercised by the Board in its meeting by means of a resolution [Section 179(3) (a)]. The Board, in making a call, must observe the provisions of the articles, otherwise the call will be invalid, and the shareholder is not bound to pay. A proper notice must be given, and the notice must specify the amount called up and manner i.e. the date for payment and place and to whom it is to be paid. It may be emphasised that the time and place at which the call is to be paid are essential ingredients of a valid call.

Apart from this rule, "in making call, care must be taken that the directors making it are duly appointed and qualified; the meeting of the directors has been duly convened; proper quorum was present, and that the resolution making the call was duly passed and specifies the amount of the call, the time and place of payment.

2. Call(s) to be made bonafide in the interest of the company

The power to make call is in the nature of trust and must be exercised only for the benefit of the company, and not for the private ends of the directors. If the call is made for the personal benefit of directors, the call will be invalid. In Alexander v. Automatic Telephone Co., (1900) 2 Ch. 56, the directors of the company paid nothing on their shares but did not disclose this fact to the shareholders and called on them to pay certain amount partly as allotment money and partly ascall money. The directors were held guilty of breach of trust and the call was held invalid.

3. Call(s) must be made on uniform basis

According to Section 49 of the Act, calls on same class of shares must be made on a uniformbasis. Hence a call cannot be made only on some of the members unless they constitute a separate class. In other words, there cannot be any discrimination between shareholders of the same class as regards amount and time of payment of call.

4. Notice of call(s)

The notice of call must specify the exact amount and time of payment. In Shackleyford & Co. Dangerfield(1868) (R3 CP 407) the notice had specified the time and amount to be paid as a call, it will be a valid callinspite of the fact that the form of notice was an inaccurate one. A call must be made by serving upon member formal notice in accordance with the provisions of Section 53 of Companies Act, 1956 (Corresponding to Companies Act, 2013).

5. Time limitations for receiving the call money

If the issuer proposes to receive subscription monies in calls, it shall ensure that the outstanding subscription money is called within twelve months from the date of allotment of the issue.

Usually Articles of association of companies provide for the manner in which calls should be made. They follow the pattern set out in Regulations 13 to 18 of Table-F of Schedule-

I appended to the Companies Act,

(a) For each call at least 14 days notice must be given to members.

(b) An interval of one month is required between two successive calls and not more than one-fourth of the nominal value of shares can be called at one time. However, companies may have theirown articles and raise the limit.

(c) The Board of directors has the power to revoke or postpone a call after it is made.

(d) Joint shareholders are jointly and severally liable for payment of calls.

(e) If a member fails to pay call money he is liable to pay interest not exceeding the rate specified in the articles or terms of issue or such lower rate, as the Board may determine. The directors are free to waive the payment of interest wholly or in part.

(f) If any member desires to pay the call money in advance, the directors may at their discretion accept and pay interest not exceeding the rate specified in the articles.

(g) A defaulting member will not have any voting right till call money is paid by him.

6. **Interest on calls due but not paid** — A member is generally made liable to pay interest on the calls made but not paid. The rate of interest to be charged is as specified in the Articles. Regulation16 of Table F, in this regard provides:

"16 (i) If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest thereon from the day appointed for payment thereof to the time of actual payment at 10% per annum or at such lower rate, if any, as the Board may determine. (ii) The Board shall be at liberty to waive payment of any such interestwholly or in part."

7. Acceptance of uncalled capital

Section 50(1) states that if authorized by its articles, a company may accept from any member the whole or part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up.

Where section 50(2) provides that a member who has paid the whole or part of the amount remaining unpaid on the shares held by him even though the company has not made a call for it is not entitled for any voting right at a general meeting on the amount so paid until that amount has been called up

8. Quantum and Interval between two calls

Proviso to Regulation 13(i) to the Table 'F' of Schedule I of the Companies Act, 2013 provides that no call shall exceed 25% of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last proceeding call.

If the issuer proposes to receive subscription monies in calls, it shall ensure that the outstanding subscription money is called within twelve months from the date of allotment of the issue and if any applicant fails to pay the call money within the said twelve months, the equity shares on whichthere are calls in arrear along with the subscription money already paid on such shares shall be forfeited. However, it shall not be necessary to call the outstanding subscription money within twelve months, if the issuer has appointed a monitoring agency in terms of regulation 16 of SEBI(ICDR) Regulations, 2009.

Regulation 16 of ICDR provides that if the issue size exceeds five hundred crore rupees, the issuer shall make arrangements for the use of proceeds of the issue to be monitored by a public financial institution or by one of the scheduled commercial banks named in the offer document as bankers of the issuer. However, nothing contained in this clause shall apply to an offer for sale or an issue of specified securities made by a bank or public financial institution or an insurance company.

Forfeiture of Shares

To forfeit means to take away or to withdraw the rights of a person. In other words forfeit means to lose the right to, be deprived of; to lose or become liable to lose, as in consequence of fault or breach of promise or contract. It is a penalty for a breach of contract or neglect; a fine that is imposed for not complying with the stipulated condition, obligation or duty. Forfeiture of share refers to the cancellation or termination of membership of a share holder by taking away the shares and rights of membership.

Forfeiture of Shares and Companies Act 2013

According to Regulation 13 of the Table – F of schedule

– I, the Board may make calls upon the members in respect of any monies unpaid on their shares. Regulation 17 of the Table – Fof schedule – I, says, in case of non-payment of such sum, all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.

Regulation 28 of Table – F of Schedule – I provides that if a member fails to pay any call, or installment of a call, on the day appointed for payment thereof, the Board of directors of the company may, at any time thereafter during such time as any part of the call or installment remainsunpaid, serve a notice on him requiring payment of so much of the call or installment as is unpaid, together with any interest which may have accrued. Regulation 29 of Table – F of Schedule – I lays down that the notice aforesaid shall –

(a) name a further day (not being earlier than the expiry of fourteen days from the date of serviceof the notice) on or before which the payment required by the notice is to be made; and

(b) state that, in the event of non-payment on or before the day so named, the shares in respect of which the call was made will be liable to be forfeited.

Regulation 30 of Table – F of Schedule – I provides that if the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may, at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect. Regulation 32 of Table – F of Schedule – I provide that a person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding the forfeiture, remain liable to pay to the company all monies which, at the date of forfeiture, were presently payable by him to the company in respect of the shares. The liability of such person shall cease if and when the company shall have received payment in full of all such monies in respect of the shares.

Procedures regarding forfeiture of shares:

1. If a member fails to pay any call, or installment of a call, on the day appointed for payment thereof, the Board may, at any time thereafter serve a notice on him requiring payment of so much of the call or installment as is unpaid, together with any interest which may have accrued.
2. The board or committee thereof shall pass a resolution authorizing the forfeiture of share and issue of notice for this purpose.
3. The notice aforesaid shall:
   - name a further day (not being earlier than the expiry of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made; and
   - state that, in the event of non-payment on or before the day so named, the shares in respect of which the call was made will be liable to be forfeited.

4. The notice must:

- specify clearly the amount payable on account of unpaid call money as well as interest accrued, if any, and other expenses.
- mention the day on or before which the amount specified ought to be paid, not be earlier than 14 days from the date of service of the notice.
- contain an unambiguous statement to the effect that in the event of failure to pay the specifiedamount latest on the appointed day, the shares in respect of which the amount remains unpaidwould be liable to be forfeited.

5. The notice of forfeiture as contemplated in regulation 28 of Table – F of Schedule – I must be served in accordance with the provisions of section 20 of the Companies Act 2013.

6. If the call money is not paid in response to such notice threatening forfeiture, the company may, at any time thereafter, before the payment required by the notice has been made, forfeit the shares by a resolution of the Board to that effect.

7. Publish a notice of forfeiture in newspapers so that the members of the public are made aware of the forfeiture and cautioned not to deal in the forfeited shares.

8. Inform the forfeiture of the shares to the concerned shareholders by registered post.

9. Regulation 33 of Table – F of Schedule – I provides for a verified declaration in writing to be issued under the signature of a director, manager or secretary of the company that a share in the company has been duly forfeited on a date stated in the declaration. The declaration so made shall be conclusive evidence of the facts stated therein as against all persons claiming to be entitled to the shares forfeited.

10. The fact of the forfeiture will be entered in the Register of Members and the name of the concerned Shareholder as a member of the company will be deleted from the register.

11. In case of listed company, notify the Stock Exchange at which the securities of the Company are listed about such forfeiture of shares.

Features of Valid Forfeiture

1. **Articles of Association must authorise the forfeiture of shares** - Where power is given in the articles, it must be exercised in accordance with the regulation regarding notice, procedure and manner stated therein; otherwise the forfeiture will be void. The power of forfeiture must be exercised bona fide and in the interest of the company. It should not be collusive or fraudulent. If Articles authorise, the forfeiture shall include forfeiture of all dividends declared in respect of the forfeited shares and such dividend is not actually paid before the forfeiture of the shares.

2. **Resolution for Forfeitur**e - Article 30 of the Table F provides that if the defaulting shareholder does not pay

the amount within the specified time as required by the notice, the directors may pass a resolution forfeiting the shares.

3. **Proper Notice -** Before the shares of a member are forfeited, a proper notice to that effect must have been served. Regulation 29 of Table F provides that a notice shall name a further day (not less than 14 days from the date of service of the notice) on or before which the payment is to be made. The notice must also mention that in the event of nonpayment, the shares will be liable to be forfeited.

4. **Power of forfeiture must be exercised bona fide and for the benefit of the company -** The power to forfeit be exercised bona fide and for the benefit of the company. The power must be used in order to coerce reluctant shareholders into paying their calls. The power of forfeiture cannot be exercised to relieve unwilling shareholders from the liability of making the payment. Such a shareholder continues to be responsible for the unpaid part of the shares.

Surrender of Shares

Surrender means to hand over; relinquish possession of, especially on compulsion or demand. The Companies Act does not contain any provision on surrender of shares. Table – F of Schedule – I also does not give power to a company to accept surrender of its shares; it contains no regulation on this subject. But articles usually empower the companies to accept surrender of shares.

There is difference between surrender and forfeiture of shares. Nothing is provided in the Act as to surrender of shares; but these have been admitted by the courts, upon the principle that they have practically the same effect as forfeiture, the main difference being that Forfeiture is a proceeding against an unwilling party and the Surrender happens when the shareholder who is unable to retain and pay future calls on the shares. Surrender is voluntary and forfeiture is due to breach of contract.

It is not open to a shareholder to surrender his shares at will, especially when he has to meet future calls, and it is not open to the company to accept a surrender of shares unless the act of the company can be brought within the rule relating to forfeiture of shares. The Act permits forfeiture of shares on certain grounds; but to give an unlimited and wide power to a company to accept surrender of shares is opposed to the principle that a company cannot buy its own shares and to the principle that a company can reduce its capital only with the permission of the court and on such terms andconditions as the court may impose.

A surrender of shares releasing the shareholder from further liability in respect of the shares, is equivalent to a purchase of the shares by the company, and is therefore illegal, null and void. Thus, a surrender of shares is not valid merely because the articles of the company authorise the Board to accept surrender of shares, unless it can be shown that the surrender took place in circumstances, which would have justified forfeiture. There can be no valid surrender of shares that are not fully paid except where shares are lawfully forfeited, as it involves reduction of capital requiring the sanction of the court. A surrender of shares amounts to a reduction of capital, whichis unlawful unless sanctioned by the court. Where a company's articles give the directors power to accept a surrender of shares, this power will be recognised as valid if it is used merely to avoid the formalities of forfeiture. Subject to the provisions allowing companies to acquire their own shares, a company cannot accept a surrender if the shares are not liable to forfeiture, so that such a surrender of partly paid shares would not relieve the shareholder from his uncalled liability; such a surrender would amount to an unauthorised purchase by the company of its own shares, or a reduction of capital without the court's sanction, and is invalid. It is, however, valid to accept the surrender of partly paid shares from an insolvent member and discharge liability for future calls thereon, if this represents bona fide compromise of the company's on him. The effect of a valid surrender is the same as forfeiture, provided the articles authorise it. It is doubtful whether a company may accept a surrender of fully paid shares in exchange for the issue by the company of an equivalent nominal amount of fully paid shares. There is a difference between surrender of shares and purchasing by a company of its own shares. A company cannot make any payment or give any valuable consideration for the surrender. This is because a surrender of shares in consideration of a payment in money or money's worth by the company is a purchase by it of its own shares and is ultra vires that is to say, unless confirmed by the court as a reduction of capital. Like forfeiture, surrender also does not involve any payment out of the funds of the company. If the surrender were made in consideration of any such payment it would be neither more nor less than a sale, and open to the same objections as purchase by the company of its own shares. If it were accepted in a case when the company was in a position to forfeit the shares, the transaction would be perfectly valid. However, surrender of shares to the company for consideration may be valid if the circumstances are very special, e.g. where the surrender is part of a compromise. A valid surrender of shares would not amount to buying by a company of its own shares.

What is share certificate?

A share certificate is a certificate issued to the members by the company under its common seal specifying the number of shares held by him and the amount paid on each share. According to Section 45 of the Companies Act, 2013 each share of the share capital of the company shall be distinguished with a distinct number for its individual identification. However, such distinction shall not be required, as per provided in Section 45, if the shares are held by a person whose nameis entered as holder of beneficial interest in such share in the records of a depository. In terms of Section 46(1) of the Act, a certificate under the common seal of the company is prima facie evidence of the title of the person to the shares specified therein. The certificate is the only documentary evidence of title in the possession of the shareholder. But it is not a warranty of titleby the company issuing it.

A share certificate is an instrument in writing that is a legal proof of the ownership of the number of shares stated in it. Every company, limited by shares, whether it is public or private must issue the share certificate to its shareholders except in the case where the shares are held in dematerialisation system. The share certificate contains the following details in it, they are:

- Company name
- Date of issue
- Details of the member
- Shares held
- Nominal value
- Paid up value
- Definite number.

Provisions relating to issue of Duplicate share certificate

Section 46 (2) states that a duplicate certificate of shares may be issued, if such certificate —

(a) is proved to have been lost or destroyed; or

(b) has been defaced, mutilated or torn and is surrendered to the company.

Procedure for issue of Share Certificate

** Pass board resolution

** Letter of offer surrendered to company if the letter is lost or destroyed the board may imposereasonable terms

** Certificate shall be issued in Form No. SH-1 and shall specify the name of person in whosefavour the certificate is issued

** Certificate shall be issue under the common seal of the company

** The certificate shall be signed by a) Two directors duly authorized by the board if the composition of board permits at least one of the aforesaid two directors shall be a person other than managing or whole time director (b) The secretary or any person authorized by the board

** Particulars of shares certificates to be entered in the Register of Members.

Procedure for issue of Renewed or duplicate Share Certificate

** Renewal to be made only on surrender of old certificate

** Company may charge fee for duplicate share certificate as the board decides but not exceeding 50 per certificate.

** Company shall not issue any duplicate share certificate in lieu of those lost or destroyed without the prior consent of Board

** If the company is listed then the duplicate share certificates shall be issued within 15 days and if the company is unlisted it shall issue the certificates in 3 months

** The particulars of renewed and duplicate share certificate to be entered in Form No.SH.2

** The register to be kept at registered office of the company

** On fraudulent issue the company shall be punishable with: fine which shall not be less than five times the face value of shares involved which may extend to ten times

** Officer in default shall be liable under section

What is the significance of share certificate?

A certificate of shares is evidence to the effect that the allottee is holding a certain number of shares of the company showing their nominal and paid-up value and distinctive numbers. This certificate is a prime facie evidence of title to the shares in the possession of shareholders. [Society Generale De Paris v. Walker, (1885) 11A AC 20, 29].

Moreover, when the company issues a certificate, it holds out to the world that the facts contained therein are true. Any person acting on the faith of the share certificate of the company, can compel the company to pay compensation for any damage caused by reason of any misstatement in the share certificate as the company is bound by any statements made in the certificate.

Share certificate is the only documentary evidence of title and that the share certificate is a declaration by the company that the person in whose name the certificate is issued is a shareholder in the company. [Ghanshyam Chhaturbhuj v. Industrial Ceramics (Pvt.) Ltd. (1995) 4 Com LJ 51]. Also the company cannot dispute the amount mentioned on the certificate as already paid. [Bloomenthal v. Ford (1897) AC 156 (HL)].

Buy Back of Shares

Buy Back of securities simply implies purchase of its own securities by a Company. Buy Back of securities is a important mode of capital restructuring. A company can buy back its shares under Section 68 of the Companies Act, 2013 which is more or less same as section 77A of The Companies Act, 1956 but there are some procedural Changes. A private or public unlisted company is further required to comply with The Companies (Share capital and Debenture rules, 2014)

Manner of Buy Back of Shares

A Company may buy-back its shares by either of the following methods:

1. From the existing security holders on a proportionate basis through private offers; or
2. By purchasing the securities issued to employees of the company pursuant to a scheme of a Stock Option or Sweat Equity

Advantages of Buy Back:

It is an alternative mode of reduction in capital without requiring approval of court –

- To improve earnings per share
- To improve return on capital, return on net worth and to enhance the long term shareholders value
- To provide an additional exit route to shareholders when shares are undervalued or thinly traded
- To enhance consolidation of stake in the company

- To prevent unwelcome takeover bids
- To return surplus cash to shareholders
- To achieve optimum capital structure
- To support share price during periods of sluggish market condition
- To serve the equity more efficiently

Essential Conditions for Buyback:

1. Ensure that there is a specific provision in the Articles of Association authorizing the Companyto buy back its own shares. If the Articles don't provide for it, then the Company first needs to amend its Articles of Association by passing a Special Resolution.
2. Pass a Special Resolution in the General Meeting authorizing the buyback of shares.

   Provided that no Specific provision in Article of Association is required and no Special Resolution is required to be passed in General Meeting where—(i) The buy-back is, ten percent or less of the total paid-up equity capital and free reserves of the company; and (ii) such buy-back has been authorized by the Board by means of a resolution passed at its meeting
3. Ensure that no buy back was made during a period of one year immediately preceding thecurrent buy back.
4. Ensure that post buy back Debt Equity Ratio of the Company i.e. amount of debt should not be more than twice the paid up capital and free reserves.

5. Ensure that all the shares of the Company which are going to be purchased by the Company should be fully paid up.
6. Ensure that the Company does not issue same kind of securities within a period of 6 months from the completion of buy back.
7. Where a company buys-back its shares it should maintain the register of the securities so bought, the consideration paid for the securities bought-back, the date of cancellation of securities, the date of extinguishing and physically destroying of securities and such other particulars as maybe prescribed (in form SH-10).

Legal and Secretarial Aspects Governing Buy Back of Equity Shares under TheCompanies Act, 2013

Section 68, 69 and 70 of the Companies Act, 2013 and Rule 17 of Companies (Share Capital and Debentures) 2014 deal with buy back of Securities. The Act and the Rules both prescribe the permitted resources and the permitted methods for buy back of Securities. Both the Act and the Rules not only list out various criteria to be fulfilled for a buy back but also the rules to be followed for buy back. Section 69 deals the accounting treatment on account of Buy back ofSecurities and Section 70 gives the list of things that the Company should not have done in order to make them eligible to go for a buy back.

A. Permitted Resources and Permitted Methods for Buy Back of Equity Shares

The first step is find out the resources under which the Equity Shares could be purchased and also the permitted source of funds to be utilised for the purpose of buy back.

a. Section 68 (1) says that the Shares could be purchased out of resources generated in the following manner i) Free reserves ii) Securities Premium Account iii) Proceeds that are generated out of Issue of any shares or other specified securities. However the proceeds thus generated shouldnot be of an earlier issue of the same kind of shares or same kind of other specified securities.

b. Rule 10 says that i) A separate Bank Account has to be opened and the amount has to be paid only by way of cash. ii) The Company shall not utilize any money borrowed from the Bank or financial institution for the purpose of buying back its shares iii) The Company shall not utilize the proceeds of an earlier issue of the same kind of shares for buy back or same kind of other securities.

B. From whom the Equity Shares could be Bought Back

The second step is to find out from whom the Shares could be bought back. Under Section 68 (5) of the Companies Ac, 1956, the buy-back of equity shares may be (i) from the existing equity shareholders on a proportionate basis; (ii) from the open market; (ii) by purchasing the shares issued to employees of the company pursuant to a scheme of stock option or sweat equity.

C. Eligibility Criteria for Buy Back of Equity Shares under the Act as well as the Rules

The third step is to find out whether the Company fits in with the norms prescribed under the Actas well as the rules to make them eligible to go for a buy back.

I. Eligible Criteria for Buy Back under the Act Section 68(2) lists out the following criteria to be fulfilled for buy back of shares

i. The percentage of Buy Back shall not exceed 10% of the total equity capital and free reserves if the same is to be authorized by the Board by means of a resolution in the Board meeting.

ii. The percentage of buy back could exceed 10% but not beyond 25% of the total paid equity Capital and free reserves if the same is authorized by the shareholders by means of a Special resolution

iii. The ratio of the aggregate of secured and unsecured debts owed by the company after buy- back shall not be more than twice the paid-up capital and its free reserves: (The Central Government may in future notify by order a higher ratio of the debt to capital and free reserves for a class or classes of companies)

iv. All the Equity Shares for buy-back are fully paid-up;

v. the buy-back of the shares listed on any recognized stock exchange is in accordance with the regulations made by the Securities and Exchange Board in this behalf; and

vi. the buy-back in respect of shares other than those specified in clause (v) is in accordance with such rules prescribed under Rule 17 of the (Companies Share Capital and Debentures) Rules,2014.

vii. No offer of buy-back under shall be made within a period of one year reckoned from the date of the closure of the preceding offer of buy-back, if any.

viii. Under Rule 10 (b) The Company shall not issue any new shares including Bonus shares from the date of passing the special resolution authorizing Buy back till the date of closure of offer of Buy back except those arising out of convertible debentures.

II. Eligibility Criteria for Buy Back under the Rules Rules 17 lists out the following eligibility criteria for buy back of shares

i. There are

a. No defaults subsisting in repayment of deposits and interest payment thereon.

b. No defaults on redemption of preference shares.

c. No defaults in payment of Dividend due to any Shareholder.

d. No defaults in repayment of any loan or interest payable thereon to any financial institution or banking Company.

However Section 69 gives an exemption that if the above default is remedied and a period of three years has lapsed after such default ceased to subsist. ii. There shall be no grounds on which the Company could be found unable to pay its debts. iii. The Company should be in a position to meet the liabilities as and when they fall due and shall not be rendered insolvent within a period of one year from the date of buy back.

D. Prohibitory Lists for Companies which make them Ineligible to go for a Buy Back of Equity Shares in Certain Cases

The fourth step is to ascertain whether the Company falls under any one of the prohibitory lists forbuy back. Section 69 lists out the following, under which Buy back is not allowed.

i. The Company cannot buy back its shares

a. through any subsidiary Company including its own subsidiary Companies.

b. through any investment Company or group of investment Companies.

ii. The Company shall cannot buy back its shares if it has not complied with the provisionsof Section 92, 123, 127 and Section 129

a. Section 92 deals with preparation and filing of Annual Return

b. Section 123 deals with manner of declaration of Dividend and its payment.

c. Section 127 deals with punishment for failure to distribute Dividend.

d. Section 129 deals with financial Statements. (There should not be any qualifying remarkeither on the Report of the Auditors or in the Notes and the financial statements shouldgive true and fair view) Note: 1. I fail to understand what Section 129 has to do with compliance. It is only a penal provision for non compliance. 2. Sections 159,160,161 and 162 of the Old Act are combined into Section 92. Section 205 and 205A are combined into Section 123. Sections 210,211 and 212 are combined into Section 129. The compliance requirements are very broad and any non compliance of any of the provisions of the above Sections will make the company ineligible to go for a buy back. In my view, the Government has to notify certain provisions of the above sections of which in its view should be complied with. This will simplify the process.

E. Rules and Procedures to be followed for Buy Back of Equity Shares under the Act and the Rules

Once the Company satisfies conditions laid as above, the next step would be to comply with procedures laid under the Act and the Rules. Once the Company meets the eligibility criteria, the next step would be how to go ahead with the Buy back. Separate rules and procedures are laid in the Act as well as in the rules.

Company not to Issue Shares of the same class after Buy Back within a periodof Six Months after completion of Buy Back

Under Section 68(8), the Company shall not issue further shares of the same class within a periodof six months from the date of completion of buy back except by way of bonus issue or in discharge of subsisting obligations such as conversion of warrants, stock option scheme, sweat equity or conversion of preference shares or debentures into equity.

Dematerialization

Dematerialization is a process of getting your share physical certificate into electronic format which is maintained in an account, known as the demat account with the depository participant (DP), who is basically an agent between the company and the depository.

- A company should amend its Articles of Association by passing a special resolution in the general meeting of the company, thereby allowing the company to issue shares in dematerialised form.
- Private companies should register with both the central depositories i.e., National Securities Depository Limited (NSDL) and Central Securities Depository Limited (CDSL). These depositories have their own terms of registration, so it is necessary for a company to meet those criteria. If registration is successful depositories will be providing companies with an International Securities Identification Number (ISIN) for each of the shares. "ISIN" is a unique 12 digit alphanumeric code given to a security, shares, Debentures, Bonds etc. when the security is admitted in the depository system. First two digits of the ISIN code indicate country of registration for the security. For all securities registered on depository in India, first two digits of the ISIN code are 'IN'.
- If the private company wants to transfer its dematerialized shares it may arrange demat connectivity from depositories like NSDL or CDSL along with a Registrar

and Transfer Agent (RTA) by entering into a tripartite agreement between the company, the depositories and the transfer agent. An RTA i.e. Registrar and Transfer Agent is an agent of the issuer. RTA act as an intermediary between the issuer and depository for providing services suchas Dematerialization, Rematerialisation, Initial Public Offers and Corporate actions.

Now, if the company wants to dematerialize its physical shares it has to follow certain procedures laid down by depositories like NSDL and CDSL. The general steps involved in the process are asfollows:

- **Step 1:** Beneficiary Owner (BO) has to open a demat account with a Depository participant (DP) and obtain an account number.
- **Step 2:** BO need to fill in a Demat Request Form (DRF) and submit the same with the physical certificate/s to the depository participants for dematerialization. For each ISIN, aseparate DRF has to be used. If the BO has free as well as lock-in shares of the same ISIN, separate demat request has to be set up for free shares and lock-in shares.
- **Step 3:** DP would verify that the DRF has been filled correctly.
- **Step 4:** DP would setup a demat request on the CDSL or NSDL system and send the same to the Company and the Registrar and Transfer Agent.
- **Step 5:** Issuer/ Registrar and Transfer Agent (RTA) would verifies the genuineness of the certificates and confirms

the request.

- **Step 6:** Once the request has been successfully made, DP would deface and mutilate the physical certificates, generate a Demat Request Number (DRN) and send an electronic communication to the depository and courier the DRF and the share certificate to the company by courier.
- **Step 7:** On receiving confirmation, depository will credit an equivalent number of securities in the demat account of the BO maintained with CDSL or NSDL.
- **Step 8:** The depository will electronically download the details of the demat request and communicate the same to the electronic registry maintained by the Registrar of Companies.

Transfer of shares by an individual in dematerialized form

- A shareholder who wants to dematerialise his shares needs to open a demat account with Depository Participant (DP), and surrender his physical shares.
- If a shareholder who wants to transfer shares to the demat account of another can transfer by issuing appropriate instructions to the concerned depository participant through Delivery Instruction Slip (DIS) which will be issued by the DP. The delivery instruction slip is a book similar to a cheque book and an investor is supposed to handle it with the same care as a cheque book.
- If an investor wants to transfer securities through the stock exchange, he/she has to instruct the DP to transfer shares

from his demat account to the brokers' pool account.

- In case he wants to transfer shares to any other buyer`s demat account, i.e., an off market transaction, he will have to instruct his DP to transfer to the concerned buyer's demat account. Similarly, securities can be transferred to the buyers demat account by the instruction of the seller (transferor) to his concerned DP. The seller is supposed mention investor`s demat account number in the DIS.
- It is important to note that RTA has to confirm from the company before approving the transfer. Company approval is necessary and then only RTA shall register a transfer in thedemat mode

Rematerialisation

Rematerialisation is the process by which a client can get his electronic holdings converted into physical certificates. The client has to submit the rematerialisation request to the DP with whom he has an account. The DP enters the request in its system which blocks the client's holdings to that extent automatically. The DP releases the request to NSDL and sends the request form to the Issuer/ R&T agent. The Issuer/ R&T agent then prints the certificates, despatches the same to the client and simultaneously electronically confirms the acceptance of the request to NSDL. Thereafter, the client's blocked balances are debited.

Features

- A client can rematerialise his dematerialised holdings at any point of time.

- The rematerialisation process is completed within 30 days.
- The securities sent for rematerialisation cannot be traded.

Procedure

- The client will submit a request to the DP for rematerialisation of holdings in its account.
- On receipt of the request form, the DP will verify that the form is duly filled in and issue to the client, an acknowledgement slip, signed and stamped.
- The DP will verify the signature of the client as on the form with the specimen availablein its records.
- If the signatures are different the DP will ensure the identity of the client.
- If the form is in order the DP will enter the request details in its DPM (software provided by NSDL to the DP). While entering the details, if it is found that the client's account does not have enough balance, the DP will not entertain the request.
- The DP will intimate the client that the request cannot be entertained since the client does not have sufficient balance.
- If there is sufficient balance in the client's account, the DP will enter the request in theDPM and the DPM will generate a Rematerialisation Request Number (RRN).
- The RRN so generated is entered in the space provided for the purpose in therematerialisation request form.

- Details recorded for the RRN should be verified by a person other than the person who entered the data. The request is then released to the DM by the DP.
- The DM forwards the request to the Issuer/ R&T agent electronically.
- The DP will fill the authorisation portion of the request form.
- The DP will then despatch the request form to the Issuer/ R&T agent.
- While processing the request, the Issuer/ R&T agent may report some objections. Depending on the nature of objection, the Issuer/ R&T agent may reject the request or process it partially, seeking rectification for the remaining, and send an objection memo tothe DP.
- The Issuer/ R&T agent accepts the request for rematerialisation prints and despatches the certificates to the client and sends electronic confirmation to the DM.
- The DM downloads this information to the DPM and the status of the rematerialisation request is updated in the DPM.
- The DP must inform the client about the changes in the client account following the acceptance of the request.

Transfer and transmission of securities

Section 56 (1) A company shall not register a transfer of securities of the company, or the interest of a member in the company in the case of a company having no share capital, other than the transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument of transfer, in such form as may be prescribed, duly stamped, dated and executed by or on behalf of the transferor and the transferee and specifying the name, address and occupation, if any, of the transferee has been delivered to the company by the transferor or the transferee within a period of sixty days from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities: **Provided** that where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit.

(2) Nothing in sub-section (1) shall prejudice the power of the company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted.

(3) Where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives the notice of the application, in such manner as may be prescribed, to the transferee and the transferee gives no objection to the transfer within two weeks from the receipt of notice.

(4) Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted—

(a) within a period of two months from the date of incorporation, in the case of subscribers to the memorandum;

(b) within a period of two months from the date of allotment, in the case of any allotment of any of its shares;

(c) within a period of one month from the date of receipt by the company of the instrument of transfer under subsection (1) or, as the case may be, of the intimation of transmission under sub-section (2), in the case of a transfer or transmission of securities;

(d) within a period of six months from the date of allotment in the case of any allotment ofdebenture:

Provided that where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

(5) The transfer of any security or other interest of a deceased person in a company made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer.

(6) Where any default is made in complying with the provisions of sub-sections (1) to (5), the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend toone lakh rupees.

Main Provisions related to Transfer of Share

1. **Instrument for Transfer of Share is compulsory:** Section 56 provides that a company shall not register a transfer of shares of, the company, unless a proper transfer deed in **Form SH.4** as given in Rule 11 of Companies (Share Capital & Debentures) Rules 2014 duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee and specifying thename, address and occupation, if any, of the transferee, has been delivered to the company, along with the certificate relating to the shares, or if no such certificate is in existence, along with the letter of allotment of the shares.

2. **Time Period for deposit of Instrument for Transfer:** An instrument of transfer of shares i.e.Form **SH.4** with the date of its execution specified thereon shall be delivered to the company withinsixty (60) days from the date of such execution by or on behalf of the transferor and by or on behalf of the transferee.

3. **Value of share transfer stamps to be affixed on the transfer deed:** Stamp duty for transfer ofshares is 25 paise for every Rs. 100 or part thereof of the value of shares as per Notification No. SO 130(E), dated 28-01-2004 issued by the Ministry of Finance, Department of Revenue, New Delhi.

4. **Time limit for issue of certificate on transfer**

(Section-56(4)): Every company, unless prohibited by any provision of law or of any order of any Court, Tribunal or other authority, shall,within One month deliver, the certificates of all shares transferred after the application for the registration of the transfer of any such shares, debentures or debenture stock received.

5. Private company shall restrict right to transfer its shares: Entire shareholding of a private company may be owned by a family or other private group. Section 2(58)(i) of the Companies Act, 2013 provides that the Articles of private company shall restrict the right to transfer the company'sshares.

6. Restriction on transfer in Private Company not applicable in certain cases: Restriction upon transfer of shares is in private company are not applicable in the following cases:—

(i) on the right of a member to transfer his/her shares cannot be applicable in a case wherethe shares are to be transferred to his/her representative(s).

(ii) in the event of death of a shareholder, legal representatives may require the registrationof share in the names of heirs, on whom the shares have been devolved.

Note: Restriction should not be in the form of prohibition and Restriction can only be by the Articles ofAssociation.

7. Time Limit for Refusal of registration of Transfer: Provisions related to Refusal of registration and appeal against refusal is given in Section 58 of the Companies Act, 2013.

Power of refusal to register transfer of shares is to be exercised by the company within thirty (30) days from the date on which the instrument of transfer or the intimation of transfer, as the case may beis delivered to the company.

8. Time Limit for appeal against refusal to register Transfer by Private Company: As per section 58(3), a transferee of shares may appeal to the Tribunal against the refusal within a period of thirty (30) days from the date of receipt of the notice from the Company or in case no notice has been sent by the company, within a period of sixty (60) days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

9. Time Limit for appeal against refusal to register Transfer by Public Company: As per section 58(4), a transferee of shares may, within a period of sixty (60) days of such refusal or where no intimation has been received from the company, within ninety (90) days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

10. Penalty for Non-compliance: Where any default is made in complying with the provisions related to transfer of shares, the company shall be punishable with fine which shall not be less than Rs. 25,000/- but which may extend to Rs. 5,00,000/- and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs. 10,000/- but which may extend to Rs. 1,00,000/-.

Basic Procedure for Transfer of Share in a Private Company

Generally articles contain the detailed provisions as regards the procedure for transfer of shares. Usually following steps shall be followed by a private company to give effect to the transfer of shares:— Transferor should give a notice in writing for his intention to transfer his share to the company. The company in turn should notify to other members as regards the availability of shares and the price at which such share would be available to them. Such price is generally determined by the directors or the auditors of the company. The company should also intimate to the members,the time limit within which they should communicate their option to purchase shares on transfer. If none of the members comes forward to purchase shares then the shares can be transferred to an outsider and the company will have no option, other than to accept the transfer. Get the Share transfer deed in **form SH-4** duly executed both by the transferor and the transferee. The transfer deed should bear stamps according to the Indian Stamp Act and Stamp Duty Notification in force in the State concerned. The present rate of transfer of shares is 25 Paise for every one hundred rupees of the value of shares or part thereof. Do not forget to cancel the stamps affixed at the time or before signing of the transfer deed. The signatures of the transferor and the transferee in the share transfer deed must be witnessed by a person giving his signature, name and address.

Attach the relevant share certificate or allotment letter with the share transfer deed and deliver the same to the company. The share transfer deed should be deposited with the company within sixty (60) days from the date of such execution by or on behalf of the transferor and by or on behalf of the transferee. After receipt of share transfer deed, board shall consider the same. If the documentation for transfer of share is in order, board shall register the transfer by passing a resolution.

Basic Procedure for Transfer of Share in a Public Company

Section 58(2) provides that the shares or debentures and any interest therein of a public company **shall be freely transferable**. Usually following steps shall be followed by a private company to give effect to the transfer of shares: —

Get the Share transfer deed in **form SH-4** duly executed both by the transferor and the transferee. The transfer deed should bear stamps according to the Indian Stamp Act and Stamp Duty Notification in force in the State concerned. The present rate of transfer of shares is 25 Paise for every one hundred rupees of the value of shares or part thereof. Do not forget to cancel the stampsaffixed at the time or before signing of the transfer deed. The signatures of the transferor and the transferee in the share transfer deed must be witnessed by a person giving his signature, name and address. Attach the relevant share certificate or allotment letter with the share transfer deed and deliver the same to the company. The share transfer deed should be deposited with the company within sixty (60) days from the date of such execution by or on behalf of the transferor and by or on behalf of the transferee. After receipt of share transfer deed, board shall consider the same. If the documentation for transfer of share is in order, board shall register the transfer by passing a resolution.

Transmission of shares

A transmission of interest in shares of a company, of a deceased member of the company, made by the legal representative of a deceased member shall be considered as transmission of shares by operation of law. This transmission will be registered by a company in the Register of Members.

Section 56 (2) Nothing in sub-section (1) shall prejudice the power of the company to register, on receipt of an **intimation of transmission** of any right to securities by operation of law from any person to whom such right has been transmitted.

(3) Where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives the notice of the application, in such manner as may be prescribed, to the transferee and the transferee gives no objection to the transfer within two weeks from the receipt of notice.

(4) Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted—

(a) within a period of two months from the date of incorporation, in the case of subscribers to the memorandum;

(b) within a period of two months from the date of allotment, in the case of any allotment of any of its shares;

(c) within a period of one month from the date of receipt by the company of the instrument of transfer under subsection(1) or, as the case may be, of the intimation of transmission under sub-section (2), in the case of a transfer or transmission of securities;

(d) within a period of six months from the date of allotment in the case of any allotment ofdebenture:

Provided that where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

(5) The transfer of any security or other interest of a deceased person in a company made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer.

(6) Where any default is made in complying with the provisions of sub-sections (1) to (5), the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend toone lakh rupees.

Main Provisions related to Transmission of Share

1. **Person eligible to apply for transmission:** The survivors

in case of joint holding can get the shares transmitted in their names by production of the death certificate of the deceased holder of shares. In other words in case of joint holding, the survivor or survivors shall only be entitled for registration and the legal heir of the deceased member shall have no right or claims.

2. **Share transfer deed not required for Transmission:** Execution of transfer deed not requiredin case of transmission of shares. Intimation/application of Transmission accompanied with relevant documents would be enough for valid transmission request.

3. **Documents required for Transmission of Shares:** In case of transmission of shares by operation of law, it is not necessary to execute and submit transfer deed. A simple application to the company by a legal representative along with the following necessary evidences is sufficient:—

   a. Certified copy of death certificate;
   b. Succession certificate;
   c. Probate;
   d. Specimen signature of the successor.

4. **Liability on shares shall continue:** In the case of a transmission of shares, shares continue to be subject to the original liabilities, and if there was any lien on the shares for any sums due, the lien would subsist, notwithstanding the devaluation of the shares.

5. **Payment of consideration or stamp duty not required:** Since the transmission is by operation of law, payment of

consideration or payment of stamp duty would not be required on instrumentsfor transmission.

6. **Time limit for issue of share certificate on transmission (Section-56(4)):** Every company, unless prohibited by any provision of law or of any order of any Court, Tribunal or other authority,shall, within One month deliver, the certificates of all shares transmitted after the application for the registration of the transmission of any such shares received.

7. **Time Limit for Refusal of registration of Transmission:** Provisions related to Refusal of registration and appeal against refusal is given in Section 58 of the Companies Act, 2013. Power of refusal to register transmission of shares is to be exercised by the company within thirty (30) days from the date on which the intimation of transmission is delivered to the company.

8. **Time Limit for appeal against refusal to register Transmission by Private Company:** As per section 58(3), the person who gave intimation of the transmission by operation of law, may appeal to the Tribunal against the refusal within a period of thirty (30) days from the date of receipt of the notice from the Company or in case no notice has been sent by the company, within a period of sixty (60) days from the date on which the intimation of transmission was delivered to the company.

9. **Time Limit for appeal against refusal to register Transmission by Public Company:** As per section 58(4), the person who gave intimation of the transmission by operation of

law may, within a period of sixty (60) days of such refusal or where no intimation has been received from the company, within ninety (90) days of the delivery of the intimation of transmission, appeal to the Tribunal against such refusal.

10. Penalty for Non-compliance: Where any default is made in complying with the provisions related to transmission of shares, the company shall be punishable with fine which shall not be less than Rs. 25,000/- but which may extend to Rs.5,00,000/- and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs. 10,000/- but which mayextend to Rs. 1,00,000/-.

Extremely useful Information and knowledge about Transmission documents:

i. Meaning of Probate: If a member of a company dies and he leaves after him a will or letter of administration then the survivors shall get a copy of 'will' certified under the seal of a Court of competent jurisdiction. The certified copy of the will is called a 'probate'. Succession certificate is not required when probate or letter of administration is issued.

ii. If a member of a company dies without leaving a will, then succession certificate issued by a Court of competent jurisdiction shall be submitted to the company. Once succession certificateis granted, it provides full indemnity to the company regarding transmission of shares by operation of law.

iii. The survivors in case of joint holding can get the shares transmitted in their names by production of the death certificate of the deceased holder of shares.

Basic Procedure for Transmission of Share

Generally articles contain the detailed provisions as regards the procedure for transmission of shares. Usually following steps shall be followed in order to give effect to the transmission of shares:—

1. The survivor in case of joint holding or legal heir, as the case may be, who want transmission by operation of law in his/her favour, shall file a simple application with the Company with relevant documents such as death certificate, succession certificate, probate, etc., depending upon various circumstances may be considers necessary for transmission by the Company.

2. The company records the particulars of the death certificate and a reference number of recording entry is given to the shareholder so as to enable him to quote such number in all future correspondence with the company.

3. The company review and verify the documents submitted with transmission request. In case all the documents are in order, company shall approve the transmission request and register the shares in the name of the survivor or legal heir as the case may be.

4. However in case documents submitted with transmission request are not in order and it is the case of refusal, company shall within thirty (30) days, from the date on which the intimation of transmission is delivered to the company, communicate refusal to the concerned person.

5. Dividend declared before the death of the shareholder will be payable to legal representative but dividend declared after the death of a member can be paid to him only after registration ofhis name and till that period it has to be kept in abeyance.

******

MODULE IV

MANAGEMENT OF COMPANIES

Board and Governance

The supreme executive authority controlling the management and affairs of a company vests in the team of directors of the company, collectively known as its Board of Directors. At thetop of the corporate governance practice is the Board of Directors which oversees how the management serves and protects the long term interests of all the stakeholders of the Company. The institution of board of directors was based on the assumption that a group of trustworthy and respectable people should look after the interests of the large number of shareholders who are not directly involved in the management of the company. The position of board of directors is that of trust as the board is entrusted with the responsibility to act in the best interests of the company. Even the Board comprises individual directors, the actions and deeds of directors individually functioning cannot bind the company, unless a particular director has been specifically authorised by a Board resolution to discharge certain responsibilities on behalf of the company. 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. A director is a person appointed to perform the duties and functions of director of a company in accordance with the provisions of the Companies Act, 2013.

Board of Directors

A company, though a legal entity in the eyes of law, is an artificial person, existing only incontemplation of law. It has no physical existence. It has neither soul nor body of its own. As such,it cannot act in its own person. It can do so only through some human agency. The persons who are in charge of the management of the affairs of a company are termed as directors. They are collectively known as Board of Directors or the Board. The directors are the brain of a company. They occupy a pivotal position in the structure of the company. Directors take the decision regarding the management of a company collectively in their meetings known as Board Meetingsor at the meetings of their committees constituted for certain specific purposes. 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 Companies Act 2013 has introduced significant changes in the composition of the board of directors of a company. The key changes introduced are set out below:

Number of Directors: The following key changes have been introduced regarding composition of the board:

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. A periodof one year has been provided to enable the companies to comply with this requirement.

1. A one person company shall have a minimum of 1 (one) director;
2. Companies Act 1956 permitted a company to determine the maximum number of directors on its board by way of its articles of association. Companies Act 2013, however, specifically provides that a company may have a maximum of 15 (fifteen) directors.
3. Companies Act 1956 required public companies to obtain Central Government's approval for increasing the number of its directors above the limit prescribed in its articles or if such increase would lead to the total number of directors on the board exceeding 12 (twelve) directors. Companies Act 2013 however, permits every company to appoint directors above the prescribed limit of 15 (fifteen) by authorizing such increase through a special resolution.

Companies Act 2013 requires companies to have the following classes ofDirectors:

Resident Director: Companies Act 2013 introduces the requirement of appointing a resident director, i.e., a person who has stayed in India for a total period of not less than 182 (one hundred and eighty two) days in the previous calendar year.

Independent Directors

The Companies Act 1956 did not require companies to appoint an independent director on its board. Provisions related to independent directors were set out in Clause 49 of the Listing Agreement ("**Listing Agreement**").

Section 149 recognizes the concept of an "Independent Director". This term is defined to mean a person-

i) Who, in the opinion of the Board, is a person of integrity and possesses relevant expertise andexperience.

ii) Who possess such other qualifications as may be prescribed.

iii) Who is or was not a promoter of the company, or its holding, subsidiary or associate company (hereinafter referred to as Group Companies)

iv) Who is not related to promoters or directors of the company or any of its group companies.

v) Who has or had no pecuniary relationship with any of the above persons/companies during the current or two immediately preceding financial years.

vi) None of his relatives has or had pecuniary relationship or transaction with the above persons amounting to 2% or more of its gross turnover or total income or Rs.50 lacs (or such higher amount which is prescribed) – whichever is lower during the current or two preceding financial years.

vii) Who or any of his relatives –

(a) Holds or held the position of a key managerial personnel or as employee of the company or any of its group companies in any of the 3 financial years immediately preceding the year of his appointment.

(b) Is or has been an employee, proprietor or partner of the following during any of the 3 preceding financial years.

- A firm of Auditors, Company Secretaries or Cost Auditors of the company or any of its group of companies.

- Any legal or consulting firm which has or had transaction with the company in or any of its group companies amounting to 10% or more of the gross turnover of the firm.

(c) Holds, together with his relatives, 2% or more of the Voting power of the company. or,

(d) is a Chief Executive or director of any non-profit organization that receives 25% or more of its receipts from the company, any of its promoters, directors or its group companies or that hold 2% or more of the total voting power of the company.

viii) Who is not a Managing/Whole Time/Nominee Director.

Number of Independent Directors:

As per the Listing Agreement, only listed companies were required to appoint independent directors. The number of independent directors on the board of a listed company was required to be equal to (i) one third of the board, where the chairman of the board is a non-executive director; or (ii) one half of the board, where the chairman is an executive director.

However, under Companies Act 2013, the following companies are required to appoint independent directors:

i) Public listed company: At least one third of the board to be comprised of independent directors;and

ii) Certain specified companies that meet the criteria listed below are required to have at least 2 (two) independent directors:

  - Public companies which have paid up share capital of Rs 1,00,000,000 (Rupees one hundredmillion only);
  - Public companies which have a turnover of 1,000,000,000 (Rupees one billion only); and
  - Public companies which have, in the aggregate, outstanding loans, debentures and deposits exceeding Rs. 5,00,000,000 (Rupees five hundred million only)

Qualification criteria:

Companies Act 2013 prescribes detailed qualifications for the appointment of an independent director on the board of a company. Some important qualifications include:

- he / she should be a person of integrity, relevant expertise and experience;
- he / she is not or was not a promoter of, or related to the promoter or director of the company or its holding, subsidiary or associate company;
- he / she has or had no pecuniary relationship with the

company, its holding, subsidiary or associate company, or their promoters, or directors during the 2 (two) immediately preceding financial years or during the current financial year;

- a person, none of whose relatives have or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directorsamounting to 2 (two) percent or more of its gross turnover or total income or INR 5,000,000 (Rupees five million only), whichever is lower, during the 2 (two) immediately preceding financial years or during the current financial year.
- Companies Act 2013 also sets forth stringent provisions with respect to the relatives of theindependent director.

Independent Directors and Companies Act 2013:

(a) The Companies Act 2013 requires an independent director to be a person of integrity, relevant

(b) expertise and experience; it fails to elaborate on the requisite standards for determining whethera person meets such criteria. Companies (acting through their respective nomination and remuneration committees) would be able to exercise their own judgment in the appointment ofindependent directors, diluting the "independence" criteria.

(c) While the Listing Agreement provided that an independent director must not have any material pecuniary relationship or transaction with the company, Companies Act 2013 states that an independent director must not have had any pecuniary relationship with the company. Further, the Listing Agreement stipulated earlier that an independent director should not have had such transactions with the company, its holding company etc., at the time of appointment as an independent director, while Companies Act 2013 extends this restriction to the current financial year or the immediately preceding two financial years. However, this provision in the Listing Agreement has been aligned with the Companies Act 2013 by means of the circular issued by the Securities and Exchange Board of India ("**SEBI**") dated April 17, 2014 titled Corporate Governance in Listed Entities- Amendments to Clauses 35B and 49 of the Equity Listing Agreement ("**SEBI Circular**"). The SEBI Circular has brought the provisions of the Listing Agreement in line with the provisions of Companies Act 2013, and would be applicable from October 01, 2014. Further, the disqualification arising from any pecuniary relationship in the previous 2 (two) financial years under Companies Act 2013 may be unreasonably restrictive, as there may be situations where a pecuniary transaction of the proposed independent director may safely be considered to be of a nature which does not affect the director's independence, for instance, a person proposed to be appointed as an independent director may be the promoter or director of a supplier (or a counter-party to an arm's length transaction) which has in the past (either during or for a period prior to the two immediately preceding financial years) been selected by the company through an independent tender process.

(d) Duties of independent directors: Neither the Listing

Agreement nor the Companies Act 1956prescribed the scope of duties of independent directors. Companies Act 2013 includes a guide to professional conduct for independent directors, which crystallizes the role of independent directors by prescribing facilitative roles, such as offering independent judgment on issues of strategy, performance and key appointments, and taking an objective view on performance evaluation of the board. Independent directors are additionally required to satisfy themselves on the integrity of financial information, to balance the conflicting interests of all stakeholders and, in particular, to protect the rights of the minority shareholders. The SEBI Circular however, states that the board is required to lay down a code of conduct which would incorporate the duties of independent directors as set out in Companies Act 2013.

(e) Liability of independent directors: Under Companies Act 1956, independent directors were not considered to be "officers in default" and consequently were not liable for the actions of the board. Companies Act 2013 however, provides that the liability of independent directors would be limited to acts of omission or commission by a company which occurred with their knowledge, attributable through board processes, and with their consent and connivance or where they have not acted diligently.

Position of Nominee Directors

- While the Listing Agreement stated that the nominee directors appointed by an institutionthat has invested in or lent to the company are deemed to be independent directors, Companies Act 2013 states that a nominee director cannot be an independent director. However, the SEBI Circular in line with the provisions of Companies Act 2013 has excluded nominee directors from being considered as independent directors.

- Companies Act 2013 defines nominee director as a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by the Government or any other person to represent its interests.

Woman Director

- Listed companies and certain other public companies shall be required to appoint at least1 (one) woman director on its board.
- Companies incorporated under Companies Act 2013 shall be required to comply with thisprovision within 6 (six) months from date of incorporation. In case of companies incorporated Under Companies Act 1956, companies are required to comply with theprovision within a period of 1 (one) year from the commencement of the act.

Duties of directors

Companies Act 1956 did not contain any provisions that specifically identified the duties of directors. Companies Act 2013 has set out the following duties of directors:

- To act in accordance with company's articles;
- To act in good faith to promote the objects of the company

for benefit of the members as awhole, and the best interest of the company, its employees, shareholders, community and for protection of the environment;

- Exercise duties with reasonable care, skill and diligence, and exercise of independent judgment; The director is not permitted to:
- Be involved in a situation in which he may have direct or indirect interest that conflicts, or may conflict, with the interest of the company;
- Achieve or attempt to achieve any undue gain or advantage, either to himself or his relatives, partners or associates.

Committees of the Board

Companies Act 2013 envisages 4 (four) types of committees to be constituted by the board:

1. **Audit Committee**: Under Companies Act 1956, public companies with a paid up capital in excess of Rs 50,000,000 (Rupees fifty million only) were required to set up an audit committee comprising of not less than 3 (three) directors. At least one third had to be comprised of directors other than

Managing Directors or Whole Time Directors. Companies Act 2013 however, requires the board of every listed company and certain other public companies to constitute the audit committee consisting of a minimum of 3 (three) directors, with the independent directors forming a majority. It prescribes that a majority of members, including its Chairman, have to be persons with the ability to read and understand financial statements. The audit committee has been entrusted with the task of providing recommendations for appointment and remuneration of auditors, review of independence of auditors, providing approval of related party transactions and scrutiny over other financial mechanisms of the company.

2. **Nomination and Remuneration Committee**: While Companies Act 1956 did not require companies to set up nomination and remuneration committee, the Listing Agreement provided companies with the option to constitute a remuneration committee. However, Companies Act 2013 requires the board of every listed company to constitute the Nomination and Remuneration Committee consisting of 3 (three) or more non-executive directors out of which not less than one half are required to be independent directors. The committee has the task of identifying persons who are qualified to become directors and provide recommendations to the board regarding their appointment and removal, as well as carry out their performance evaluation.

3. **Stakeholders Relationship Committee**: Companies Act 1956 did not require a company to set up a stakeholder's relationship committee. The Listing Agreement required listed

companies to set up a shareholders / investors grievance committee to examine complaints and issues of shareholders. Companies Act 2013 requires every company having more than 1000 (one thousand) shareholders, debenture holders, deposit holders and any other security holders at any time during a financial year to constitute a stakeholders relationship committee to resolve the grievances of security holders of the company.

4. Corporate Social Responsibility Committee ("CSR Committee"): Companies Act 1956 did not impose any requirement on companies relating to corporate social responsibility ("**CSR**"). Companies Act 2013 however, requires certain companies to constitute a CSR Committee, which would be responsible to devise, recommend and monitor CSR initiatives of thecompany. The committee is also required to prepare a report detailing the CSR activities undertaken and if not, the reasons for failure to comply.

Board Meetings and Processes

The key changes introduced by Companies Act 2013 with respect to board meetings and processesare as under:

- First board meeting of a company to be held within 30 (thirty) days of incorporation;
- Notice of minimum 7 (seven) days must be given for each board meeting. Notice for boardmeetings may be given by electronic means. However, board meetings may be called at shorter notice to transact "urgent business" provided such meetings are either attended by at least 1 (one)

independent director or decisions taken at such meetings on subsequent circulation are ratified by at least 1 (one) independent director.

- Companies Act 2013 has permitted directors to participate in board meetings through video conferencing or other audio visual means which are capable of recording and recognising the participation of directors. Participation of directors by audio visual means would also be counted towards quorum.
- Requirement for holding board meeting every quarter has been discontinued. Now at least4 (four) meetings have to be held each year, with a gap of not more than 120 (one hundredand twenty) days between 2 (two) board meetings.
- Certain new actions have been identified, that require approval by directors in a board meeting. These include issuance of securities, grant of loans, guarantee or security, approval of financial statement and board's report, diversification of business etc.
- Approval of circular resolution will be by a majority of directors or members who are entitled to vote on the resolution, irrespective of whether they are present in India or otherwise.

Directors of Company

- An appointed or elected member of the board of directors of a company.
- He has the responsibility for determining and implementing the company's policy.

- A company director need not
- to be a shareholder or
- an employee, and
- may hold only the office of director under the provisions of the Act.

Directors derive their powers emanating from board resolutions. Unlike shareholders, directors cannot participate through proxy. Unlike employees, cannot absolve themselves of their responsibility for the delegated duties. Section 2(34) of the Companies Act, 2013 defines a director as – “director” means a director appointed to the Board of a company.

Appointment Position, Powers, Rights, Duties and Liabilities

Appointment of Directors – Section 152

First Director

The first directors of most of the companies are named in their articles. 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 Section152. Provisions relating to appointment of Directors are contained in Sections 151 to 172 of the new Act. These provisions are more or less on the same lines as provisions of sections 254 to 267,274, 275, 283, 284, 303, 307 and 313 of the existing Act. It may be noted that some of the Sections out of 151 to 172 are also applicable to Private Companies. These provisions are applicable to private companies, unless otherwise stated.

(i) Subscribers to the Memorandum and Articles shall be the first directors, if the Articles do not make any provision.

(ii) Every director will be appointed by the company at the General Meeting.

(iii) No person shall be appointed as a director, if he is not allotted the Director Identification Number (DIN) u/s.154.

(iv) The person to be appointed as a director has to give his consent in the prescribed form whichis to be filed by the company with ROC within 30 days. He has also to give his DIN particulars and a declaration that he is not disqualified under the Act.

(v) At least 2/3rd of the directors on the Board of a public company shall be such that they are liable to retire by rotation. At every AGM 1/3rd of such directors shall retire by rotation.

(vi) A person other than a retiring director shall be eligible to contest election for directorship ofa public company if a shareholder proposes his name for such position and deposits Rs.1 Lac or such higher amount as may be prescribed with the company. This amount will be refunded by the company if such person is elected as director or he gets at least 25% of votes at the AGM.

(vii) Board of Directors can appoint an additional director who shall hold office up to the next AGM. Similarly, Board can also appoint an alternate director if any director is to be out of India for more than 3 months.

(viii) A nominee of any Institution or any State/Central Government can be appointed as a director. He will be called a "Nominee Director."

(ix) The company has option by articles of association, to adopt the principle of proportional representation for appointment of Directors.

(x) Provisions in section 164 of the new Act for disqualification of a person for appointment as director are similar to provisions in section 274 of the existing Act.

(xi) Provision in section 167 of the new Act for vacation of office of a director are similar to section 283 of the existing Act.

(xii) Section 165 of the new Act provides that no person shall be a director or alternate director in more than 20 companies. It may be noted that u/s 275 of the existing Act this limit is 15 companies. Out of these, the maximum number of public companies cannot exceed 10. For computing this limit of public companies directorships in a private company which is a holding or subsidiary company of a public company shall be included. Members of a company may, by a special resolution, specify for any lesser number of companies in whichits director may act as a director.

(xiii) Any person holding directorship in more than the number specified U/s. 165 has to regularize the position in one year after the commencement of the new Act.

(xiv) Section 168 of the new Act provides for resignation of a director and section 169 provides for removal by a director. Elaborate provisions in these sections are made more or less on the same lines as section 284 of the existing Act.

(xv) Every company has to maintain Register of Directors and key managerial personnel and their shareholding as provided in section 170. Members shall have right to inspect these registersu/s.171.

Appointment of Additional Director-

Section 161 (1) The board of directors can appoint additional directors, if such power is conferredon them by the articles of association. Such additional directors hold office only up to the date ofnext annual general meeting or the last date, on which the annual general meeting should have been held, whichever is earlier. A person who fails to get appointed as a director in a general meeting cannot be appointed as Additional Director.

Appointment of Alternate Director-

Section 161 (2) of the Act allowed the followings:

(i) The Board of Directors of a company must be authorised by its articles or by a resolution passed by the company in general meeting for appointment of alternate director.

(ii) The person in whose place the Alternate Director is being appointed should be absent for a period of not less than 3 months from India.

(iii) The person to be appointed as the Alternate Director shall be the person other than the person holding any alternate directorship for any other Director in the Company.

(iv) If it is proposed to appoint an Alternate Director to an Independent Director, it must be ensured that the proposed appointee also satisfies the criteria for Independent Directors.

(v) An alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India.

(vi) If the term of office of the original director is determined before he so returns to India, any provision for the automatic reappointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

Appointment of Directors by Nomination

Section 161(3) This new sub-section now provides for appointment of Nominee Directors. It states that subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government Company.

Appointment of Directors in causal vacancy-

Section 161 (4) If any vacancy is caused by death or resignation of a director appointed by the shareholders in General meeting, before expiry of his term, the Board of directors can appoint a director to fill up such vacancy. The appointed director shall hold office only up to the term of the director in whose place he is appointed.

Duties of Directors:

Section 166 of the new Act provides that a director of a company (including a private company) shall act in accordance with the Articles of the company. His duties are listed in the section as under:

(1) He has to act in good faith in order to promote the objects of the company for the benefit of itsmembers as a whole.

(2) He has to act in the best interest of the company, its employees, shareholders, community and for the protection of environment.

(3) He has to carry on his duties with due and reasonable care, skill and diligence and exerciseindependent judgment.

(4) He shall not involve in a situation in which he may have a direct or indirect interest that conflicts or likely to conflict with the interest of the company.

(5) He shall not achieve or attempt to achieve any undue gain or advantage either to himself, hisrelatives, partners or associates.

(6) He shall not assign his office to any other person.

Role (position) of directors in a company

A Director is part of a collective body of Directors called the Board, responsible for the superintendence, control and direction of the affairs of the Company.

- **Directors as Agents :** A company as an artificial person, acts through directors who are elected representatives of the shareholders and who execute decision making for the benefitofshareholders
- **Directors as employees:** When the director is appointed as whole time employee of the company then that particular directors shall be considered as employee director or wholetime director
- **Directors as officers:** Director treated as officers of an company. They are liable to certain penalties if the provisions of the companies act are not strictly complied with.
- **Director as trustees:** Director is treated as trustees of the company, money and property: and of the powers entrusted to and vested in them only as trustee.
- **Director as "Key Managerial Personnel"-** key managerial personnel, in relation to acompany, means—

  (i) the Chief Executive Officer or the managing director or the manager;

(ii) the company secretary;

(iii) the whole-time director;

(iv) the Chief Financial Officer; and

(v) such other officer as may be prescribed;

- **Director as "Officer in default"**

Officer who is in default, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

(i) whole-time director;

(ii) key managerial personnel;

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

(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in aprofessional capacity;

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

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

<u>Liabilities of Directors</u>

Liability of non-executive / Independent Directors

An independent director and a non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

The liability of director may be Liability as "Officer"

Section 66 (Reduction of Capital)

If any officer of the company—

(a) knowingly conceals the name of any creditor entitled to object to the reduction;

(b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or

(c) abets or is privy to any such concealment or misrepresentation as aforesaid, he shall be liable under section 447.

Section 105 (Proxies)

If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to anymember entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to one lakh rupees. Provided that an officer shall not be punishable under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

Section 173 (Meetings of Board)

Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of twenty-five thousand rupees.

Section 204 (Secretarial Audit)

If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the company or the company secretary in practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Section 207 (Conduct of Inspection and Enquiry)

If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees. If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.

Section 212 (Inspection by SFIO)

On receipt of the investigation report, the Central Government may, after examination of the report (and after taking such legal advice, as it may think fit), direct the Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs. Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973 of the company.

Section 274 (Directions for filing statement of Affairs – Winding Up by Tribunal)

If any director or officer of the company contravenes the provisions of this section, the director or the officer of the company 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 twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

Liability as "Officer in Default"

Directors are liable as officers in default under all sections where specific penalty is provided for each officer in default. Where no specific penalty is provided under the Act, they are liable underSection 450.

Liability for "Fraud"

"Fraud" in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss; Any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.

Personal Liability Directors can be made personally liable if

When the directors enter into contract in their own name. When they enter into contracts on behalfof company but fails to use "LTD. or PVT LTD." when directors exceeds their powers.

The BOD should act an agent of company, not of a single director. Therefore a single director cannot enter into a contract on behalf of company unless the BOD authorises.

Section 35 – Civil Liability for mis-statement in prospectus

Where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person concerned shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basisof such prospectus.

Section 75 – Damages for Fraud

Where a company fails to repay the deposit or part thereof or any interest thereon referred to in section 74 within the time specified in sub-section (1) of that section or such further time as may be allowed by the Tribunal under subsection (2) of that section, and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to the provisions contained in subsection (3) of that section and liability under section 447, be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors.

Section 339 – Liability for fraudulent conduct of business

If in the course of the winding up of a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or any other persons or for any fraudulent purpose, the Tribunal, on the application of the Official Liquidator, or the Company Liquidator or any creditor or contributory of the company, may, if it thinks it proper so to do, declare that any person, who is or has been a director, manager, or officer of the company or any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Tribunal may direct.

Disqualifications for appointment as director

A person shall not be eligible for appointment as a director of a company, if —He is of unsound mind and stands so declared by a competent court

- He is an undischarged insolvent
- He has applied to be adjudicated as an insolvent and his application is pending
- He has been convicted and sentenced to imprisonment for atleast 6 months and 5 years from expiry of sentence have not got over
- He has been convicted and sentenced for a period of 7 years or more

- ✧ An order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force
- ✧ He has not paid any calls in respect of any shares of the company held by him & 6 months have elapsed from the last day fixed for the payment of the call
- ✧ He has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years
- ✧ He has not obtained DIN
- ✧ A person who is director of a company which has not filed financial statements or annual returns for 5 continuous yrs, till expiry of 5 yrs from date of default
- ✧ A person who is director of company which has failed to repay deposits, debentures or distribute dividend for a period of one year, till expiry of 5 years from date of default
- ✧ Private Companies can provide for additional disqualifications in their Articles

Removal of Directors- Section 169

A company may, remove a director except the director appointed by National Company Law Tribunal u/s 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard after passing the ordinary resolution. Provided that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it undersection 163 to appoint not less than two thirds of the total number of directors according to the principle of proportional representation. A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed. On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting. Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so, —

(a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company), and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting.

Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it. A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place at the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section (2). A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not beenremoved. If the vacancy is not filled under sub- section (5), it may be filled as a casual vacancy inaccordance with the provisions of this Act:

Provided that the director who was removed from office shall not be re-appointed as a director by the Board of Directors. Nothing in this section shall be taken— (a) as depriving a person removed under this section of any compensation or damages payable to him in respect of the termination ofhis appointment as director as per the terms of contract or terms of his appointment as director, orof any other appointment terminating with that as director; or (b) as derogating from any power to remove a director under other provisions of this Act.

Key Managerial personnel

While the Companies Act, 1956 recognised only Managing

Director, Whole Time Director and Manager as the Managerial Personnel, the Companies Act, 2013 has brought in the concept of Key Managerial Personnel which not only covers the traditional roles of managing director and whole time director but also includes some functional figure heads like Chief Financial Officer and Chief Executive Officer etc. These inclusions are in line with the global trends. "Company Secretary" has also been brought within the ambit of Key Managerial Personnel giving them the long deserved recognition of a Key Managerial Personnel of the Company. Another noteworthy feature of this concept is that it combines the important management roles as a team or a cluster rather than as independent individuals performing their duties in isolation to others.

Who is a Key Managerial Personnel?

The definition of the term Key Managerial Personnel is contained in Section 2(51) of the Companies Act, 2013. The said Section states as under:

"Key managerial personnel", in relation to a company, means—

(i) the Chief Executive Officer or the managing director or the manager;

(ii) the company secretary;

(iii) the whole-time director;

(iv) the Chief Financial Officer; and

(v) such other officer as may be prescribed;

The above definition is an exhaustive definition but point number (v) gives the power to the legislature to include some other personnel also within the definition of Key Managerial Personnel as may be deemed fit by them from time to time. As of now, no further prescription has been madepursuant to point number (v) and therefore, as on date, the definition is confined to the six personnel mentioned above.

The above definitions depict that in the case of CEO and CFO, the designation is crucial to deemthe person as CEO and CFO whereas in the case of MD and Manager the functions discharged or the role performed by an individual is taken as the test to deem them as the MD or Manager. The definition of whole time director is an inclusive definition and CS is defined to mean a CS as per the Company Secretaries Act, 1980who is duly appointed to perform the functions of a company secretary.

Which Companies are mandatorily required to Appoint Key ManagerialPersonnel

As per Section 203 of the Companies Act, 2013 read with the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the following class of Companies, namely - Every listed company, and Every other public company having paid up share capital of Rs. 10 Crores or more shall have the following whole-time key managerial personnel,—

(i) Managing Director, or Chief Executive Officer or manager and in their absence, a whole-timedirector;

(ii) Company secretary; and

(iii) Chief Financial Officer

Further, as per recently notified Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, a company other than a company which is required to appoint a whole time key managerial personnel as discussed above and which is having paid up share capital of Rs. 5 crores or more shall have a whole time Company Secretary.

Manner of appointment of Key Managerial Personnel

Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration. If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of 6 months fromthe date of such vacancy.

Restrictions regarding appointment of Key Managerial Personnel:

♣ Same person not to act as Chairman and MD/CEO

It has been provided under the Act that the role or designation of Chairman and Managing Director or Chairman and Chief Executive Officer should not be assigned to the same person. In other words, the same person should not act as both Chairman and Managing Director or Chief Executive Officer of the Company. However, in the following circumstances, the above restriction will not apply:

(a) the articles of the company contain provision for appointment of same person, or

(b) the company carries only a single business, or

(c) the company is engaged in multiple businesses and has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government

♣ Whole time KMP not to hold office in more than one company

It has been provided under the Act that a whole-time key managerial personnel shall not hold office in more than one company at the same time, except: In the company's subsidiary company, As a director in any other company with the permission of the Board , As a MD, if he is the managing director or manager of one and of not more than one other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India. Further, it has also been provided that a whole-time key managerial personnel holding office in more than one company at the same time on the date of commencement of this Act, shall, within a period of 6 months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel.

Other Provisions regarding Key Managerial Personnel

A KMP is included within the meaning of "Officer in Default" under the Act. A document or proceeding requiring authentication by a company; or contracts made by or on behalf of a company, may be signed by any key managerial personnel or an officer of the company duly authorised by the Board in this behalf. Details regarding KMP, changes therein and the remuneration paid to them are required to be disclosed in the Annual Return of the Company. Explanatory statement should disclose the nature of concern or interest, financial or otherwise, of every key managerial personnel, in respect of each items of special business to be transacted at a general meeting. A person whose relative is employed as a KMP in a company is disqualified to be appointed as auditor in that company. A person is disqualified to be appointed as an independentdirector if he either himself or through his relative holds or has held the position of a key managerial personnel of the company or its holding, subsidiary or associate company in any of the3 financial years immediately preceding the financial year in which he is proposed to be appointed. Company is required to maintain a register of the KMPs at its registered office containing particulars which shall include the details of securities held by each of them in the company or its holding, subsidiary, subsidiary of company's holding company or associate companies. A return of every appointment and change in KMP has to be filed with the ROC within 30 days of the appointment or the change as the case may be. The key managerial personnel shall have a right tobe heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote. The remuneration policy of the KMP is to be recommended by the Nomination and Remuneration Committee, who should ensure that the policy involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals. Such policy shall be disclosed in the Board's report. Every key managerial personnel shall, within a period of 30 days of his appointment, or relinquishment of his office, as the case may be, disclose to the company the particulars specified in sub-section (1) of section 184 relating to his concern or interest in the other associations which are required to be included in the register under that sub-section or such other information relating to himself as may be prescribed. Key Managerial Personnel are prohibited to make forward dealings and insider trading in securities of the company. Financial statements of acompany are required to be signed either by the Chairperson of the company (where he is authorised by the Board) or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed.

Corporate Governance

In a narrow sense, corporate governance involves a set of relationships amongst the company's management, its board of directors, its shareholders, its auditors and other stakeholders.

These relationships, which involve various rules and incentives, provide the structure through which the objectives of the company are set, and the means of attaining these objectives as well as monitoring performance are determined. Thus, the key aspects of good corporate governance include transparency of corporate structures and operations; the accountability of managers and the boards to shareholders; and corporate responsibility towards stakeholders. Corporate governance is the system of rules, practices and processes by which a company is directed and controlled. Corporate governance essentially involves balancing the interests of the many stakeholders in a company - these include its shareholders, management, customers, suppliers, financiers, government and the community. Since corporate governance also provides the framework for attaining a company's objectives, it encompasses practically every sphere of management, from action plans and internal controls to performance measurement and corporate disclosure. Thus **Corporate governance** broadly refers to the mechanisms, processes and relations by which corporations are controlled and directed. Governance structures and principles identify the distribution of rights and responsibilities among different participants in the corporation (such as the board of directors, managers, shareholders, creditors, auditors, regulators, and other stakeholders) and includes the rules and procedures for making decisions in corporate affairs. Corporate governance includes the processes through which corporations' objectives are set and pursued in the context of the social, regulatory and market environment.

Definition of Corporate Governance

"Accountability to providers of capital." — Bruce Weber

John L. Weinberg "Corporate governance is the control of management in the best interests of the company, including accountability to shareholders who elect directors and auditors and vote on say on pay"

Need of Corporate Governance:

The need for corporate governance has arisen because of the increasing concern about the non- compliance of standards of financial reporting and accountability by boards of directors and management of corporate inflicting heavy losses on investors. The collapse of international giants likes Enron, World Com of the US and Xerox of Japan are said to be due to the absence of good corporate governance and corrupt practices adopted by management of these companies and their financial consulting firms. The failures of these multinational giants bring out the importance of good corporate governance structure making clear the distinction of power between the Board of Directors and the management which can lead to appropriate governance processes and procedures under which management is free to manage and board of directors is free to monitor and give policy directions. In India, SEBI realised the need for good corporate governance and for this purpose appointed several committees such as Kumar Manglam Birla Committee, Naresh Chandra Committee and Narayana Murthy Committee.

Importance of Corporate Governance:

1) Investors and shareholders of a corporate company need protection for their investment due tolack of adequate standards of financial reporting and accountability. It has been noticed in India that companies raised capital from the market at high valuation of their shares by projecting wrong picture of the company's performance and profitability. The investors suffered a lot due to unscrupulous management of corporate that performed much less than reported at the time of raising capital. There is increasing awareness and consensus among Indian investors to invest in companies which have a record of observing practices of good corporate governance. Therefore, for encouraging Indian investors to make adequate investment in the stock of corporate companies and thereby boosting up rate of growth of the economy, the protection oftheir interests from fraudulent practices of corporate of boards of directors and management are urgently needed.

2) Corporate governance is considered as an important means for paying heed to investors' grievances. Kumar Manglam Birla Committee on corporate governance found that companies were not paying adequate attention to the timely dissemination of required information to investors in by India. Though some measures have been taken by SEBI and RBI but much more required to be taken by the companies themselves to pay heed to the investors grievances and protection of their investment by adopting good standards of corporate governance.

3) The importance of good corporate governance lies in the fact that it will enable the corporate firms to (1) attract capital and (2) perform efficiently. This will help in winning investors confidence. Investorswill be willing to invest in the companies with a good record of corporate governance. New policy of liberalization and deregulation adopted in India since 1991 has given greater freedom to management which should be prudently used to promote investors' interests. In India there are several instances of corporate' failures due to lack of transparency and disclosures and instances of falsification of accounts.This discourages investors to make investment in the companies with poor record of corporate governance.

4) Indispensable for healthy and vibrant stock market. An important advantage of strong corporate governance is that it is indispensable for a vibrant stock market. A healthy stock market is an important instrument for investors protection. A bane of stock market is insider trading. Insider trading means trading of shares of a company by insiders such directors, managers and other employees of the company on the basis of information which is not knownto outsiders of the company. It is through insider trading that the officials of a corporate company take undue advantage at the expense of investors in general. Insider trading is a kind of fraud committed by the officials of the company. One way of dealing with the problem of insider trading is enacting legislation prohibiting such trading and enforcing criminal action against violators. In India, insider trading has been rampant and therefore it was prohibited by SEBI. However, the experience shows prohibiting insider trading by law is not the effective way of dealing with the problem of insider trading because legal process of providing punishment is a lengthy process and conviction rate is very low. According to Sandeep Parekh, an advocate (Securities and Financial Regulations), the effective way of tackling the problemis by encouraging the companies to practice self regulation and taking prophylactic action. This is inherently connected to the field of corporate governance. It is a means by which the company signals to the market that effective self-regulation is in place and that investors are safe to invest in their securities. In addition to prohibiting inappropriate actions (which might not necessarily be prohibited) self-regulation is also considered an effective means of creating shareholders value. Companies can always regulate their directors/officers beyond what is prohibited by the law".

5. **Changing Ownership Structure**: In recent years, the ownership structure of companies has changed a lot. Public financial institutions, mutual funds, etc. are the single largest shareholder in most of the large companies. So, they have effective control on the management of the companies. They force the management to use corporate governance. That is, they put pressure on the management to become more efficient, transparent, accountable, etc. They alsoask the management to make consumer-friendly policies, to protect all social groups and to protect the environment. So, the changing ownership structure has resulted in corporate governance.

6. **Importance of Social Responsibility**: Today, social responsibility is given a lot of importance. The Board of Directors have to protect the rights of the customers, employees, shareholders, suppliers, local communities, etc.

This is possible only if they use corporate governance.

7. **Growing Number of Scams**: In recent years, many scams, frauds and corrupt practices have taken place. Misuse and misappropriation of public money are happening everyday in India and worldwide. It is happening in the stock market, banks, financial institutions, companies and government offices. In order to avoid these scams and financial irregularities, many companies have started corporate governance.

8. **Indifference on the part of Shareholders**: In general, shareholders are inactive in the management of their companies. They only attend the Annual general meeting. Postal ballot is still absent in India. Proxies are not allowed to speak in the meetings. Shareholders associations are not strong. Therefore, directors misuse their power for their own benefits. So, there is a need for corporate governance to protect all the stakeholders of the company.

9. **Globalisation**: Today most big companies are selling their goods in the global market. So, they have to attract foreign investor and foreign customers. They also have to follow foreign rules and regulations. All this requires corporate governance. Without Corporate governance, it is impossible to enter, survive and succeed the global market.

10. **Takeovers and Mergers**: Today, there are many takeovers and mergers in the business world. Corporate governance is required to protect the interest of all the parties during takeovers and mergers.

11. **SEBI**: SEBI has made corporate governance compulsory for certain companies. This is done to protect the interest of the investors and other stakeholders.

Corporate Social Responsibility (CSR)

Corporate social responsibility refers to a business practice that involves participating in initiatives that benefit society. Corporate social responsibility (CSR) is a business approach that contributes to sustainable development by delivering economic, social and environmental benefits for all stakeholders.

There is no agreed definition of CSR. According to EU commission (2002), "….CSR is aconcept where by companies integrates social and environmental concern in their business operations and in their interaction with their stakeholders on a voluntary basis."

Types of corporate social responsibility

CSR can encompass a wide variety of tactics, from giving nonprofit organizations a portion of a company's proceeds, to giving away a product or service to a worthy recipient for every sale made. Here are a few of the broad categories of social responsibility that businesses are practicing:

Environment: One primary focus of corporate social responsibility is the environment. Businesses, both large and small, have a large carbon footprint. Any steps they can take to reduce those footprints are considered both good for the company and society as a whole.

Philanthropy: Businesses also practice social responsibility by donating to national and local charities. Whether it involves giving money or time, businesses have a lot of resources that can benefit charities and local community programs.

Ethical labor practices: By treating employees fairly and ethically, companies can also demonstrate their corporate social responsibility. This is especially true of businesses that operate in international locations with labor laws that differ from those in the United States.

Importance of corporate social responsibility to societies

Corporate social responsibility generates direct and indirect business benefits and advantages to the corporation that adopt it (Bueble, 2009). In synthesis, the benefits and advantages that corporations adopting Corporate social responsibility initiatives may obtain the following (Campbell, 2007):

1. Increased employee loyalty and retention.
2. Gaining legitimacy and access to markets.
3. Less litigation.
4. Increased quality of products and services.
5. Bolstering public image and reputation and enhanced brand value.
6. Less volatile stock value.
7. Avoiding state regulation.
8. Increased customer loyalty.

Corporate social responsibility activities amongst various corporations and its stakeholders could contribute to the macroeconomic development of a developing country through sustainable benefitto all. At the same time, optimum national impact, cooperation, and communication would be encouraged and socialized. The following are the various benefits of corporate social responsibilityto the society.

Local community and society

- Improved quality of life and Changed habits.
- Capacity building creates wealth and employment.
- Balanced ecosystems.
- Waste management.
- Clean and Green environment.

Corporations

- Goodwill and Community acceptance.
- Profit, Growth, competitive edge and image.
- Genuine dialog with stakeholders.
- Spiritual and Pride values to their families and employees.

SEBI (Securities Exchange Board of India)

In 1988 the Securities and Exchange Board of India (SEBI) was established by the Government ofIndia through an executive resolution, and was subsequently upgraded as a fully autonomous body(a statutory Board) in the year 1992 with the passing of the Securities and Exchange Board of India Act (SEBI Act) on 30th January 1992. In place of Government Control, a statutory and autonomous regulatory board with defined responsibilities, to cover both development & regulation of the market, and independent powers has been set up.

The basic objectives of the Board are as follows:

- To protect the interests of investors in securities;
- To promote the development of Securities Market;
- To regulate the securities market and
- For matters connected therewith or incidental there to.

Since its inception SEBI has been working targeting the securities and is attending to the fulfillment of its objectives with commendable zeal and dexterity. The improvements in the securities markets like capitalization requirements, margining, establishment of clearing corporations etc. reduced the risk of credit and also reduced the market. SEBI has introduced the comprehensive regulatory measures, prescribed registration norms, the eligibility criteria, the codeof obligations and the code of conduct for different intermediaries like, bankers to issue, merchant bankers, brokers and sub-brokers, registrars, portfolio managers, credit rating agencies, underwriters and others. It has framed bye-laws, risk identification and risk management systems for Clearing houses of stock exchanges, surveillance system etc. which has made dealing in securities both safe and transparent to the end investor.

Functions of SEBI

The Following are some of the main functions of SEBI:

Regulatory Functions

- Registration of brokers and sub-brokers and other players in the market

- Registration of collective investments schemes and Mutual Funds
- Regulation of stock exchanges and other self-regulatory organisations (SRO) merchant banks etc
- Prohibition of all fraudulent and unfair trade practices
- Controlling Insider Trading and takeover bids and imposing penalties for such Practices

Developmental Functions

- Investor education
- Training of intermediaries
- Promotion of fair practices and Code of conduct for all SROs
- Conducting Research and Publishing information useful to all market Participants

Powers of SEBI - Securities and Exchange Board of India

1. Powers relating to stock exchanges & intermediaries:

SEBI has wide powers regarding the stock exchanges and intermediaries dealing in securities. It can ask information from the stock exchanges and intermediaries regarding their business transactions for inspection or scrutiny and other purpose.

2. Power to impose monetary penalties:

SEBI has been empowered to impose monetary penalties on capital market intermediaries and other participants for a range of violations. It can even impose suspension of their registrationfor a short period.

3. **Power to initiate actions in functions assigned:**

SEBI has a power to initiate actions in regard to functions assigned. For example, it can issue guidelines to different intermediaries or can introduce specific rules for the protection of interests of investors.

4. **Power to regulate insider trading:**

5. **SEBI has power to regulate insider trading or can regulate the functions of merchant bankers.**

6. **Powers under Securities Contracts Act:**

For effective regulation of stock exchange, the Ministry of Finance issued a Notification on 13September, 1994 delegating several of its powers under the Securities Contracts (Regulations) Act to SEBI. SEBI is also empowered by the Finance Ministry to nominate three members onthe Governing Body of every stock exchange.

7. **Power to regulate business of stock exchanges:**

SEBI is also empowered to regulate the business of stock exchanges, intermediaries associatedwith the securities market as well as mutual funds, fraudulent and unfair trade practices relatingto securities and regulation of acquisition of shares and takeovers of companies.

Securities Appellate Tribunal

The Securities and Exchange Board of India (SEBI) is responsible for protecting the interests of investors in securities and to promote the development of, and to regulate the securitiesmarket and for all other connected matters. To protect and be responsive to the needs of three groups of people (issuer of securities, investors and market intermediaries), SEBI has been invested with three necessary functions rolled-in to enable it to carry out its mandate: Quasi- legislative function = drafts regulations Quasi- judicial = passes rulings and judgments; prosecute and judge directly certain violations Quasi-executive = investigation and enforcement actions. Since these powers make SEBI a very powerful body, an appeal process has been created to ensure accountability. For the quasi judicial functions, there is a Securities Appellate Tribunal, which is a three-member tribunal and is presently headed by Mr. Justice J P Devadhar, a former judge of the Bombay High Court. A second appeal lies directly to the Supreme Court. The first SAT was formed in 1995, through a notification issued by the Central Government and therefore, is a statutory body established under the provisions of Section 15K of the Securities and Exchange Board of India Act, 1992 to: Hear and dispose of appeals against orders passed by the Securities and Exchange Board of India or by an adjudicating officer under the Act and, Exercise jurisdiction, powers and authority conferred on the Tribunal by or under this Act or any other law for the time being in force. The Tribunal is a three-member body composed of a Presiding Officer and two other members who are to be nominated via a notification by the Central Government. The Union Government also reserves the right to notify as many SAT's as is needed. The Securities Appellate Tribunal has only one bench that sits at Mumbai and has jurisdiction over all of India. The Securities Appellate Tribunal is not be bound by the procedure laid down by the Code of

Civil Procedure, 1908, but is be guided by the principles of natural justice and, subject to the other provisions of Depositories Act, 1996. It has powers to regulate its own procedure including the places at which it shall have its sittings. Every proceeding before the Securities Appellate Tribunal is deemed to be a judicial proceeding and the tribunal has all the powers of a Civil Court.

Securities Appellate Tribunal is a statutory body established under the provisions of Section 15K of the Securities and Exchange Board of India Act, 1992 to hear and dispose of appeals against orders passed by the Securities and Exchange Board of India or by an adjudicatingofficer under the Act and to exercise jurisdiction, powers and authority conferred on the Tribunalby or under this Act or any other law for the time being in force.

Section 15K of SEBI Act, 1992 empowers the Central Government to set up one or more Tribunals, for the purpose making appeals against the orders of SEBI and its adjudicating officers.These tribunals will be known as Securities Appellate Tribunal (SAT). In exercise of the power conferred, the Central Government has set up one Tribunal at Mumbai.

Composition of SAT

SAT shall consist of the following:

1. One Presiding officer
2. Two other members

Presiding Officer

- The Presiding Officer of SAT shall be appointed by the

Central Government in consultation with the Chief Justice of India or his nominee.

- The person to be appointed as the Presiding Officer must;
  - **a)** Be a sitting or retired Judge of the Supreme Court ; or
  - **b)** Be a sitting or retired Chief Justice of a High Court ; or
  - **c)** Be a sitting or retired Judge of a High Court, who has completed atleast 7 years of service.
  - **d)** The person so appointed shall hold office, earlier of the two for a period of 5 years ; or
  - **e)** up to the age of 68 years

Members

The two members of SAT shall be appointed by the CentralGovernment. The person to be appointed must;

- A person of ability, integrity and standing who has shown capacity in dealing with problems relating to securities market.
- Have qualification and experience of Corporate Law, Securities Law, Finance,Economics or Accountancy.
- Person shall hold office, earlier of the two, For a period of 5 years; or
- Upto age of 62 years. **Appeal to SAT [Sec. 15T]** Who can make appeal?
- Any person aggrieved,

- By an order of the SEBI ; or
- By an order made by an adjudicating office may prefer an appeal to SAT.

Exceptions: – No appeal shall lie to SAT from an order made with the consent of the parties. **Time Limit:** – The appeal to SAT shall be filed within a period of 45 days from the date of receiving the copy of the order of SEBI or adjudicating officer, as the case may be. However, SAT may entertain an appeal after the expiry of 45 days, if it is satisfied that there was sufficient causefor not filing it within that period.

SAT shall send copy of every order made by it to the following person:

- SEBI
- Concerned Adjudicating Officer
- Parities to Appeal.

Appeal against the Orders of SAT [Sec 15Z]

- Any person aggrieved by any decision or order of SAT may file an appeal to the Supreme Court. It may be noted that the appeal can be made only on any Question of Law.
- The appeal shall be filed within 60 days from the date of receiving a copy of the decision or order of SAT. However, the Supreme Court may allow a further period of 60 days for making an appeal, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the first 60 days.

Powers of SAT [Sec 15U]

The SAT shall have, for the purpose of discharging their functions under SEBI Act, 1992, the samepowers as are vested in a Civil Court under the CPC, 1908, while trying a suit, in respect of the following matters, namely:

1. Summoning and enforcing the attendance of any person and examining him on oath.

2. Requiring the discovery and production of documents.

3. Receiving evidence on affidavits.

4. Issuing commissions for the examination of witness or documents.

5. Reviewing its decisions.

6. Dismissing an application for default or deciding it ex parte.

7. Setting aside any order of dismissal of any application for default or any order passed by itex parte.

8. Any other matter which may be prescribed.

******

MODULE V

COMPANY MEETINGS AND WINDING UP

Introduction

A meeting may be generally defined as a gathering or assembly or getting together of a number of persons for transacting any lawful business. There must be atleast two persons to constitute a meeting. Therefore, one shareholder usually cannot constitute a company meeting even if he holds proxies for other shareholders. However, in certain exceptional circumstances, even one person may constitute a meeting. It is to be noted that every gathering or assembly doesnot 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. A company is composed of members, though it has its own entity distinct from members. The members of a company are the persons who, for the time being, constitute the company, as a corporate entity. However, a company, being an artificial person, cannot act on its own. It, therefore, expresses its will or takes its decisions through resolutions passed at validly held Meetings. The primary purpose of a Meeting is to ensure that a company gives reasonable and fairopportunity to those entitled to participate in the Meeting to take decisions as per the prescribed procedures.

The decision making powers of a company are vested in the Members and the Directors and they exercise their respective powers through Resolutions passed by them. General Meetingsof the Members provide a platform to express their will in regard to the management of the affairs of the company. Convening of one such meeting every year is compulsory. Holding of more general meetings is left to the choice of the management or to a given percentage of shareholdersto exercise their power to compel the company to convene a meeting. Shareholder Democracy, Class Action Suits and Protection of interest of investors are the essence and attributes of the Companies Act, 2013.

Members' Meeting

A company is required to hold meetings of the members to take approval of certain business items, as prescribed in the Act.

The meetings to be held for seeking approval to ordinary business and special business arecalled annual general meeting and extraordinary general meeting. In certain cases, a company mayhave to hold a meeting of the members of a particular class of members.

Statutory Meeting

Every company limited by shares and every company limited by guarantee and having a share capital shall, within not less than one month and not more than six months from the date at whichthe company is entitled to commence a business, hold a general meeting of the members of the company.

This meeting is called the 'statutory meeting.' This is the first meeting of the shareholders of a public company and is held only once in the lifetime of a company.

Statutory report: The Board of directors shall, at least 21 days (based on Companies Act) beforethe day on which the meeting is to be held, forward a report, called the 'statutory report,' to everymember of the company.

Procedure at the meeting;

a. List of members,
b. Discussion of matters relating to a formational aspect,
c. Adjournment.

Objects of the meeting and report;

1. To put the members of the company in possession of all the important facts relating tothe company.
2. To provide the members an opportunity of meeting and discussing the management,methods, and prospects of the company.
3. To approve the modification of the terms of any contract named in the prospectus.

Class Meetings

Under the Companies Act, class meetings of various kinds of shareholders and creditors are required to be held under different circumstances.

Class meetings of the holders of different classes of shares are to be held if the rightsattaching to these shares are to be varied.

Requisites of a Valid Meeting

1. A meeting can validly transact any business if the

following requirements are satisfied;

2. The meeting must be duly convened by proper authority.
3. Proper notice must be served in the prescribed manner.
4. A quorum must be present.
5. A chairperson must preside.
6. Minutes of the proceedings must be kept.

Annual General Meeting (AGM) (Sec. 96)

Annual general meeting (AGM) is an important annual event where members get an opportunity to discuss the activities of the company. Section 96 provides that every company, other than a one person company is required to hold an annual general meeting every year. Following are the key provisions regarding the holding of an annual general meeting:

Holding of annual general meeting

1. Annual general meeting should be held once every year.
2. First annual general meeting of the company should be held within 9 months from the closing of the first financial year. Hence it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.
3. Subsequent annual general meeting of the company should be held within 6 months from the closing of the financial year.
4. The gap between two annual general meetings should not exceed 15 months.

Extension of validity period of AGM

In case, it is not possible for a company to hold an annual general meeting within the prescribed time, the Registrar may, for any special reason, extend the time within which any annual general meeting shall be held. Such extension can be for a period not exceeding 3 months. No such extension of time can be granted by the Registrar for the holding of the first annual general meeting.

Time and place for holding an annual general meeting

An annual general meeting can be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday. It should be held either at the registered office of the company or at some other place within the city, town or village in which the registered officeof the company is situate. The Central Government is empowered to exempt any company from these provisions, subject to such conditions as it may impose. “National Holiday” for this purpose means and includes a day declared as National Holiday by the Central Government.

Default in holding the annual general meeting

Section 99 provides that if any default is made in complying or holding a meeting of the company, the company and every officer of the company who is in default shall be punishable with fine which may extend to 1 lakh and in case of continuing default, with a further fine which may extend to Rs. 5,000/- for each day during which such default continues.

If any default is made in holding the annual general meeting of a company, any member ofthe company may make an application to the Tribunal to call or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient. Such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

Business to be transacted at annual general meeting:

Sub-section (2) of Section 102 provides that all other businesses transacted at an Annual GeneralMeeting except the following are special business:

(i) the consideration of financial statements and the reports of the Board of Directors andauditors;

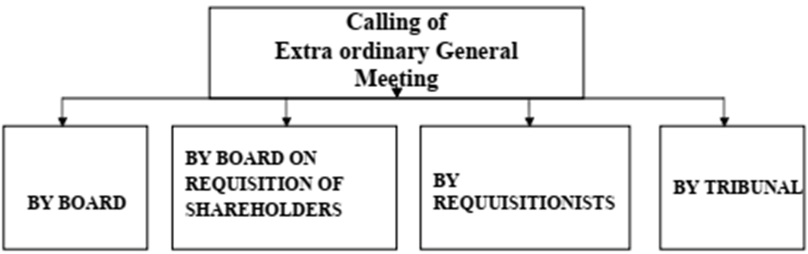
(ii) the declaration of any dividend;

(iii) the appointment of directors in place of those retiring;

(iv) the appointment of, and the fixing of the remuneration of, the auditors.

In case of any other Meeting all business shall be deemed to be special

<u>Extra Ordinary General Meeting (Sec.10)</u>



All general meetings other than annual general meetings are called extraordinary general meetings. All businesses items can be transacted at the extraordinary general meetings are special business. Following are the key provisions, provided in section 100, regarding calling and holding of an extraordinary general meeting:

(I) By Board [Section 100 (1)]

The Board may, whenever it deems fit, call an extraordinary general meeting of the company.

(II) By Board on requisition [Section 100 (2)]

The Board must call an extraordinary general meeting on receipt of the requisition from the following number of members:

(a) in the case of a company having a share capital: members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;

(b) in the case of a company not having a share capital: members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote The requisition should set out the matters to be considered at the proposed meeting and the same should be signed by the requisitionists and sent to the registered office of the company.

The Board must, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting on a day not later than 45 days from the date of receipt of such requisition.

(III) By requisitionists [Section 100(4)]

If the Board does not within 21 days from the date of receipt of a valid requisition in regardto any matter, proceed to call a meeting for the consideration of that matter on a day not later than45 days from the date of receipt of such requisition, the meeting may be called and held by the requisitonists themselves. However in such case, the meeting should be held within a period of 3 months from the date of the requisition.

Reasonable expenses incurred by the requisitionists in calling such a meeting shall be reimbursed by the company to the requisitionists. The company in turn recover such expenses fromany fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting. [Section 100(6)

In case, the quorum is not present within half-an-hour from the time appointed for holding a meeting called by requisitionists, the meeting shall stand cancelled. [Section 103(2)(b)]

Rules 17 provides as under with regard to calling of extraordinary general meeting by requisitionists:

- The members may requisition convening of an extraordinary general meeting in accordance with sub-section (4) of section 100, by providing such requisition in writing or through electronic mode at least clear twenty-one days prior to the proposed date of such extraordinary general meeting.
- The notice shall specify the place, date, day and hour of

the meeting and shall contain the business to be transacted at the meeting. The requistionists should convene meeting at Registered office or in the same city or town where Registered office is situated and such meeting should be convened on working day.

- If the resolution is to be proposed as a special resolution, the notice shall be given as required by sub-section (2) of section 114.
- The notice shall be signed by all the requistionists or by a requistionists duly authorised in writing by all other requistionists on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition.
- No explanatory statement as required under section 102 need be annexed to the notice of an extraordinary general meeting convened by the requistionists and the requistionists maydisclose the reasons for the resolution(s) which they propose to move at the meeting.
- The notice of the meeting shall be given to those members whose names appear in the Register of members of the company within three days on which the requistionists depositwith the Company a valid requisition for calling an extraordinary general meeting.
- Where the meeting is not convened, the requistionists shall have a right to receive list of members together with their registered address and number of shares held and the company concerned is bound to give a list of members together with their registered address made as on twenty

first day from the date of receipt of valid requisition together with such changes, if any, before the expiry of the forty- five days from the date of receipt of a valid requisition.

- The notice of the meeting shall be given by speed post or registered post or through electronic mode . Any accidental omission to give notice to, or the non-receipt of such notice by, any member shall not invalidate the proceedings of the meeting.

(IV) By Tribunal [Section 98 (not yet enforced)]

Section 98 provides that if for any reason it is impracticable to call a meeting of a company or to hold or conduct the meeting of the company, the Tribunal may, either suo motu or on the application of any director or member of the company who would be entitled to vote at the meeting: order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company.

Such directions may include a direction that one member of the company present in person or byproxy shall be deemed to constitute a meeting. Meeting held pursuant to such order shall be deemed to be a meeting of the company duly called, held and conducted.

Requisites of a valid meeting

Notice of the Meeting (Sec 101)

A general meeting of a company may be called by giving not less than 21 clear days' notice either in writing or through electronic mode. Notice through electronic mode shall be given in suchmanner as may be prescribed.

Short notice

A general meeting may be called after giving a shorter notice also if consent is given in writing orby electronic mode by not less than 95% of the members entitled to vote at such meeting.

Quorum for Meetings

Quorum refers to the minimum number of members required to constitute a valid meeting. Following are the minimum numbers provided in section 103, for various categories of companies. However the Articles of Association of the company may provide for a higher number.

(a) Public company:

- 5 members personally present if the number of members as on the date of meeting is not more than 1000;
- 15 members personally present if the number of members as on the date of meeting ismore than 1000 but up to 5000;
- 30 members personally present if the number of members as on the date of the meetingexceeds 5000.

(b) Private company:

- 2 members personally present, shall be the quorum for a meeting of the company.

Absence of quorum

If the quorum is not present within half-an-hour from the time appointed for holding a meeting ofthe company:

(a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or

(b) the meeting, if called by requisitionists, shall stand cancelled.

Adjourned meeting

In case of an adjourned meeting or of a change of day, time or place of meeting, the company shall give not less than 3 days' notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated. If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

Chairman of Meetings (Section 104)

Unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the Chairman thereof on a show of hands. If a poll is demanded on the election of the Chairman, it shall be taken forthwith in accordance with the provisions of this Act and the Chairman elected on a show of hands shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of the poll, and such other person shall be the Chairman for the rest of the meeting.

Proxies (Section 105)

Appointment of a proxy is an important right of a member of the company. The Act contains elaborate provisions regarding exercise of this right by a member.

Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.

Every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, should carry with reasonable prominence, a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member. Hence a company not having a share capital can abstain from complying with this provision by incorporating necessary clause in its articles of association.

A proxy shall not have the right to speak at the meeting. A proxy shall be entitled to vote only on a poll. A member of a company registered under section 8 shall not be entitled to appointany other person as his proxy unless such other person is also a member of such company.

A person appointed as proxy shall not act as proxy on behalf of more than fifty members and members holding in the aggregate more than ten percent of the total share capital of the company carrying voting rights.

The instrument appointing the proxy must be deposited with the company, 48 hours beforethe meeting. Any provision contained in the articles, requiring a longer period than 48 hours shall have effect as if a period of 48 hours had been specified. The instrument appointing a proxy mustbe in Form No. MGT. 11. It needs to be in writing and signed by the appointer or his attorney duly authorised in writing. If the appointer is a body corporate, the instrument should be under its sealor be signed by an officer or an attorney duly authorised by the body corporate. For execution of proxy, the Articles of Association of a company can not specify any special requirement to be complied with.

Circulation of Members' Resolution (Section 111)

As per Section 111, a company shall, on requisition in writing of certain number of members, give notice to members of any proposed resolution intended to be moved in the meeting or circulate any statement with respect to matters referred in proposed resolution. The company shall be bound to give notice of resolution only if the requisition is deposited not less than six weeks before the meeting. In case of other requisition not less than 2 weeks before the meeting. The statement need not be circulated if the Central Government declares that the right conferred is being abused to secure needless publicity for defamatory matters. If default is made the company and every officer of the company shall be punishable with fine.

Representation of President and Governors in Meetings

Section 112 of the Act provides that President of India or the Governor of a State, if he is a member of a company, may appoint such person as he thinks fit, to act as his representative at any meeting of the company. The person so appointed shall be deemed to be a members and havethe same rights including the right vote by proxy or postal ballot, as the President or Governor could exercise as a member of the company.

Representation of Corporations at Meeting of Companies and of Creditors

In terms of Section 113, where a body corporate is a member or a creditor including a holder of debentures of the company and it authorises any person as its representative at any meeting of the company or any class of members of the company or at any meeting of creditors of the company, such representative shall be entitled to exercise the same rights and powers includingright to vote by proxy and by postal ballot on behalf of the body corporate which he represents.

Ordinary and Special Resolutions

Section 114 provides with regard to Ordinary and Special Resolution

Ordinary Resolution

A resolution shall be an ordinary resolution if the notice has been duly given and it is required to be passed by the votes cast, in favour of the resolution, including the casting vote, if any, of the Chairman, exceed the votes, if any, cast against the resolution.

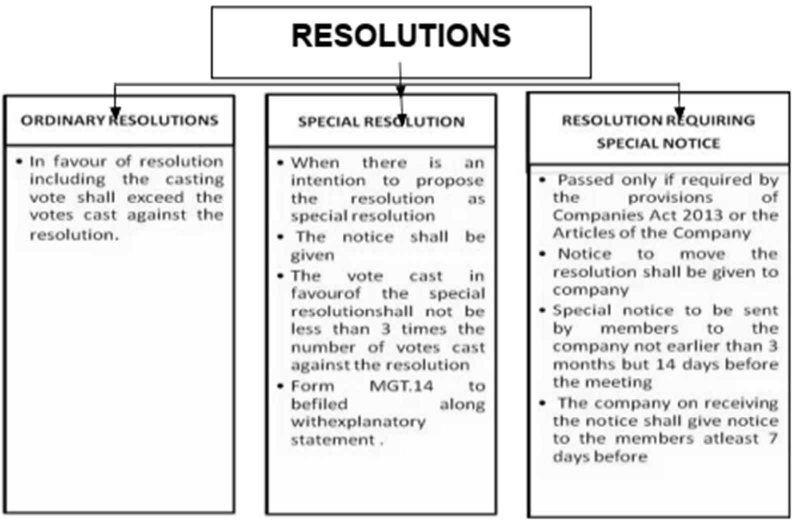
Special Resolution

A resolution shall be a special resolution when:

(a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of theresolution;

(b) the notice required under this Act has been duly given; and

(c) the votes cast in favour of the resolution, are required to be not less than 3 times the number of the votes, if any, cast against the resolution.



Resolutions requiring Special Notice

Section 115 provides that where, by any provision contained in this Act or in the articles of a company, special notice is required of any resolution, notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of total voting power or holding shares on which such aggregate sum not exceeding Rs.5,00,000/- asmay be prescribed has been paid-up and the company shall give its members notice of the resolution in the following manner as prescribed in Rules.

Procedure for special notice:

- A special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than five lakh rupees has been paid up on the date of the notice.
- Such notice shall be sent by members to the company not earlier than three months but at least 14 days before the date of the meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.
- The company shall immediately after receipt of the notice, give its members notice of the resolution at least seven days before the meeting , exclusive of the day of dispatch of notice and day of the meeting , in the same manner as it gives notice of any general meetings.

- Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, the notice shall be published in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in theState where the registered office of the Company is situated. Such notice shall also be posted on the website, if any, of the Company. Such notice shall be published at least seven days before the meeting, exclusive of the day of publication of the notice and day of the meeting.

Resolutions passed at Adjourned Meeting (Section 116)

As per Section 116 where a resolution is passed at an adjourned meeting of a company; or the holders of any class of shares in a company; or the Board of Directors, the resolution shall be treated as passed on the day it was actually passed and not on any earlier date.

Resolutions and Agreements to be filed with the Registrar (Section 117)

Section 117 provides that a copy of every resolution and an agreement in respect of matters specified therein together with a explanatory statement shall be filed in Form No. MGT.14 with the Registrar within thirty days of its passing. The Registrar shall register the same and in case ofany default, a company and every officer who is in default including the liquidator shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Resolutions and agreements to be filed with the Registrar are as under:

(a) special resolutions;

(b) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;

(c) any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;

(d) resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members;

(e) resolutions passed by a company according consent to the exercise by its Board of Directors of any of the powers under clause (a) and clause (c) of sub-section (1) of section 180;

(f) resolutions requiring a company to be wound up voluntarily passed in pursuance of section 304;

(g) resolutions passed in pursuance of sub-section (3) of section 179; and

(h) any other resolution or agreement as may be prescribed and placed in the public domain.

Maintenance of Minutes of Meetings

Section 118 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of share holders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. In case of meeting of Board of Directors or of a committee of Board, the minutes shall contain name of the directors present and also name of dissenting director or a director who has not concurred the resolution. The chairman shall exercise his absolute discretion in respect of inclusion or non-inclusion of the matters which is regarded as defamatory of any person, irrelevant or detrimental to company's interest in the minutes. Minuteskept shall be evidence of the proceedings recorded in a meeting.

As per section 118(10) every company shall observe Secretarial Standards with respect to General and Board Meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980, and approved as such by the Central Government.

Rule 25 contains provisions with regards to minutes of meetings.

A distinct minute book shall be maintained for each type of meeting namely:

(i) general meetings of the members;
(ii) meetings of the creditors;
(iii) meetings of the Board; and
(iv) meetings of the committees of the Board.

It may be noted that resolutions passed by postal ballot shall be recorded in the minute book of general meetings as if it has been deemed to be passed in the general meeting. In no case the minutes of proceedings of a meeting or a resolution passed by postal ballot shall be pasted to any such book. In case of every resolution passed by postal ballot, a brief report on the postal ballot conducted including the resolution proposed, the result of the voting thereon and the summary of the scrutinizer's report shall be entered in the minutes book of general meetings along with the date of such entry within thirty days from the date of passing of resolution.

Minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along with the date of such entry within thirty days of the conclusion of the meeting.

Each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by:

- in the case of minutes of proceedings of a meeting of the Board or of a committee thereof, by the chairman of the said meeting or the chairman of the next succeeding meeting;
- in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the

aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose;

- in case of every resolution passed by postal ballot, by the chairman of the Board within theaforesaid period of thirty days or in the event of there being no chairman of the Board or the death or inability of that chairman within that period, by a director duly authorized bythe Board for the purpose.

Minute books of general meetings shall be kept at the registered office of the company. Minutes of the Board and committee meetings shall be kept at the registered Office or at such other place as may be approved by the Board. Minutes books shall be preserved permanently and kept in the custody of the company secretary of the company or any director duly authorized by the Board for the purpose and shall be kept in the registered office or such place as the members may decide by passing special resolution pursuant to requirement of section 88 read with section 94 of the Act.

Inspection of Minute book of General Meeting

In terms of Section 119, the minute's book of general meetings shall be kept at the registered office of a company and shall be open for inspection to members during business hours without any charge subject to such restrictions as the company may impose. A member shall be entitled for a copy of any minutes subject to payment of fees as may be specified in the Articles of Association of the company, but not exceeding a sum of ten rupees for each page or part of any page. The copy should be made available to him within seven days of his making request.

Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, with a copy of any minutes of any general meeting, on payment of such sum as may be specified in the articles of the company but not exceeding a sum of ten rupees for each page or part of any page. A member who has made a request for provision of soft copy in respect of minutes of any previous general meetings held during a period of immediately preceding three financial years shall be entitled to be furnished, with the same free ofcost.

Where the company refuses inspection or fails to furnish a copy of minutes within specified time, the Tribunal is empowered to direct immediate inspection or sending a copy of minutes in the matter and the company and every officer of the company shall be punishable with fine.

Maintenance and Inspection of Document in Electronic Form

According to section 120 the documents, records, registers, minutes may be kept and inspected in electronic form.

According to Rule 27, every listed company or a company having not less than one thousand share holders, debenture holders and other security holders, shall maintain its records, as required to bemaintained under the Act or rules made there under, in electronic form.

The records in electronic form shall be maintained in such manner as the Board of directors of thecompany may think fit, provided that-

- the records are maintained in the same formats and in accordance with all otherrequirements as provided in the Act or the rules made there under;
- the information as required under the provisions of the Act or the rules made there under should be adequately recorded for future reference;
- the records must be capable of being readable, retrievable and reproducible in printedform;
- the records are capable of being dated and signed digitally wherever it is required under the provisions of the Act or the rules made there under;
- the records, once dated and signed digitally, shall not be capable of being edited or altered;
- the records shall be capable of being updated, according to the provisions of the Act or therules made there under, and the date of updation shall be capable of being recorded on every updation;

It may be noted that the term “records” means any register, index, agreement, memorandum, minutes or any other document required by the Act or the rules made there under to be kept by a company.

Security of Records maintained in electronic form

The Managing Director, Company Secretary or any other director or officer of the companyas the Board may decide shall be responsible for the maintenance and security of electronic records.

The person who is responsible for the maintenance and security of electronic records shall-

- provide adequate protection against unauthorized access, alteration or tampering ofrecords;
- ensure against loss of the records as a result of damage to, or failure of the media on which the records are maintained;
- ensure that the signatory of electronic records does not repudiate the signed record as notgenuine;
- ensure that computer systems, software and hardware are
- adequately secured and validated to ensure their accuracy, reliability and consistentintended performance;
- ensure that the computer systems can discern invalid and altered records;
- ensure that records are accurate, accessible, and capable of being reproduced for referencelater;
- ensure that the records are at all times capable of being retrieved to a readable and printableform;
- ensure that records are kept in a non-rewriteable and non-erasable format like pdf. version or some other version

which cannot be altered or tampered;

- ensure that at least two backups, taken at a periodicity of not exceeding one day, are kept of the updated records kept in electronic form, every backup is authenticated and dated and such backups shall be securely kept at such places as may be decided by the Board;
- limit the access to the records to the managing director, company secretary or anyother director or officer as may be authorized by the Board in this behalf;
- ensure that any reproduction of non-electronic original records in electronic form is complete, authentic, true and legible when retrieved;
- arrange and index the records in a way that permits easy location, access and retrieval ofany particular record; and
- take necessary steps to ensure security, integrity and confidentiality of records.

Inspection and Copies of Records maintained in Electronic Form

Where a company maintains its records in electronic form, any duty imposed by the Act or rules made there under to make those records available for inspection or to provide copies of the whole or a part of those records, shall be construed as a duty to make the records available forinspection in electronic form or to provide copies of those records containing a clear reproductionof the whole or part thereof, as the case may be.

Penalty

If any default is made in compliance with any of the provisions of this rule, the company and every officers or such other person who is in default shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further finewhich may extend to five hundred rupees for every day after the first during which suchcontravention continues.

Report on Annual General Meeting

In terms of section 121(1) every listed public company required to prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Act and the rules made thereunder. A copy of the report is to be filed with the Registrar in Form No. MGT. 15 within thirty days of the conclusion of annual general meeting along with the prescribed fee.

According to Rule 31, the report shall be prepared in the following manner:

(a) A report under this section shall be prepared in addition to the minutes of the general meeting.

(b) The report shall be signed and dated by the Chairman of the meeting or in case of his inability to sign, by any two directors of the company, one of whom shall be the Managing director, if thereis one.

(c) Such report shall contain the details in respect of the following:

- The day, date, hour and venue of the annual general meeting.
- Confirmation with respect to appointment of Chairman of the meeting.
- Number of members attending the meeting.
- Confirmation of quorum.
- Confirmation with respect to compliance of the Act and the Rules, secretarial standards made there under with respect to calling, convening and conducting the meeting.
- Business transacted at the meeting and result thereof.
- Particulars with respect to any adjournment, postponement of meeting, change in venue.
- Any other points relevant for inclusion in the Report.

(d) Such Report shall contain fair and correct summary of the proceedings of the meeting.

Meetings of Board and its Powers

The board of directors is the supreme authority in a company and they have the powers to take allmajor actions and decisions for the company. The board is also responsible for managing the affairsof the whole company.

For the effective functioning and management, it is imperative that board meetings be held at frequent intervals. For this, Section 173 of Companies Act, 2013 provides –

In the case of a Public Limited Company, the first board meeting has to be held within the first 30 days, since the incorporation date. Additionally, a minimum of 4 board meetings must be held in a span of one year. Also, there cannot be a gap of more than 120 days between two meetings.

In the case of small companies or one person company, at least two meetings must be conducted, one in each half of the financial year. Additionally, the gap between the two meetings must be at least 90 days. In a situation where the meeting is held at a short notice, at least one independent director must be attending the meeting.

Notice of Board Meeting

The notice of Board Meeting refers to a document that is sent to all directors of the company. This document informs the members about the venue, date, time, and agenda of the meeting. All types of companies are required to give notice at least 7 days before the actual day of the meeting.

Quorum for the Board Meeting

The quorum for the Board Meeting refers to the minimum number of members of the Board to conduct a valid Board Meeting. According to Section 174 of Companies Act, 2013, the minimum number of members of the board required for a meeting is 1/3rd of a total number of directors.

At any rate, a minimum of two directors must be present. However, in the case of One Person Company, the rules of Section 174, do not apply.

Participation in Board Meeting

All directors are encouraged to actively attend board meetings and in case that's not possible at least attend the meetings through a video conference. This is so that all directors can take part in the decision-making process.

Requirements for Conducting a Valid Board Meeting

1. **Right Convening Authority:** The board meeting must be held under the direction of proper authority. Usually, the company secretary (CS) is there to authorize the board meeting. In casethe company secretary is unavailable, the predetermined authorized person shall act as the authority to conduct the board meeting.

2. **Adequate Quorum:** The proper requirements of the quorum or the minimum number of Directors required to conduct a Board meeting must be present for it to be considered a validboard meeting.

3. **Proper Notice:** Proper notice is one of the major requirements to be fulfilled when planning a board meeting. Formal notice has to be served to all members before conducting a board meeting.

4. **Proper Presiding Officer:** The meeting must always be conducted in the presence of a chairman of the board.

5. **Proper Agenda:** Every board meeting has a set agenda that must be followed. The agenda refers to the topic of discussion of the board meeting. No other business, which is not mentioned in the meeting must be considered.

Appointment of Key Managerial Personnel (Section 203)

(1) Every company belonging to such class or classes of

companies as may be prescribed shallhave the following whole-time key managerial personnel,—

(i) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;

(ii) company secretary; and

(iii) Chief Financial Officer :

Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,—

(a) the articles of such a company provide otherwise; or

(b) the company does not carry multiple businesses:

Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.

(2) Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

(3) A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary

company at the same time: Provided that nothing contained in this sub-section shall disentitle a key managerial personnel from being a director of any company with the permission of the Board:

Provided further that whole-time key managerial personnel holding office in more than one company at the same time on the date of commencement of this Act, shall, within a period of six months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel:

Provided also that a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

(4) If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date ofsuch vacancy.

(5) If a company contravenes the provisions of this section, the company shall be punishable withfine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every director and key managerial personnel of the company who is in default shall be

punishable 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 one thousand rupees for every day after the first during which the contravention continues.

Functions of Company Secretary – Section 205

(1) The functions of the company secretary shall include,—

(a) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;

(b) to ensure that the company complies with the applicable secretarial standards;

(c) to discharge such other duties as may be prescribed.

Explanation.—For the purpose of this section, the expression "secretarial standards" means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government.

(2) The provisions contained in section 204 and section 205 shall not affect the duties and functions of the Board of Directors, chairperson of the company, managing director or whole- timedirector under this Act, or any other law for the time being in force.

WINDING UP

Meaning of Winding Up:

"Winding up is a means by which the dissolution of a company is brought about and its assets are realized and applied in the payment of its debts. After satisfaction of the debts, the remaining balance, if any, is paid back to the members in proportion to the contribution made by them to the capital of the company."

1. "The liquidation or winding up of a company is the process whereby its life is ended and its property is administered for the benefit of its creditors and members. An Administrator, called a liquidator, is appointed and he takes control of the company, collects its assets, pays its debts and finally distributes any surplus among the members in accordance with their rights."
2. As per Section 2(94A) of the Companies Act, 2013, "winding up" means winding up under this Act or liquidation under the Insolvency and Bankruptcy Code, 2016.

Thus, winding up ultimately leads to the dissolution of the company. In between winding up and dissolution, the legal entity of the company remains and it can be sued in a Tribunal of law.

Winding up proceedings are governed by the provisions of the **Companies Act 2013** as well as Insolvency and Bankruptcy Code 2016.

Meaning of Dissolution of a Company:

A company is said to be dissolved when it ceases to exist as a corporate entity. On dissolution, thecompany's name shall be struck off by the Registrar from the Register of Companies and he shall also get this fact published in the Official Gazette. The dissolution thus puts an end to the existence of the company.

Modes of Closure of Company-

1) Removal / Strike off of name of the Company.
2) Winding up under the Companies Act, 2013 by the Tribunal.
3) Liquidation of Company under the Insolvency and Bankruptcy Code, 2016.

1. Removal / Strike off of name of the Company-Section 248(2) of the Companies Act, 2013 read with Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 implies two different modes for removing the name of the Company from the Register of Companies-

I. By the Registrar of Company (ROC) on suo motu basis, if it has a reasonable cause to believe that-

- a company has failed to commence its business within 1 year of its incorporation; or
- a company is not carrying on any business or operation for a period of 2 immediately preceding financial years and has not made any application within such period for

obtaining the status of a dormant company under Section 455 (In such case, ROC shall send a notice to the Company and all their directors of his intention to remove the name of Company and requesting them to send their representations along with relevant document within 30 days from the date of the notice); or

- the subscribers to the memorandum have not paid the subscription amount which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within 180 days of its incorporation; or
- the company is not carrying on any business or operations, as revealed after the physical verification of registered office of the Company.

II. By a Company upon filing of an application with the Registrar on all or any of the groundsmentioned above.

If a Company suo motu opts to remove its name as mentioned in option 2, it can be done by takingfollowing steps which are summarized below-

- A Company may after extinguishing all its liabilities, pass special resolution or take consent of seventy-five per cent. members in terms of paid-up share capital;
- File an application for removal of name of the company in eForm STK-2 along with the fee of 5,000 rupees and the prescribed list of documents-

1. No Objection Certificate from a regulatory body constituted or established under that Act, in case of a

company being regulated by special Act;

2. indemnity bond duly notarized by every director in Form STK 3;
3. a statement of accounts containing assets and liabilities of the company made up to a day, not more than 30 days before the date of application and certified by a Chartered Accountant;
4. An affidavit in Form STK 4 by every director of the company;
5. copy of the special resolution duly certified by each of the directors of the company or consent of seventy-five per cent of the members of the company in terms of paid up share capital as on the date of application;
6. a statement regarding pending litigations, if any, involving the company.

- On receipt of such application, the registrar shall issue a public notice in Form STK-6 and shall place it on MCA website, company's website, publish in newspapers and also issue inthe Official Gazette for the information of the general public.
- The Registrar of Companies shall, simultaneously intimate the concerned regulatory authorities regulating the company, viz, the income-tax authorities, central excise authorities and service-tax authorities having jurisdiction over the company.
- Upon expiry of the time mentioned in the notice, if no

objection is received, the Registrar may, unless cause to the contrary is shown by the company, strike off the name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved.

2. Winding up under the Companies Act, 2013 by the Tribunal-

Section 271 of the Companies Act, 2013 lays down circumstances in which Company may be wound up by the tribunal-

- if the company has, by special resolution, resolved that the company be wound up by the Tribunal;
- 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;
- if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;

- if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or
- if the Tribunal is of the opinion that it is just and equitable that the company should be wound up

Section 272 of the Companies Act, 2013 clarifies about the list of persons, who shall be entitledto file an petition for the winding up of a company-

- the company;
- any contributory or contributories (holder of partly/fully paid up shares);
- all or any of the persons specified in clauses (a) and (b);
- the Registrar;
- any person authorised by the Central Government in that behalf; or
- in case falling under clause (b) of section 271, by the Central Government or a StateGovernment.

HOW DOES IT WORK?

i) A Petition presented by the company shall be admitted only if accompanied by a statement of affairs, whereas if filed by any person other than the company, the Tribunal on being satisfied that a prima facie case for winding up of the company is made out, shall by an order direct the company to file its objections along with a statement of its affairs within 30 days of the order.

ii) Within 90 days from the date of presentation of the petition, the tribunal may pass any of the following orders-

- dismiss it, with or without costs;
- make any interim order as it thinks fit;
- appoint a provisional liquidator of the company till the making of a winding up order;
- make an order for the winding up of the company with or without costs;
- any other order as it thinks fit.

iii) The Tribunal at the time of the passing of the order of winding up, shall appoint an Official Liquidator or the Liquidator from amongst the Insolvency Professionals registered under the Insolvency and Bankruptcy Code, 2016 as the Provisional Liquidator or the Company

Liquidator who shall entirely be responsible for the conduct of the proceedings for the windingup of the company.

3. Liquidation of Company under the Insolvency and Bankruptcy Code, 2016-

A. Voluntary Liquidation of a company (SECTION 59 of the IBC, 2016)-

1) A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of IBC, 2016.

2) Voluntary Liquidation proceedings of a corporate person registered as a company, shall meet the following conditions-

i) a declaration from majority of the directors of the company verified by an affidavit statingthat—

- they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and
- the company is not being liquidated to defraud any person;

ii) a declaration under sub-clause (a) shall be accompanied with the following documents, namely:—

- audited financial statements and record of business operations of the company for the previous 2 years or for the period since its incorporation, whichever is later;
- a report of the valuation of the assets of the company, if any prepared by a registeredvaluer;

iii) within four weeks of a declaration under sub-clause (a), there shall be—

- a special resolution of the members in a general meeting requiring the company to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator; or
- a resolution of the members in a general meeting

requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act as the liquidator.

(In case of company owing any debt to any person, creditors representing two-thirds in value of the debt of the company shall approve the resolution passed under sub- clause (c) within 7 days of such resolution.)

iv) The company shall notify the Registrar of Companies and the Board (IBBI) aboutthe resolution to liquidate the company within 7 days of such resolution or the subsequentapproval by the creditors, as the case may be.

v) Subject to approval of the creditors (if required), the voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution.

3) The provisions of sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.

4) Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person.

5) On receipt of an application by the liquidator, the Adjudicating Authority shall pass an order that the corporate debtor be dissolved from the date of that order.

6) A copy of an order made by the Adjudicating Authority, shall within 14 days from the date of such order, be forwarded to the authority with which the corporate person is registered.

B. Liquidation process in case of company has made default in payment of debts-

1) The provisions relating to insolvency and liquidation of corporate debtors shall be applicable only when the amount of the default is 1 Lakh rupees or more. However the Central Government may, by notification, specified the minimum amount of default of higher value which shall not be more than 1 Crore rupees.

2) Where any corporate debtor commits a default, a creditor (financial or operational) or the corporate debtor itself may initiate Corporate Insolvency Resolution Process (CIRP) by filing an application before Adjudicating Authority.

3) A financial creditor either by itself or jointly with any financial creditors may file an application under section 7 of the Code, whereas an operational creditor shall first serve demand notice- demanding repayment of the operational debt as per section 8 and file an application under section 9 of the Code.

4) The Corporate Insolvency Resolution Process (CIRP) shall be completed within a period of 180 days from the date of admission of application. Further such period may be extended by maximum 90 days, if a resolution has been passed at a meeting of committee of creditors by vote of seventy-five per cent. of the total voting shares.

5) On admission of an application, the adjudicating authority shall by an order-

   a) declare a moratorium (calm period);

   b) cause a public announcement of initiation of CIRP and call for submission of claims;

   c) appoint an Interim Resolution Professional (IRP).

6) The Interim Resolution Professional shall manage the entire affairs of the corporate debtor, exercise the power of Board/Partners, collect all claims received against the corporate debtorand constitute a Committee of Creditors.

7) The Committee of Creditors shall comprise of all financial creditors, who on their first meeting shall appoint Interim Resolution Professional as a Resolution Professional or replace it by some another Resolution Professional.

8) The Resolution Professional shall submit a resolution plan, which if not submitted within theprescribed timeline or rejected by the Tribunal, then an order for liquidation of the company can be passed in such manner and procedure as has been laid down in the Code and as may be necessary to give effect to the same.

Constitution of winding up committee

Section 277(4) states that within three weeks from the date of passing of winding up order, the Company Liquidator shall make an application to the Tribunal for constitution of a winding up committee to assist and monitor the progress of liquidation proceedings by the Company Liquidatorin carrying out the function as provided in Sub-Section (5) and such winding up committee shall comprise of the following persons, namely:

(a) Official Liquidator attached to the Tribunal.
(b) nominee of secured creditors. and
(c) a professional nominated by the Tribunal.

Functions of winding up committee

Section 277(5) states that the Company Liquidator shall be the convener of the meetings of the winding up committee which shall assist and monitor the liquidation proceedings in following areasof liquidation functions, namely:

(a) taking over assets.
(b) examination of the statement of affairs.
(c) recovery of property, cash or any other assets of the company including
(d) benefits derived therefrom.
(e) review of audit reports and accounts of the company.
(f) sale of assets.
(g) finalization of list of creditors and contributories.
(h) compromise, abandonment and settlement of claims.
(i) payment of dividends, if any and

(j) any other function, as the Tribunal may direct from time to time.

Report and minutes of the meeting of the winding up committee

As per Section 277 (6) the Company Liquidator shall place before the Tribunal a report along with minutes of the meetings of the committee on monthly basis duly signed by the members present in the meeting for consideration till the final report for dissolution of the company is submitted before the Tribunal.

As per 277 (7), the Company Liquidator shall prepare the draft final report for consideration and approval of the winding up committee. As per 277 (8), the final report so approved by the winding up committee shall be submitted by the Company Liquidator before the Tribunal for passing of a dissolution order in respect of the company.

Liquidator

A company's winding up is the process whereby its life comes to an end and its assets are administered for the advantage of its members & creditors. Winding up or liquidation is the process by which the management of a company's affairs is taken out of its director's hands, its assets are realised by the liquidator, and its debts and liabilities are discharged out of the proceeds of realisation and any surplus of assets remaining is returned to its members and shareholders.

1. A company may wind-up due to various reasons. But generally it is either voluntary liquidation, this includes

both the creditors' voluntary liquidation (CVL) and members' voluntary liquidation (MVL) or compulsory liquidation i.e., when the court orders for the winding up of the company. An Administrator, called the liquidator is appointed who takes upon the completecontrol of the company.

A liquidator is an officer who is particularly appointed to wind up the affairs of a company whenit decides to end its operations, typically when it goes bankrupt. He manages the entire liquidation process. Generally a liquidator is appointed by the court or by the shareholders of a company or by unsecured creditors. The core variances between a liquidator and an official receiver are not their roles but the insolvency process which they oversee and manage. A liquidator is appointed in a MVL and CVL by the directors, which enables the directors to holda degree of control over the process. An official receiver is appointed by the court as a liquidator when a winding-up order has been passed as a consequence of a creditor(s) forcing the companyinto compulsory liquidation.

Company liquidator as defined by the Companies Act, 2013 means a person appointed by the Tribunal as the Company Liquidator in accordance with the provisions of section 275 for the winding up of a company under this Act.

2. A liquidator is a person with the legal authority to act on behalf of a company in various capacities; however, he is only an additional person helping the company in the winding up process.

3. As the liquidator is appointed, he/she takes over the control of the company's assets. He sells the assets of the company to fetch maximum price and uses fund realised from such sale is used to pay the company's debts and lastly if anything remains he distributes it among the members in agreement with their rights and share. In certain jurisdictions, a liquidator is also referred as a trustee, like, a bankruptcy trustee.

Appointment of Liquidator

With the passing of the Insolvency and Bankruptcy Code, 2016, a company can now be wound up under the Companies Act, 2013 only by the tribunal. The concept of voluntary winding up which was earlier available has now been removed. However, the IBC, 2016 provides for voluntary liquidation of companies.

Under the Insolvency and Bankruptcy Code, 2016 a company is eligible to file for voluntary liquidation only when it has no debts or future promises to pay the full debt from the proceeds of the assets sold under the liquidation process. This is to ensure, that the liquidation process is not todefraud any of the creditors. But, when a special resolution is passed for winding up of the company by the tribunal then an application may be made by the company to the tribunal under the CompaniesAct, 2013.

The IBC, 2016 has offered an easier exit route to companies opting for voluntary liquidation as compared to the one laid down by the Companies Act, 2013. The previous process of voluntary liquidation given by the Companies, Act 20013 was very complex and lengthy and it would the process would go on up to ten years but the procedure laid down by the IBC, 2016 is very simple and short. It typically comprises with the board of directors gaining approval of the shareholders and appointing a liquidator. If the books of the company show debts, then two-thirds creditors by value of the debt need to approve the resolution passed by the shareholders. After all approvals necessary are received, it must be filed with the registrar of companies and the Insolvency and Bankruptcy Board of India. Ideally the process finishes within a year.

The 2013 Act adopts in substance the amended Section 448 of the 1956 Act. The office of the Official Liquidator is retained under Section 359 of the 2013 Act. Under Section 275, the Tribunal will appoint the Official Liquidator or liquidator from a panel maintained by the Central Government for this purpose. The designation accorded to the liquidator appointed is "Company Liquidator".

A liquidator appointed pending winding up orders passed is a "Provisional Liquidator". A provisional liquidator will be appointed only from the panel of liquidators which contains names of professionals–chartered accountants, lawyers, cost accountants, company secretaries or other professionals which is constituted by the Central Government.

Powers and Duties of Liquidator

Section 290 of the 2013 Act provides for the powers and duties of company liquidator in winding up by the tribunal. The company liquidator can exercise certain powers subject to the overall control of the tribunal. The tribunal may require the company liquidator to perform any other duty.

Powers of Company Liquidator

The powers of the company liquidator as specified in Section 290(1) of the Act. Following are someof the powers of a liquidator –

1. to carry on the business of the company so far as may be necessary for the beneficial winding up of the company;
2. to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer such property to any person or body corporate,or to sell the same in parcels;
3. to invite and settle claim of creditors, employees or any other claimant and distribute sale proceeds in accordance with priorities established under this Act;
4. to inspect the records and returns of the company on the files of the Registrar or any other authority;
5. to draw, accept, make and endorse any negotiable instruments including cheque, bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if such instruments had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;
6. to take out, in his official name, letters of administration

to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases, the money due shall, for the purpose of enabling the Company Liquidator to take out the letters of administration or recover the money, be deemed to be due to the CompanyLiquidator himself;

7. to take all such actions, steps, or to sign, execute and verify any paper, deed, document, application, petition, affidavit, bond or instrument as may be necessary,— (i) for winding up ofthe company;

a. for distribution of assets;

b. in discharge of his duties and obligations and functions as Company Liquidator;

Duties of Company Liquidator

When an individual is appointed as the liquidator of a company, he is expected to perform certain duties which are laid down in various provisions of law. Following are the duties of a liquidator:

1. The first duty which a liquidator has to fulfil is that of providing notice of his appointment. It is clearly stated under Section 178 (b) of the Income tax act that an individual who is appointed as a liquidator must within thirty days of him becoming such liquidator, give notice to the Assessing Officer sanctioned to evaluate the revenue of the company of his appointment.

2. It is the duty of the liquidator to act equitably and impartially the whole winding-up procedure in accordance with the provisions of law and the directions of the tribunal. It is also his duty to make himself thoroughly acquainted with the state of affairs of the company, and also about thetechnical hurdles that the company is facing. The liquidator has to act fairly and honourably in considering the claims of persons against the company.
3. The liquidator must bring into his custody and control the property of the company. The Supreme Court in Indian Official Liquidator, U.P. & Uttarakhand v. Allahabad Bank held that company judge under Companies Act has no jurisdiction at instance of official liquidator to setaside auction or sale held by recovery officer under RDB Act.
4. He must submit a preliminary report to the tribunal within sixty days from the winding up order.
5. He must within 30 days from date of direction from the tribunal shall call a meeting of the creditor and other contributories in order to determine the persons who are to be made the members of the advisory committee, if such committee is to be appointed. And, he must chair this committee.
6. He must keep all sums received by him on behalf of the company into some scheduled bank, or in accordance to the directions of the tribunal.
7. He must maintain proper books in the prescribed manner in which he must make entries or minutes to be made of

the proceedings of meetings and of other such matters as may be prescribed. The books may be inspected by any creditor or contributory or their agents subject to control of the tribunal.

8. A liquidator owes a duty to act with care and efficiency. He has a duty to exercise his particular professional skills to complete the winding up process and he shall incur liability if he fails to show the required degree of care and skill which, by accepting the office, he holds himself out as possessing. Therefore, a high standard of care and diligence is required of a liquidator.

9. As the liquidator is acquainted with all the state of affairs of the company and has all the records and accounts of the company, it is his duty to maintain all these records and accounts safely and not disclose these information to any person not authorized to access them or has legitimate reason to gain access to them.

Powers and Functions of Official Liquidators (Section 360)

Section 360 (1) states that the Official Liquidator shall exercise such powers and perform such duties as the Central Government may prescribe.

Sub-Section (2) states that without prejudice to the provisions of Sub-Section (1), the Official Liquidator may:

(a) exercise all or any of the powers as may be exercised by a Company Liquidator under the provisions of this Act, and

(b) conduct inquiries or investigations, if directed by the

Tribunal or the Central Government, in respect of matters arising out of winding up proceedings.

Rule 35 (2) of Companies (Winding up) Rules 2013 (2) states that for the purpose of sub Section (1) of Section 360, the Official Liquidator shall exercise following powers and performfollowing duties:

1) For winding up of the company by the Tribunal, the Tribunal at the time of passing an order of winding up, may appoint Official Liquidator as Company Liquidator, who shall exercise all powers as may be exercised by the Liquidator in the winding up proceedings.

2) The Tribunal may also by an order appoint official liquidator as Provisional Liquidator for the purpose of winding up.

3) Official Liquidator shall continue as the Company Liquidator or provisional liquidator for all such cases of winding up of companies, pending before District Court or High Court immediately before the date of transfer to the Tribunal as per clause (c) of Sub-Section (1) of Section 434 of the Act.

4) To supervise the functions of any Company Liquidator, or

5) Provisional Liquidator appointed from the panel, if directed by Tribunal or Central Government.

6) To advice or guide the Company Liquidator or Provisional Liquidator appointed from the panelon any reference made to him by such Liquidator.

7) Official Liquidator shall conduct enquires or investigations, if directed by the Tribunal or Central Government in respect of matters arising out of winding up proceedings including all such cases where the company liquidator is appointed from the panel.

8) To submit report to the Tribunal on any such matter including on the report for dissolution of the company filed by Company Liquidator appointed from the panel, on winding up by the Tribunal or Voluntary Winding up.

9) The Official Liquidator shall maintain a panel of Security Agency with the approval of Tribunal and of professionals including Valuers', Chartered Accountants, Company Secretaries, Cost Accountants and Advocates to represent and assist the Official Liquidator in the winding up process and proceeding related to winding up petitions and applications before the Tribunal and the Central Government.

10) Any such powers and duties as may be directed by the Tribunal or Central Government from time to time.

Removal and Replacement of Liquidator

1. The Tribunal may, on a reasonable cause being shown and for reasons to be recorded in writing, remove the provisional liquidator or the Company Liquidator, as the case may be, as liquidator of the company on any of the following grounds, namely:—

   a) misconduct;
   b) fraud or misfeasance;

c) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;

d) inability to act as provisional liquidator or as the case may be, Company Liquidator;

e) conflict of interest or lack of independence during the term of his appointment that wouldjustify removal.

2. In the event of death, resignation or removal of the provisional liquidator or as the case may be, Company Liquidator, the Tribunal may transfer the work assigned to him or it to another Company Liquidator for reasons to be recorded in writing.

3. Where the Tribunal is of the opinion that any liquidator is responsible for causing any loss or damage to the company due to fraud or misfeasance or failure to exercise due care and diligence in the performance of his or its powers and functions, the Tribunal may recover or cause to be recovered such loss or damage from the liquidator and pass such other orders as it may think fit.

4. The Tribunal shall, before passing any order under this section, provide a reasonable opportunity of being heard to the provisional liquidator or, as the case may be, Company Liquidator.

Dissolution of company by Tribunal (Section 302)

As per 302 (1), when the affairs of a company have been completely wound up, the Company Liquidator shall make an application to the Tribunal for dissolution of such company:

As per 302 (2), the Tribunal shall on an application filed by the Company Liquidator under Sub- Section (1) or when the Tribunal is of the opinion that it is just and reasonable in the circumstancesof the case that an order for the dissolution of the company should be made, make an order that thecompany be dissolved from the date of the order, and the company shall be dissolved accordingly.

As per 302 (3), a copy of the order shall, within thirty days from the date thereof, be forwarded by the Company Liquidator to the Registrar who shall record in the register relating to the company a minute of the dissolution of the company.

As per 302 (4), if the Company Liquidator makes a default in forwarding a copy of the order withinthe period specified in Sub-Section (3), the Company Liquidator shall be punishable with fine whichmay extend to five thousand rupees for every day during which the default continues.

Order of dissolution of company (Section 365)

Section 365 (1) states that the Official Liquidator shall, if he is satisfied that the company is finallywound up, submit a final report to:

(a) the Central Government, in case no reference was made to the Tribunal under Sub-Section (4) of Section 364, and

(b) in any other case, the Central Government and the Tribunal.

As per Sub-Section (2) the Central Government, or as the case may be, the Tribunal on receipt of such report shall order that the company be dissolved. (3) Where an order is made under Sub-Section(2), the Registrar shall strike off the name of the company from the register of companies and publish a notification to this effect.

Consequences of Winding Up

The most important consequences of the winding up of a company are as follows −

1. **As Regards the Company Itself**
   - **a.** Winding up doesn't take away the existence of the company completely.
   - **b.** The company continues to exist as a corporate entity till its dissolution.
   - **c.** All the ongoing business of the company is administered by the liquidator during the phase of liquidation.
2. **As Regards the Shareholders**
   - **a.** Contributors − a new statutory liability comes into existence.
   - **b.** Every transaction of share during the liquefaction done without the approval of the liquidatoris termed void.
3. **As Regards the Creditors**
   - **a.** The creditors cannot file a case against the company except with the consent of the court.
   - **b.** If the creditors already have decrees, they cannot proceed with the execution.

c. They must explain their claims and justify their claims to the liquidator.

4. As Regards the Management

a. With the appointment of the liquidator, all the powers of the directors, chief executives and other officers tend to cease.

b. Only the powers to give notice of resolution and the power of appointment of the liquidatorupon winding up of the company are given to the members.

5. As Regards the Disposition of the Company's Property

All the dispositions of the company's properties are void if the dispositions are not approved by thecourt or the liquidator.

****