THE COMPANIES ACT OF 1956

With a view to enable the organization and management of companies, to develop trade and industry for faster economic development, companies act of 1956 came into force on 1st April 1956.

Companies

Company is a voluntary association of persons formed to carry on some business for profit or to promote art, science, education or some charitable purpose.

According to section 3 (1) (*i*) of the companies act 1956, a company means , "a company formed and registered under this act or an existing company." An existing company means, "a company formed and registered under any of the previous companies laws."

Characteristics of a company

The main characteristics of a company are:

1. Incorporated association. A company is created when it is registered under the companies act. It comes into being from the date mentioned in the certificate of incorporation.

2. Artificial legal person. A company is an artificial person. Negatively speaking, it is not a natural person. It exists in the eyes of the law and cannot act on its own.

3. Separate legal entity: a company has a legal distinct entity and is independent of its members. The creditors of the company can recover their money only from the company and the property of the company.

4. Perpetual existence. A company is a stable form of business organization. Its life does not depend upon the death, insolvency or retirement of any or all shareholders or directors

5. Common seal

The law has provided for the use of common seal, with the name of the company engraved on it, as a substitute for its signature. Any document bearing the common seal of the company will be legally binding on the company.

6. Limited liability: a company may be company limited by shares or a company limited by guarantee. In company limited by shares, the liability of members is limited to the unpaid value of the shares. In a company limited by guarantee the liability of members is limited to such amount as the member may undertake to contribute to the assets of the company in the event of its being wound up.

7. Transferable shares. In a public company, the shares are freely transferable. The right to transfer shares is a statutory right and it cannot be taken away by a provision in the articles.

8. Separate property: as a company is a legal person distinct from its members, it is capable of owning, enjoying and disposing of property in its own name.

9. Delegated management: a joint stock company is an autonomous, self governing and self-controlling organization.

10. Legal restrictions: the formation working and winding up of company are strictly governed by laws, rules and regulations.

11. Share capital: a company mobilizes its capital by selling its shares. Those persons who buy shares become its shareholders and thereby become members in it.

Types of company

Joint stock company can be of various types. The following are the important types of company:

1. Classification of companies by mode of incorporation

A. Chartered companies. These are incorporated under a special charter by a monarch. The powers and nature of business of a chartered company are defined by the charter which incorporates it. Such companies do not exist in India.

B. Statutory companies. These companies are incorporated by a special act passed by the central or state legislature. Reserve bank of India, state bank of India,

C. Registered or incorporated companies: - these are formed under the companies act, 1956 or under the companies act passed earlier to this.

I) companies limited by shares: - these types of companies have a share capital and the liability of each member or the company is limited by the memorandum to the extent of face value of share subscribed by him.

ii) companies limited by guarantee: - these types of companies may or may not have a share capital. Each member promises to pay a fixed sum of money specified in the memorandum in the event of liquidation of the company for payment of the debts and liabilities of the company

iii) unlimited companies: a company not having any limit on the liability of its members is called an 'unlimited company'

ii. <u>On the basis of number of members</u>.

A. Private company

According to sec. 3(1) (iii) of the Indian companies act, 1956, a private company is that company which by its articles of association :

I) limits the number of its members to fifty, excluding employees who are members or ex-employees who were and continue to be members;

Ii) restricts the right of transfer of shares, if any;

Iii) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

Where two or more persons hold share jointly, they are treated as a single member. According to sec 12 of the companies act, the minimum number of members to form a private company is two. A private company must use the word "pvt" after its name.

B. Public company

According to section 3 (1) (iv) of Indian companies act. 1956 "a public company which is not a private company", if we explain the definition of indian companies act. 1956 in regard to the public company, we note the following :

I) the articles do not restrict the transfer of shares of the company

Ii) it imposes no restriction no restriction on the maximum number of the members on the company.

Iii) it invites the general public to purchase the shares and debentures of the companies

<u>Differences between a public company and a private company</u>

1. Minimum number: the minimum number of persons required to form a public company is 7. It is 2 in case of a private company.

2. Maximum number: there is no restriction on maximum number of members in a public company, whereas the maximum number cannot exceed 50 in a private company.

3. Number of directors. A public company must have at least 3 directors whereas a private company must have at least 2 directors (sec. 252)

4. Restriction on appointment of directors. In the case of a public company, the directors must file with the register consent to act as directors or sign an undertaking for their qualification shares. The directors or a private company need not do so (sec 266)

5. Restriction on invitation to subscribe for shares. A public company invites the general public to subscribe for shares.. A private company by its articles prohibits invitation to public to subscribe for its shares.

6. Name of the company: in a private company, the words "private limited" shall be added at the end of its name.

7. Public subscription: a private company cannot invite the public to purchase its shares or debentures. A public company may do so.

8. Issue of prospectus: unlike a public company a private company is not expected to issue a prospectus or file a statement in lieu of prospectus with the registrar before allotting shares.

9. Transferability of shares. In a public company, the shares are freely transferable (sec. 82). In a private company the right to transfer shares is restricted by articles.

10. Special privileges. A private company enjoys some special privileges. A public company enjoys no such privileges.

11. Quorum. If the articles of a company do not provide for a larger quorum 5 members personally present in the case of a public company are quorum for a meeting of the company. It is 2 in the case of a private company (sec. 174)

12. Managerial remuneration. Total managerial remuneration in a public company cannot exceed 11 per cent of the net profits (sec. 198). No such restriction applies to a private company.

13. Commencement of business. A private company may commence its business immediately after obtaining a certificate of incorporation. A public company cannot commence its business until it is granted a "certificate of commencement of business".

<u>Special privileges of a private company</u>

A) special privileges of all companies.

1. A private company may be formed with only two persons as member. Sec.12(1)]
2. It may commence allotment of shares even before the minimum subscription is subscribed for or paid (sec. 69).
3. It is not required to either issue a prospectus to the public
4. Restrictions imposed on public companies regarding further issue of capital do not apply on private companies. [sec 81 (3)]
5. Provisions of sections 114 and 115 relating to share warrants shall not apply to it. (sec. 14)
6. It need not keep an index of members. (sec. 115)
7. It can commence its business after obtaining a certificate of incorporation. A certificate of commencement of business is not required. [sec. 149 (7)]
8. It need not hold statutory meeting or file a statutory report [sec. 165 (10)]
10. A director is not required to file consent to act as such with the registrar.
11. Provisions in section 284 regarding removal of directors by the company in general meeting shall not apply to a life director appointed by a private company on or before 1st april 1952 [sec. 284 (1)]
12. In case of a private company, poll can be demanded by one member if not
13. It need not have more than two directors,

iii. <u>On the basis of control</u>

On the basis of control, a company may be classified into :

1. Holding companies, and
2. Subsidiary company

1. Holding company [sec. 4(4)].

A company is known as the holding company of another company if it has control over the other company. According to sec 4(4) a company is deemed to be the holding company of another if, but only if that other is its subsidiary.

2. Subsidiary company. [sec. 4 (i)].

A company is known as a subsidiary of another company when its control is exercised by the latter (called holding company) over the former called a subsidiary company.

Iv. <u>On the basis of ownership of companies</u>

A) government companies. A company of which not less than 51% of the paid up capital is held by the central government of by state government or government singly or jointly is known as a government company.

B) non-government companies. All other companies, except the government companies, are called non-government companies.

V. <u>On the basis of nationality of the company</u>

A) Indian companies : these companies are registered in India under the companies act. 1956 and have their registered office in

India.

B) foreign companies : it means any company incorporated outside India which has an established place of business in India

Corporate veil

Juristic point of view, a company is a legal person distinct from its members. This principle may be referred to as "the veil of incorporation". The effect of this principle is that there is a fictional veil between the company and its members.

Lifting of corporate veil

The term "lifting corporate veil" means looking behind the company as a legal person: i.e. Disregarding the corporate entity and paying regard, instead, to the realities behind the legal façade.

The various **cases** in which corporate veil have been lifted are as follows.

Under judicial interpretation :there are number of case, in which the court lift the corporate veil, and a few of them are mentioned below

- Protection of revenue : the corporate may ignore the corporate entity of a company where it is used for tax evasion
- Prevention of fraud
- Determination of enemy character of a company
- Where the company is a sham: the court also lift the veil where the company has been formed for some fraudulent purpose or is a sham.
- Company avoiding legal obligations
- Company acting as agent of the shareholders
- Avoidance of welfare legislation
- Protecting public policy

Under express statutory provisions : the veil of corporate personality be lifted under express statutory provisions of the companies act 1956, as follows.

- Reduction of number of members below statutory minimum
- For the establishment of relationship between holding and subsidiary company
- Investigation of ownership of company
- Fraudulent trading

MODULE II

PROMOTION AND INCORPORATION OF COMPANIES

Company is an artificial person created by following a legal procedure. Before a company is formed, a lot of preliminary work is to be performed which can be divided into four distinct stages :

- Promotion;
- Incorporation or registration;
- Capital subscription; and
- Commencement of business.

I. Promotion

The term 'promotion' is a term of business and not of law. It is frequently used in business. 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 there from." 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.

Promoter's remuneration

A promoter has no right to get compensation from the company for his services in promoting it unless the company, after its incorporation, enters into a contract with him for this purpose. If allowed, remuneration may be paid in cash or partly in cash partly in shares and debentures of the company.

Promoter's liability

If a promoter does not disclose any profit made out of a transaction to which the company is a party, then the company may sue the promoter and recover the undisclosed profit with interest

Functions of promoter

- Discovery of business idea
- Detailed investigations about the projects
- Assembling of resources like land, labour, capital and management personnels
- Preparing preliminary documents such as memorandum of association etc
- Entering into preliminary contracts
- Naming the company
- Appointment of bankers, brokers and underwriters

Ii incorporation

This is the second stage of the company formation. It is the registration that brings a company into existence. A company is legally constituted on being duly registered under the act and after the issue of certificate of incorporation by the registrar of companies. For the incorporation of a company the promoters take the following preparatory **steps:**

I) to take approval of the name, an application has to be made in the prescribed form along with requisite fee;

Ii) to get a letter of intent under industries (development and regulation) act, 1951, if the company's business comes within the purview of the act.

Iii) to get necessary documents i.e. Memorandum and articles of association prepared and printed.

Iv) to prepare preliminary contracts and a prospectus or statement in lieu of a prospectus. The application should be accompanied by the following **documents:**

1. Memorandum of association properly stamped, duly signed by the signatories of the memorandum and witnessed.
2. Articles of association, if necessary.
3. A copy of the agreement, if any, which the company proposes to enter into with any individual for his appointment as managing or whole-time director or manager.
4. A written consent of the directors to act in that capacity, if necessary.

The registrar will scrutinize these documents. If the registrar finds the document to be satisfactory, he registers them and enters the name of the company in the register of companies and issues a certificate called the certificate of incorporation. The certificate of incorporation is the birth certificate of a company.

Iii capital subscription

A private company can start business immediately after the grant of certificate of incorporation but public limited company has to further go through 'capital subscription stage' and 'commencement of business stage'. In the capital subscription stage, the company makes necessary arrangements for raising the capital of the company.

Iv commencement of business

A private company can commence business immediately after the grant of certificate of incorporation, but a public limited company will have to undergo some more formalities before it can start business

Documents of a company

The formation of a public company involves preparation and filing of several

Essential documents. Three of basic documents are :

1. Memorandum of association
2. Articles of association
3. Prospectus

Memorandum of association

The preparation of memorandum of association is the first step in the formation of a company. It is the main document of the company which defines its objects and lays down the fundamental conditions upon which alone the company is allowed to be formed. It is the charter of the company. It governs the relationship of the company with the outside world and defines the scope of its activities. Its purpose is to enable shareholders, creditors and those who deal with the company to know what exactly is its permitted range of activities.

Form of memorandum (sec. 14):

Table b memorandum of a company limited by shares

Table c memorandum of a company limited by guarantee and not having a share capital

Table d memorandum of company limited by guarantee and having share capital.

Table e memorandum of an unlimited company

Contents of memorandum

1. Name clause

Promoters of the company have to make an application to the registrar of companies for the availability of name. The company can adopt any name if :

I) there is no other company registered under the same or under an identical name;

Ii) the name should not be considered undesirable and prohibited by the central government

Iii) once the name has been approved and the company has been registered, then

A) the name of the company with registered office shall be affixed on outside of the business premises;

B) if the liability of the members is limited the words "limited" or "private limited" as the case may be, shall be added to the name;

(c) the name and address of the registered office shall be mentioned in all letterheads, business letters, notices and common seal of the company, etc.

Name of a company is the symbol of its personal existence. The name should be properly and correctly mentioned.

2. Registered office clause

Memorandum of association must state the name of the state in which the registered office of the company is to be situated. It will fix up the domicile of the company. Further, every company must have a registered office either from the day it begins to carry on business or within 30 days of its incorporation, notice of the situation of the registered office and every change shall be given to the registrar within 30 days after the date of incorporation of the company or after the date of change.

3. Object clause

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

I) main objects: this sub-clause has to state the main objects to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of main objects.

Ii) other objects: this sub-clause shall state other objects which are not included in the above clause. While drafting the objects clause of a company the following points should be kept in mind.

- The objects of the company must not be illegal,.
- The objects of the company must not be against the provisions of the companies act
- The objects must not be against public
- The objects must be stated clearly and definitely.
- The objects must be quite elaborate also.

4. Capital clause

In case of a company having a share capital unless the company is an unlimited company, memorandum shall also state the amount of share capital with which the company is to be registered and division thereof into shares of a fixed amount [sec. 13(4)].

5. Liability clause

In the case of company limited by shares or by guarantee, memorandum of association must have a clause to the effect that the liability of the members is limited. It implies that a shareholder cannot be called upon to pay any time amount more than the unpaid portion on the shares held by him. The memorandum of association of a company limited by guarantee must further state that each member undertakes to contribute to the assets of the company if wound up.

6. Association or subscription clause

In this clause, the subscribers declare that they desire to be formed into a company and agree to take shares stated against their names. No subscriber will take less than one share. The memorandum has to be subscribed to by at least seven persons in the case of a public company and by at least two persons in the case of a private company. The signature of each subscriber must be attested by at least one witness who cannot be any of the subscribers. Each subscriber and his witness shall add his address, description and occupation, if any

Alteration of memorandum of association

Alteration of memorandum of association involves compliance with detailed formalities and prescribed procedure contents of the memorandum of association can be altered as under:

1. Change of name

A company may change its name by special resolution and with the approval of the central government signified in writing . However, no such approval shall be required where the only change in the name of the company is the addition there to or the deletion there from, of the word "private", consequent on the conversion of a public company into a private company or of a private company into a public company.

2. Change of registered office

This may involve :

A) change of registered office from one place to another place in the same city, town or village. In this case, a notices is to be give within 30 days after the date of change to the registrar who shall record the same.

B) change of registered office from one town to another town in the same state. In this case, a special resolution is required to be passed at a general meeting of the shareholders and a copy of it is to be filed with the registrar within 30 days.

C) change of registered office from one state to another state to another state.

3. Alteration of the object clause

the alteration shall be effective only after it is approved by special resolution of the members in general meeting with the companies amendment act, 1996, for alteration of the objects clause in memorandum of associations sanction of central government is dispensed with.

4. Alteration of capital clause

The procedure for the alteration of share capital and the power to make such alteration are generally provided in the articles of association if the procedure and power are not given in the articles of association, the company must change the articles of association by passing a special resolution. If the alteration is authorized by the articles, the following **changes** in share capital may take place :

1. Alteration of share capital [section 94-95]
2. Reduction of capital [section 100-105]
3. Reserve share capital or reserve liability [section 99]
4. Variation of the rights of shareholders [section 106-107]
5. Reorganization of capital [section 390-391]

5. Alteration of liability clause

Ordinarily the liability clause cannot be altered so as to make the liability of members unlimited. Section 38 states that the liability of the members cannot be increased without their consent. It lays down that a member cannot by changing the memorandum or articles, be made to take more shares or to pay more the shares already taken unless he agrees to do so in writing either before or after the change. A company, if authorized by its articles, may alter its memorandum to make the liability of its directors or manager unlimited by passing a special resolution

Articles of association

Every company is required to file articles of association along with the memorandum of association with the registrar at the time of its registration articles of association are the rules, regulations and bye-laws for governing the internal affairs of the company. They may be described as the internal regulation of the company governing its management and embodying the powers of the directors and officers of the company as well as the powers of the shareholders.

Contents of articles of association

Articles generally contain provision relating to the following **matters;**

(1) the business of the company
(2) share capital
(3) execution or adoption of preliminary agreements, if any;
(4) allotment of shares;
(5) lien on shares
(6) calls on shares;
(7) forfeiture of shares;
(8) issue of share certificates;
(9) issue of share warrants;
(10)transfer of shares;
(11)transmission of shares;
(12)alteration of share capital;
(13)borrowing power of the company;
(14) rules regarding meetings;
(15)voting rights of members;
(16)notice to members;
(17)dividends and reserves;
(18)accounts and audit;
(19)arbitration provision, if any;
(20)directors, their appointment and remuneration;
(21)the appointment and reappointment of the managing director, manager and secretary;
(22)fixing limits of the number of directors
(23)payment of interest out of capital;
(24)common seal; and
(25)winding up.

Alteration of articles

Section 31 grant power to every company to alter its articles whenever it desires by passing a special resolution and filing a copy of altered articles with the registrar. An alteration is not invalid simply because it changes the company's constitution. Alteration of articles is much easier than memorandum as it can be altered by special resolution.

Distinction between articles of association and memorandum of association

Memorandum of association	**Articles of association**
It is the charter which set out the conditions on which the company is incorporated	It is the bye-laws for the internal management
Main document	Subsidiary document
It defines the objects and power of the company	It mentioned the ways and means
It regulates the relationship between the company and the general public	It regulates the relationship between company and members
No company can be incorporated without its own memorandum	A company can incorporated without its own articles
It is governed by the companies act only	It is governed by the memorandum and companies act
Cannot be altered easily	Can be altered easily

Legal effects of memorandum and articles

Legal effects as per 36 can be discussed in the following headings

- **Members liable to the company**- articles constitute a contract between the company and its members, and

- therefore every member is bound by the articles.
- **Company liable to the members**- a company is bound to members by whatever is contained in its memorandum and articles of association. The company is bound not only to the members as a body, but also to the individual as to their individual right.
- **Members liable to member**- the relationship between members also regulated by the provisions in the basic documents like memorandum and articles.
- **Company to outsiders-** contract between company and outsiders also regulated by the provisions in the memorandum and articles.

Doctrine of ultra vires

Generally, a company has power to do all acts that are authorized to be done by the companies act, its memorandum and articles. So any acts done in excess of these will be ultra vires. Hence ultra vires activities are:

- **Ultra vires the companies act** : any act done in excess of the scope of activities of companies act are ultra vires the companies act. Such an act is void.
- **Ultra vires the memorandum of association** : any act done contrary to the object clause of the memorandum of association are ultra vires the memorandum of association.
- **Ultra vires the articles** : acts which are ultra vires the articles but intra vires the memorandum will be ultra vires the articles. Such acts can be altered.

Constructive notice of articles and memorandum

A company's memorandum and articles become public documents on registration with the registrar. These documents are available for public inspection in the registrar office on payment of a nominal fee. Every person who deals with the company is deemed to know the contents of these two statements. This is known as constructive notice of articles and memorandum.

Doctrine of indoor management

It is the exception to the rule of constructive notice of articles and memorandum of association.

Prospectus

The promoters of a public company will have to take steps to raise the necessary capital for the company, after having obtained the certificate of incorporation. A public company may invite the public to subscribe to its shares or debentures. Prospectuses are to be issued for this purpose. To issue a prospectus is very essential for a public company. If the promoters of the company are confident of raising the required capital privately from their friend or relatives, they need not issue a prospectus. In such a case, a statement in lieu of prospectus must be filed with the registrar.

Definition of prospectus

In simple words, a prospectus may be defined as an invitation to the public to subscribe to a company's shares or debentures. The word "prospectus" means a document which invites deposits from the public or invites offers from the public to buy shares or debentures of the company.

Objects of prospectus

The main objects of a prospectus are as follows:

1. To bring to the notice of public that a new company has been formed.
2. To preserve an authentic record of the terms of allotment on which the public have been invited to but its shares or debentures.
3. The secure that the directors of the company accept responsibility of the statement in the prospectus.

Contents of prospectus

- Name and registered office of the co.

- Main objects of the company
- Full particulars about signatories to the memorandum
- Number and classes of shares
- Name and addresses of directors
- Director's share qualification and remuneration
- Particulars of managerial personnels
- Details of redeemable preference shares
- Information regarding listing of shares
- Minimum subscription
- Details of borrowing powers
- Details regarding purchase of property
- Time of opening and closing of the subscription list
- Amount payable on application and allotment
- Rights and privileges regarding each class of shares
- Estimated preliminary expenses
- Details of underwriters
- Details of reserves and surplus
- Name and address of auditor, broker, banker
- Details regarding voting rights

New format of prospects

Part i of schedule ii

General information

- Name and address of company
- Consent of central govt. For the present issue
- Name of regional stock exchange
- Punishment for fictitious applications
- Minimum subscription
- Date of opening and closing of issue
- Name and address of lead managers, trustees etc
- Rating from crisil
- Underwriting details

Capital structure of the company

- Authorized, issued, subscribed and paid up capital
- Size of present issue
- Paid up capital after present issue

Details of the issue

- Authority for the issue
- Terms of payment
- Objects of the issue
- Tax benefits available to the co and its shareholders
- Premium details

Details about the company management

- History, main object and present business
- Subsidiary of the company
- Promoters and their background
- Name and address of managers.

Details about the project

- Cost of project
- Location
- Technology
- Collaboration agreement
- Infrastructure
- Export details
- Expected capacity
- Stock market data for shares, debenture etc

Part ii schedule ii

General information

- Consent of directors, auditors etc for the issue
- Change in directors, auditors
- Authority for the issue
- Name and address of company secretary, legal advisor, lead manager etc

Financial information

- Reports by the auditors
- Reports by the accountant

Statutory and other information

- Minimum subscription
- Underwriting commission and brokerage
- Issue other than cash
- Details of right issue
- Details of listing on the stock exchanges
- Amount of premium, discount etc

Statement in lieu of prospectus

A company having a share capital which does not issue a prospectus or which has issued a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures, unless at least three days before the allotment of shares or debentures, this has been delivered to the registrar for registration a 'statement in lieu of prospectus' signed by every person who is named therein as a director or a proposed director of the company or by his agent authorized in writing. A private company on becoming a public company shall deliver to the registrar a statement in lieu of prospectus in the form containing the particulars specified in part i of schedule iv with report set out in part ii of schedule iv subject to the provisions contained in part iii of that schedule

Difference between prospectus and statement in lieu of prospectus

- A prospectus can be considered as a prospectus proper, whereas a statement in lieu prospectus can be considered as a proforma prospectus
- A prospectus is an invitation to the public. Where a statement in lieu prospectus is not issued to the public.
- A prospectus serves more purpose and has a greater significance than a statement in lieu of prospectus.
- The need for prospectus arises only when a public ltd company intends to invite the public for subscription. On the other hand the need for a statement in lieu of prospectus arises when a public ltd company does not wish to invite public subscription.
- A prospectus should accompany every application for shares. But a statement in lieu of prospectus need not accompany any application form.

Minimum subscription (section 69)

When shares are offered to the public the amount of minimum subscription has to be mentioned in the prospectus. It means the amount which, in the opinion of the directors, is enough to meet the purchase price of any property, preliminary expenses and working capital.

MODULE III

SHARE CAPITAL AND SHARES

SHARE CAPITAL

The term 'share capital' refers to the amount of capital raised (or to be raised) by a company through the issue of shares. It generally means the money subscribed pursuit to memorandum of association of the company.

Classes types or kinds of share capital:

The various kinds or sub-divisions of share capital are:

1. **Authorized capital, registered capital or nominal capital:** authorized capital is the sum stated in the capital clause of the memorandum of association as the capital of a company. It is the maximum amount of share capital, which the company is authorized by its memorandum of association to raise through the issue of shares
2. **Issued capital:** the part of the authorized capital which is issued or offered, for the time being, to the public for subscription is, usually, called the issued capital.
3. **Subscribed capital:** part of the issued capital, which is subscribed or taken up by the public, is called subscribed capital.
4. **Called-up capital:** part of the subscribed capital, which has been called up or demanded by the company is called called-up capital.
5. **Paid -up capital:** part of the called-up capital, which has been actually paid, by the subscribers or shareholders is called paid-up capital.

Shares

a share can be defined as, "a share is a fractional part of the capital of a company which forms the basis of certain rights of a member of the company as well as his liabilities vis-à-vis (i.e., as against) the company"

Kinds or types of shares

A public company can issue only Two types of shares, viz., (1) preference shares. (2) equity shares.

1. Preference shares.

Meaning of preference shares:

Preference shares are shares, which have preferential rights (i.e., first priority over other kinds of shares) in respect of payment of dividend during the existence of the company, and also in respect of repayment or refund of share capital in the event of the winding up of the company

Types of preference shares:

1. **Cumulative preference shares:** the holders of cumulative preference share are entitled to receive a fixed percentage of dividend before anything is given, tot other classes of shareholders
2. **Non-cumulative preference shares:** non-cumulative preference shares are entitled to a fixed rate of dividend in the first instance (i,e., before anything is given to other types of shareholders).
3. **Participating preference share**: the holders of these shares, in addition to a fixed percentage of dividend, are also entitled to participate in the surplus profits of the company along with the equity shareholders
4. **Non-participating preference share:** the holders of non-participating preference shares will get only a fixed rate of dividend, of course, in the first instance (i.e., before any dividend is paid to equity shareholders). But they are not entitled to participate in the surplus profits of the company.
5. **Convertible preference shares:** the holders of convertible preference shares are given the rights to convert their shares into equity shares later on (i.e., after a certain period).
6. **Non-convertible preference share:** the holders of non-convertible preference share are not given the right to convert their shares into equity shares later on.
7. **Redeemable preference shares:** redeemable preference shares are those preference shares, which can be redeemed (i.e., returned or paid back) even during the existence of the company.
8. **Irredeemable preference shares**: irredeemable preference shares are those preference share, which are not (i.e. Refundable) until the company is wound up.

Merits of preference shares

I) the payment of dividend to preference shares is not a legal obligation.

Ii) issue of preference shares does not create any charge against the assets of the company.

Iii) the promoters of the company can retain control over the company

Iv) in the case of redeemable preference shares, there is the advantage that the amount can be repaid as soon as the company is in possession of funds flowing out of profits.

V) preference shares are entitled to a fixed rate of dividend and the company may declare higher rates of dividend for the equity shareholders

Vi) if the assets of the company are not of high value, debenture holders will not accept them as collateral securities

Viii) preference shares are particularly useful for those investors who want higher rate of return with comparatively lower risk.

Ix) preference shares add to the equity base of the company and they strengthen the financial position of it additional equity base increases the ability of the company to borrow in future.

X) preference shares have variety and diversity, unlike equity shares, companies have thus flexibility in choice.

Xi) preference shareholders have only limited voting rights.

Demerits of preference shares

I) usually preference shares carry higher rate of dividend than the rate of interest on debentures.

Ii) compared to debt capital, preference share capital is a very expensive source of financing

Iii) in the case of cumulative preference shares, arrears of dividend accumulate. It is a permanent burden on the profits of the company.

Iv) from the investors point of view, preference shares may be disadvantageous because they do not carry voting rights. Their interest may be damaged by a equity shareholders in whose hands the control is vested.

2. Equity shares.

Equity shares are those, which are not preference shares. In other words, these are shares, which do not enjoy any preferential right either in respect of payment of dividend or in respect of the repayment of capital at the time of the winding up of the company. These shares are knows as equity shares, as they are the 'ownership shares' conferring the ownership of the company on the holders of these shares, i.e., the holders of these shares are the real owners of the company.

Merits of equity shares

- Permanent capital
- There is no capital obligation
- Enhance credit worthiness
- Can be used for long term purposes
- Can strengthen its financial base
- Equity holders can enjoy the sense of ownership
- Reward is very high

Differences between preference shares and equity share:

There are many differences between preferences shares and equity shares. The main differences between them are:

1. Generally, the face value of preference shares is relatively higher than that of equity shares.

2. Preference shares have priority over equity shares in the payment of dividend as will in the repayment of capital in the event of the winding up of the company.

3. The rate of dividend on preference shares remains fixed from year to year. But the rate of dividend on equity shares varies from year to year depending upon the amount of profits available for distribution.

4. The rate of dividend on preference shares, in generally, fixed by the articles of association. But the rate of dividend on equity shares is dependent on the discretion of the board of directors.

5. Preference shares cannot participate in the surplus profits and in the surplus assets in the event of the winding up to the company

6. Except those preference shares which are issued as non-cumulative, all preference shares are preference shares can get the arrears of dividend. But equity shares cannot get the arrears of dividend.

7. As the rate of dividend on preference shares is fixed or stable, the market value of preference shares remains more or less stable. On the other hand, as the rate of dividend on equity shares fluctuate from year to year, the market value of equity shares fluctuates greatly from year to year.

8. Preference shares, i.e., redeemable preference shares, are redeemable during the existence of the company. But equity shares are not redeemable during the life of the company.

9. Preference shares have limited voting rights. On the other hand, equity shares have full voting rights.

10. As there is steady dividend like rent, preference shares capital is considered as rentier capital. On the other hand, as there is much risk in equity shares, equity share capital is considered as risk capital.

11. As there is not much risk in preference shares, on the other hand, equity shares appeal to adventurous investors who are prepared to assume risks.

12. The holders of preference shares do not have much control over the management On the other hand, the holders of equity shares have much control over the management

Employees stock option scheme

Employee stock option plans (esops) & **employee stock purchase schemes** (espss) are employee benefit plans, which makes the employee of the company owners of stock in that company.

Stock options are the instruments that are offered to employees, allowing them to buy a certain number of shares in the company at a specific price. This price could either be lower than the current market-price of scrip-

Different terms used in an esop

Grant date - the date on which the company grants an option to its employee.

Option price - the price at which such shares in a scheme are offered. It is also known as the 'strike price' or 'grant price'.

Vesting date - an esop would provide for a date on which an option is vested with employees and time frame over which the stock option would vest with employees

Exercise period - the employees would be given a time period, called exercise period, within which they are required to exercise the option.

Different types of esops

Employee stock option scheme (esos) - under this scheme, the company grants an option to its employees to acquire shares at a future date at a pre-determined price. Eligible employees are free to acquire shares on vesting within the exercise period. Generally exercise price is lower than the prevalent market price.

Employee stock purchase plan (espp) - this is generally used in listed companies, wherein the employees are given the right to acquire shares of the company immediately, not at a future date as in esos, at a price lower than the prevailing market price.

Share appreciation rights (sar)/ phantom shares - under this scheme, no shares are offered or allotted to the employee. The employee is given the appreciation in the value of shares between two specified dates as an incentive or performance bonus, that is linked to the performance of the company as a whole, as reflected in its share value.

Book building

It is basically a capital issuance process used in initial public offer i(ipo). It is a mechanism where, during the period for which book for the ipo is open, bids are collected from investors at various prices, which are above or equal to the floor price.

Allotment of shares

Allotment is the acceptance of the offer by the company. Allotment is a binding contract between the company and the prospective shareholders.

The **rules and regulations** with regard to the allotment are as follows

1. General principles regarding allotment
2. Statutory restrictions on allotment.

1. General principles regarding allotment

With regard to the allotment of shares the following general principles should be observed in addition to the provisions of the companies act.

*1. **Allotted by proper authority***

Allotment should be made by proper authority, ie, the board of directors of the company or a committee authorized to allot shares on behalf of the board. An allotment made without proper authority will be invalid.

*2.**allotment against application only***

No valid allotment can be made on an oral request. Section 41 provides that for becoming a member, a person should agree in writing. Thus no allotment can be made without a written application for allotment.

*3. **Reasonable time***

Allotment must be made within a reasonable period of time, otherwise, the application lapses. Reasonable time is a question of facts depending on circumstances of the case. With regard to reasonable time section 6 of the contract act becomes applicable

4. ***Communication***

As per the contract act, for a legal offer and acceptance communication is essential. The allotment is an acceptance and be communicated to the applicant.

5. ***Absolute and unconditional***

The allotment must be absolute and unconditional, that means it must be made on the same terms as stated in the application. The legal rules regarding offer and acceptance is applicable in allotment also.

Ii. Statutory restrictions on allotment of shares

I) a **prospectus** must be issued and a copy of the same should be filed with the registrar. The company cannot allot the shares immediately after issuing the prospectus. No allotment can be made until the beginning of the fifth day from the date of issue of prospectus.

Ii) minimum subscription: no company can proceed to allot shares to the public until the minimum subscription (which is usually 90% of the issue amount) has been subscribed, and the sum payable on applications for it has been received by the company in cash

Iii) **statement in lieu of prospectus:** where a company having a share capital does not issue a prospectus, it can allot shares only after submitting statement in lieu of prospectus for registration.

Irregular allotment and its consequences

An allotment of shares shall be termed irregular if it is made without fulfilling the conditions precedent to a regular allotment. The allotment of shares will irregular in the following cases:

1) where an allotment is made without receiving the minimum subscription.

2) where an allotment is made without receiving at-least five per cent of the nominal value of shares as application money.

3) where an allotment is made without depositing the application money in a scheduled bank.

4) in the case of a company which does not invite public to subscribe its shares, if the allotment is made without filing with the registrar the 'statement in lieu of prospectus' at least three days before the first allotment of shares.

5) where the company fails to apply for listing of its shares in one or more recognized stock exchanges before the tenth day after the first issue of prospectus

6) where the allotment is made before the expiry of the fifth day after the date of issue of the prospectus.

Allotment procedure

The directors of the company take decision regarding allotment. Allotment is an act of the directors by accepting the offer of an applicant to purchase the shares of the company. The decision is taken after complying with the provisions of the act by passing a resolution at the board meeting

Letter of regret

These letters are sent to those applicants to whom shares have not been allotted. Such a letter will contain the regret of the directors for their inability to allot shares. A cheque also will be enclosed with the letter for the refund of the application money.

Splitting of allotment

When a large block of shares has been allotted to a single person, the company at his request split or divide the original allotment letter into a number of small allotment letters. This facility is usually enjoyed by speculators of shares who are interested to sell part of their holdings.

Renunciation of allotment

To renounce means to give up. An allottee is permitted under the act to give up the right over shares allotted to him either wholly or partly and transfer allotment made to him to some other person. This is known as renunciation of allotment. The right of renunciation is exercised by an allottee when he is not in a position to retain the shares to himself,.

Underwriting

Underwriting is an act of guarantee by an organization for the sale of certain minimum amount of shares and debentures issued by a public limited company. According to the companies act, when a person agrees to take up the shares specified in the underwriting agreement, when the public or others have failed to subscribe for them, it is called underwriting agreement.

Underwriting commission

The consideration for the work done by the underwriter is known as underwriting commission. Section 76 permits the payment of underwriting commission subject to the compliance of the following conditions:-

1. It should be authorized by the articles of the company.
2. The commission payable should not exceed 5% in case of share and 21/2 % in the case of debentures.
3. Underwriting commission may be paid in cash or kind
4. Underwriting commission shall be disclosed in the prospectus or statement in lieu of prospectus as the case may be.
5. Details of shares undertaken are also disclosed in the prospectus or statement in lieu of prospectus.
6. A copy of contract relating to the payment of the commission should be delivered
To the registrar.

Brokerage

Broker is a person connecting a purchaser and a seller. In the process of subscribing shares to the public, company appoints brokers. Brokerage is the reward for the work. It is the reward paid to the middlemen who brings about a bargain between the seller and a purchase of shares or debentures. Brokerage is different from the underwriting commission. Underwriters are liable for the under subscription of shares, but there is no such liability for brokers.

Issue of shares or terms of issue of shares :

Issue of shares at par

When shares are issued by a company to the public at a price equal to their face value (i.e., the price written on the face of the share certificates), they are said to be issued at par.

Issue of shares at a premium (section 78)

When a company finds at there is a great demand for its shares, it may issue shares at a premium. Issue of shares at a premium means the issue of shares by a company at a price higher than the face value of the shares. (the difference between the issue price, i.e., the price at which the shares are issued, and the face value of the shares is called share premium) the share premium may be **utilized for the following purposes:-**

1. To issue fully paid bonus shares to the members
2. To write off preliminary expenses of the company.
3. To write off expenses or commissions paid or discounts allowed on an issue of shares or debentures.
4. To provide for the premium payable on redemption of any redeemable preference shares or debentures.

Issue of shares at a discount section (79)

When a company wants to raise further capital at a time when its shares are not demanded, and so, quoted in the market below par, it may issue shares at a discount. Issue of shares at a discount means the issue of shares at a price less than the face value of the shares. (the differences between the face value and the issue price of the shares are the discount allowed on the shares. The discount allowed is a capital loss to the company.). Section (79) of the companies act lays down that a company may issue shares at a discount, if the following **conditions are satisfied.**

- The issue of shares at discount must be of a class of shares already issued.
- At least one year have lapsed at the date of the issue from the date of commencement of business by the company.
- The issue is authorized by a resolution (ordinary) in the general meeting which must state the maximum rate of discount.
- The resolution shall specify the maximum rate of discount which shall not exceed 10%
- The resolution shall sanctioned by the central government.
- Shares are issued within two months of the date on which the issue is sanctioned by the central government
- The prospectus relating to the issue shall contain particulars of discount allowed on the issue of shares.

Sweat equity:

Sweat equity shares' to mean equity shares issued by the company to employees or directors at a discount or for consideration other than cash for providing the knowhow or making available rights in the nature of intellectual property rights

Rights shares

If a public company issues additional or further shares at any time after the expiry of two years of its formation or one year of the first allotment of shares, which ever is earlier, such additional shares must be offered to the existing equity shareholders of the company in proportion to the capital paid up on their shares, such shares are called rights shares. Such shares are called rights shares, as the existing equity shareholders are given preferential rights (i.e., first preference) in the allotment of such shares.

Bonus shares

Bonus shares are shares issued by a company out of its accumulated reserves or profits to the existing equity share holders either as fully paid shares or partly paid shares free of cost.

Differences between bonus shares and rights shares:

1. Bonus shares are issued to the existing members (i.e. Free of costs. But rights shares are issued to the existing member for money.
2. Bonus shares can be issued by a company only when it has sufficient accumulated reserves or profits. But the issue of rights shares is not at all related to the availability of accumulated reserves or profits.
3. The purpose of bonus issue is to bring the issued capital of the company in line with the true worth of the undertaking so that the net profit of the company may not appear to be excessively high as compared to its paid -up capital. But the purpose of rights issue is to raise additional share capital for the company.
4. For the issue of bonus shares, the permission of the controller of capital issues is necessary; on the other hand, for the issue of right shares, the permission of the controller of capital issues is necessary only when the issue exceeds rs.1 crore in a period of 12 months.
5. For the issue of bonus shares, sanction of the shareholders is necessary always. But for the issue of rights shares, the sanction of the shareholders is necessary only when the rights issue involves increase in the authorized capital. ,

Calls on shares

When shares are issued, the terms of issue may specify the installment by which the issue price shall be payable. A member of a company is bound to pay the nominal amount of share which he has purchased. As noted earlier section 69 provides that not less than five percent of the nominal value of share can be called by way of application money and another sum at allotment. The balance may be payable as and when called for. The power to make call is exercised by the board in the meeting by means of a resolution. The board, making a call, must observe the provision of the articles, otherwise the call will be invalid and the shareholder is not bound to pay.

Notice of call

A call must be made by serving upon members a notice of payment in accordance with the provision of section 53. It should be a formal notice, not a demand or request for payment. Every share-holder is under a statutory obligation to pay the full amount of his shares.

Calls in advance

According to sec.92 of the companies act, a company may if so authorized by its articles, accept from a shareholder either the whole or part of the amount remaining unpaid on any shares held by them, as calls in advance.

Surrender of shares : a shareholder who is not able to pay the call money may surrender its shares to the company. The company cancels such surrender shares. Surrender is a voluntary act on the part of the shareholder, whereas forfeiture is a compulsory act on part of the company

Forfeiture of shares

When shares are allotted to an applicant, it becomes a contract between the shareholder & the company. The shareholder is bound to contribute to the capital and the premium if any of the company to the extent of the shares he has agreed to take. As & when the directors make the calls. If the fails to pay the calls then his shares may be forfeiture by the directors if authorized by the articles of association of the company. The forfeiture can be only for non-payment of calls on shares and not for any other reasons.

Re-issue of forfeited shares

Shares are forfeited because only a part of the due amount of such shares is received and the balance remains unpaid. On forfeiture the membership of the original allottee is cancelled. He/she cannot be asked to make payment of the remaining amount. Such shares become the property of the company. Therefore company may sell these shares. Such sale

Difference between forfeiture and surrender of shares

- forfeiture of shares is a compulsory action taken by a company as a last resort to recover the calls on arrears. But surrender of share is a voluntary act done by a
- Shareholder either to avoid forfeiture of shares or to exchange his share for new shares
- for forfeiture the company takes the initiative. But in surrender , share holder takes the initiative.
- complicated procedures are required for forfeiture, while surrender requires easy procedures.
- there cannot be forfeiture of fully paid shares, as there is no outstanding call on such shares. But there can be surrender of fully paid shares in exchange of new issues.

Stock

Stock can be defined as, "stock is a bundle of fully paid shares put together for convenience". In other words, it is the aggregate of fully-paid shares of a company consolidated or put together for the purpose of facilitating its division and transfer in fraction of any denomination or amount

Share certificate:

A share certificate is a document issued by a company under its common seal specifying the number of shares held by a member and the amount paid on each share and evidencing the title of the member to those shares. It is a prima facie evidence of the title of a member of the shares specified therein.

Contents of a share certificate:

A share certificate must contain the name and the registered office of the company. It must bear the common seal of the company. It must contain the signatures of at least two directors who are authorized to sign and also the counter signature of the secretary of the company.

In addition to the above, it must contain the following particulars:

1. Name and address of the member
2. Share certificate no.
3. Number and class of shares.
4. Distinctive numbers of the shares included in the certificate.
5. Face value of the amount paid on each share.
6. Date of issue of the share certificate.
7. A revenue stamp.

Share warrants

A share warrant is a document issued by a public limited company under its common seal to its shareholders in respect of fully paid shares, stating that the bearer of the instrument (i.e., the share warrant) is entitled to the shares mentioned therein. In short, it is bearer document of title to the shares issued by a public limited company to its shareholders.

Differences between a share certificate and share warrant:

They are many differences between a share certificate and a share warrant. They are

1. Share certificates can be issued by public companies as well as private companies. But share warrants can be issued only by public companies limited by shares.
2. Share certificates can be issued for fully-paid as well as partly paid shares, whereas share warrants can be issued only for fully paid shares.
3. No authorization by the articles of association is necessary for the issue of shares certificates. But share warrants cannot be issued by a company unless their issue is authorized by the articles of association.
4. No sanction or approval of the central government is necessary for the issue of shares certificates, whereas the approval of the central government s necessary for the issue of share warrants.
5. Shares represented by a share certificate are considered as qualification shares for the directorship of a company. But the shares represented by a share warrant are not considered as qualification shares for the directorship of a company.
6. The stamp duty payable on the issue of share certificates is just nominal, whereas the stamp duty payable on the issue of share warrants is heavy
7. The name of the bolder of a share certificate appears in the register of members. But the name of the holder of a share warrant does not appear in the register of members.
8. A share certificate is not a negotiable instrument, whereas a share warrant is considered as a negotiable instrument under mercantile usage and custom.
9. A share certificate can be issued originally. But a share warrant cannot be issued originally. Only share certificates can be converted into share warrants later on.
10. A share certificate is only a prima facie evidence of the title of the holder to the shares specified therein. On the other hand, a share warrant is a conclusive evidence of the title of the holder to the shares specified therein, provided he is a bonafide holder for value.

Transfer of shares:

When a registered shareholder passed on the property or interest in his shares by sale or otherwise (say) by gift) to another person voluntarily) there is said to be transfer of shares. So, transfer of shares refers to the passing on of the property or interest in the shares by a registered shareholder to some other person voluntarily for a valuable consideration.

Power to directors to reject transfer

A) where in the articles no clause for reject the transfer

In such a case the shareholder may freely transfer his shares and may carry the direction to register the transfer

B) where the articles have provision

If the articles contain a clause empowering the director to reject the transfer they can do so.

Certification of transfer – section 112

Where a shareholder desires to sell away some of the shares represented by a share certificate or to sell them to different buyers, the problem of single share certificate arise. To overcome this problem, a practice has grown up whereby the transferor lodges the certificate and transfer form with the company with a request to certify the transfer.

Forged transfer

An instrument of transfer which is not signed by the true owner of shares, but is signed by some other person as the true owner is called a forged transfer. In other words, an instrument of transfer which contains the forged signature of the transferor is called a forged transfer.

Blank transfer

When an instrument of transfer duly completed and signed by the transferor, but the name, address and signature of the transferee left blank, is delivered by the transferor to the transferee along with the relevant share certificate, there is said to be a blank transfer.

Transmission of shares:

Transmission of shares refers to the passing of property in shares by the operation of law, and not by sale by the original owner, on the happening such events as death, insolvency or lunacy of a shareholder, to his legal representative.

Differences between transfer of shares and transmission of shares:

1. Transfer of shares is the result of a voluntary and deliberate act of the holder of shares, whereas transmission of shares is the result of the operation of law.
2. Transfer of shares is a common or general method of passing of property in the shares from one person to another. But transmission of shares takes place only under certain special circumstances, such as the death, lunacy or insolvency of a shareholder.
3. As the transfer of shares is a voluntary act of the parties, there must be adequate and valid consideration for the transfer of shares. On the other hand, as the transmission of shares is the result of the operation of law
4. As the transfer of shares take place for valid consideration, stamp duty is payable in case of transfer of shares. But as the transmission of shares take place without any consideration, no stamp duty is payable in the case of transmission of shares.
5. For the transfer of shares, an instrument of transfer is required to be executed by the transferor in favour of the transferee. On the other hand, for the transmission of shares, there is no need for an instrument of transfer.
6. In the case of transfer of shares, as soon as the transfer is complete, the liability of the transferor ceases completely. But in the case of transmission of shares, the shares transmitted continue to be subject to the liability of the original holder to the company.

Lien on shares

Company's lien over partly paid shares

If a shareholder has not fully paid the allotment price of any share or owes money to the company, the company has a lien over all shares registered for that shareholder alone (except fully paid shares). This lien is for the amount outstanding, even if it is not immediately payable.

Demattting of shares

Dematerialization (commonly known as 'demat') signifies conversion of a share certificate from its present physical form to electronic form for the same number of holding. It offers scope for paperless trading through state-of-the-art technology, whereby share transactions and transfers are processed electronically without involving any share certificate or transfer deed after the share certificates have been converted from physical form to electronic form.

Listing of securities

Listing means the enrolment of a name of company in an official list maintained in the stock exchanges. These securities are only allowed to be traded in stock exchanges. Listing is compulsory in the case of companies which intend to offer securities for public issue through the issue of prospectus.

Objectives of listing

- Creation of ready marketability, liquidity to securities.
- Mobilize savings for economic development
- Protect interest of investors
- Ensure control of trading

Advantages of listing

- **High liquidity:** listing ensures liquidity to the public and free transferability.
- **Helps to know the performance** : the investing public gets periodic reports of the listed companies, which help them to know the performance of the company.
- **Get regular information:** the transaction of the listed companies is reported in daily and the investors get regular information of the securities.
- **Tax advantages**
- **Facilitates buying and selling of securities**
- **Helps to raise finance for companies**
- **Protects the interest of investors**
- **Fair price:** prices on the stock exchange are determined by two way bids under the operation of the law of supply and demand. So it provides fair price for securities.
- **Collateral security**: it can be used as collateral securities for obtaining loans.

Limitations

- **Speculation:** listing of securities can bring wide fluctuations in the value of shares in the market. It provide ample scope for speculators.
- **No regular price quotation**
- **Large amount of listing fees**
- **Information of competitors**

Operation in depository system

The operations in the depository system involve the participation of a depository, depository participants, company/registrars and investors. The company is also called the issuer. A **depository** (NSDL and CDSL) is an organization where the securities on an investor are held in electronic form, through depository participants. A **depository participant** is the agent of the depository and is the medium through which the shares are held in the electronic form. They are also the representatives of the investor, providing the link between the investor and the company through the depository. In both systems, the transfer of funds or securities happens without the actual handling of funds or securities. Both the banks and the depository are accountable for safe keeping of funds and securities respectively.

MODULE IV

MANAGEMENT OF COMPANIES

A company is an artificial person created by law. Thus a company is not a natural person and yet it acts as a natural person through the persons who conducts his business, and they are known as directors of the company. The directors of the company are collectively known as board of directors or the board. The board of directors entrust the day to day management of the company to a chief executive, who may be managing director or manager by delegating necessary powers. So the chief executive looks after the day to day managerial functions of the company, with or without whole time director or directors. As per the companies [amendment] act, 2000, the

following are the managerial persons of a company.
1. Directors
2. Whole time director
3. Managing director or manager

Directors duties and responsibilities directors

The companies act says that the term 'director' includes 'any person occupying the position of director regardless of title'. The definition of 'director' includes 'any person occupying the position of a director, by whatever name called'. Directors of the company may therefore be trustees, governors, managers, officers etc., they will have the legal status of a director if that is their function

Qualification of a director

General qualifications:

1. Director should possess a variety of knowledge and experiences while being a professional with an ethical mind.
2. Director should fully understand his obligations and practices with a commitment to create long-term values to the business and shareholders.
3. Director should have enough time to perform his duties effectively.
4. Director should be able to assess himself and is ready to notify the board of Directors upon change or if there is anything that prevents him from performing his job effectively.

Dis-qualification of directors

1. A person shall not be capable of being appointed as a director of a company, if,
A. He has been found to be of unsound mind
B. He is an undercharged insolvent
C. He has applied to be adjudicated as an insolvent
D. He has been convicted by a court of any
E. He has not paid any call in respect of shares,
F. An order disqualifying him for appointment as director has been passed by a court
G. Such person is already a director of a public company which
(i) has not filed the annual accounts and annual returns for any continuous three financial years commencing on and after the first day of april. 1999 or
(ii) has failed to repay its deposit or interest thereon due date or redeem its debentures

Legal position of directors

It is difficult to define the exact legal position of the director of a company. In the words of bowen. L.j. " directors are described sometimes as agents, sometimes as trustees and sometimes as managing directors

Directors as agents

In the theory of the english law, the agent is a connecting line between the principal & third parties. He is an intermediary who has the power to create legal relationships between the principal and the third parties. . Directors of a company are in the eye of law agents of the company for which they act and the general principles of the law of principal and agent regulate in most respects the relationship of the company and its directors. A director of a company is not necessarily the agent of the company or of its shareholder, but the true position of the directors of a company may that be of agents for the company with powers and duties of carrying on the whole of its business, subject to the restrictions imposed by the articles of association.

Directors as trustees

In the non-profit world, "directors" and "trustees" are often used interchangeably; intended to refer to the group of individuals responsible for the management of the activities and affairs of the corporation (e.g., "board of directors," "board of trustees," "board of governors"). Most state non-profit laws provide a common structure from which these individuals (whether directors, trustees, or governors) may carry out those responsibilities.

Directors as managing partners

Directors are elected representatives of the shareholders and therefore they are in a position as managing partners. In addition to that, they themselves are the shareholders of the company, this also makes them partners with other shareholders. They do almost all the functions of the Company in the capacity of its proprietor but they are not the managing partners of the company in full sense. Because, if they are the managing partners, why are they not authorized to bind other directors and shareholders by their acts and why do they compulsorily retire.

Although directors are agent of the company, they are not employees or servants to the company. Hence they cannot claim their remunerations as a preferential creditor in the event of winding up of a company under section 530 of the companies act 1956. But where any director, besides being a director, is also in the service or employment of the company such as secretary, manager or otherwise, he will be treated as an employee. He will be entitled to the remuneration and other benefits of the employee in addition to his rights as a director to sitting fee etc..

Appointment and removal of directors

Appointment of directors

The directors are the brain of a company. They occupy a very important position in the structure of the company. Only individuals can be appointed as directors. Legally, no firm or association or company can be appointed as directors

A. Appointment of first directors

1.by articles of the company

2.by the subscribers to the memorandum of association

The first directors are generally nominated by the promoters of the company, and their names are mentioned in the articles of association of the company. If the first directors are not nominated by the promoters of the company, the subscribers to the memorandum, who are individuals, shall be deemed to be the first directors of the company, subject to the regulations of the company's articles. They shall held office until directors are duly appointed in the first annual general meeting

Appointment of subsequent directors

The subsequent directors of a company are appointed in any of the following ways:-

1. By the company in annual general meeting

Except for the first directors, the subsequent directors are appointed by the company in the general meeting. In case of a public company or a subsidiary thereof, unless the article provide for the retirement of all directors at every annual general meeting, at least 2/3 of the total number of directors shall be liable to retire by rotation.

2. **By the board of directors**: the board can appoint the following types of directors

Additional directors

Directors in casual vacancy

Alternate directors: the board of directors can appoint an alternate director to act for the original director during his absence.

3:**appointment of directors by third parties**: if the articles provides, other parties may also appoint the directors. Third parties includes, debenture holders, bankers etc.

4 **appointment of directors by proportional representation** : section 265 of the act provides an option to companies to appoint directors by way of proportional representation.

5: **appointment by the central government:** the central government can appoint such number of directors in a company on an order passed by tribunal under the winding circumstances.

Directors as employees

Removal of directors

Removal of director by shareholders – shareholders may remove any director before the expiration of his or her term of office by special resolution. In that event, the shareholders may elect, or appoint by ordinary resolution, a director to fill the resulting vacancy.

Removal of director by directors – the directors may remove any director before the expiration of his or her term of office if the director is convicted of an indictable offence, or if the director ceases to be qualified to act as a director of a company and does not promptly resign, and the directors may appoint a director to fill the resulting vacancy.

Removal by central government**:** central govt. Has the power to remove the directors when the management follow illegal and unsatisfied conducts.

Removal by tribunal : the tribunal is also has authority to remove the directors on an application for prevention of mis-management.

powers of directors

- To make calls on shares
- To issue debentures
- To borrow money
- To invest the funds of the company
- To make loans
- To forfeit shares
- To fill up casual vacancy in the office of a director
- To make contracts for the purchase of land, patents etc
- To recommend to the general body, the rate of dividend.
- To appoint major executives like md, manager, secretary etc
- To determine internal organization
- To formulate major policies

Restrictions on directors

1. **Age :**a person who has reached the age of 65 cannot become director unless approved by ordinary resolution
2. **Number of directorship:** a person cannot become director in more than 15 companies at one time.
3. **Assignment of office:** a director cannot assign or transfer his office in favour of anyone else
4. **Office of profit:** a director cannot hold any office of profit except with the previous consent of the company accorded by special resolution
5. **Disclosure of interest :** if a director is having interest in any contract entered into or to be entered into on behalf of the company, he is bound to disclose his interest through a notice to the board of directors.
6. **Loan (section 295):** no director shall obtain any loan from the company without the previous approval of the central government.

Managing director

According to section 2 (26) of the act, the managing director is a director who by virtue of an agreement with the company or of a resolution passed in the general meeting or by board of directors, by virtue of a memorandum of articles is "entrusted with substantial powers of the management which would not otherwise be exercisable by him".

Whole time director

Whole time director is an employee director with the company. He does not exercise substantial powers of management but performs important administrative functions.

Manager

According to section 2 (26) manager means an individual, who, subject to the superintendence, control and direction of the board of directors, has the management of the whole or substantially the whole of the affairs of a company, and includes a director or any other person occupying the position of a manager

Difference between MD and manager

- A MD must be a director of the co, whereas a manager need not necessarily be a director.
- A co. Have more than one MD but ordinarily a company can have only one manager.

- A md is entitled with substantial powers of management. A manager on the other hand, has the management of the whole or substantially the whole of the affairs of co.
- MD exercises powers under agreement or memorandum or articles. But a manager exercise powers under control and directions of the board.
- MD acts both as a director and a manager. But a manager is appointed only for managerial services.

Company meetings

The company is an artificial person created by law having a separate entity distinct from its members. Being an artificial person, it cannot take decisions on its own. It has to take decisions on matters relating to its well being by way of resolutions passed at properly constituted and convened meetings of its shareholders or directors. The decisions about a company's management are taken by the directors in their meetings and they are to be ratified in the general meetings of the company by the shareholders. Generally, the purpose of a meeting is to consider issues of common interests to its attendants.

Kinds of meetings

The meetings of a company are of four kinds:

1. **Meetings of the shareholders**

I) statutory meeting

Ii) annual general meetings

Iii)extra ordinary general meeting

Iv) class meetings

2. Meetings of the directors

3. Meetings of the creditors

4. Meetings of the debenture holders

Statutory meeting

The statutory meeting is held only once in the life time of a company. The first meeting of the shareholders of the public company is known as a statutory meeting. Private companies, public companies limited by guarantee and not having a share capital and unlimited companies are not required to hold the statutory meeting

Notice

The company must give notice to its members 21 days before the holding of the statutory meeting. The notice convening the statutory meeting must specifically state that the meeting is the statutory meeting. The time, date and place of the meeting must be mentioned in the notice.

Statutory report

The board of directors is required to prepare a report which is known as the 'statutory report" and must send this report to the members at least 21 days before the day on which the meeting is to be held [section 165(2)].

Contents of statutory report

The statutory report shall set out:

(a) the total number of shares allotted,

(b) the total amount of cash received by the company

(c) an abstract of the receipts and payments made

(d) the name, address and occupations of the directors of the company

E) contracts

F) underwriting contracts

(g) the arrears due on cash from every director and from the manager.

(h) particulars of any commission or brokerage

Objects

The obvious purpose of the statutory meeting with its preliminary report is to put the shareholders of the company as early as possible in possession of all the important facts relating to the new company what shares have been taken up, what moneys received, what contracts entered into, what sums spent on preliminary expenses, etc.

Annual general meeting

The annual general meeting is to be held in addition to any other general meeting that might have been held in a year. It appears that holding of an annual general meeting in every calendar year is a statutory necessity. Calendar year is to be calculated from 1st January to 31st December and not twelve months from the date of incorporation of the company.

First annual general meeting

A company must hold its first annual general meeting within a period of not more than 18 months from the date of its incorporation and if such general meeting is held within that period, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation or in the following year

Subsequent annual general meeting

As already discussed a company is required to hold an annual general meeting in each year. Where a meeting called and held on a day in one year is adjourned to a date in the next

Power to convene an annual general meeting

The proper authority to convene an annual general meeting is the board of directors, and if the managing director, manager, secretary or other officer calls a meeting without such authority

Notice

A public company must give at least 21 days notice for convening any general meeting including annual general meeting. Annual general meeting may be called after giving a shorter notice than 21 days

Date, time and place of holding the annual general meeting

Every annual general meeting shall be called at any time during the business hours, on a day that is not a public holiday. It shall 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 office of the company is situated.

Extra ordinary general meeting

All general meetings other than annual general meetings shall be called extraordinary general meetings. An extraordinary general meeting is called to consider those transactions or business which cannot be postponed till the next annual general meeting. Hence, it is a meeting of a company which is held between two consecutive annual general meetings for transacting some urgent or special business.

Class meetings

Class meetings are the meetings of the shareholders and the creditors. Class meetings are held to pass resolutions which will bind only the members of the particular class concerned

Requisites of a valid meeting

A meeting to be in order must fulfill certain requirements.

1. Proper authority

The board of directors is the proper authority to convene a general meeting of a company and for this purpose the board should pass a resolution at a duly convened meeting of the board.

2. Notice of meetings

A proper notice of the meetings must be given to the members of the company. The notice must be given 21 days before the date of the meeting.

3. Quorum

Quorum means the minimum number of members that must be present at the meeting. The quorum is generally fixed by the company's article. Unless the articles provide for a large number, five members personally present in the case of a public and two members personally present in the case of any other company will be the quorum for a meeting of the company

4. Chairman of meeting

Before a meeting of a company can start its business, it is required to have a chairman. It is the chairman who is to preside at the meeting of the company. He is to conduct the meeting and to maintain the order.

Duties of the chairman

(a) he must take care that the minority is not oppressed in any way.

(b) he must give the members who are present a reasonable opportunity to discuss any proposed resolution
(c) he must see that the meeting is properly convened and constituted
(d) the chairman must conduct the proceedings in accordance with the provisions of the act, the company's articles of association
(e) he should adjourn the meeting when it is impossible.
(f) he must take care that the opinion of the meeting is properly ascertained with regard to the questions before it
(g) he must keep order in the meeting.
(h) he should exercise his casting vote, if any,
(i) the minutes of the meeting should be properly recorded and signed by the chairman.

Minutes of the meeting:

Every company must keep a record of all proceedings of every general meeting and of all proceedings of every meeting of its board of directors and of every committee of the board. These records are known as minutes and the books in which these records are written are called 'minute books'.

Voting and roll

A vote is the formal expression of the will of the members of the house either for or against a proposal. The matters proposed and duly recommended in a general meeting of the company are decided by the voting of the members of the company. The procedure of voting is regulated by the articles subject to the provisions of the act

1. Voting by a show of hands at any general meeting, unless the articles otherwise provide, a resolution put to the vote is in the first instance decided by a show of hands except when a poll is

2. Voting by poll [sec. 179] if there is dissatisfaction among the members about the result of voting by the show of hands, they can demand a poll. 'Poll' means counting the number of votes cast for and against a motion

Proxies

A meeting has right to vote either in person or by proxy. Any member of a company who is entitled to attend and vote at a meeting of the company can appoint another person (whether a member or not) as his proxy to attend and vote instead of himself but a proxy so appointed will have no right to speak at the meeting.

Resolutions

The decisions of a meeting take the form of resolutions carried by a majority of votes. A resolution may, thus, be defined as the formal decision of a meeting on a particular proposal before it.

Types of resolutions

Resolutions are of the following types :
1. Ordinary resolutions ;
2. Special resolutions ; and
3. Resolutions requiring special notice.

Ordinary resolution

At a general meeting of which notice has been given, if votes cast in favour of the resolution by members exceed the votes, if any, cast against the resolution by members, the resolution so passed is an ordinary resolution

Special resolution

The resolution is a special resolution, if
(i) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting ;
(ii) the notice required has been duly given of the general meeting; and
(iii) the votes cast in favour of the resolution by members are three times the number of the votes, if any,

Resolutions requiring special notice

A resolution requiring special notice is not an independent class of resolutions. It is a kind of ordinary resolution, with the only difference that here the mover of the proposed resolution is required to give a special notice of 14 days to the company before moving the resolution, and the company shall then immediately give its members notice of the resolution in the same manner as it gives notice of the meeting

Difference between ordinary resolution and special resolution

Ordinary resolution	Special resolution
It is not required to mention in the notice of the meeting that the co. Is going to pass an ordinary resolution.	It is required to mention in the notice of the meeting that the co. Is going to pass a special resolution.
Generally required for ordinary matters	Required for special matters
This is passed by a simple majority of votes	At least ¾ the majority is required for passing the special resolution
Casting vote is available to the chairman	Casting vote is not available
A copy of resolution need not be filed with the registrar	A copy of resolution must be filed with the registrar within 30 days

Meeting of directors:

A meeting of the board of directors must be held at least once in every three months and at least four such meetings shall be held in every year.

Notice of the meeting: notice of the every meeting must be given in writing to every director within the time prescribed.

Agenda : when the agenda is enclosed with notice each of the directors gives due consideration to the proposed business and comes with necessary preparation for discussion in the meeting.

Quorum: the quorum for a meeting of the board of directors of a company shall be 1/3 of its total strength or two directors which ever is higher.

Chairman: every meeting of the board must have a chairman who shall preside over the board meeting.

Resolution: decision are taken by directors by passing resolution on matters presented before them for consideration.

Voting: each director has one vote for each resolution put to vote at the meeting. In case of equality, chairman have a second or casting vote.

Secretary's duties regarding board meeting:

Before meeting:

- To give notice to each director
- Prepare agenda
- Make available the records necessary for the meeting
- To make all other arrangements for meeting
- Issue invitation letters to the auditors and other persons if their presence is essential.

At the meeting

- Assist the chairman in meeting
- To secure signature of the directors
- To ascertain the quorum
- Read the notice if necessary
- Note decision taken at the meeting

After meeting

- To prepare minutes of the meeting
- Take steps to carry out the instructions of the directors' meeting

Winding up of a company

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

Compulsory winding up or winding up by the tribunal

Winding up by the tribunal is also called compulsory winding up. The following are the **circumstances** in which company may wound up by tribunal.

- If the co. Has, by special resolution resolved that the co. Be wound up by the tribunal.
- If default is made in delivering the statutory report to the registrar
- If the co. Does not commence its business within a year from its incorporation.
- If the number of members reduced below to statutory minimum.
- If the co. Is unable to pay its debts
- If the tribunal is of opinion that it is equitable that the co. Should be wound up
- If the co. Has made a default in filing with the registrar its balance sheet and p/l a/c for any five consecutive years
- If the co. Acted against the interests of the integrity and sovereignty of india.

Petitions for winding up

Petition by the co.: the co. Can present petition to the court for winding up where the shareholders passed a special resolution.

Creditors' petition : creditors can also file a petition if the co. Is unable to pay its debts. Creditors include, debenture holders, secured creditors etc

Contributor's petition: the term contributory means any person liable to contribute to the assets of the co. In the event of its wound up. A contributory may present a petition for winding up if the co. Makes any default in filing statutory report or holding statutory meeting or there is a dead lock in the management etc.

Joint petition : petition given by the co., creditors and contributories together or separately to wound up the co.

Registrar's petition: registrar may present petition,

- If default is made in submitting the statutory report or
- Holding statutory meeting or
- The co. Fails to commence business within a year from its incorporation
- If number of members below the minimum
- If the co. Is unable to pay its debts
- If the tribunal considers it just and equitable

Central govt.'s petition: central govt. May sometimes present petition to wound up a co.

Official liquidators

Under the present act, the only person who is competent to act as the liquidator in a winding up is the official liquidator. For the purpose of winding up, there shall be attached to each high court an official liquidator appointed by the central government, who may be either a whole time or part time officer depending upon the volume of work.

Powers of liquidators to be exercised with the sanction of the tribunal

- To carry out on the business of the co.
- To sell the properties
- To carry on the legal proceedings
- To charge the assets in order to raise money
- To sell the undertaking
- To pay the creditors
- To appoint an advocate
- To disclaim any property
- To compromise for all calls, debts and other liabilities
- To distribute the money

Powers to be exercised without the sanction of the tribunal

- To inspects the records

- To use the seal of the co.
- To deal with the negotiable instrument
- To sue against the insolvency of contributories
- To collect the money
- To appoint agent

Duties of the liquidators

- To conduct the winding up process
- To submit the preliminary report to the tribunal
- Custody of the properties of the co.
- To follow the directions given by the committee of inspection
- To call the meetings of creditors and contributories
- To maintain proper books
- To present an account to the court

Provisional liquidator

The court may appoint the official liquidator to be the liquidator provisionally at any time after the presentation of the petition for winding up and before making winding up

Committee of inspection

The court may, at the time of making an order for the winding up or at any time thereafter, direct that there shall be appointed a committee of inspection to act with the liquidator. Where such a direction is given by the court, the liquidator is required to convene, within 2 months from the date of the direction, a meeting of the creditors to determine who are to be the members of the committee, within 14 days from the date of the creditors' meeting, the liquidator must call a meeting of the contributories to consider the creditors' decision with respect to the membership of the committee

Contributory

According to sec 428 contributories refers to persons who are liable to contribute to the assets of the co. In the event of winding up. The following persons are liable as contributories on the winding up of the co.

Present and past : a present member of the co. Is liable to contribute the unpaid amount on his shares or the amount which he has agreed to pay.

A past member is liable to pay only when it appears to the tribunal that the present members are unable to satisfy the contribution required to be made by them.

Legal representatives : if a person died before or after he has been included in the list of contributories, his legal representative will become as a contributory.

Official assignee: if a person liable as a contributory has been adjudged as an insolvent, the official assignee or receiver of the insolvent contributory become liable as a contributory.

Liquidator of a body corporate: the liquidator of a body corporate which held shares in the company in liquidation and which had been included in the list of contributories will become liable as a contributory.

Directors, md or manager with unlimited liability : the above said persons of the co. In liquidation whose liability is unlimited becomes liable as contributories.

VOLUNTARY WINDING

Voluntary winding up means winding up of the co. By the members or creditors without interference by the tribunal. In this type of winding up, the co and its creditors are left free to settle their affairs without going to the court. The co. Can wound up voluntarily by passing an ordinary resolution in general meeting and also through passing special resolution.

Types of voluntary winding up

- Members' voluntary winding up
- Creditors' voluntary winding up

MEMBERS' VOLUNTARY WINDING UP

A member's voluntary winding up take place only when the co. Is solvent. It is initiated by members and is entirely managed by them. The liquidator is appointed by the members. No meeting of creditors held and no committee of inspection is appointed. The members in confidence say that they are ready to pay liabilities and are solvent.

<u>Conditions of members' voluntary winding up</u>

1.**<u>Declaration of solvency:</u>** the declaration of solvency must be made by the directors and verified by an affidavit. They have to make a declaration to the effect that they made full enquiry into the affairs of the co. And have the opinion that the co. Has no debt or that it will be able to pay its debt within a period of 3 years from the commencement of winding up.

2.**<u>Shareholders' resolution</u>** : after the declaration, the shareholders must meet and pass an ordinary resolution or a special resolution.

Provisions applicable to members' voluntary winding up

3.**<u>Appointment of liquidator</u>** : a co. In general meeting shall appoint liquidator by passing resolution for winding up the affairs of the co. And for distributing the assets.

4.**<u>Board's power to cease on appointment of a liquidator</u>** : board of directors and the md has the power to cease the appointment of liquidator

<u>5.Power to fill a vacancy in the office of a liquidator:</u> if the vacancy occurs in the office of the any liquidator appointed by the co. , the co. In the general meeting may fill the vacancy.

6.**Notice of the appointment of liquidator to be given to the registrar**

<u>7.Restriction on liquidator to accept share</u> : the liquidator cannot accept shares in the transferee co. As consideration without sanction of a special resolution of the co. In the process of sale.

8.**<u>Duty of liquidator to call creditors' meeting in case of insolvency</u>**: Liquidator must call the general meeting at the end of each year

<u>9.Final meeting and dissolution:</u> the liquidator call the last meeting of the co. When all the affairs have been completely over.

<u>Secretary's duties in connection with members' voluntary winding up</u>

- He should arrange for the preparation and audit of the balance sheet and p/l a/c of the co.
- He must convene a meeting of board of directors
- He must convene an extra ordinary meeting to pass the resolution for the winding up
- He must publish notice of the resolution
- He must see the declaration of solvency, verified and delivered to the registrar
- He should see that the liquidator is appointed and his remuneration is satisfied
- To see that the notice of the appointment is given to the registrar
- He must help for the preparation of statement of affairs

<u>CREDITORS' VOLUNTARY WINDING UP</u>

Creditors' voluntary winding up is take place when the co is insolvent and co. Is unable to pay its debt in full. The law gives the creditors primary place in the process of winding up.

Provisions regarding creditors' voluntary winding up

- **<u>Meeting of creditors':</u>** the co. Shall call a meeting of the creditors when the resolution for voluntary winding up is passed.
- **<u>Notice to the registrar:</u>** the co. Shall give notice of resolution passed at the creditors meeting to the registrar within 10 days.
- **<u>Appointment of liquidator</u>** : the creditors and the members appoint a person to be the liquidator.
- **<u>Committee of inspection</u>** : the creditors at the meeting may appoint a committee of inspection consisting of not more than five members

- **<u>Fixing liquidator's remuneration</u>** : it is fixed either by the committee of inspection or by creditors
- **<u>Board's power to cease on appointment of a liquidator</u>** : board of directors and the md has the power to cease the appointment of liquidator
- **<u>Power to fill a vacancy in the office of a liquidator:</u>** if the vacancy occurs in the office of the any liquidator appointed by the co. , the creditors in the meeting may fill the vacancy.
- **<u>Restriction on liquidator to accept share</u>** : the liquidator cannot accept shares in the transferee co. As consideration without sanction of court or committee of inspection.
- **<u>Meeting at the end each year</u>**: where the winding up continues for more than a year, the liquidator shall call a general meeting of the co.
- **<u>Final meeting and dissolution</u>**: the liquidator call the last meeting of the co. When all the affairs have been completely over

<u>Secretary's duties in connection with creditors' voluntary winding up</u>

- To arrange to hold a board meeting to fix the date, time and place and agenda of the general meeting
- He should prepare and get the approval of the board for the draft resolution to be placed in general meeting.
- He should see that the notice of general meeting of the members and meeting of the creditors are issued.
- He should see that the creditors' meeting is duly held.
- He should see that a director is nominated to preside the creditors meeting.
- He should see that the resolution necessary for the winding up is passed at the directors' meeting
- He should see that the notice of the resolution is published in the official gazette.
- He should ensure that the liquidator is appointed and the remuneration is fixed.
- He should see that a copy of statement of affairs of the co. Is duly verified and affidavit is send to the liquidator.

<u>Distinguish between members' voluntary winding up and creditors' voluntary winding up</u>

Members' voluntary winding up	**Creditors' voluntary winding up**
Take place when co. Is solvent	Take place when co. Is insolvent
Under this, declaration of solvency is made by directors.	No such declaration is made in this type of winding up
Only members meeting is called	Both members and creditors meeting is called
Liquidator is appointed by members	Liquidator is appointed by creditors
No committee of inspection is appointed	Committee of inspection is appointed
Meeting of members' is called on completion of proceedings of winding up	Meeting of members and creditors' is called at the end.

<u>Winding up subject to supervision of court</u>

At any time after a co. Has passed a resolution for voluntary winding up, the court may make an order that the voluntary winding up shall continue, but subject to such supervision of the court as the court think just. The object of supervision order is to protect the interest of the members, creditors and the co. Such an order is passed by the court when there are irregularities or fraud in the voluntary winding up.

<u>Consequences of winding up</u>

- **Consequences as to shareholders** : the shareholders are liable to the face value of share. Hence a member or contributory of a co. Is liable and bound to pay the full amount on the shares held by him.
- **Consequences as to creditors** : the object of winding up is to realize the assets and discharge the liabilities and then if there be any surplus, to pay it off to the shareholders. Sec 530 says, certain debts which are to be paid in priority to all other debts. Such payments are called preferential payments. It may note that such payments are made after paying secured creditors and costs, charges and expenses of the winding up.
- **Consequences as to servant's and officers'**: a winding up order by a court operates as a notice of discharge to the employees and officer of the co. When the business of the co. Is continued.
- **Consequences of proceedings against the co**. : when a winding up order is made, no suit or legal proceedings can be commenced and no pending legal proceedings continued against the co, except with the permission of court.
- **Consequences as to costs** : where the assets of the co. Are insufficient to satisfy the liabilities, the court may make an order for payment of the costs out of the assets, including the cost of winding up as first priority.
- **Consequences as to documents** : any document, letters, invoice issued in the name of the co. Must contain a statement that the co. Is being wound up.

DISSOLUTION OF A COMPANY

Dissolution means the stage when the co. Ceases to exist. On dissolution the existence of a co. Comes to an end. It is similar death of a living person.

Methods of dissolution of company

- **If the name of the co. Is removed** (defunct co.) : according to sec 560 of Indian companies act 1956, registrar of companies may remove the name of any co. From its register of the companies, if the co. Is not doing its business for a long time or if the co. Is not a going concern.
- **Dissolution by the court order** : sec 394 of the Indian companies act states that a tribunal may order for the dissolution of a co., on the re-organization or restructuring of the co. Or on the amalgamation of two companies. On such order of the tribunal, the co. Is dissolved.
- **Dissolution by liquidation** : when the liquidator or the co. Has completed all the formalities of the winding up of the co., the co. Is taken to be dissolved.

Difference between winding up and dissolution

Winding up	Dissolution
It is the first stage towards the dissolution. In winding up assets are sold and utilized for the payment of liabilities	It is the second stage that give the end to the co.
It is carried out by liquidator	While in dissolution no such proceedings, it is the end result.
The liquidator represents the co.	No such representation
Order of court is not essential in winding up	Dissolution take place only by order of the court.

Defunct company

Defunct simply means de-functioning. A defunct co. Thus means a co. Which never commenced business or which is not carrying on business and has either no assets or has such assets shall not be sufficient to meet the costs of liquidation.

MODULE V

EMERGING ISSUES IN COMPANY LAW

PRODUCER COMPANIES

Till recently, the companies act, 1956 (the act), recognized only three types of companies, namely, companies limited by shares (sub-divided into public limited and private limited companies), companies limited by guarantees and unlimited companies. With the coming into force on February 6 of the companies (amendment) act 2002, (1 of 2003), a fourth category, `producer companies,' finds a place in the act.

Formation

Any ten or more individuals, each of them being a producer, that is, any person engaged in any activity connected with primary produce.

Objects

The objects of producer companies shall include one or more of the eleven items specified in the act, the more important being:

(i) production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of members or import of goods or services for their benefit;

(ii) processing including preserving, drying, distilling, brewing, venting, canning and packaging of produce of its members; and

(iii) manufacture, sale or supply of machinery, equipment or consumables mainly to its members.

The other objects include rendering technical or consultancy services, insurance, generation, transmission and distribution of power and revitalization of land and water resources; promoting techniques of mutuality and mutual assistance; welfare measures and providing education on mutual assistance principles. It is to be noted that private limited or public limited companies are not hamstrung by such restrictions as to their objectives, provided they are legal.

Management

(a) every producer company is to have at least five and not more than 15 directors..

(b) a full time chief executive, is to be appointed by the board.

(c) a stipulation that could dismay company secretaries is that only producer companies having an average annual turnover exceeding rs. 5 crores in each of three consecutive years need have a whole-time secretary

Members' benefits

Members will initially receive only such value for the produce or products pooled and supplied as the directors may determine. The withheld amount may be disbursed later either in cash or in kind or by allotment of equity shares. Members will be eligible to receive bonus shares. An interesting provision is for the distribution of patronage bonus after the annual accounts are approved — patronage bonus means payment out of surplus income to members in proportion to their respective patronage. Patronage, in turn, is defined as the use of services offered by producer companies to their members by participation in their business activities.

Limited liability partnership

It is viewed as an alternative corporate business vehicle that provides the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. Owing to flexibility in its structure and operation, the llp would also be a suitable vehicle for small enterprises and for investment by venture capital.

Formation of limited liability partnership

1) for a limited liability partnership to be incorporated.

(a) two or more persons associated for carrying on a lawful business

(b) the incorporation document shall be

filed in such manner and which such fees
(c) there shall be filed along with the incorporation document, a statement in the prescribed form
2) the incorporation document shall
(a) be in a form as may be prescribed.
(b) state the name of the limited liability partnership.
(c) state the proposed business of the limited liability partnership.
(d) state the address of the registered office of the limited liability partnership.
(e) state the name and address of each of the persons who are to be partners of the limited liability partnership on incorporation.
(f) state the name and address of the persons who are to be designated partners of the limited liability partnership on incorporation.
(g) contains such other information concerning the proposed limited liability partnership as may be prescribed.

Corporate governance

Corporate governance refers to the structures and processes for the direction and control of companies. Corporate governance concerns the relationships among the management, board of directors, controlling shareholders, minority shareholders and other stakeholders. Good corporate governance contributes to sustainable economic development by enhancing the performance of companies and increasing their access to outside capital.

Corporate governance may be defined as "a set of systems, processes and principles which ensure that a company is governed in the best interest of all stakeholders".

In simple sense, it is the process of managing the corporate by establishing better relation with the top management and other interested parties to the affairs of the company with a view to maximize the shareholders' value in the long run through better business practices, better quality of work life and culture.

Accordingly good corporate **governance implies the following**

1. Optimal utilization of resources for enhancing the value of the company
2. Ethical behavior of the company in honoring and protecting the rights of all the stakeholders.

The core principles of corporate governance are fairness, transparency, accountability and responsibility. That is
A) fairness to ensure the right of shareholders including minority shareholders.
B) transparency through disclosure of information on financial performance governance and ownership.
C) accountability for handling resources of the company on the part of board of governors.
D) responsibility in discharging its functions including compliance with regulations and code of conduct.

Securities Exchange Board of India (SEBI)

It was officially established by the government of India in the year of 1992 with SEBI act 1992 being passed by the Indian parliament. Initially SEBI was a non statutory body without any statutory power. However in the year of 1995, the SEBI was given additional statutory power by the government of India through an amendment to the securities and exchange board of India act 1992.

Management of the board

1. The board shall consist of the following members, namely:-
(a) a chairman;
(b) two members from amongst the officials of the ministry of the central government dealing with finance and administration of the companies act, 1956
(c) one member from amongst the officials of the reserve bank;
(d) five other members of whom at least

three shall be the whole-time members to be appointed by the central government.
2. The general superintendence, direction and management of the affairs of the board shall vest in a board of members
3. The chairman shall also have powers of general superintendence and direction of the affairs of the board
4. The chairman and members shall be nominated by the central government and the reserve bank respectively.
5. The chairman and the other members shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to securities market or have special knowledge or experience of law, finance, economics, accountancy, administration.

Functions of SEBI

- Protect the interest of investors
- Regulating the business in stock exchanges
- Registering and regulating the working of stock brokers, sub brokers, share transfer agents, underwriters etc
- Registering and regulating the working of the depositories, participants, custodians of securities, fiis, credit rating agencies etc.
- Registering and regulating the working venture capital funds.
- Promoting and regulating self regulatory organizations
- Prohibiting fraudulent and unfair trade practices relating to securities market.
- Promoting investors' education and training of intermediaries of stock markets.
- Prohibiting insider trading
- Collecting information, undertaking inspection, conducting enquiries of the stock exchanges, mutual funds etc.
- Levying fees and other charges
- Inspection of books and records of any co.

Powers of SEBI

- To file a complaints in a court
- To regulate companies in the issue and transfer of shares
- It can impose penalties on companies and on brokers for violating transactions
- Power to summon any broker or intermediaries and call for documents
- It can issue directions to all brokers for protecting the interest of investors
- It can call for periodical returns from stock exchange
- Seek any information from stock exchange
- It can enquire into functioning of stock exchange
- It can grant permission for the change of bye-laws of any stock exchange
- It can compel listing of securities of public co.
- It can control and regulate stock exchanges
- Granting registration to market intermediaries
- Promoting investor- education and training of intermediaries
- Regulating purchase of shares and take over of companies.

Securities appellate tribunals

Securities appellate tribunals means a securities appellate tribunal established under subsection (1) of section 15 k of the securities and exchange of India act 1992

Composition of securities appellate tribunal

A securities appellate tribunal shall consist of a presiding officer and two other members, to be appointed, by notification, by the central government:

Tenure of office of presiding officer and other members Of securities appellate tribunal

The presiding officer and every other member of a securities appellate tribunal shall hold office for a terms of five years from the date on which he enters upon his office and shall be eligible for re-appointment.

Difference between company and partnership

Basis	Company	Partnership
Mode of creation	By registration	By agreement
Legal statute	Legal separate entity	No separate entity
Life	Perpetual succession	Uncertain life
Liability	Limited liability	Unlimited joint and several liability
Authority	Representative management	Common management
Transfer	Public co – freely shares transferable	No right to transfer
Minimum members	Private -2 members. Public -7 members	2 members
Maximum members	Private- 50 and public – unlimited	20 members
Resources	Large and unlimited	Personal resources of partners are limited

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Study well…..