MBA / PGBA (S2) - 08

LEGAL ASPECTS OF BUSINESS

SEMESTER 2
BUSINESS ADMINISTRATION
BLOCK 2

KRISHNA KANTA HANDIQUI STATE OPEN UNIVERSITY

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MASTER IN BUSINESS ADMINISTRATION

LEGAL ASPECTS OF BUSINESS

Block 2
DETAILED SYLLABUS

UNIT - 8 : Formation of a Company **Page 105 - 132**

Introduction, Formation of a Company, Stages of Formation of Company, Documents required for incorporation, Types of Company, meaning of meetings and kind of Company, meaning of minutes, role of chairman, Postal ballot, Resolution and its diferent kinds.

UNIT - 9 : Regulatory Framework for Insurance **Page 133 - 155**

Introduction, Concept and Importance of Insurance, Evolution and Development of Insurance in India, Fundamental Principles of Insurance, Double Insurance and Reinsurance , Concept and Importance of Life insurance, Concept of Marine Insurance, Concept and Features of Fire Insurance.

UNIT - 10 : Food Safety and Standards (Packaging and Labelling) Regulations, 2011 **Page 156 - 184**

Introduction, short title and commencement, Definitions under the Act, Product specific requirements, Labelling, Manner of declaration, Specific Requirements/ Restrictions on manner of labeling, specific restrictions on Product labels, Exemptions from labelling requirements.

UNIT - 11 : The Companies Act, 2013 **Page 185 - 203**

Introduction, Objective and Scope, Important Definitions, Formation of a Company, Memorandum of Association, Articles of Association, Prospectus, Shares, Directors, General Meetings and Proceedings, Auditor, Winding up of a Company.

UNIT - 12 : Consumer Protection Act **Page 204 - 214**

Introduction, Objective and Scope, Important Definitions, Rights of Consumers, Nature and Scope of Complaints, Remedies available to Consumers.

UNIT - 13 : E- Governance **Page 215 - 225**

Introductions, Concept of E-Governance, Director Identification Number, Corporate Identification Number, Digital Signature Certificate, Important features, e-Form, Importance of MCA 21 projects.

UNIT - 14 : Regulation to Information **Page 226 - 241**

Introduction, Right to Information Act, 2005, Information Technology Act, 2000, Electronic Governance and Secure Electronic Record, Digital Signatures and Digital Signature Certificates, Cyber Regulations Appellate Tribunal, Offences, Limitations of the Information Technology Act, 2000.

BLOCK INTRODUCTION

Block 2 deals with 7 units which includes formation of a Company, Regulatory framework of Insurance, The Companies Act, Consumer Protection Act etc.

The structure of Block 2 is as follows :

UNIT - 8 : Formation of a Company

UNIT - 9 : Regulatory Framework for Insurance

UNIT - 10 : Food Safety and Standards (Packaging and Labelling) Regulations, 2011

UNIT - 11 : The Companies Act, 2013

UNIT - 12 : Consumer Protection Act

UNIT - 13 : E- Governance

UNIT - 14 : Regulation to Information

Each unit of these blocks includes some along-side boxes to help you know some of the difficult, unseen terms. You may find some boxes marked with : “LET US KNOW”. These boxes will provide you with some additional interesting

information. The “CHECK YOUR PROGRESS” questions have been designed to self-check your progress of study. It will be helpful for you if you solve the problems put in these boxes immediately after you go through the sections of the units and then match your answers with “ANSWERS TO CHECK YOUR PROGRESS” given at the end of each unit. you in making your learning more active and efficient.

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UNIT - 8 : FORMATION OF A COMPANY

UNIT STRUCTURE

8.1 Learning Objectives

8.2 Introduction

8.3 Formation of a Company

8.4 Stages of formation of Company

8.5 Documents Required for Incorporation

8.6 Types of Company

8.7 Meaning of Meetings and Kinds of Company

8.8 Meaning of Minute

8.9 Recording and Signing of Minutes

8.10 Role of Chairman

8.11 Postal Ballot

8.12 Resolution and its Different Kinds

8.13 Let us Sum Up

8.14 Further Readings

8.15 Answers to Check Your Progress

8.16 Model Questions

8.1 LEARNING OBJECTIVES

After going through this unit you will be able to :

- define and explain the formation of a company
- describe the stages of formation of company
- explain the documents required for incorporation of a company
- describe the certificate of incorporation
- explain the certificate of commencement of business
- explain the meaning of a company meeting and its different kinds
- define the meaning of a Minute
- elaborate the recording and signing of minutes
- explain the role of the Chairman and know about Postal Ballot
- describe the resolution and its different kinds.

8.2 INTRODUCTION

In this unit, we are going to discuss about the formation of a company and company meetings. Here, you will be able to know details about the documents required for incorporation of the formation of a company. This unit also encompasses the stages of formation of company. The unit discusses the certificate of incorporation and the certificate of commencement of business. Thus, you will able to understand through this unit, the basic concept of company, the essential document for formation of a company, stages, documents required for incorporation, certificate of incorporation and certificate of commencement of business.

And at the end of this unit you will be able to know about company meetings and recording of minutes and prospectus.

8.3 FORMATION OF A COMPANY

Before formation of a company, there must be an idea originated in the mind of a person or persons to form a company and do the necessary steps to convert it into reality. Such persons are called as 'Promoter'.

The term 'promoter' is not define anywhere in the Companies Act. According to Palmer, "A person who originate a scheme for the formation of the company, has the Memorandum and Article prepared, executed and registered, and finds the first directors, settles the terms of preliminary contracts and prospectus (if any), and make arrangements for advertising and circulating the prospectus and placing the capital, is a promoter."

An idea has to come to start a business and it should bring into existence. The promoter is a person who originates the idea to start a business and plan to bring it into reality. He has very wide powers relating to the formation of the company. He is neither a trustee nor an agent of the proposed company. The promoter stands in a fiduciary relationship towards the company.

Lord Justice Lindley, defines the company as,

"A company is voluntary association or an organization of many persons who contribute money or monies worth to a common stock and employee it in some trade or business and who share the profit or loss arising

therefrom. The common stock so contributed is denoted in money and is the capital of the company. The persons, who contribute it or to whom it belongs, are members of the company. The proportion of capital to which each member is entitled, is his share. The shares are of fixed value and the whole capital of the company is divided into equal number of shares. The shares are generally transferable although under certain special circumstances, the right to transfer may be restricted."

8.4 STAGES OF FORMATION OF COMPANY

A company is nothing but an association of persons incorporated under Companies Act, having legal separate existence from its members. A company is formed under three stages, as—

1. Promotion of a company
2. Registration, incorporation and Commencement of a company and
3. Raising of capital

1. Promotion of a company : An idea has to come in the mind of certain persons to form a company. These persons are called promoter. He takes all necessary steps to form the company. The promoter may be an individual, association of persons, partners etc who originate the scheme for formation of the company; get together the subscribers to the memorandum, gets the Memorandum and Article, prepared, executed and registered, finds the bankers, brokers and legal advisers, find the directors, settle the terms of preliminary contracts with vendors and agreement with underwriters and makes arrangement for preparation, advertisement and circulation of the prospectus and placement of the capital.

2. Registration, incorporation and commencement of a company : The following aspects have to decide before a company incorporate and commence its business :

   a. Types of company : Any two or more persons required to start a private company and 7 members for a public company, associated for a lawful purpose, by subscribing their names to the memorandum of association in respect of registration, form an incorporated company, with or without limited liability.

b. **Application for availability of name of company :** The promoters choose at least five names apart from the main name of the company and make an application along with prescribed fee(presently Rs. 500) to the Registrar of Companies to ascertain the availability of the name. According to Section 20 of the Act, a company cannot be registered with the name which is undesirable in the opinion of Central Government or which is identical with or too nearly resembles the name of an existing company. The name of the company must end with the word “Limited” in the case of a public company and the words “Private Limited” in the case of a private company. The Registrar of Companies shall have to furnish the information regarding the availability of name within seven days. In case the name is undesirable, the registrar may reject the same or ask for resubmission of the application with new name or calls for further information, ordinarily within three days of receipt of the application.

c. **Preparation of Memorandum and Article of Association :** Memorandum of Association is the constitution of the company which specifies the area of the company, within which it can act. It contains clauses like, name clause, object clause, capital clause, liability clause, subscription clause and registered office clause. Article of Association is another important document which contains rules and regulations relating to the internal management of a company.

d. **Vetting of Memorandum and Articles, Printing, Stamping and Singing of the same :** The draft of the Memorandum and Articles of Association should be prepared and typed. But before printing the Memorandum and Articles Association it is desirable to get the draft vetted by the Registrar. This helps in avoiding mistakes and unnecessary delay in registration of the Company. It should be signed separately by the subscribers. It should be stamped.

e. **Power of attorney :** With a view to fulfill the various formalities that are required for incorporation of a company, the promoters may appoint an attorney empowering him to carry out the instruction/ requirement stipulated by the Registrar. This requires execution of a Power of Attorney on a non-judicial stamp paper of a value prescribed in the respective State Stamp Laws.

f. Additional Documents Required :

A. Consent of director : In case of public limited company having share capital, the director has to give written consent to act as director.

B. Notice of the Registered office : The notice of location of the registered office in the memorandum and article of association is necessary.

C. Particulars of directors : The persons who are to act as first directors may file their particulars to the Registrar at the time of registration.

g. Statutory Declaration in e-Form No. 1 : Statutory Declaration for completing of all legal formalities should be signed by an advocate of High Court or Supreme Court or attorney or Chartered Accountant or by a person named in the Article as a director, manager, or secretary of a company and filed with the Registrar. The Registrar may accept such a declaration as sufficient evidence of such compliance.

h. Payment of Registration Fees : The fee prescribed for registration of company is required to be paid to the Registrar.

i. Certificate of incorporation : If all the documents mentioned above are complete and the Registrar of the Companies is satisfied that all requirements are complied with, the Registrar shall certify under his hand that the company is incorporated. The certificate of incorporation given by the Registrar and it is the conclusive evidence that all requirements of the Companies Act, 1956, have been complied with in respect of registration.

But, a public company cannot start its business until it gets certificate of commencement of business from Registrar of Companies. To get the certificate of commencement of business a public company has to pass through capital subscription state i.e. raise sufficient capital to commence its business. There are two ways of raising capitals i.e. from private source and from the public.



CHECK YOUR PROGRESS

Q.1. Mention any three aspects that have to decide before a company incorporate and commerce its business ?

i) .....

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ii) .....

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iii) .....

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3. Raising of capital : If a company raises capital from private source i.e. from director's members and their relations, it is required to file a statement in lieu of prospectus with the Registrar at least three days before the allotment of shares. Where the company wishes to invite public in subscription for its shares, it will have to issue a prospectus after filing a copy of it with the Registrar. On receiving the minimum subscription, the company can allot shares and thus raise the required capital.

8.5 DOCUMENTS REQUIRED FOR INCORPORATION

There are certain necessary documents that have to file with the Registrar of companies for its incorporation :

1. The Memorandum of Association : It is a document that describes the object of the company for which it is form and it should be signed by all the persons necessary to form the company.
2. The Article of Association : It is the document which contains the rules and regulation of the company and should be signed by the all the persons necessary to form the company.
3. The agreement which the company propose to enter with any individual for appointment as company's managing director, or whole-time directors or manager : If the company is entered into an

agreement with any individual for appointment as company's managing director, or whole-time directors or manager than copy of the same should be filed with the Registrar of the company.

4. The declaration that all the requirements of the Companies Act relating to the registration of the company have been compiled with : Such declaration must be signed by any one of the following person—
   a. A Chartered Accountant in the whole-time practice in India;
   b. A company secretary in whole-time practice in India;
   c. An advocate of the Supreme Court or High Court;
   d. An attorney or pleader entitled to appear before High Court;
   e. A person named in the article of association as a director, manager, or secretary of the company.
5. A written consent of such directors to act as director of the company : It should be signed by the director himself or by his agent authorized in writing.
6. A written undertaking by such directors to take and pay for their qualification shares if any : It should be signed by all directors.
7. A list of persons who have agreed to become the first directors of the company.



CHECK YOUR PROGRESS

Q.2. Mention any three necessary documents that have to file with the Registrar of companies for its incorporation ?

i) .....
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ii) .....
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iii) .....
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LET US KNOW

STATEMENT IN LIEU OF PROSPECTUS :

The statement in lieu prospectus contains similar particular as are required for a prospectus and should fulfil similar conditions as regards statements. It must be in the form set out in Schedule III. When a private company converts itself into a public company it must either issue a prospectus or file a statement in lieu of prospectus.

A certificate of incorporation is issued by the Registrar of company which certifies that the company is incorporated. A private company can start its business from the date of the certificate of incorporation. Thus, the legal effect of certificate of incorporation are stated as,

1. The company comes into existence having separate legal existence.
2. The company can start its business from the date of the certificate of incorporation.
3. The 'memorandum of association' and 'articles of association' binds upon the company as well as its members and it acquire perpetual succession.
4. The liabilities of the members become limited of company limited by shares.

Conclusiveness of the Certificate of Incorporation :

The certificate of Incorporation is conclusive evidence that all the requirements of the Companies Act, 1956, complied with and it is conclusive that—

a. All the requirements of the Act have been complied with in respect of the registration.

b. The company is duly registered and,

c. That the company came into existence on the date mentioned in the certificate.

Thus, once a private company gets registered, it can begin its business.

8.6 TYPES OF COMPANY

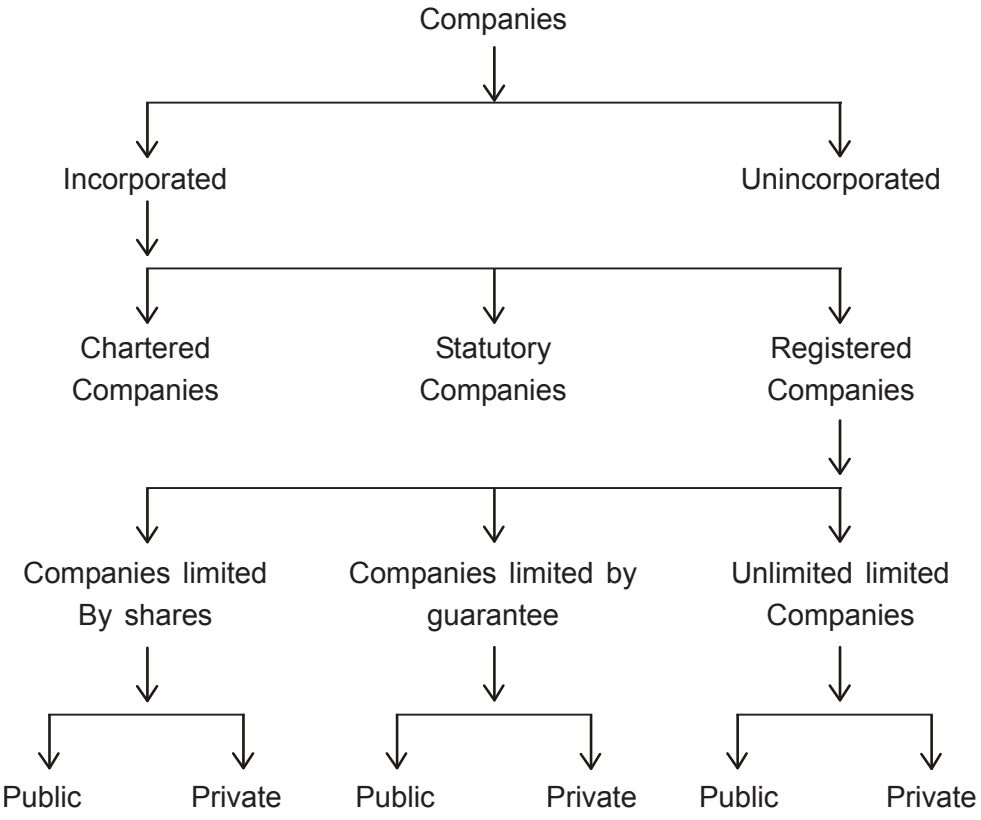
The word 'corporation' is derived from the Latin word 'corpus' which means anybody or any institution enjoying perpetual succession having own separate legal existence. It is divided into two parts :

a. A corporation sole;

b. Corporation aggregate.

A corporation sole means a single person constituted as a corporation in respect of some office or function, e.g., Governor, President etc; and corporation aggregate means a collection of individuals united into body having perpetual succession and an independent, e.g. trading and non-trading corporation.

The Companies Act, 1956, provides for a variety of companies which can be promoted and registered under the Act. The companies can be classified into the following categories, like :



A. Incorporated :

1. *Chartered Companies :* Chartered Companies formed under a special Royal Charter issued by the King or Queen. The Charter defined their powers and areas of operation.
2. *Statutory Companies :* Statutory Companies are formed under special Act like, RBI Act, LIC Act etc.
3. *Registered Companies :* Registered Companies are companies which are formed under the Companies Act, 1956. It may be—
   a. Companies limited by shares : A company that has the liability of its members limited by the memorandum to the amount, if, any unpaid on the shares respectively held by them is termed as a company limited by shares.
   b. Companies limited by guarantee : A company that has the liability of its members limited to such amount as the members may respectively undertake, by the memorandum, to contribute to the assets of the company in the event of its being wound up.
   c. Unlimited liability companies : In this type of company, the members are liable for the company's debts and their liability is unlimited.

A. Private Company : By virtue of section 3 (1) (iii), a private company means a company, which has a minimum paid-up capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and by its articles :

i) Restrict the right to transfer its shares, if any;

ii) Limits the number of its members to fifty not including –
   a. persons who, are in the employment of the company; and
   b. persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continue to be the members after the employment ceased;

iii) Prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company; and

iv) Prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives.

Here it must be borne in mind that invitation is not prohibited but invitation to the public other than the members is prohibited. A private company can issue any number of debentures to its members but, not to the public in general. Similarly, the number of members is limited to fifty and if two or more person holds one or more shares in a company jointly, it is treated as single member.

B. Public Company : By virtue of section 3 (1) (iv), a public company means a company which—

   i) is not a private company,

   ii) has a minimum paid-up capital of five lakh rupees or such higher paid-up capital as may be prescribed;

   iii) is a private company which is a subsidiary of a company which is not a private company.

There should be 7 members to start a public company, which is registered under the Act. In case of public company, invitation to subscribe shares and debentures is not prohibited. It may be listed its shares and debentures to the stock exchange.

Every public company existing on the commencement of the Companies (Amendment) Act, 2000, with a paid-up capital of less than five lakh rupees, was required to, within a period of two years from such commencement; enhance its paid-up capital to five lakh rupees. Where a public company failed to do so, such company was deemed to be a defunct company within the meaning of Section 560.

8.7 MEANING AND KINDS OF COMPANY MEETING

Company has a separate identity from its members. A company being an artificial person can not act on its own. It is however, constituted by the shareholders and express its decisions in the form of resolution in the meeting. Thus, a meeting has been defined as, “coming together of two or more persons face to face so as to be in each others’ presence or company”.

A meeting is a gathering or assembling of a numbers of persons for transacting any lawful business. It should be conducted under prescribed

rules and regulation of the Companies Act, 1956. The shareholders and directors can take their decisions by calling the meeting.

The meeting of a company may be classified, as—

1. Meeting of the members (shareholders) :
   i) Statutory Meeting
   ii) Annual General Meeting
   iii) Extraordinary General Meeting
   iv) Class Meeting
2. Meetings of the debentureholders.
3. Meetings of the creditors.
4. Meetings of the Board of Directors.

1. Meeting of the members (shareholders) :

i) Statutory Meeting, (Section 165) :

According to section 165, of Companies Act, 1956, every company limited by shares or guarantee and having share capital, shall, within a period of not less than one month, but not more than six months from the date which the company is entitled to business, has to hold a general meeting of the members of the company. The meeting shall be called 'statutory meeting'.

The statutory meeting is held only once in the life time of the company. The Board of Directors are required to prepare a report, called 'statutory report'. The statutory report should be sent to each member at least 21 days before the day on which the meeting is to be held. A notice is also sent for the meeting to the members.

There are certain legal provisions relating to the statutory meeting, like—

1. The Board of Director has to prepare the 'Statutory Report' at least 21 days before the day the meeting is to be held.
2. The statutory meeting should be held within a period of not less than one month, but not more than six months from the date on which the company is entitled to business.
3. Statutory Report should be sent to the members of the company containing the particulars like total number of shares allotted and

the total amount received from the same, details of company's preliminary expenditures, particulars of company directors, managers, auditors ete.

4. The Statutory Report has to be certified by two directors. If the company has a managing director, then he has to certify the statutory report.

ii) Annual General Meeting, Section 166 (1) :

As the term denotes, annual general meeting is the meeting under section 166(1) which has to be held annually. It is the meeting of the members through which they get the opportunity to express their views on the management of the company. Through this meeting, the shareholders can exercise control over the affairs of the company. The 'Annual General Meeting' is sometimes called ''Ordinary General Meeting" as it usually deals with the so-called 'Ordinary Business'. The main purpose to hold this meeting are, like;

a. To submit the annual account, balance sheet, director's report and auditor's report.

b. To declare the dividend.

c. Special business— any other business to be transacted will be deemed special business likes :

   i. To increase share capital

   ii. To alter Article of Association

d. To appoint auditors and fix their remuneration.

e. To elect directors are that liable to retire by rotation.

Every company is required to hold this meeting. But, there are certain legal provisions which have to be followed, relating to the annual general meeting as contained in sections 166 to 168. There are :

a. The annual general meeting must be held once in each year in addition to other meeting.

b. The first annual general meeting must be held within 18 months of the incorporation of the company. The Registrar of Companies may extend this time period up to 3 months for special reasons.

c. The members of the company have to get at least 21 days before the meeting is held.

d. The meeting must be held during the business hours and on a day which should not be a public holiday.

e. The meeting must be held either at the registered office or at some place within the city, town or village.

As mentioned earlier, every company is required to hold this meeting according to the provision of the Companies Act. If any company fails to hold the annual general meeting the consequences are as follows :

A) As mentioned above, the annual general meeting provides the opportunity to the members to express views on the management of the company. Any member can apply to the Central Government for the failure of the company to call the meeting. The Central Government may give direction to the company for calling the meeting.

B) The company as well as every officer will become liable if they fail to held the meeting and shall be punishable with fine upto Rs. 50,000, and if the default continues , with a further fine of Rs. 2,500 for every day after the first day of default during which the default continues.

For example, 'ABC Private Ltd' was incorporated in February 2006. The first annual general meeting of the company was held in March 2007 and the next in July 2008.In this case, the company 'ABC Private Ltd' is not guilty of not holding the annual general meeting for the year 2006 or 2007. Because, the first annual general meeting was held within 18 months of incorporation of the company.

iii) Extraordinary General Meeting :

A General meeting other than the statutory meeting and the annual general meeting is called 'Extraordinary General Meeting' (Clause 47 of Table A, Schedule I). Due to some urgent or special business purpose, the extraordinary general meeting is held between two consecutive annual general meetings. Here, 'special business' means, all the business transacted at any meeting except in the annual general meeting. But, every 'Extraordinary General Meeting' has to be informed to the members through a notice accompanied by an 'Explanatory Statement', which explains the objective of the meeting. The 'Extraordinary General Meeting' can be convened by :

the Board of Directors of its own accord.

the directors on requisition.

the requisitionists themselves.

the Tribunal.

1. Extraordinary general meeting convened by Board of Directors :

The Board of Directors under clause 48, table A, can call the extraordinary general meeting on its own whenever they like to call the meeting. However, they have to pass a resolution for convening such a meeting.

2. The directors on requisition :

Under section 169, the extraordinary general meeting becomes necessary on the requisition of the members and the Directors are also become bound to call such a meeting.

3. Extraordinary general meeting convened by requisitionists :

Some times, the Board of Directors fails to call the extraordinary general meeting though the members deposit a valid requisition. If the Board of Directors fails to call the extraordinary general meeting within 21 days from the deposit of valid requisition, a meeting may be called on a day not later than 45 days from the date of the deposit of the requisition, the meeting may be called by;

a. the requisitionists themselves;

b. the company having a share capital, by such of them as represent either a majority in value of the paid-up share capital held by all of them or not less than one tenth paid-up share capital of the company, whichever is less; or

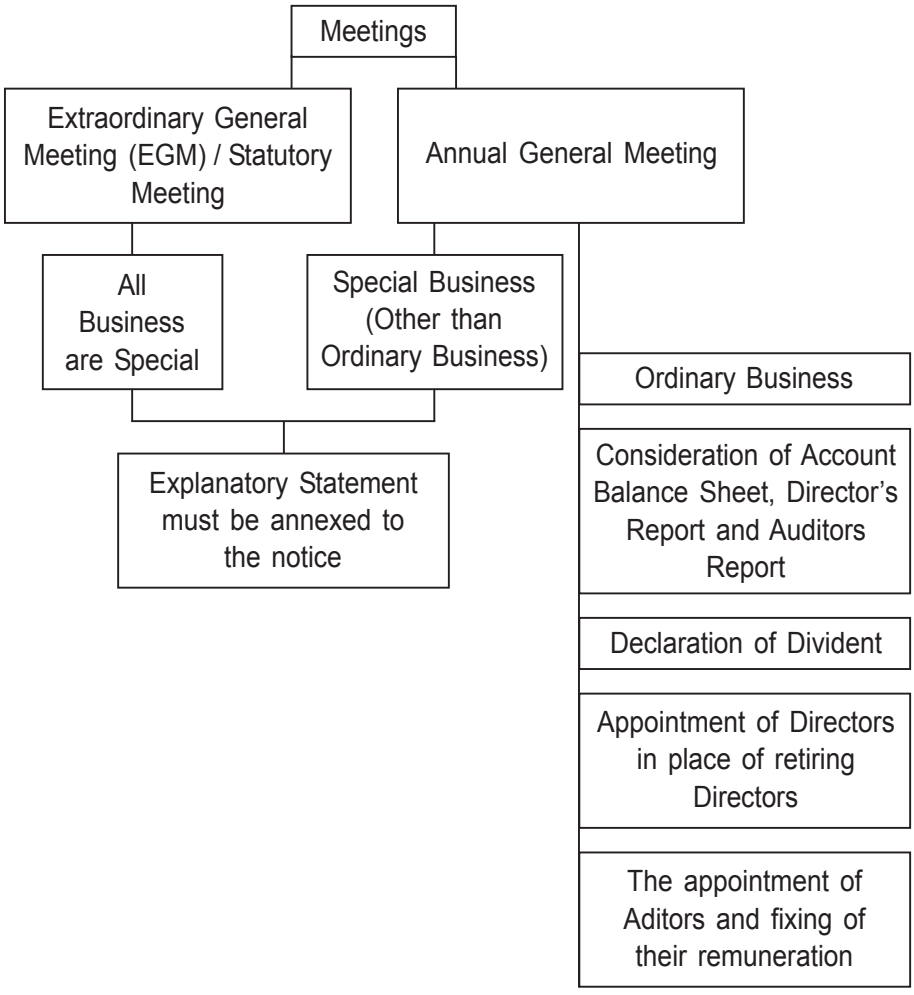
c. a company not having share capital, by such of the requisitionists as represent not less than one tenth of the voting power of the members of the company.

Under section 169(7), the meeting must be held within 3 months of the deposit of valid requisition.

4. Extraordinary general meeting convened by the Tribunal :

The tribunal under section 186 can call a meeting of the company. The tribunal may call the meeting either on its own motion or, on an application of any director, or, on an application of any member of the company entitled to vote at the meeting.

All Business at EGM are special business and Explanatory Statement must be annexed to the Notice :



V) Class Meeting, Sections 106 and 107 :

Class meeting are basically held for taking consent of a particular class of shareholders. Through this meeting, the rights and privileges of the shareholders can be altered, or conversion of one class to another can be done. If the article permits, the right of the different classes of the shareholders can be altered from the class of holder of that share, only when a resolution is passed in a separate meeting.

2. Meetings of the debentureholders:

Meeting of the debentureholders are held according to the debenture trust deed to protect the interest of the debentureholders. Such type of meeting is held at the time of reconstruction, amalgamation, or winding up. The essential rules and regulations of valid meeting are contained in the debenture trust deed, like—

a. Proper convening authority :

The meeting should be called by the proper authority. The proper authority in a company is the Board of Directors. Thus, if the Board of Directors makes default in calling the meeting, then the meeting can be called by the requisitionists or Company Law Board.

b. Notice :

Previous notice should be given to every member about the holding of the meeting.

c. Proxy :

Proxy is nothing but, an agent of the members authorized to give vote. Thus, proxy should be mentioned in the debenture trust deed.

d. Voting by Poll :

Voting by showing hand is a general method in ascertaining the wishes of the members. But, sometimes a poll may be demanded by the chairman or by the members.

e. Quorum :

According to the rule of the Companies Act, a minimum number of members should be present in the meeting. This is called the quorum for the meeting. For 'General Meeting' of a company, the quorum is laid down in the article of association of the company. But for Board Meeting, it is 1/3rd of the total number of the members or two directors, which ever is higher.

f. Chairman of the Meeting :

There should be chairmen in the meeting. But, if no chairman is elected beforehand or the elected chairman can not come within 15 minutes of the fixed time, then any one director or a member can be elected as the chairman.

3. Meetings of the Creditors :

Sometimes it becomes necessary to make certain arrangement with the creditors by the company. Usually, this type of meeting is held for such purposes only.

4. Meetings of the Board of Directors :

As most of the power of the company is exercised by the directors of the company, it become necessary for then to interact frequently among them to review the management of company's affairs. Notice has to sent to every director about the meeting previously. The notice has to clearly mention the time, date and place of the meeting. The meeting of the Board of Directors of the company should be held—

i) at least once in every three months, and

ii) at least four such meetings shall be held in every year.

CHECK YOUR PROGRESS

Q.3. What do you mean by 'Extraordinary General Meeting' ?

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8.8 MEANING OF MINUTE

A minute is nothing but a, written record of the proceedings of a meeting. Many important decisions are taken in the company general meeting and the Board meeting. Many new policies as well as existing policies are discussed in the meetings. It is necessary to record every decision taken in the meetings and a company has to keep a fair record of all the transactions and the resolutions arrived in a meeting in the form of 'minutes'. For this purpose, a book is maintained in every company and all the proceedings of each meeting should be recorded within 30 days.

Advantages of minute :

1. It is an official record of every meeting.
2. As it keeps the record of all the decisions taken in the previous meeting, it becomes an evidence of what new or prior decisions have been adopted or changed.
3. It helps the member who was absent in the previous meeting, in knowing the proceedings of that meeting and also enables him to review and understand the necessity of the meeting.
4. If the minutes are signed by the chairmen, it becomes a prima facie evidence of the proceedings of the meetings and the decisions recorded there are deemed valid.

Minutes to be Evidence :

Minutes are constituted as the official records of all decisions, transactions, resolution made in a meeting. Care is always taken not to include any defamatory and detrimental statements in the minute. The minute books of the general meeting are signed by the chairman and on his death or absence by, any director authorized by the Board. On the other hand, in case of the Board meeting or meeting of the committee of the Board, the Chairman of the said meeting or the Chairman of the next succeeding meeting has to sign it. Thus, each proceeding of the minute of all meetings is recorded. Under section 194, all the records of the minutes of the different meetings of the company may act as evidence. 6.5



CHECK YOUR PROGRESS

Q.4. Mention three advantages of a minute.

a) .....

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b) .....

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c) .....

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8.9 RECORDING AND SIGNING OF MINUTES

Every company is required to keep minutes of all meetings, such as—

a. All General Meetings;

b. Meeting of the Board of Directors;

c. Meeting of the Board of Directors.

But, there are certain legal obligations in maintaining the records in the form of minute :

1. All proceedings of each meeting should be recorded within 30 days from the conclusion of the meeting. [Section 193 (1)]
2. The minutes of each meeting must contains fair and correct records. [Section 193 (2)]
3. All the appointments and decisions made in the meeting must be included in the minutes. [Section 193 (3)]
4. In case of the Board Meeting and Committee of Board Meeting, the minute must record, [Section 193 (4)]
   i) The name of the each director present in the meeting.
   ii) If any resolution is passed in the meeting, the names of the directors who dissent or do not concur with the resolution of the meeting must be recorded.
5. The chairman of the meeting has the right to exclude any matter of the meeting, if he thinks it necessary.
6. The minute books are maintained at the registered office of the company.
7. In case of a general meeting of the company, minute books should be signed by the Chairman and on his death or in his inability to be present in the meeting any director can be sign the minute as permitted by the Board of Directors.
8. The pages of the minute books must be consecutively numbered.
9. If the minute is maintained properly, it shall be presumed that the meeting was duly held.

Every recording of the meeting in the minute should be signed and the last page should be dated and signed properly :

a. In case of the minutes of the Board meeting or meeting of the committee of the Board, thereof, these are to be signed by the chairman of the said meeting or the chairman of the next succeeding meeting.

b. In case of the minutes of a general meeting, minutes are to be signed by the Chairman of the same meeting or on his death or inability, by any director duly authorized by the Board.

8.10 ROLE OF CHAIRMAN

The Chairman is the person who has been elected to conduct the proceeding of the meeting. If the Article of association does not permit to elect the Chairman, than he is elected under Section 175. In this regards, the Section 175 lays down,

i) Unless the article of a company otherwise provides, the member personally present at the meeting shall elect one of them to be the Chairman.

ii) If a poll is demanded on the election of the chairman, it shall be taken forthwith. The Chairman elected on a show of hands shall exercise all the power of the chairman.

iii) If some other person is elected Chairman as a result of the poll, he shall be the Chairman for the rest of the meeting.

The Chairman is responsible for maintaining the proper rules and regulations and the decorum of the meeting. The chairman has to play a vital role in a company, like—

a. The chairman has to see that the meeting is properly convened and followed all the rules and regulations are followed in the meeting.

b. Sometimes the members raise their points in the meeting. The chairman has to interpret the rules regarding their points and the decision that is given by the chairman will be binding on the members.

c. He is responsible to observe whether all statutory rules, standing orders and regulations are followed in conducting the proceeding of the meeting.

d. He is also responsible for to giving opportunity to those who wish to speak and to express their views in the meeting.

e. The chairman has the duty on ruling over the points of order and all other emerging questions.

f. The minutes of the meeting should also be signed by the chairman. He has to check the records of the previous meeting whether they are properly entered, confirmed and duly signed.

g. The Chairman is also plays an important role in taking care that the sense of the meeting is properly ascertained with regard to any question before it. But, he can not adjourn the meeting or dispose it at his own choice.

h. The chairman has the right to cast vote as a member. But, he can cast vote in second time also if the rules expressly allow him to do.

i. He is to judiciously exercise his power of adjournment.

8.11 POSTAL BALLOT

The members of a company may be widely dispersed and it may be impossible for all to attend the meetings of the company. But, the company general meeting are required to be held during working hours. Thus, a listed company can pass resolution through postal ballot, where the members can give their consent easily. Under section 192 A (1), the central Government may also empowers certain companies for passing resolution through postal ballot.

In case of listed companies, notice has to sent to all the members along with draft resolution explaining the reasons of the meeting and requesting them to give their assent within 30 days from the date of posting the notice. But, this notice has to be sent only Under Registered Post Acknowledgement Due or Under Certificate of Posting. In addition to that, an advertisement should be given in a leading English Newspaper and in any one vernacular Newspaper in the locality of the registered office. Thus, if the majority of the members have given their assent for passing the resolution, than it shall be deemed that the resolution has been duly passed at the general meeting.

8.12 RESOLUTION AND ITS DIFFERENT KINDS

Decisions are taken by the company by passing resolution. It is passed and prescribed by the majority of the members present at the meeting. It can be categorized into three types,

a. Ordinary Resolution

b. Special Resolution and

c. Resolution Requiring Special Notice

a. ‘‘Ordinary Resolution’’ means a resolution passed by the members of a company in general meeting by a simple majority of the votes cast in person or by proxy where proxies are allowed.

b. ‘‘Special Resolution’’ means a resolution passed by a majority of not less than 3/4 of the votes cast by those members of a company who, being entitled to do so, vote in person or by proxy where proxies are allowed at a general meeting of the company and, not being less than 21 days’ notice of the meeting specifying the intention to propose the resolution as a special resolution.

c. “Resolution Requiring Special Notice” means under section 190 of the Companies Act, 1956, where by any provision in this Act or in the article, special notice is required of any resolution, notice of the intention to move the resolution shall be given to the company not less than fourteen days before the meeting at which it is moved or deemed to be served and day of the meeting.

Section 192 of the Companies Act states that a copy of each of the following resolutions or agreement must within 30 days after the passing be printed or type written submitted to the Registrar who shall record the same.



LET US KNOW

SPECIMEN OF NOTICE OF ANNUAL GENERAL MEETING

PQR Ltd.
(Regd. Office)

Notice is hereby given that the 10th Annual General Meeting of the Company will be held at its Registered office at..... At 2.00 P.M on .....the day of .....2008 to transact the following business.

ORDINARY BUSINESS

1. To receive and adopt the Balance Sheet as at.....and the Profit and Loss Account for the year ended..... And the Directors’ and the Auditor’s Report thereon.

2. To declare dividend.

3. To appoint director in place of Shri P, who retire by rotation and being eligible offers himself for re-appointment

SPECIAL BUSINESS

4. To consider and, if thought fit, to pass with or without modification, the following resolution as a SPECIAL RESOLUTION :

   Resoled that clause 5 of the Memorandum of Association of the Company be and is hereby substituted by the following clause 5 :

5. "The Authorised Share Capital of the Company is Rs. 90,00,000 (Rupees ninety lakhs) divided into 30,000 (thirty thousand) Preference shares of Rs 100 (Rupees one hundred) each and 6,00,000 (six lakhs) Equity Shares of Rs. 10 (Rupees ten each)."

By order of the Board of Directors
for PQR Ltd.
Sd/-
COMPANY SECRETARY

Dated :

Place :



LET US KNOW

SPECIMEN MINUTES OF
ANNUAL GENERAL MEETING OF MEMBERS
PQR Ltd.

Minutes of the 10th Annual General Meeting of the Company held at its Registered Office on....., the date..... at.....

Present : Mr. ..... Chairman
Mr. ..... Managing Director
Mr. ..... Director
Mr. ..... Director
Mr. ..... Director
Mr. ..... Director, and

.....(Number) members present in person, and

..... (Number) members represented by Proxies)

Also Present : Mr. ..... Company Secretary
Mr ..... General Manager (Finance)
Mr.....Auditor of the Company

1. CHAIRMAN

Pursuant to Article ..... of the Article of Association, the Chairman of the Board of Directors being present took the chair.

2. QUORUM

After satisfying himself that there was adequate quorum, the chairman declared the meeting to be duly constituted and commenced the proceedings.

3. WELCOME

The Chairman welcomed the members for the company‘s Annual General Meeting.

4. REGISTER OF DIRECTORS’ SHAREHOLDINGS

The Chairman informed the members that the Register of the Directors’ Shareholdings maintained under Section 307 of the act was available at the meeting for inspection by any member till the conclusion of the meeting.

5. NOTICE OF THE MEETING

With the consent of the members, the Chairman said that the notice sent to members calling the Annual General Meeting along with the other documents had been taken as read.

6. CHAIRMAN’S SPEECH

The Chairman addressed the members.

7. REAPPOINTMENT OF MR.....

The following motion was moved, by Mr. .....
And seconded by Mr. .....

“That Mr. ..... who retires by rotation and who is eligible for reappointment, be and is hereby appointed a director of the Company.”

This was put to vote and declared by the Chairman to have been carried.

The meeting terminated with a vote of thanks to the Chair,

Dated..... CHAIRMAN



8.13 LET US SUM UP

In this unit, we have discussed the following :

- Promoters are generally the persons who assume the primary responsibility of matters relating to promotion of a company.
- A company is formed under three stages, as promotion of a company, registration and incorporation of a company and commencement of business.
- The word ‘corporation’ is derived from the Latin word ‘corpus’ which means any body or institution enjoying perpetual succession having own separate legal existence.
- A public company can not start its business from the date of the certificate of incorporation. It will have to obtain a further document called as ‘certificate to commencement of business’.
- A meeting can be defined as, “coming together of two or more persons face to face so as to be in each others’ presence or company”.
- The statutory meeting is held only once in the life time of the company.
- Annual general meeting is the meeting under section 166(1) which has to be held annually.
- Due to some urgent or special business purpose, the extraordinary general meeting is held between two consecutive annual general meetings.
- Class meetings are basically held for taking consent of a particular class of shareholders.
- Meetings of the debentureholders are held according to the debenture trust deed to protect the interest of the debentureholders.
- Chairman is the person who has been elected to conduct the proceeding of the meeting.
- Under section 194, all the record of minutes of the different meeting of the company acts as an evidence.



8.14 FURTHER READINGS

1. Arun Kumar Sen and Jitendra Kumar Mitra (1977) *Commercial Law (including Company Law and Industrial Law);* World Press Private Limited.
2. R. P. Maheshwari and S. N. Maheshwari (2014) *Principles of Mercantile Law;* Himalaya Pub. House, New Delhi.
3. N. D. Kapoor (2014) *Elements of Mercantile Law;* Sultan Chand & Sons.
4. K. C. Garg, V. K. Sareen, Mukesh Sharma & R. C. Chawla (2014) *Mercantile Law;* Kalyani Publishers.
5. V. K. Sareen, Mukesh Sharma & K. C. Garg (2015) *Business Law;* Kalyani Publishers.
6. The Consumer Protection Act, 1986 (Bare Act).



8.15 ANSWERS TO CHECK YOUR PROGRESS

Answer to Q. No. 1

1. Any three aspects that have to decide before a company incorporate and commence its business are—
   i) Types of company,
   ii) Application for availability of name of company and
   iii) Preparation of Memorandum and Article of Association.

Answer to Q. No. 2

1. Any three necessary documents that have to file with the Registrar of companies for its incorporation are—
   i) The Memorandum of Association
   ii) The agreement which the company propose to enter with any individual for appointment as company's managing director, or whole-time directors or manager and
   iii) A written consent of such directors to act as director of the company

Answer to Q. No. 3

1. All General meetings other than the statutory meeting and the annual general meeting are called 'Extraordinary General Meeting' (Clause 47 of Table A, Schedule I).

Answer to Q. No. 4

1. Three advantages of Minute are :
   i. It is an official record of every meeting.
   ii. As it keeps record of all decision taken in the prior meeting, it is become an evidence of what new or prior decisions have been adopted or changed.
   iii. It helps the member who was absent in the prior meeting, to review and understand the necessity of the meeting.



8.16 MODEL QUESTIONS

1. Define the company. What are the stages of formation of a company ?
2. Distinguish –
   a) Private Company and Public Company
   b) Corporation aggregate and corporation sole
3. When a public limited company can commence its business ?
4. What are the various documents to be filled with the Registrar for incorporation of a company ?
5. "The 'certificate to commence business' is conclusive evidence in regards to start the businesses". Discuss.
6. Define Meeting. What are the different type of meeting ?
7. Write short notes on
   a) Statutory Meeting
   b) Extraordinary meeting
   c) Minute
   d) Postal Ballot
   e) Role of chairman.

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UNIT - 9 : REGULATORY FRAMEWORK FOR INSURANCE

UNIT STRUCTURE

9.1 Learning Objectives

9.2 Introduction

9.3 Concept and Importance of Insurance

9.4 Evolution and Development of Insurance in India

9.5 Fundamental Principles of Insurance

9.6 Double Insurance and Re-insurance

9.7 Concept and Importance of Life insurance

9.8 Concept of Marine Insurance

9.9 Concept and Features of Fire Insurance

9.10 Let us Sum Up

9.11 Further Reading

9.12 Answers to Check Your Progress

9.13 Model Questions

9.1 LEARNING OBJECTIVES

After going through this unit you will be able to

- Discuss the concept and importance of insurance
- Explain the evolution and stages of development of insurance in India
- Explain the principles of insurance
- Discuss the rights of insurer and policy holder
- Differentiate between double insurance and reinsurance
- Explain the concept and importance of Life, Marine and Fire Insurance.

9.2 INTRODUCTION

In our day to day life we all anticipate and face various kinds of risks. No one can foresee the loss he may suffer in future. He who walks on road,

works in office, fields, shops etc may anticipate variety of risks. Similarly, there can be loss due to floods, earthquakes, disease, fire etc. Every risk may result in loss of one or the other kind. Where ever there is uncertainty to a probable loss of one or of the other kind. If it is small, he may bear it. But if it is large he may not be in a position to bear it at its own. It is possible to take precautions again such events. Hence, it would be wise to adopt a device or plan to provide help to those who suffer a loss. Such a device is 'Insurance' which safeguards the person from various risks which he anticipates.

9.3 CONCEPT AND IMPORTANCE OF INSURANCE

The aim of all kinds of insurance is to provide help to those who happen to suffer a loss. Most of the losses can be identified in terms of money. The risk of loss can not be averted but loss occurred can be distributed among the agreed persons. Insurance is an assurance that if a particular kind of event happens, the insured person will be paid the money. The person who seeks such protection against such a risk is called the 'insured' or 'assured' and who undertakes to protect such person from financial loss or some mishappening is called the 'insurer' or 'assurer or 'underwriter', and the consideration collected by the insurer companies to provide such security is called the 'premium' or 'premia'. The document containing term and conditions of contract is called the 'policy' or 'insurance policy'.

It is the universally accepted phenomenon that what is created will be destroyed. No one can predict or foresee the time of destruction or loss he may suffer in future. Every risk result in loss of one or other kind. The risk cannot be eliminated but loss can be. This desire to protect a person from uncertain loss brings the business of insurance into existence.

The function of insurance is to protect the insured from variety of risks he anticipates by spreading the loss to persons who agreed to co-operate each other at the time of loss by making contributions to the common fund.

Illustration :

In a town, there are 500 car owners. Each car can be valued Rs. 3,00,000. Every year 1 car is lost due to theft. If all the 500 car owners agree to come together and each one contribute Rs. 600 annually, the common fund would be Rs. 3,00,000 a year. This would be sufficient to pay Rs. 3,00,000

to the Contributor whose car is lost due to theft. Thus, the risk of one contributor is distributed amongst the 500 contributors of the town.

Definition of Insurance

The definition of insurance can be classified under two categories :

I. *Functional Definitions* : According to Allen C. Mayerson, " Insurance is a device for the transfer of certain risks of economic loss to an insured, that would otherwise be borne by the insured."

As per Disnadle, " Insurance is an instrument of distributing the loss of few among many."

II. *Contractual definition* : According to E.W. Patterson, "Insuance is a contract by which one party, for a considertion called premium, assumes a particular risk of the other party and promises to pay to him or his nominee a certain or ascertainable sum of amount on a specified contingency."

According to MacLean "Insurance is a method of spreading over a large number of persons a possible financial loss too serious to be conveniently borne by an individual.

There are various Forms of Insurance. Such as—

I) Marine Insurance

II) Fire Insurance

III) Life Insurance and

IV) Miscellaneous Insurance.



CHECK YOUR PROGRESS

Q.1. Define insurance.

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Importance of Insurance

Human beings, his family and properties are always exposed to different kinds of risks. Risk involve the losses. Insurance is a tool which reduces the cost of loss or effect of loss caused by variety of risk. It accumulates funds to meet individual losses. It is not device to prevent unwanted event of happening or cause of loss but protects them against that loss by compensating which is lost. The role and importance of insurance are discussed as follows :

1. *Insurance provides security*
   Insurance provides safety and security against the loss on a particular event. Life insurance provides security against death and old age sufferings. Fire insurance protects against loss due to fire while Marine insurance provides protection and safety against loss of ship and cargo. For personal accident and sickness insurance financial protection is given when the individual is unable to earn. In other insurance too, this security is provided against the loss at a given contingency.

2. *Insurance reduces business risk or losses*
   In Business, commerce and industry, huge properties are employed. Because of slight negligence, the property may be turned in to ashes. A person may not be sure of his life, health and cannot continue the business up to the longer period to support his dependents. With the help of insurance, he can be sure of his earning, because the insurance company will pay a fixed amount at the time of death, damage by fire, theft, accident and other perils.

3. *Insurance provides peace of mind*
   Insurance removes the tensions, fears, anxiety, frustration and weakness of the human mind associated with the future uncertainty. By providing financial support and promise to compensate losses arising out from various risk, it provides peace of mind and stimulates more and better work performance of an individual.

4. *Life insurance encourages saving*
   In some specified life insurance policies, the insured has an he expiry of the term of policy. Life insurance encourages the habit of regular and systematic saving through premium and after a certain period, it would be a part of necessary saving of the insured person.

5. *Insurance accelerates the economic growth of the country*
   To develop the economic growth of the country, insurance provides strong hand and mind, with protection against loss of property and capital to produce more wealth. It provides protection against different kinds of loss caused by risk. It accumulates the capital from the insured and utilizes for the development of country. Thus, the insurance meets all the requirements for the economic growth of a country.

6. *Insurance provides credit facilities*
   The insured person can get loan by pledging insurance policy and the interest will not exceed the cash value of policy charged by insurer. In case of death of insured person, the policy can be utilized for setting of the loan with interest. Business person can take loan on the basis of insurance documents from the bank also.

7. *Insurance helps to reduce inflation*
   Inflation created from over supply of money and on less production entities. Insurance can help to reduce the inflationary pressure in two ways. Firstly, it collects money as an amount of premium which controls over supply of money and secondly, it provides sufficient funds for increase production entities. Thus, it reduces the impact of inflation.

8. *Insurance makes security and welfare of employees*
   The security and welfare of employees is the responsibility of employer. These security and welfare can easily be met by life insurance, accident and sickness benefit and pension which are generally covered by group insurance. The premium for group insurance is normally bear by the employer. Insurance is the simple method for employer to fulfill their responsibility. Due to these benefits, employees will devote their maximum capacities to complete their job.

9. *Other Importances of Insurance*
   a) Insurance helps to promote foreign trade providing protection again trade risk.
   b) Insurance increases business efficiency eliminating the loss of damage, destruction, or disappearance of property of goods.

c) Insurance protects the social wealth providing protection against social evil.

d) Development of insurance business helps to solve the evil of unemployment, generating employment opportunity in the country.

e) The insured gets tax benefit in life insurance.



CHECK YOUR PROGRESS

Q.2. State the importance of insurance.

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9.4 EVOLUTION AND DEVELOPMENT OF INSURANCE IN INDIA

The development of insurance sector in India has been phenomenon. The insurance industry has undergone massive change over the last millennium extending to nearly 200 years. There are numerous private and governmental insurance companies in India that offered a diversified product portfolio and excellent services. As a result, many of the insurance companies in India have managed to make their presence into almost every Indian household by one way or the other

In Indian scenario the roots of Insurance has their origin in the era of Sage Manu (Rishi Manu) and later in Maurya Dynasty in the era of Kautilya (i.e. Chanakya) who has written the rules of Arthshastra (Economics). “Manav Dharma Shastra” (Laws of Manu) of Manu contained rules for “Sea-Form” contracts which were practised for doing international trade. In Kautilya’s Arthshastra one of the chapters has mentioned about the protection of State to the people against any natural calamity, theft or any act of Anti-Social-Elements. In this way India has the origin of Insurance thousands of

years back and later it has evolved in present codified form in the Influence of English Rule which was prevailing all over the world at one point of time.

To understand the Development of Insurance in India we have to look into the development of Insurance Laws in India. Since it's a necessity and compulsion on Business doers to evolve-conceptualize-amend their policies/strategies in accordance with the Laws of the Land to do hassle-free business.

The Indian Insurance Scenario has changed gradually in the following manner :

1938 – This is the year when a comprehensive Act called The Insurance Act, 1938 has been introduced.

1939 – In this year the Insurance Rules were framed for effectuating the Insurance Act.

1956 – This year has witnessed a huge change in the Indian Insurance Sector since the Government of India took over all life insurance companies.

1968 – In 1968 The Insurance Act, 1938 was amended to provide for social control, minimum solvency margin and a Tariff Advisory Committee (TAC) has also been established.

1972 – This year witnessed the Nationalization of General Insurance Companies and for this General Insurance Business (Nationalization) Act, 1972 was passed.

1973 – The General Insurance Corporation of India (GIC) came into existence as a Government Company.

1974 – A year later 107 insurers practising General Insurance business were grouped and merged to form four subsidiaries of GICs namely – National Insurance Co. Ltd., The New India Assurance Co. Ltd., The Oriental Insurance Co. Ltd. and United India Insurance Co. Ltd.

1991 – The Public Liability Insurance Act 1991 and Public Liability Insurance Rules 1991 were introduced as another milestone in the series of Public Welfare Laws in India.1994 – The Malhotra Committee submitted its report in January 1994 (set up by Govt. in 1993 under Chairmanship of Shri R.N. Malhotra, former Governor of RBI, to examine potential reforms that could be

undertaken in the insurance sector and complement them with reforms initiated in the other sectors) submitted its report in January 1994 and recommended establishment of a strong and effective insurance regulatory authority.

1998 – Insurance Ombudsman Redressal of Public Grievances Rules, 1998 were issued to provide Consumers a Forum with minimal formalities to get their grievances resolved.

1999 – This year has the great relevance in the history of Indian Insurance Sector because of establishment of the Insurance Regulatory and Development Authority (IRDA) to regulate, promote and ensure orderly growth of the insurance and reinsurance business in India on the basis of Malhotra Committee Report.

2001 – The year of 2001 brought another transformation in the Insurance Business of India because in addition to the existing Government insurance companies, Private Sector Companies were also licensed by IRDA to conduct general insurance business in India.

2002 – An important amendment was made in General Insurance Business (Nationalization) Amendment Act, 2002 by which the subsidiaries of GIC were restructured as independent companies and GIC was converted into National Re-insurer.

2003 – This year witnessed the introduction of Broker for first time in Indian Insurance Market to boost up the business in more widened manner.

2015 – The Insurance Laws (Amendment) Act, 2015 was passed to increase the Ceiling of FDI from 26% to 49% and in this manner the Insurance Business in India has been widely opened for Foreign Giants of Insurance.

9.5 THE FUNDAMENTAL PRINCIPLES OF INSURANCE

(i) Principle of Utmost Good Faith

A contract of insurance is based on the principle of utmost good faith to be observed by both the parties – the insured and the insurance company – towards each other. If one party conceals any material

information from the other party, which may influence the other party's decision to enter into the contact of insurance; the other party can avoid the contract.

The principle of utmost good faith is equally applicable to both the parties. However, the onus (i.e. burden) of making a full and fair disclosure of all material facts usually rests primarily upon the insured; because the insured is supposed to have an intimate knowledge of the subject-matter of insurance.

The duty of disclosing material facts is not a continuing obligation i .e. the insured is under no obligation to disclose any material fact which comes to his knowledge after the conclusion of the contract of insurance.

(ii) The Principle of Indemnity

Except life insurance, all other contracts of insurance are contacts of indemnity; which means that in the event of the loss caused to the subject matter of insurance, the insured can recovery only the actual amount of loss-subject to a maximum of sum assured.

Suppose A insured his house against fire with an insurance company for Rs. 1, 00,000. The loss caused to the house due to fire is Rs. 80, 000 only. A can recovery only Rs.80, 000 from the insurance company.

(iii) Principle of Insurable Interest

The principle of insurable interest is the foundation of a contract of insurance. In the absence of insurable interest, the contract of insurance is a mere gamble and not enforceable in a court of law.

Insurable interest may be defined as follows :

A person is said to have insurable interest in the subject matter of insurance; when with respect to the subject matter he is so situated that he will benefit from its existence and lose from its destruction.

Insurable interest must exist in life, fire and marine insurances, as per the following rules :

(1) In case of life insurance; insurable interest must exist at the time of making the contract.

(2) In case of fire insurance; insurable interest must exist both at the time of making the contract and also at the time of loss.

(3) In case of marine insurance; insurable interest must exist, at the time of loss.

(iv) Principle of Contribution

The principle of contribution applies in cases of double-insurance. In case of double insurance, each insurer will contribute to the total payment in proportion to the amount assured by each. In case, one insurer has paid the full amount of loss; he can claim proportionate contribution from other insurers.

Suppose, A insures his house against fire with two insurance companies, X and Y, for Rs. 40, 000 and Rs. 80, 000 respectively. If the houses catches fire and the actual loss amount to Rs. 48, 000, then

X will pay Rs. 16,000 to A

And Y will pay Rs. 32, 000 to a

i.e. the loss of Rs. 48,000 is divided between X and Y in the ratio of 40,000: 80,000 or 1:2.

If X pays the whole loss of Rs. 48,000 to A; it can recover Rs. 32,000 from Y. And if Y pays Rs. 48,000 to A; it can recover Rs. 16,000 from X.

The principle of contribution does not apply to life insurance; where each insurer will pay the full amount of policy to the insured; because life insurance is a sort of investment and life insurance contract is not a contract of indemnity.

(v) Principle of Subrogation

According to the principle of subrogation, after the insurance company has compensated for the loss caused to the insured; the insurance company steps into the shoes of the insured i.e. the insurance company acquires all the rights of the insured, in respect of the damaged property.

Suppose A insures his house for Rs. 2,00,000 against fire. The house is fully damaged by fire and the insurance company pays Rs. 2,00,000 to A. Later on, the damaged house is sold for Rs. 25,000. The insurance company is entitled to receive this sum of Rs. 25,000. Suppose further, it is found that someone tried to put the house on fire.

The insurance company can take action against that person also; ecause the insurance company acquires all the rights and remedies available to the insured i.e. Mr. A.

Implications of the principle of subrogation are :

(1) The insurance company gets the rights of the insured, only after compensating for the loss caused to the insured.

(2) This principle does not apply to life insurance.

(vi) Principle of Cause Proxima (i.e. the Proximate Cause)

According to this principle, we find out the proximate cause or the nearest cause of loss to the insured property. If the nearest cause of loss is a factor which is insured against; then only the insurance company is liable to compensate for the loss, otherwise not. This principle is significant in cases when the loss is caused by a series of events.

Suppose X has taken a marine insurance policy against loss or damage to goods caused by sea water. During the voyage rats made a hole in the bottom of the ship, through which sea water seeped into the ship and caused damaged to the goods.

Here, the insurance company is liable to compensate for loss caused to goods; because the proximate cause of loss is sea-water against which insurance is affected. Making of a hole in the bottom of the ship by rats is only the remote cause of loss.

(vii) Principle of Mitigation of Loss :

(Mitigation means making something less harmful). According to the principle of mitigation of loss, it is the duty of the insured to take all possible steps to minimize the loss caused to the property covered by the insurance policy. He should behave as a prudent person and must not become careless after taking the insurance policy.

Suppose a house is insured against fire and a fire breaks out. The owner must immediately inform the Fire Brigade department and do each and every thing to extinguish fire; as if the house were not insured. That is, he must make all efforts to minimize the loss caused by fire.



CHECK YOUR PROGRESS

Q.3. State the Principle of Utmost Good Faith.

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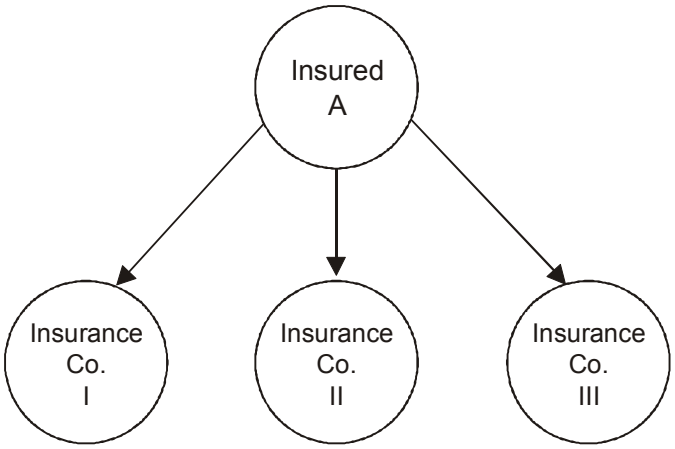
Q.4. State the Principle of Indemnity.

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9.6 DOUBLE INSURANCE AND RE-INSURANCE

It is quite possible for a person to take more than one insurance policy to cover the same risk. This is known as double insurance



In the case depicted above, Mr. A, the insured has taken three insurance policies for the same subject matter of risk, with three insurance companies—I, II & III.

The implications of double insurance are :

(a) In Case of Life Insurance :

In case of life insurance, the insured or his dependents can claim the full amount of policy from each insurance company. This is so because

life insurance is a sort of investment; and a person can take any number of insurance policies on his life and claim full amount under each policy.

(b) In Case of Other Types of Insurances :

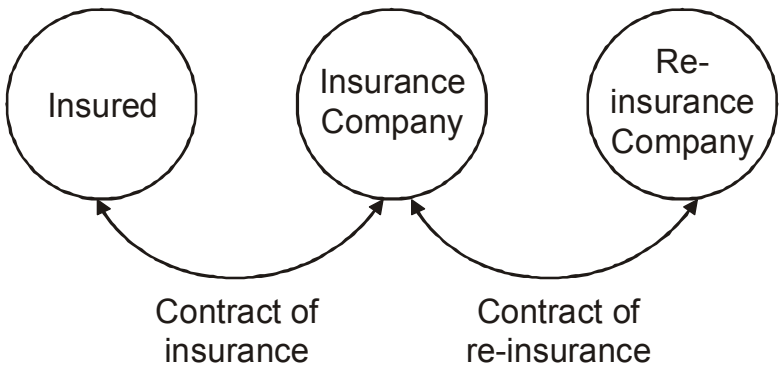
In case of fire or marine insurance, the insured cannot recover more than the amount of actual loss from al insurance companies, taken together; because he is not allowed to make any profit out of the transaction of insurance.

Suppose Mr. A insures his house against fire from three insurance companies-I, II & III for Rs.50, 000, 1, 00,000 and 1,50,000 respectively. His house is destroyed by fire entailing a loss of Rs.60,000. He can claim in all Rs.60,000 the actual amount of loss in the ratio of 1:2:3 i.e. Rs. 10,000, Rs.20,000 and Rs.30,000 from insurance companies I, II and III respectively.

If he claims the full amount of loss i.e. Rs.60, 000 from Insurance Co. II then insurance company II can claim proportionate contribution from Insurance Co. I and III i.e. Rs. 10,000 from Co. I and Rs. 30,000 from Co. III.

Re-insurance

When an insurance company finds that the risk it has undertaken is too heavy for it; it may get itself insured with some other insurance company. This is called re-insurance.



In this case, there are two contracts of insurance :

(i) One between the insured and the insurance company called the contact of insurance.

(ii) The other between the insurance company and the re-insurance company called the contact of re-insurance.

The implications of re-insurance are :

(1) The insured has no relationship with the re-insurance company. He can claim loss only from the insurance company, with whom he has entered into a contract of insurance.

(2) The insurance company can claim loss (paid by it to the insured) from the re-insurance company.

Differences between Double Insurance and Reinsurance

The concept of double insurance differs from the concept of reinsurance in the following respects : (a) MEANING : The reinsurance business is entered into by the original insurer with the other insurers. But in double insurance, the insured gets the same subject matter insured with more than one insurer or under more than one policy with the same insurer. (b) FILLING CLAIM : In reinsurance, the insured cannot claim any part of the loss from the reinsurer. But in the double insurance, the insured can claim the actual loss from each of the insurers up to the amount insured with them. (C) CONTRIBUTION : In reinsurance, the reinsured will claim a part of the loss proportionate to the risk reinsured by the him with the reinsurers. But in double insurance, each insurer is liable to contribute on pro-rata basis towards the loss suffered by the insured.

CHECK YOUR PROGRESS

Q.5. What is reinsurance ?

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Q.6. State two points of different between reinsurance and double insurance.

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9.7 CONCEPT AND IMPORTANCE OF LIFE INSURANCE

A life insurance policy is a contract with an insurance company. In exchange for premium payments, the insurance company provides a lump-sum payment, known as a death benefit, to beneficiaries upon the insured's death.

There is currently no statutory definition of life insurance. The Supreme Court of India held that although there is no statutory definition of Life insurance but it has been defined as a contract of Insurance whereby he insured agrees to pay certain sums, called premiums, at specified times, and in consideration thereof the insurer agrees to pay certain sums of money on certain conditions and in specified way, upon happening of a particular event contingent upon the duration of human life.

In Dalby v. India and London life Assurance Co., the definition of life insurance is well explained as, "a contract to pay a certain sum of money on the death of a person in considering of the due payment of a certain annuity for his life calculated according to the probable duration of life."

In Joseph v. Law Integrity Insurance Co., it was observed by Bunyon J., that, "A contract of life insurance may further be defined to be that in which one party agrees to pay a given sum of money upon the happening of a particular event contingent upon the duration of human life in consideration of immediated payment of a smaller sum or other equivalent periodical payment by the other."

Nature and Scope of Life Insurance :

It is impossible for a human being to foretell or prevent many serious hazards such as fire, disability and premature death etc. It is the function of insurance in its numerous forms to enable individuals to safeguard themselves against such misfortunes by spreading the loss to persons who agreed to co-operate each other at the time of loss by making contributions to the common fund.

Life insurance policy is required to protect against losses in death. Life insurance is a contract whereby for a stipulated compensation, called the premium, one party (the insurer) agrees to pay the other (the insured), or his beneficiary, a fixed sum upon the happening of death or some other specified event.

Although the basic nature of life insurance is to provide risk coverage, when the contract period extends over a long time, premium payments serves two- fold purposes-the immediate or short-range and the remote or long-range. The immediate purpose is served by paying a definite sum or amount at damage or death of the insured.

So, question may arise that, if the time of the death is non-speculative, isn't the nature of life insurance amounts to gambling ? The justified answer can be-nothing is more uncertain than life and life insurance policy offers the sure method of changing the uncertainty into certainty. So, we can say that insurance is just opposite of gambling. In the gambling, a person exposes himself to the risk, the risk of losing whereas in the insurance, the insured is always opposed to risk.

The second query that may come is whether the nature of life insurance is a charity or not. The answer is no, as the charity is given without consideration whereas in life insurance, consideration is given in the form of a contribution called the 'premium'.

9.8 CONCEPT OF MARINE INSURANCE

The basic principle of a contract of marine insurance is that the indemnity recoverable from the insurer is the pecuniary loss suffered by the insured under the contract in a manner and to the interest thereby agreed.

Section 3 of the Marine Insurance Act, 1963 gives a very comprehensive definition of "marine insurance" as : "A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure."

Types of Marine insurance Policies

There are various types of marine insurance policies which are offered to the clients by insurance companies so as to provide the clients with flexibility while choosing a marine insurance policy. The availability of a wide variety of marine insurance policies gives a client a wide arena to choose from, thus enabling him to get the best deal for his ship and cargo. The different types of marine insurance policies are detailed below :

Voyage and Time Policy :

(i) A voyage policy is that kind of marine insurance policy which is valid for a particular voyage irrespective of the time involved in it. In this case the risk attaches only when the ship starts on the voyage and terminates at the port of destination. It is mandatory to describe accurately in the voyage policy about the voyage risk insured, i.e., the limits of risk. It is generally done by specifying the port where the voyage is to commence (terminus quo) and the port where the voyage is concluded (terminus ad quem).

When the contract is to insure the subject matter for a definite period of time, the policy is called a time policy. A contract for both voyage and time may be included in the same policy. A time policy which is made for any time exceeding twelve months is invalid.

(ii) Mixed Policy :

A marine insurance policy which offers a client the benefit of both time and voyage policy is recognised as a mixed policy.

(iii) Valued Policy :

In this type of policy, the value of the cargo and consignment is ascertained and is mentioned in the Policy document beforehand thus making clear about the value of the reimbursements in case of any loss to the cargo and consignment. The value is to be determined according to the rules provided in Section 18 of The Marine Insurance Act, 1963.

(iv) Un-Valued Policy :

In this type of marine insurance policy, the value of the cargo and consignment is not put down in the policy beforehand. Therefore, reimbursement is done only after the loss to the cargo and consignment is inspected and valued. In mordern practice, these policies are rarely in existence.

(v) Port Risk Policy :

This kind of marine insurance policy is taken out in order to ensure the safety of the ship while it is stationed in a port.

(vi) Wagering Policy :

A wagering policy is one where there are no fixed terms of reimbursement mentioned. If the insurance company finds the damage worth the claim then the reimbursement are provided, else there is no compensation offered.

(vii) Floating Policy :

A marine insurance Policy where only the amount of claim is pecified and all other details are omitted till the time the ship embarks on its journey, is known as floating policy.



CHECK YOUR PROGRESS

Q.7. Define marine insurance.

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9.9 CONCEPT AND FEATURES OF FIRE INSURANCE

Fire insurance means insurance against any loss caused by fire. Section 2(6A) of the Insurance Act defines fire insurance as follows : "Fire insurance business means the business of effecting, otherwise than incidentally to some other class of business, contracts of insurance against loss by or incidental to fire or other occurrence customarily included among the risks insured against in fire insurance policies."

What is 'Fire' ?

The term fire in a Fire Insurance Policy is interpreted in the literal and popular sense. There is fire when something burns. In English cases it has been held that there is no fire unless there is ignition. *Stanley v. Western Insurance Co*. Fire produces heat and light but either o them alone is not fire. Lighting is not fire. But if lighting ignites something, the damage may be covered by a fire-policy. The same is the case with electricity.

Characteristics of Fire Insurance

- Fire insurance is a *contract of indemnity*. The insurer is liable only to the extent of the actual loss suffered. If there is no loss there is no liability even if there is a fire.
- Fire insurance is a contract of good faith. The policy-holder and the insurer must disclose all the material facts known to them.
- Fire insurance policy is usually made for one year only. The policy can be renewed according to the terms of the policy.
- The contract of insurance is embodied in a policy called the fire policy. Such policies usually cover specific properties for a specified period.
- A fire policy is valid only if the policy-holder has an insurable interest in the property covered. Such interest must exist at the time when the loss occurs. In English cases it has been held that the following persons have insurable interest for the purposes of fire insurance-owner; tenants, bailees, including carriers; mortgages and charge-holders.
- In case of several policies for the same property, each insurer is entitled to contribution from the others. After a loss occurs and payment is made, the insurer is subrogated to the rights and interests of the policy-holder. An insurer can reinsure a part of the risk.
- Fire policies cover losses caused proximately by fire. The term loss by fire is interpreted liberally. Example: A women hid her jewellery under the coal in her fireplace. Later on she forgot about the jewellery and lit the fire. The jewellery was damaged. Held, she could recover under the fire policy.
- Nothing can be recovered under a fire policy if the fire is caused by a *deliberate act* of policy-holder. In such cases the policy-holder is liable to criminal prosecution.
- Fire policies generally contain a condition that the insurer will not be liable if the fire is caused by riot, civil disturbances, war and explosions. In the absence of any specific expectation the insurer is liable for all losses caused by fire, whatever may be the causes of the fire.

- Assignment : According to English law a policy of fire insurance can be assigned only with the consent of the insurer. In India such consent is not necessary and the policy can be assigned as a chose-in-action under the Transfer of Property Act. The insurer is bound when notice is given to him. But the assignee cannot recover damages unless he has an insurable interest in the property at the time when the loss occurs. A stranger cannot sue on a fire policy.
- **Payment of Claims :** Fire policies generally contain a clause providing that upon the occurrence of fire the insurer shall be immediately notified so that the insurer can take steps to salvage the remainder of the property and can also determine the extent of the loss. Insurance companies keep experts on their staff of value the loss. If in a policy there is an international over valuation of the property by the policy-holder, the policy may be avoided on the ground of fraud.



CHECK YOUR PROGRESS

Q.8. State two characteristics of fire insurance.

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9.10 LET US SUM UP

In this unit we have discussed the following aspects-

- The aim of all kinds of insurance is to provide help to those who happen to suffer a loss.
- In a contract of insurance, there are mainly two parties- 'insured' – who seeks the protection against a risk and 'insurer' - who undertakes to protect such person from financial loss on some mishappening.

- The consideration collected by the insurer to provide security is called the 'premium'. The document containing terms and conditions of the contract is called the 'insurance policy'.
- Insurance is important as it provides security, reduces business risk or losses, it accelerates the economic growth of the country etc.
- Insurance is based on certain principles like, Principle of Utmost Good Faith, The Principle of Indemnity, Principle of Insurable Interest, Principle of Contribution, Principle of Subrogation, Principle of Cause Proxima, Principle of Mitigation of Loss.
- The differences between reinsurance and double insurance.
- The importance of life, marine and fire insurance.



9.11 FURTHER READINGS

1. Arun Kumar Sen and Jitendra Kumar Mitra (1977) *Commercial Law (including Company Law and Industrial Law);* World Press Private Limited.
2. R. P. Maheshwari and S. N. Maheshwari (2014) *Principles of Mercantile Law;* Himalaya Pub. House, New Delhi.
3. N. D. Kapoor (2014) *Elements of Mercantile Law;* Sultan Chand & Sons.
4. K. C. Garg, V. K. Sareen, Mukesh Sharma & R. C. Chawla (2014) *Mercantile Law;* Kalyani Publishers.
5. V. K. Sareen, Mukesh Sharma & K. C. Garg (2015) *Business Law;* Kalyani Publishers.
6. The Consumer Protection Act, 1986 (Bare Act).



9.12 ANSWERS TO CHECK YOUR PROGRESS

Answer to Q. No. 1

Insurance is to protect the insured from variety of risks he anticipates by spreading the loss to persons who agreed to co-operate each other at the time of loss by making contributions to the common fund.

Answer to Q. No. 2

a) Insurance provides security

Insurance provides safety and security against the loss on a particular event. Life insurance provides security against death and old age sufferings. Fire insurance protects against loss due to fire while Marine insurance provides protection and safety against loss of ship and cargo.

b) Insurance reduces business risk or losses

In Business, commerce and industry, huge properties are employed. Because of slight negligence, the property may be turned in to ashes. A person may not be sure of his life, health and cannot continue the business up to the longer period to support his dependents. By the help of insurance, he can be sure of his earning, because the insurance company will pay a fixed amount at the time of death, damage by fire, theft, accident and other perils.

Answer to Q. No. 3

A contract of insurance is based on the principle of utmost good faith to be observed by both the parties – the insured and the insurance company – towards each other. If one party conceals any material information from the other party, which may influence the other party's decision to enter into the contact of insurance; the other party can avoid the contract.

The principle of utmost good faith is equally applicable to both the parties. However, the onus (i.e. burden) of making a full and fair disclosure of all material facts usually rests primarily upon the insured; because the insured is supposed to have an intimate knowledge of the subject-matter of insurance.

Answer to Q. No. 4

Except life insurance, all other contracts of insurance are contacts of indemnity; which means that in the event of the loss caused to the subject matter of insurance, the insured can recover only the actual amount of loss-subject to a maximum of sum assured.

Answer to Q. No. 5

When an insurance company finds that the risk it has undertaken is too heavy for it; it may get itself insured with some other insurance company. This is called re-insurance.

Answer to Q. No. 6

The reinsurance business is entered into by the original insurer with the other insurers. In double insurance, the insured gets the same subject matter insured with more than one insurer or under more than one policy with the same insurer.

In reinsurance, the insured cannot claim any part of the loss from the reinsurer. In double insurance, the insured can claims the actual loss from each of the insurers up to the amount insured with them.

Ans. to Q. No. 7

According to Section 3 of the Marine Insurance Act, 1963 Marine insurance is "A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure."

Answer to Q. No. 8

(a) Fire insurance is a *contract of indemnity*. The insurer is liable only to the extent of the actual loss suffered. If there is no loss there is no liability even if there is a fire.

(b) Fire insurance is a contract of good faith. The policy-holder and the insurer must disclose all the material facts known to them.



9.13 MODEL QUESTIONS

1. Define insurance.
2. Discuss the importance of insurance.
3. Discuss the principles of insurance.
4. Discuss the importance of life insurance.
5. Differentiate between double insurance and reinsurance.
6. Discuss the characteristics of fire insurance.

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UNIT - 10 : FOOD SAFETY AND STANDARDS (PACKAGING AND LABELLING) REGULATIONS, 2011

UNIT STRUCTURE

10.1 Learning Objectives

10.2 Introduction

10.3 Short title and commencement

10.4 Definitions under the Act

10.5 Product specific requirements

10.6 Labelling

- 10.6.1 General Requirements of labelling
- 10.6.2 Labelling of Pre-packaged Foods

10.7 Manner of declaration

- 10.7.1 General Conditions
- 10.7.2 Principal display panel

10.8 Specific Requirements / Restrictions on manner of labeling

- 10.8.1 Labelling of infant milk substitute and infant food
- 10.8.2 Labelling of edible oils and fats
- 10.8.3 Labelling of permitted food colours

10.9 Specific restrictions on Product labels

10.10 Exemptions from labelling requirements

10.11 Let us Sum Up

10.12 Further Reading

10.13 Answers to Check Your Progress

10.14 Model Questions

10.1 LEARNING OBJECTIVES

After going through this unit you will be able to :

- discuss the various terms used in the Act,
- discuss about rules with regards to packaging,

- explain the various requirements in the labels of the packages,
- describe the different ways of labeling different categories of food products,
- explain the different restrictions on product labels.

10.2 INTRODUCTION

The link between food packaging and consumer protection is of high significance. A package is a vehicle of safety and achieves the objective of delivering safe, wholesome, nutritious food to the consumer. To safeguard the interests of the consumer and the society at large, Packaging Laws and Regulations have been introduced by the Government. The Indian Regulatory System falls under the category of compulsory legislations formulated by the various ministries and voluntary standards framed by various organizations to serve the country.

10.3 SHORT TITLE AND COMMENCEMENT

These regulations may be called the Food Safety and Standards (Packaging and labelling) Regulations, 2011. These regulations shall come into force on or after 5th August, 2011

10.4 DEFINITIONS UNDER THE ACT

In these regulations unless the context otherwise requires :

1. **"Best before"** means the date which signifies the end of the period under any stated storage conditions during which the food shall remain fully marketable and shall retain any specific qualities for which tacit or express claims have been made and beyond that date, the food may still be perfectly safe to consume, though its quality may have diminished. However the food shall not be sold if at any stage the product becomes unsafe.
2. "**Date of manufacture**" means the date on which the food becomes the product as described;

3. "**Date of packaging**" means the date on which the food is placed in the immediate container in which it will be ultimately sold;

4. **"Infant"** means a child not more than twelve months of age;

5. **"Lot number"** or "**code number**" or **"batch number"** means the number either in numericals or alphabets or in combination thereof, representing the lot number or code number or batch number, being preceded by the words "Lot No" or "Lot" or "code number" or "Code" or Batch No" or "Batch" or any distinguishing prefix by which the food can be traced in manufacture and identified in distribution.

6. **"Multipiece package"** means a package containing two or more individually packaged or labelled pieces of the same commodity of identical quantity, intended for retail either in individual pieces or packages as a whole.

7. **"Non- Vegetarian Food"** means an article of food which contains whole or part of any animal including birds, fresh water or marine animals or eggs or products of any animal origin, but excluding milk or milk products, as an ingredient;

8. **"Prepackaged" or "Pre-packed food"**, means food, which is placed in a package of any nature, in such a manner that the contents cannot be changed without tampering it and which is ready for sale to the consumer.

   Note : The expression "package" wherever it occurs in these Regulations, shall be construed as package containing pre-packed food articles.

9. **"Principal Display Panel"** means that part of the container/package which is intended or likely to be displayed or presented or shown or examined by the customer under normal and customary conditions of display, sale or purchase of the commodity contained therein.

10. **"Wholesale package**" means a package containing —

   (a) a number of retail packages, where such first mentioned package is intended for sale, distribution or delivery to an intermediary and is not intended for sale direct to a single consumer; or

   (b) a commodity of food sold to an intermediary in bulk to enable such intermediary to sell, distribute or deliver such commodity of food to the consumer in smaller quantities.

10.5 PRODUCT SPECIFIC REQUIREMENTS

1. Packaging requirements for Milk and Milk Products

(a) Bottling or filling of containers with heat-treated milk and milk product shall be carried out mechanically and the sealing of the containers shall be carried out automatically.

(b) Wrapping or packaging may not be re-used for dairy products, except where the containers are of a type which may be re-used after thorough cleaning and disinfecting.

(c) Sealing shall be carried out in the establishment in which the last heat-treatment of drinking milk or liquid milk-base products has been carried out, immediately after filling, by means of a sealing device which ensures that the milk is protected from any adverse effects of external origin on its characteristic. The sealing device shall be so designed that once the container has been opened, the evidence of opening remains clear and easy to check.

(d) Immediately after packaging, the dairy products shall be placed in the rooms provided for storage.

2. Packaging requirements for Fruits and Vegetables Products

(i) Every container in which any fruit product is packed shall be so sealed that it cannot be opened without destroying the licensing number and the special identification mark of the manufacture to be displayed on the top or neck of the bottle.

(ii) For Canned fruits, juices and vegetables, sanitary top cans made up of suitable kind of tin plates shall be used.

(*iii*) For Bottled fruits, juices and vegetables, only bottles/ jars capable of giving hermetic seal shall be used.

(iv) Juices, squashes, crush, cordials, syrups, barley waters and other beverages shall be packed in clean bottles securely sealed. These products when frozen and sold in the form of ice shall be packed in suitable cartons. Juices and Pulps may be packed in wooden barrels when sulphited.

(*v*) For packing Preserves, Jams, Jellies, and Marmalades, new cans, clean jars, new canisters, bottles, chinaware jars, aluminium containers may be used and it shall be securely sealed.

(*vi*) For Pickles, clean bottles, jars, wooden casks, tin containers covered from inside with polythene lining of 250 gauge or suitable lacquered cans shall be used.

(vii) For Tomato Ketchups and Sauces, clean bottles shall be used. If acidity does not exceed 0.5% as acetic acid, open top sanitary cans may also be used.

(viii) Candied fruits and peels and dried fruits and vegetables can be packed in paper bags, cardboard or wooden boxes, new tins, bottles, jars, aluminium and other suitable approved containers.

(ix) Fruits and Vegetable products can also be packed in aseptic and flexible packaging material having good grade quality conforming to the standards laid down by BIS.

3. Packaging requirements for Canned Meat Products

(i) New sanitary top cans made from suitable kind of tin plate shall be used. The cans shall be lacquered internally; they shall be sealed hermetically after filling. The lacquer used shall be sulphur resistant and shall not be soluble in fat or brine.

(ii) Cans used for filling pork luncheon meat shall be coated internally with edible gelatin, lard or lined with vegetable parchment paper before being filled.

(iii) Meat products packed in hermetically sealed containers shall be processed to withstand spoilage under commercial conditions of storage and transport.

4. Packaging requirements for Drinking Water (Both Packaged and Mineral Water)

It shall be packed in clean, hygienic, colourless, transparent and tamperproof bottles/containers made of polyethylene (PE) (conforming to IS : 10146 or polyvinyl chloride (PVC) conforming to IS : 10151 or polyalkylene terephthalate (PET and PBT) conforming to IS : 12252 or polypropylene conforming to IS : 10910 or foodgrade polycarbonate or sterile glass bottles suitable for preventing possible adulteration or contamination of the water.



CHECK YOUR PROGRESS

Q.1. Define Principal Display Panel.

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Q.2. Mention the packaging requirements for Drinking Water.

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10.6 LABELLING

10.6.1 General Requirements of labelling

1. Every prepackaged food shall carry a label containing information as required here under unless otherwise provided, namely,—
2. The particulars of declaration required under these Regulations to be specified on the label shall be in English or Hindi in Devnagri script: Provided that nothing herein contained shall prevent the use of any other language in addition to the language required under this regulation.
3. Pre-packaged food shall not be described or presented on any label or in any labelling manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character in any respect;
4. Label in pre-packaged foods shall be applied in such a manner that they will not become separated from the container;
5. Contents on the label shall be clear, prominent, indelible and readily legible by the consumer under normal conditions of purchase and use;
6. Where the container is covered by a wrapper, the wrapper shall carry the necessary information or the label on the container shall

be readily legible through the outer wrapper and not obscured by it;

10.6.2 Labelling of Pre-packaged Foods

In addition to the General Labelling requirements, every package of food shall carry the following information on the label, namely,—

1. **The Name of Food :** The name of the food shall include trade name or description of food contained in the package.
2. **List of Ingredients :** Except for single ingredient foods, a list of ingredients shall be declared on the label in the following manner :
   - *(a)* The list of ingredients shall contain an appropriate title, such as the term “Ingredients”;
   - *(b)* The name of Ingredients used in the product shall be listed in descending order of their composition by weight or volume, as the case may be, at the time of its manufacture;
   - *(c)* A specific name shall be used for ingredients in the list of Ingredients;
   - *(d)* Where an ingredient itself is the product of two or more ingredients, such a compound ingredients shall be declared in the list of ingredients, and shall be accompanied by a list, in brackets, of its ingredients in descending order of weight or volume, as the case may be :

     Provided that where a compound ingredient, constitutes less than five percent of the food, the list of ingredients of the compound ingredient, other than food additive, need not to be declared;
   - *(e)* Added water shall be declared in the list of ingredients except in cases where water forms part of an ingredient, such as, brine, syrup or broth, used in the compound food and so declared in the list of ingredients :

     Provided that water or other volatile ingredients evaporated in the course of manufacture need not be declared; Provided further that in the case of dehydrated or condensed food,

which are intended to be reconstituted by addition of water, the ingredients in such reconstituted food shall be declared in descending order of weight or volume as the case may be, and shall contain a statement such as "Ingredients of the product when prepared in accordance with the directions on the label";

(f) Every package of food sold as a mixture or combination shall disclose the percentage of the ingredient used at the time of the manufacture of the food (including compound ingredients or categories of ingredients), if such ingredient–

(i) is emphasised as present on the label through words or pictures or graphics; or

(ii) is not within the name of the food but, is essential to characterise the food and is expected to be present in the food by consumers, and if the omission of the quantitative ingredient declaration will mislead or deceive the consumer.

Provided that where the ingredient has been used as flavouring agent, the disclosure of such ingredient is not required:

Provided further that where the drained net weight is indicated on the label as required or in case of such food products where specific provisions are stipulated under these Regulations or where a pictorial representation of a serving suggestion is made for consumer information and use, the disclosure of such ingredient is not required.

Provided further that in case of any bottle containing liquid milk or liquid beverage having milk as an ingredient, soft drink, carbonated water or ready-to-serve fruit beverages, the declarations with regard to addition of fruit pulp and fruit juice shall invariably appear on the body of the bottle.

3. Nutritional information – Nutritional Information or nutritional facts per 100 gm or 100ml or per serving of the product shall be given on the label containing the following :

(i) energy value in kcal;

(ii) the amounts of protein, carbohydrate (specify quantity of sugar) and fat in gram (g) or ml;

(iii) the amount of any other nutrient for which a nutrition or health claim is made :

Provided that where a claim is made regarding the amount or type of fatty acids or the amount of cholesterol, the amount of saturated fatty acids, monounsaturated fatty acids and polyunsaturated fatty acids in gram (g) and cholesterol in milligram (mg) shall be declared, and the amount of trans fatty acid in gram (g) shall be declared in addition to the other requirement stipulated above;

(*iv*) Wherever, numerical information on vitamins and minerals is declared, it shall be expressed in metric units;

(*v*) Where the nutrition declaration is made per serving, the amount in gram (g) or milliliter (ml) shall be included for reference beside the serving measure;

Provided that the food claimed to be enriched with nutrients, such as, minerals, proteins, vitamins, metals or their compounds, amino acids or enzymes shall give the quantities of such added nutrients on the label. Provided that —

(*i*) the nutritional information may not be necessary, in case of foods such as raw agricultural commodities, like, wheat, rice, cereals, spices, spice mixes, herbs, condiments, table salt, sugar, jaggery, or non –nutritive products, like, soluble tea, coffee, soluble coffee, coffee-chicory mixture, packaged drinking water, packaged mineral water, alcoholic beverages or fruit and vegetables, processed and pre- packaged assorted vegetables, fruits, vegetables and products that comprise of single ingredient, pickles, papad, or foods served for immediate consumption such as served in hospitals, hotels or by food services vendors or *halwais,* or food shipped in bulk which is not for sale in that form to consumers.

(*ii*) The compliance to quantity of declared nutrients on the label shall be according to the established practices.

Explanation — For the purpose of this provision, at the time of analysis, due consideration, based on shelf-life, storage, and inherent nature of the food shall be kept in view in case of quantity declared nutrients;

(iii) The food, in which hydrogenated vegetable fats or bakery shortening is used shall declare on the label that 'hydrogenated vegetable fats or bakery shortening used-contains trans fats;

Provided further that, a health claim of 'trans fat free' may be made in cases where the trans fat is less than 0.2 gm per serving of food and the claim 'saturated fat free' may be made in cases where the saturated fat does not exceed 0.1 gm per 100 gm or 100 ml of food.

4. Declaration regarding Veg or Non veg –

(i) Every package of "Non Vegetarian" food shall bear a declaration to this effect made by a symbol and colour code as stipulated below to indicate that the product is Non-Vegetarian Food. The symbol shall consist of a brown colour filled circle having a diameter not less than the minimum size specified in the Table mentioned in the regulation.

(ii) Where any article of food contains egg only as Non-Vegetarian ingredient, the manufacturer, or packer or seller may give declaration to this effect in addition to the said symbol.

(iii) Every package of Vegetarian Food shall bear a declaration to this effect by a symbol and colour code as stipulated below for this purpose to indicate that the product is Vegetarian Food. The symbol shall consist of a green colour filled circle, having a diameter not less than the minimum size specified in the Table below, inside the square with green outline having size double the diameter of the circle.

(iv) Size of the logo

Sl. No.	Area of principal display panel	Minimum size of diameters in mm
1	Up to 100 cms. Square.	3
2	Above 100 cms. Square up to 500 cms square.	4
3	Above 500 cms square up to 2500 cms square.	6
4	Above 2500 cms. Square.	8

The symbol shall be prominently displayed

(i) on the package having contrast background on principal display panel;

(ii) just close in proximity to the name or brand name of the product;

(iii) on the labels, containers, pamphlets, leaflets, advertisements in any media;

Provided also that the provisions of regulation regarding veg. or non-veg. item shall not apply in respect of mineral water or packaged drinking water or carbonated water or alcoholic drinks, or liquid milk and milk powders.

5. Declaration regarding Food Additives-

For food additives falling in the respective classes and appearing in lists of food additives permitted for use in foods generally, the following class titles shall be used together with the specific names or recognized international numerical identifications.

Acidity Regulator, Acids, Ant caking Agent, Antifoaming Agent, Antioxidant, Bulking Agent, Colour, Colour Retention Agent, Emulsifier, Emulsifying Salt, Firming Agent, Flour Treatment Agent, Flavour Enhancer, Foaming Agent, Gelling Agent, Glazing Agent, Humectant, Preservative, Propellant, Raising Agent, Stabilizer, Sweetener, Thickener :

6. Name and complete address of the manufacturer :

(i) The name and complete address of the manufacturer and the manufacturing unit if these are located at different places and in case the manufacturer is not the packer or bottler, the name and

complete address of the packing or bottling unit as the case may be shall be declared on every package of food;

(ii) Where an article of food is manufactured or packed or bottled by a person or a company under the written authority of some other manufacturer or company, under his or its brand name, the label shall carry the name and complete address of the manufacturing or packing or bottling unit as the case may be, and also the name and complete address of the manufacturer or the company, for and on whose behalf it is manufactured or packed or bottled ;

(iii) Where an article of food is imported into India, the package of food shall also carry the name and complete address of the importer in India.

Provided further that where any food article manufactured outside India is packed or bottled in India, the package containing such food article shall also bear on the label, the name of the country of origin of the food article and the name and complete address of the importer and the premises of packing or bottling in India.

7. Net quantity :

(i) Net quantity by weight or volume or number, as the case may be, shall be declared on every package of food; and

(ii) In addition to the declaration of net quantity, a food packed in a liquid medium shall carry a declaration of the drained weight of the food.

Explanation 1. — For the purposes of this requirement the expression “liquid medium” include water, aqueous solutions of sugar and salt, fruit and vegetable juices or vinegar, either singly or in combination.

Explanation 2. — In declaring the net quantity of the commodity contained in the package, the weight of the wrappers and packaging materials shall be excluded :

(iii) Where a package contains a large number of small items of confectionery, each of which is separately wrapped and it is not reasonably practicable to exclude from the net weight of the commodity, the weight of such immediate wrappers of all the items

of the confectionery contained in the package, the net weight declared on the package containing such confectionary or on the label thereof may include the weight of such immediate wrapper if the total weight of such immediate wrapper does not exceed –

(a) eight per cent, Where such immediate wrapper is a waxed paper or other paper with wax or aluminium foil under strip; or

(b) six per cent. In case of other paper of the total net weight of all the items of confectionery contained in the package minus the weight of immediate wrapper.

8. Lot / Code / Batch identification :

A batch number or code number or lot number which is a mark of identification by which the food can be traced in the manufacture and identified in the distribution, shall be given on the label. Provided that in case of packages containing bread and milk including sterilized milk, particulars under this clause shall not be required to be given on the label.

9. Date of manufacture or packing :

The date, month and year in which the commodity is manufactured, packed or pre-packed, shall be given on the label. Provided that the month and the year of manufacture, packing or pre-packing shall be given if the “Best Before Date” of the products is more than three months. Provided further that in case any package contains commodity which has a short shelf life of less than three months, the date, month and year in which the commodity is manufactured or prepared or pre-packed shall be mentioned on the label.

10. Best Before and Use By Date :

(i) the month and year in capital letters upto which the product is best for consumption, in the following manner, namely —

“BEST BEFORE ..... MONTHS AND YEAR

OR

“BEST BEFORE ..... MONTHS FROM PACKAGING

OR

"BEST BEFORE ..... MONTHS FROM MANUFACTURE

(Note : blank be filled up)

(ii) In case of package or bottle containing sterilised or Ultra High Temperature treated milk, soya milk, flavoured milk, any package containing bread, dhokla, bhelpuri, pizza, doughnuts, khoa, paneer, or any uncanned package of fruits, vegetable, meat, fish or any other like commodity, the declaration be made as follows:—

"BEST BEFORE ..... DATE/MONTH/YEAR"

OR

"BEST BEFORE ..... DAYS FROM PACKAGING"

OR

"BEST BEFORE ..... DAYS FROM MANUFACTURE"

Note :

(a) blanks be filled up

(b) Month and year may be used in numerals

(c) Year may be given in two digits

(iii) On packages of Aspartame, instead of Best Before date, Use by date/recommended last consumption date/expiry date shall be given, which shall not be more than three years from the date of packing;

(iv) In case of infant milk substitute and infant foods instead of Best Before date, Use by date/ recommended last consumption date/ expiry date shall be given, Provided further that the declaration of best before date for consumption shall not be applicable to:

(i) wines and liquors

(ii) alcoholic beverages containing 10 percent or more by volume of alcohol.

Provided further that above provisions except net weight/net content, nutritional information, manufacturer's name and address, date of manufacture and "best before" shall not apply in respect of carbonated water (plain soda and potable water impregnated with carbon dioxide under pressure) packed in returnable glass bottles.

11. Country of origin for imported food :

(i) The country of origin of the food shall be declared on the label of food imported into India.

(ii) When a food undergoes processing in a second country which changes its nature, the country in which the processing is performed shall be considered to be the country of origin for the purposes of labelling.

12. Instructions for use :

(i) Instructions for use, including reconstitution, where applicable, shall be included on the label, if necessary, to ensure correct utilization of the food.

10.7 MANNER OF DECLARATION

10.7.1 General Conditions

1. Any information or pictorial device written, printed, or graphic matter may be displayed in the label provided that it is not in conflict with the requirements of these Regulations.

2. Every declaration which is required to be made on package under these regulations shall be :

   (i) Legible and prominent, definite, plain and unambiguous

   (ii) Conspicuous as to size number and colour,

   (iii) as far as practicable, in such style or type of lettering as to be boldly, clearly and conspicuously present in distinct contrast to the other type, lettering or graphic material used on the package, and shall be printed or inscribed on the package in a colour that contrasts conspicuously with the background of the label

Provided that —

(a) Where any label information is blown, formed or moulded on a glass or plastic surface or where such information is embossed or perforated on a package that information shall not be required to be presented in contrasting colours :

(b) Where any declaration on a package is printed either in the form of a handwriting or hand script, such declaration shall be clear, unambiguous and legible.

3. No declaration shall be made so as to require it to be read through any liquid commodity contained in the package.

4. Where a package is provided with an outside container or wrapper, such container or wrapper shall also contain all the declarations which are required to appear on the package except where such container or wrapper itself is transparent and the declarations on the package are easily readable through such outside container or wrapper.

5. Labels not to contain false or misleading statements : A label shall not contain any statement, claim, design, device, fancy name or abbreviation which is false or misleading in any particular concerning the food contained in the package, or concerning the quantity or the nutritive value or in relation to the place of origin of the said food :

Provided that this regulation shall not apply in respect of established trade or fancy names of confectionery, biscuits and sweets, such as, barley,sugar,bull's eye, cream cracker or in respect of aerated waters, such as, Ginger Beer or Gold-Spot or any other name in existence in international trade practice.

10.7.2 Principal display panel

The information required under these Regulations shall be given on the principal display panel of the package or container and such information may be given in the following manner.

(a) All information should be grouped together and given at one place.

OR

The pre-printed information be grouped together and given in one place and,

(b) Online information or those not pre-printed be grouped together in another place.

1. Area of the principal display panel

   The area of principal Display panel shall not be less than —

   (a) In the case of a rectangular container, forty percent of the product of height and width of the panel of such container having the largest area;

   (b) In case of cylindrical or nearly cylindrical, round or nearly round, oval or nearly oval container, twenty percent of the product of the height and average circumference of such container; or

   (c) In the case of container of any other shape, twenty percent of the total surface area of the container except where there is label, securely affixed to the container, such label shall give a surface area of not less than ten percent of the total surface area of the container.

   Provided that in the case of package having a capacity of five cubic centimeters or less, the principal display panel may be card or tape affixed firmly to the package or container and bearing the required information under these regulations.

10.8 SPECIFIC REQUIREMENTS/ RESTRICTIONS ON MANNER OF LABELING

10.8.1 Labelling of infant milk substitute and infant food

1. An article of infant milk substitutes /infant foods, whose standards are not prescribed under Food Safety and Standards (Food Products standards and Food Additives) Regulations, 2011 shall be manufactured for sale, exhibited for sale or stored for sale only after obtaining the approval of such articles of food and its label from the Authority.

2. Without prejudice to any other provisions relating to labelling requirements contained in these regulations, every container of infant milk substitute or infant food or any label affixed thereto shall indicate in a clear, conspicuous and in an easily readable manner, the words “IMPORTANT NOTICE” in capital letters and indicating there under the following particulars, namely :

(i) a statement "MOTHER'S MILK IS BEST FOR YOUR BABY" in capital letters. The types of letters used shall not be less than five millimeters and the text of such statement shall be in the Central Panel of every container of infant milk substitute or infant food or any label affixed thereto. The colour of the text printed or used shall be different from that of the background of the label, container as the case may be. In case of infant food, a statement indicating "infant food shall be introduced only (after the age of six months and upto the age of two years)" shall also be given;

(ii) a statement that infant milk substitute or infant food should be used only on the advice of a health worker as to the need for its use and the proper method of its use;

(iii) a warning that infant milk substitute or infant food is not the sole source of nourishment of an infant;

(iv) a statement indicating the process of manufacture (e.g spray dried) except in case of infant foods, instruction for appropriate and hygienic preparation including cleaning of utensils, bottles and teats and warning against health hazards of inappropriate preparations, as under;

"Warning/ caution-Careful and hygienic preparation of infant foods/infant milk substitute is most essential for health. Do not use fewer scoops than directed since diluted feeding will not provide adequate nutrients needed by your infant. Do not use more scoops than directed since concentrated feed will not provide the water needed by your infant".

(v) the approximate composition of nutrients per 100 gms. of the product including its energy value in Kilo Calories/Joules;

(vi) the storage condition specifically stating "store in a cool and dry place in an air tight container" or the like (after opening use the contents within the period mentioned or the expiry date whichever is earlier);

(vii) the feeding chart and directions for use and instruction for discarding leftover feed;

(viii) Instruction for use of measuring scoop (level or heaped) and the quantity per scoop (scoop to be given with pack);

(ix) indicating the Batch No. Month and Year of its manufacture and expiry date

(x) the protein efficiency ratio (PER) which shall be minimum 2.5 if the product other than infant milk substitute is claimed to have higher quality protein;

(xi) the specific name of the food additives, if permitted, shall be declared in addition to appropriate class names.

3. No containers or label referred to in this regulation relating to infant milk substitute or infant food shall have a picture of infant or women or both. It shall not have picture or other graphic materials or phrases designed to increase the saleability of the infant milk substitute or infant food. The terms “Humanised” or “Maternalised” or any other similar words shall not be used. The Package and/or any other label of infant milk substitute or infant food shall not exhibit the words, “Full Protein Food”, “energy Food”, “Complete food” or “Health Food” or any other similar expression.

4. The containers of infant milk substitute meant for (premature baby (born before 37 weeks)/low birth weight infant (less than 2500gm) or labels affixed thereto shall indicate the following additional information, namely :

(i) the words [PREMATURE BABY (BORN BEFORE 37 WEEKS) LOW BIRTH WEIGHT (LESS THAN 2.5 KG] in capital letters along with the product name in central panel;

(ii) a statement “the low birth weight infant milk substitute shall be withdrawn under medical advice as soon as the mother’s milk is sufficiently available’; and

(iii) a statement “TO BE TAKEN UNDER MEDICAL ADVICE” in capital letters.

5. The product which contains neither milk nor any milk derivatives shall be labelled “contains no milk or milk product” in conspicuous manner.

6. The container of infant milk substitute for lactose or lactose and sucrose intolerant infants or label affixed thereto shall indicate conspicuously "LACTOSE-FREE or SUCROSE-FREE or LACTOSE and SUCROSE-FREE" in capital letters and statement "TO BE TAKEN UNDER MEDICAL ADVICE" and shall also bear the following statements, namely :

   "Lactose free Infant Milk Substitute should only be used in case of diarrhea due to lactose intolerance. The lactose free/sucrose free Infant Milk Substitute should be withdrawn if there is no improvement in symptoms of intolerance".

7. The container of infant milk substitute meant for infants with allergy to cow's /buffalo's milk protein or soy protein or label affixed thereto shall indicate conspicuously "HYPOALLERGENIC FORMULA" in capital letters and statement "TO BE TAKEN UNDER MEDICAL ADVICE".

8. Declaration to be surrounded by line : There shall be a surrounding line enclosing the declaration where the words "unsuitable for babies" are required to be used.

   (i) Distance of surrounding line : The distance between any part of the words "unsuitable for babies" surrounding the line enclosing these words shall not be less than 1.5 mm.

10.8.2 Labelling of edible oils and fats

1. The package, label or the advertisement of edible oils and fats shall not use the expressions "Super-Refined", "Extra-Refined", "Micro-Refined", "Double-Refined", Ultra-Refined", "Anti-Cholesterol", "Cholesterol Fighter", "Soothing to Heart", "Cholesterol Friendly", "Saturated Fat Free" or such other expressions which are an exaggeration of the quality of the Product.

2. Every container in which solvent-extracted oil or de-oiled meal or edible flour is packed for sale shall, at the time of sale by the producer, bear the following particulars in English or Hindi (Devnagri script) :

(i) the name, trade name, if any, or description of the solvent-extracted oil or de-oiled meal or edible flour, as the case may be :

(ii) in the case of oil not conforming to the standards of quality for "refined" grade solvent extracted oils specified in regulation 2.2.6 (1) of Food Safety and Standards (Food Products Standards and Food Additive) Regulation, 2011 for Edible vegetable oil/Vanaspati, a declaration in a type-size of not less than 50 mm, as follows shall appear on the label :

(a) "NOT FOR DIRECT EDIBLE CONSUMPTION", in the case of oils complying with the requirements for the "semi-refined" or "raw-grade 1" grades of oil specified in regulation 2.2.6 (1) of Food Safety and Standards(Food Products standards and Food Additive) Regulation, 2011

(b) "FOR INDUSTRIAL NON-EDIBLE USES ONLY", in the case of oils not complying with the requirements under item (a) above;

(iii) the name and business particulars of the producer;

(iv) the net weight of the contents in the container;

(v) the batch number, month and year of manufacture : Provided that where solvent extracted oils are transported in bulk in rail tank-wagons or road tankers, or where de-oiled meal or edible flour is transported in bulk either for storage in silos or transferred to ship for bulk shipment, it shall be sufficient if the aforesaid particulars are furnished in the accompanying documents.

3. Every container in which solvent is packed shall, at the time of sale by the manufacturer or dealer thereof, bear the Indian Standards Institution certification mark.

4. Every container in which vanaspati, margarine, bakery shortening, blended edible vegetable oils, mixed fat spread and refined vegetable oil is packed in addition to other labelling requirements provided in these regulations shall bear the following particulars in English or Hindi in Devnagri script :

(a) The name/description of the contents, "free from Argemone Oil";

(b) The mass/volume of the contents;

5. Every container of refined vegetable oil shall bear the following label, namely—

Refined (name of the Oil) Oil

Provided that the container of imported edible oil shall also bear the word, "Imported", as prefix.

6. Every package containing an admixture of palmolein with groundnut oil shall carry the following label, namely—

BLEND OF PALMOLEIN AND GROUNDNUT OIL Palmolein..... per cent Groundnut oil.... per cent

7. Every package containing an admixtu're of imported rape-seed oil with mustard oil, shall carry the following label, namely :

BLEND OF IMPORTED RAPE-SEED OIL AND MUSTARD OIL Imported rape-seed oil.....per cent Mustard oil.....per cent

8. Every package of vanaspati made from more than 30 percent of Rice bran oil shall bear the following label, namely :

This package of vanaspati is made from more than 30 per cent Rice bran oil by weight

9. Every package containing Fat Spread shall carry the following labels namely :

Milk Fat Spread

Use before .....

Date of packing .....

Total Milk Fat Content Per cent by weight .....

Mixed Fat Spread

Use before .....

Date of packing .....

Per cent by weight .....
Milk Fat Content .....
Total Milk Fat Content Percent by weight .....
Vegetable Fat Spread
Use before .....
Date of packing .....
Total Fat Content Per cent by weight .....

10. A package containing annatto colour in vegetable oils shall bear the following label namely :

Annatto colour in oil (Name of oil/oils) used

11. Every package containing an admixture of edible oils shall carry the following label, namely :

This blended edible vegetable oil contains an admixture of :

(i) .....% by Weight
(ii) .....% by Weight

(Name and nature of edible vegetable oils i.e. in raw or refined form)

Date of Packing.....

There shall also be the following declaration in bold capital letters along with the name of product on front/central panel,—

NOT TO BE SOLD LOOSE

10.8.3 Labelling of permitted food colours

1. No person shall sell a permitted synthetic food colours for use in or upon food unless its container carries a label stating the following particulars :
   (i) the words “Food Colours”;
   (*ii*) the chemical and the common or commercial name and colour index of the dye-stuff.
2. No person shall sell a mixture of permitted synthetic food colours for use in or upon food unless its container carries a label stating the following particulars :

(i) the words “Food Colour Mixture”;

(ii) the chemical and the common or commercial name and colour index of the dye stuff contained in the mixture.

3. No person shall sell a preparation of permitted synthetic food colours for use in or upon food unless its container carries a label stating the following parti culars

(i) the words “Food Colour Preparation”;

(ii) the name of the various ingredients used in the preparation.

10.9 SPECIFIC RESTRICTIONS ON PRODUCT LABELS

(1) Labels not to contain reference to Act or rules or regulations contradictory to required particulars : The label shall not contain any reference to the Act or any of these regulations or any comment on, or reference to, or explanation of any particulars or declaration required by the Act or any of these regulations to be included in the label which directly or by implication, contradicts, qualifies or modifies such particulars or declaration.

(2) Labels not to use words implying recommendations by medical profession : There shall not appear in the label of any package, containing food for sale the words “recommended by the medical profession” or any words which imply or suggest that the food is recommended, prescribed, or approved by medical practitioners or approved for medical purpose.

(3) Unauthorized use of words showing imitation prohibited :

a. There shall not be written in the statement or label attached to any package containing any article of food the word ‘imitation’ or any word, or words implying that the article is a substitute for any food, unless the use of the said word or words is specifically permitted under these regulations.

b. Any fruit syrup, fruit juice, fruit squash, fruit beverages, cordial, crush or any other fruit products standardised under Food Safety and Standards (Food Products standards and Food Additives) Regulations, 2011 which does not contain the prescribed amount

of fruit juice or fruit pulp or fruit content shall not be described as a fruit syrup, fruit juice, fruit squash, fruit beverages, cordial, crush or any other fruit product as the case may be.

c. Any food product which does not contain the specified amount of fruit and is likely to deceive or mislead or give a false impression to the consumer that the product contains fruit, whether by use of words or pictorial representation, shall be clearly and conspicuously marked on the label as 'ADDED (NAME OF THE FRUIT) FLAVOUR'.

d. Any food product which contains only fruit flavours, whether natural flavours and natural flavouring substances or nature identical flavouring substances, artificial flavouring substances as single or in combination thereof, shall not be described as a fruit product and the word "ADDED" (NAME OF FRUIT) FLAVOUR shall be used in describing such a product;

e. Carbonated water containing no fruit juice or fruit pulp shall not have a label which may lead the consumer into believing that it is a fruit product.

f. Any fruit and vegetable product alleged to be fortified with vitamin C shall contain not less than 40 mgms. of ascorbic acid per 100 gm. of the product.

(4) Imitations not to be marked "pure" : The word "pure" or any word or words of the same significance shall not be included in the label of a package that contains an imitation of any food.

(5) Labelling prohibitions for Drinking Water (Both Packaged and Mineral Water) :

(i) No claims concerning medicinal (preventative, alleviative or curative) effects shall be made in respect of the properties of the product covered by the standard Claims of other beneficial effects related to the health of the consumer shall not be made.

(ii) The name of the locality, hamlet or specified place may not form part of the trade name unless it refers to packaged water collected at the place designated by that trade name.

(iii) The use of any statement or of any pictorial device which may create confusion in the mind of the public or in any way mislead the public about the nature, origin, composition, and properties of such waters put on sale is prohibited.

10.10 EXEMPTIONS FROM LABELLING REQUIREMENTS

1. Where the surface area of the package is not more than 100 square centimeters, the label of such package shall be exempted from the requirements of list of ingredients, Lot Number or Batch Number or Code Number, nutritional information and instructions for use, but these information shall be given on the wholesale packages or multi piece packages, as the case may be.
2. The 'date of manufacture' or 'best before date' or 'expiry date' may not be required to be mentioned on the package having surface area of less than 30 square centimeters but these information shall be given on the wholesale packages or multipiece packages, as the case may be;
3. In case of liquid products marketed in bottles, if such bottle is intended to be reused for refilling, the requirement of list of ingredients shall be exempted, but the nutritional information specified in regulation regarding veg. or non-veg. items these regulations shall be given on the label.

   Provided that in case of such glass bottles manufactured after March 19, 2009, the list of ingredients and nutritional information shall be given on the bottle.
4. Iin case of food with shelf-life of not more than seven days, the 'date of manufacture' may not be required to be mentioned on the label of packaged food articles, but the 'use by date' shall be mentioned on the label by the manufacturer or packer.
5. In case of wholesale packages the particulars regarding list of ingredients. Date of manufacture/ packing, best before, expiry date labelling of irradiated food and, vegetarian logo/non vegetarian logo, may not be specified.



CHECK YOUR PROGRESS

Q.3. Mention one item which do not require labeling.

.....

.....

Q.4. What declaration the seller should give in the container in case he use synthetic food colours in the product ?

.....

.....



10.11 LET US SUM UP

In this unit we have discussed the following aspects –

- Packaging requirements for Milk and Milk Products.
- Packaging requirements for Fruits and Vegetables Products.
- Packaging requirements for Canned Meat Products.
- Packaging requirements for Drinking Water Both Packaged and Mineral Water.
- Labeling requirements of Pre-packaged Foods.
- Items or products exempted from labeling requirements.



10.12 FURTHER READINGS

1. Arun Kumar Sen and Jitendra Kumar Mitra (1977) *Commercial Law (including Company Law and Industrial Law);* World Press Private Limited.
2. R. P. Maheshwari and S. N. Maheshwari (2014) *Principles of Mercantile Law;* Himalaya Pub. House, New Delhi.
3. N. D. Kapoor (2014) *Elements of Mercantile Law;* Sultan Chand & Sons.

4. K. C. Garg, V. K. Sareen, Mukesh Sharma & R. C. Chawla (2014) *Mercantile Law;* Kalyani Publishers.

5. V. K. Sareen, Mukesh Sharma & K. C. Garg (2015) *Business Law;* Kalyani Publishers.

6. The Consumer Protection Act, 1986 (Bare Act).

10.13 ANSWERS TO CHECK YOUR PROGRESS

Answer to Q. No. 1 :

"Principal Display Panel" means that part of the container/package which is intended or likely to be displayed or presented or shown or examined by the customer under normal and customary conditions of display, sale or purchase of the commodity contained therein.

Answer to Q. No. 2 :

Package drinking water shall be packed in clean, hygienic, colourless, transparent and tamperproof bottles/containers made of polyethylene (PE) or food grade polycarbonate or sterile glass bottles suitable for preventing possible adulteration or contamination of the water.

Answer to Q. No. 3 :

Food with shelf-life of not more than seven days, the 'date of manufacture' may not be required to be mentioned on the label of packaged food articles, but the 'use by date' shall be mentioned on the label by the manufacturer or packer.

Answer to Q. No. 4 :

In case he use synthetic food colours in the product, its container carries must carry a label stating the following particulars :

(i) the words "Food Colour Mixture";

(ii) the chemincal and the common or commercial name and colour index of the dye stuff contained in the mixture.



10.14 MODEL QUESTIONS

1. Define Wholesale package.
2. List the General Requirements of labeling.
3. Discuss the procedure of Labelling of edible oils and fats.
4. What are the Nutritional Information's or nutritional facts to be declared on the label of a product in case of pre-package foods?
5. Discuss the Packaging requirements for Fruits and Vegetables Products.

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UNIT - 11 : THE COMPANIES ACT, 2013

UNIT STRUCTURE

11.1 Learning Objectives
11.2 Introduction
11.3 Object and Scope
11.4 Important Definitions
11.5 Formation of a Company
11.6 Memorandum of Association
11.7 Articles of Association
11.8 Prospectus, Shares, Directors
11.9 General Meetings and Proceedings
11.10 Auditor
11.11 Winding up of a Company
11.12 Let us Sum Up
11.13 Further Readings
11.14 Answer to Check Your Progress
11.15 Model Questions

11.1 LEARNING OBJECTIVES

After going through this unit you will be able to :

- Explain the object and scope of the Companies Act
- Define the different definitions
- Describe the formation of a company, appointment of directors , proceedings and meetings, about auditors and winding up of a company.

11.2 INTRODUCTION

The Companies Act, 1956 was passed to deal with the laws relating to companies. It had been in force for about 55 years and had faced many Amendments to meet the requirement of the present context. Its main purpose was to regulate business and protect common people from being

defrauded. In this unit we are going to discuss about the Companies Act, 1956 along with the Amendment Act of 2013.This unit also encompasses different definitions. Through this unit you will able to know about the formation of a company, its proceedings and winding up. Thus you will able to understand through this unit, the object and reason behind passing of this Act.

11.3 OBJECT AND SCOPE

The Companies Act, 1956 was enacted with the object to consolidate and amend the law relating to companies and certain other associations. But due to vast changes in the national and international economic environment and also due to the expansion and growth of economy of our country, the Central Government decided to repeal the Act of 1956 and enact a new legislation to cope up with the present economic scenario. Thus the Companies Bill, 2011 have been passed by the both houses of the Parliament and received President's assent on 29th August, 2013, which is now known as the Companies Act, 2013. The new Act introduced some new concepts relating to companies. It should be noted that the provisions of the Companies Act, 1956 are still in force. The new Act has replaced it in a partial manner.



CHECK YOUR PROGRESS

Q.1. Mention one objective of the Companies Act, 1956.

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11.4 IMPORTANT DEFINITIONS

Section - 2 : Definitions

In this Act, unless the context otherwise requires,

1) "Abridged prospectus" means a memorandum containing such salient features of a prospectus as may be prescribed;

2) "Articles" means the articles of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act, including, so far as they apply to the company, the regulations contained, as the case may be, in Table B in the Schedule annexed to Act No. 19 of 1857 or in Table A in the First Schedule annexed to the Indian Companies Act, 1882 (6 of 1882), or in Table A in the First Schedule annexed to the Indian Companies Act, 1913 (7 of 1913), or in Table A in Schedule I annexed to this Act;

3) "Board of directors" or "Board", in relation to a company, means the Board of directors of the company ;

4) "Body corporate" or "corporation" includes a company incorporated outside India but does not include

   a) A corporation sole;

   b) A co-operative society registered under any law relating to co-operative societies; and

   c) Any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf;

5) "Book and paper" and "book or paper" include accounts, deeds, vouchers, writings, and documents;

6) "Branch office" in relation to a company means

   a) any establishment described as a branch by the company; or

   b) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the company; or

   c) any establishment engaged in any production, processing or manufacture, but does not include any establishment specified in any order made by the Central Government under section 8;

7) "Company" means a company as defined in section 3;

8) "Company Law Board" means the Board of Company Law Administration constituted under section 10E;

9) "The Court" means,

a) with respect to any matter relating to a company (other than any offence against this Act), the Court having jurisdiction under this Act with respect to that matter relating to that company, as provided in section 10;

b) with respect to any offence against this Act, the Court of a Magistrate of the First Class or, as the case may be, a Presidency Magistrate, having jurisdiction to try such offence;

10) ‘‘Debenture’’ includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not;

11) “Director’’ includes any person occupying the position of director, by whatever name called;

12) “District Court’’ means the principal Civil Court of original jurisdiction in a district, but does not include a High Court in the exercise of its ordinary original civil jurisdiction;

13) “Dividend” includes any interim dividend;

14) “Document’’ includes summons, notice, requisition, order, other legal process, and registers, whether issued, sent or kept in pursuance of this or any other Act or otherwise;

15) “Financial year” means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in annual general meeting is made up, whether that period is a year or not :

Provided that, in relation to an insurance company, “financial year’’ shall mean the calendar year referred to in sub-section (1) of section 11 of the Insurance Act, 1938 (4 of 1938);

16) “Limited company’’ means a company limited by shares or by guarantee;

17) “Manager’’ means an individual (not being the managing agent) 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, by whatever name called, and whether under a contract of service or not;

18) “Member’’, in relation to a company, does not include a bearer of a share-warrant of the company issued in pursuance of section 114;

19) "Memorandum'' means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act;

20) "Officer'' includes any director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act;

21) "Private company'' means a private company as defined in section 3;

22) "Prospectus'' means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate;

23) "Public company'' means a public company as defined in section 3;

24) "Registrar'' means a Registrar, or an Additional, a Joint, a Deputy or an Assistant Registrar, having the duty of registering companies under this Act;

25) "Share'' means share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied;

Section-3 in The Companies Act, 1956

Definitions of ''Company", ''Existing Company", ''Private Company" and ''Public Company".

1) In this Act, unless the context otherwise requires, the expressions ''company", ''existing company", ''private company" and ''public company" shall, subject to the provisions of sub-section (2), have the meanings specified below :

   i) "company" means a company formed and registered under this Act or an existing company as defined in clause (ii);

   ii) "existing company" means a company formed and registered under any of the previous companies laws.

   iii) "private company" means a company which, by its articles,

   a) restricts the right to transfer its shares, if any;

   b) limits the number of its members to fifty not including—

i) persons who are in the employment of the company, and

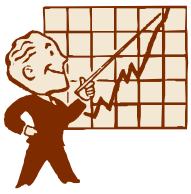
ii) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased

c) prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company : Provided that where two or more persons hold one or more shares, in a company jointly, they shall, for the purposes of this definition, be treated as a single member;

iv) "public company" means a company which is not a private company.

Some new concept introduced by the Companies Act, 2013 are—

- One person Companies
- Women Directors
- Corporate Social Responsibility
- Rotations of Auditors etc.



CHECK YOUR PROGRESS

Q.2. Define 'Private Company' under the Companies Act, 1956.

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11.5 FORMATION OF A COMPANY

Company is a socio-economic institution which has a responsibility towards the development of society. The Companies Act was passed to protect the interest of common people.

Broadly formation of a company involves three stages :

i) Promotion of a company

ii) Incorporation

iii) Commencement of business

In the first stage, some persons known as 'promoters' take initiative to start up the business and make necessary arrangements like collection of Capital or assets ,go by the formalities of incorporation and registration.

In second stage, the company gets legal recognition only after it is incorporated from the Registrar of Companies. It is incorporated by registering certain documents and paying certain fees and stamp duties. Certain procedures has to be followed to incorporate a company and after that the company receive its Certificate of Incorporation from the Registrar.

The third stage is the commencement of business, which can be started as soon as the company receives the Certificate of Incorporation. A private company or a public company not having share capital may commence business as soon as the company receives the Certificate of Incorporation. But for the public company having shared capital can commence its business only after obtaining the Certificate to commence business, which is also called Trading Certificate.

Every person who is responsible for doing business without obtaining the Trading Certificate shall be liable for punishment with fine not exceeding Rupees 5000/- per day during the period of default.

11.6 MEMORANDUM OF ASSOCIATION

Memorandum of Association is the fundamental document of a company which is essential for the formation of a company.

Memorandum of Association contains the fundamental conditions upon which the company formed and registered. It must contain the following six clauses—

1. Name clause that contains the name of the company.
2. Registered office clause that contains the name of the state in which the registered office of the company is situated.
3. Object clause deals with the object of the company. Object to protect creditors and investors.
4. Liability clause means whether the company is limited by shares, limited by guarantees and an unlimited company.
5. Capital clause is necessary only in case of limited company.
6. Subscription clause is also known as Association clause. This is subscriber's declaration clause.

According to section 12(1) there must be at least seven persons in case of public company or two persons in case of a private company and they must all subscribe for at least one share each.

Memorandum shall be signed by each subscriber in the presence of at least one witness, attesteting the signature and address of the subscriber.

A company is authorized to do only such acts which it has been to do through the Memorandum and it cannot do the acts which are outside its powers.(i.e. ultra vires)

A company though get registered may change its name or registered office by following certain procedures.

11.7 ARTICLES OF ASSOCIATION

An Article of Association is that document which describes the rules and regulations for the administration of a company. For example appointment of Directors, their powers, issues like transfers of shares, alteration of capital, borrowing powers, dividend, accounts, general meetings, winding up etc.

It is important to note that for registration of a company, along with the prescribed documents and fees, the application must be accompanied by the Memorandum of Association and Articles of Association of the company (if any).

The rules and regulations of a company mentioned in the Article of Association can be altered as it is considered as the statutory power of every company.

To alter the Article of Association a special resolution has to be taken by a company. By altering the Article of Association a private company can be converted into a public company. The public company can also be converted into a private company, only with the approval of the Tribunal. The Memorandum of Association and Articles of Association when registered, bind the company and the members, as if they had been respectively signed by the company and by each member.

11.8 PROSPECTUS, SHARES AND DIRECTORS

Prospectus means any document in the form of a circular or news paper advertisement or pamphlet containing information with a view to invite the general public to make investment to the company in question.

According to L. B Curzon, prospectus means, "any document containing information about securities". Therefore, it has the following essentials :

i) It must contain an invitation for deposit or an invitation to purchase shares or debentures of the company and

ii) The invitation must be made to the public.

Conditions of a valid prospectus :

i) It must be dated : The date of publication of the prospectus is considered as the date of prospectus.

ii) It must be signed by the directors or proposed directors or his authorized agents.

iii) Registration of prospectus is essential on or before the date of publication.

In case of default for any prospectus, the company and every person who is knowingly a party to the issue of prospectus are punishable with fine.

Contents of a prospectus :

A prospectus must contain the name, address of the registered company, Company Secretary, Directors etc., the capital structure of the company, its financial performance in the past, details about Director's appointment, remuneration etc.

Mis-Statement in Prospectus :
(Civil and Criminal Liability)

The Companies Act 1956 imposes Civil liability under Section 62 for the Mis-Statement in Prospectus whereas Section 63 imposes Criminal liability for the Mis-Statement in Prospectus.

Section 447 of the Companies Act, 2013 deals with the punishment for fraud.

Shares :

In the context of Company law, the expression 'Share' means a typical movable property which for all practical purposes can be sold, mortgaged, and bequeathed.

A 'Share' is a right to a particular amount of the Share Capital of a Company carrying with it certain rights and liabilities, while the company in going concern and winding up. Further the Share Certificates are issued, are evidence of the true Prospectus.

Kinds of shares :

i) Equity Shares or Ordinary Shares : Section 85 (2) of the Act means it with reference to any such company, all share capital which is not preferred share capital.

ii) Preference Share : According to Section 85 (1) the term Preference Share means with reference to any company limited by share, a fixed rate of dividends or premium is payable over the equity share holders or ordinary share holders as specified in the Memorandum of Association or Articles of Association. Even in case of winding up of the company the preferred share holders are entitled to be paid as priority.

There are certain Statutory Restrictions imposed under the Companies Act, while making allotment of shares.

Transfer of Shares :

The shares or debentures of companies are freely transferable. It is to be noted that bthe word 'share' has been replaced by the 'share or debentures' by the companies (Amendment) Act, 1999.

Directors :

A company being an artificial person, has to be managed and controlled by natural persons. These natural persons are called Directors of company.

Appointment of Directors :

Section 253 of the Companies Act provides that no body corporate, association or firm shall be appointed as director of the company and only an individual shall be so appointed. The Companies (Amendment) Act, 2006 added a proviso to this section stating that no company should appoint or re appoint any individual as director unless he has been allotted a Director Identification Number (DIN).

The subscribers to the Memorandum of Association are regarded as the first directors of a company. Other than that the directors can be appointed by the members in General Meeting, by nomination, by voting by a single resolution at annual general meeting, by Board and by the Tribunal.

Qualification and Disqualification of Directors :

The Companies Act does not prescribe any qualifications for appointment as a director. But Rule 66 of Table A of the Act requires that Director must hold at least one share in the company.

A minor cannot be a director as he or she is not competent to enter into contract.

The following grounds are considered as the disqualification :

a) If he has been found to be of unsound mind by a competent Court.

b) If he is an undischarged insolvent.

c) He has applied to be adjudicated as an insolvent and his application is pending.

d) If he has been sentenced to at least six months of imprisonment for an offence involving moral turpitude.

e) If he has not paid any call on his shares within the stipulated period.

f) If the Court disqualified him.



CHECK YOUR PROGRESS

Q.3. What is Prospectus ? Write the conditions of a valid Prospectus.

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11.9 GENERAL MEETINGS AND PROCEEDINGS

The meetings of the members of a company are three types :

1) Statutory Meeting (Section165 (1))

2) Annual General Meeting (Section 166-168)

3) Extraordinary General Meeting (Section 169)

Statutory Meeting :

Every company limited by shares and limited by guarantee and having a share capital is required to hold the first meeting of the company after one month but within the period of six months.

Annual General Meeting :

Every company is required to hold a general meeting each year to be known as annual general meeting. There should not be more than 15 months gap between one general meeting and the next.

If there is default in holding the meeting of its own, the company and every officer of the company who is in default shall be punishable with fine.

Extraordinary General Meeting :

The meeting other than the annual general meeting is known as the extraordinary general meeting. The directors may call for a meeting other than an ordinary general meeting whenever they think fit.

Conduct of Meetings :

A general meeting of a company may be called by giving at least 21days notice in writing. A shorter notice may also be given with the consent of all the members entitled to vote (in case of annual general meeting) and with the consent of those holding 95% share capital or having 95% voting power (in case of extraordinary general meeting).

Content and manner of service of notice :

Every notice should specify the place, date and hour of meeting. Also it should contain a statement of business to be transacted there at.

A proper notice should be served to the following persons :

a) Every member of the company
b) The legal representatives of the deceased or assignee of the insolvent member
c) Auditor or auditors of the company

Quorum for meeting :

Quorum means the minimum number of persons without whom a meeting cannot be held. According to Section 174 of the Companies Act, unless the Articles of the Company provide for a larger number, the quorum for the public company is five members personally present and two members personally present in case of a private company.

If within half an hour from time of appointed for holding a meeting a quorum is not present, the meeting shall be adjourned to the same day in the next week. The time and place remains the same as fixed earlier. In case of requisitioned meeting, for the want of quorum within half an hour, the meeting shall stand dissolved.

Chairman of Meeting :

Chairman may be appointed in accordance with the provisions of the Articles of the company. If the Articles do not provide, the members present at the meeting shall elect one of themselves to the chairman of the meeting.

Minutes of the Meeting :

Every company is required to maintain minutes of all the proceedings of every general meeting and all proceedings of every meeting of the Board of Directors.

Resolutions :

In a meeting the members present can vote for passing a resolution. There are two kinds of resolutions : Ordinary Resolution and Special Resolution.



CHECK YOUR PROGRESS

Q.4. Discuss different types of meetings in a company.

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11.10 AUDITOR

The auditor or auditors of a company shall be appointed by the Board of Directors within the one month of the date of registration of the company. If the Board fails to appoint, the company in general meeting may appoint the first auditor or auditors.

Except for the first time, the auditor or auditors are appointed at the annual general meeting and they hold office from the time of their appointment until the conclusion of the next annual general meeting.

An auditor cannot accept auditor ship of more than 20 companies.

An auditor once appointed can be re appointed when certain conditions are fulfilled and in certain specified cases an auditor can be appointed only by a special resolution.

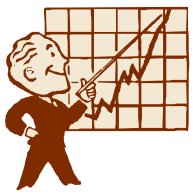
Removal of auditors :

An auditor may be removed from his office before the expiry of his term only by the company in general meeting, after obtaining the previous permission of the Central Government.

Qualifications and Disqualifications of auditors :

Only a chartered accountant can be appointed as an auditor of a company. A body corporate, an officer or employee of a company, a partner or who is in employment and a person who is indebted to the company for an amount exceeding Rs. 1000/- or a person who has given guarantee of a third person to the company for an amount exceeding Rs. 1000/- are not qualified to be an auditor of the company.

The auditors of a company have the right to have access to the books, accounts and voucher of a company. They have the power to inquire into the financial transactions of the company.



CHECK YOUR PROGRESS

Q.5. Write the qualification and disqualification of an Auditor of a company.

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11.11 WINDING UP OF A COMPANY

Winding up of a Company is of three kinds

1. Winding up by the Court
2. Voluntary winding up. It may be—
   a) Member's Voluntary winding up
   b) Creditor's Voluntary winding up
3. Winding up subject to the supervision of the Court.

1. Winding up by the Court (Section 433-483)

   Circumstances of Winding up by the Court (Section 433)

   a) If the company has resolved by the special resolution that the company be wound up by the court.
   b) If there is default in delivering the statutory report or in holding the statutory meeting.
   c) If the company does not commences its business within a year from incorporation or suspended the business for the whole year.
   d) If in a public company the number of member is reduced below seven and that of a private company below two. (Companies Act 2013 introduced one Person Company as private Company)
   e) If the company is unable to pay its debts.

A petition for winding up of a company may be presented to the court by the following :

The Company, any creditor or creditors, any contributory, the Registrar, and the Central Government.

For winding up, a resolution has to be passed by the company before presenting the petition for winding up to the court. The winding up of the company shall be deemed to have commenced at the passing of the resolution, unless court finds any proof of fraud or mistake.

In any other case, the winding up of a company by the court shall be deemed to commence at the time of presentation of the petition.

Where a court makes an order for the winding up of a company, the court shall set forth with cause intimation thereof to send to the Official Liquidator and the Registrar.

Voluntary winding up :

A company may be wound up voluntarily when—

1. a) The period (if any), fixed for the duration of the company by the Articles has expired or due to occurrence of any event for which the article provide that the company is to be dissolved. And
   b) The company in general meeting passes a resolution requiring the company to be wound up voluntarily.
2. If the company passes a special resolution that the company be wound up voluntarily.

When the directors of the company make the declaration of solvency then it is known as Member's Voluntary winding up and if no such declaration is made it is known as Creditor's Voluntary winding up.

Winding up subject to the supervision of the Court :

At any time after a company has passed a resolution for voluntary winding up, the court may order that the voluntary winding up shall continue but subject to such supervision of the court.

The process of winding up involves realizing the assets of the company. That is realizing what is due to the company from any source whatever, and then satisfying the debts and liabilities of the company.



11.12 LET US SUM UP

- The Companies Act, 1956 was passed to consolidate and amend the law relating to companies and other associations.
- Now, this Act has been repealed and a new legislation came into existence known as the Companies Act 2013. But the repealed Act replaced the old one in a partial manner only.
- This Act provides for the creation, continuation and winding up of a company.
- The Act deals with the rules and regulations of a company.
- It also specifies the appointment, qualification and disqualification, removal and liabilities of Directors.

- It provides for the rules relating to the general meetings and proceedings.
- The Companies Act provides for the appointment, qualification and removal of Auditors.
- This Act empowered the members, creditors and the court for the winding up of a company.



11.13 FURTHER READINGS

1. Arun Kumar Sen and Jitendra Kumar Mitra (1977) *Commercial Law (including Company Law and Industrial Law);* World Press Private Limited.
2. R. P. Maheshwari and S. N. Maheshwari (2014) *Principles of Mercantile Law;* Himalaya Pub. House, New Delhi.
3. N. D. Kapoor (2014) *Elements of Mercantile Law;* Sultan Chand & Sons.
4. K. C. Garg, V. K. Sareen, Mukesh Sharma & R. C. Chawla (2014) *Mercantile Law;* Kalyani Publishers.
5. V. K. Sareen, Mukesh Sharma & K. C. Garg (2015) *Business Law;* Kalyani Publishers.
6. The Consumer Protection Act, 1986 (Bare Act).



11.14 ANSWER TO CHECK YOUR PROGRESS

Answer to Q. No. 1

The main object of the Companies Act is to consolidate and amend the law relating to companies and certain other associations. Also to protect the interest of common people.

Answer to Q. No. 2

According to Section 3, "private company" means a company which, by its articles,

a) Restricts the right to transfer its shares, if any;

b) Limits the number of its members to fifty not including—

   i) persons who are in the employment of the company, and

ii) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased.

c) Prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company : Provided that where two or more persons hold one or more shares, in a company jointly, they shall, for the purposes of this definition, be treated as a single member.

Answer to Q. No. 3

According to L. B Curzon, prospectus means, "any document containing information about securities". Therefore, it has the following essentials :

i) It must contain an invitation for deposit or an invitation to purchase shares or debentures of the company and

ii) The invitation must be made to the public.

Conditions of a valid prospectus :

a) It must be dated : The date of publication of the prospectus is considered as the date of prospectus

b) It must be signed by the directors or proposed directors or his authorized agents.

c) Registration of prospectus is essential on or before the date of publication.

Answer to Q. No. 4

The meetings of the members of a company are three types :

1) Statutory Meeting (Section165 (1))

2) Annual General Meeting (Section 166-168)

3) Extraordinary General Meeting (Section 169)

Statutory Meeting : Every company limited by shares and limited by guarantee and having a share capital is required to hold the first meeting of the company after one month but within the period of six months.

Annual General Meeting : Every company is required to hold a general meeting each year to be known as annual general meeting. There should not be more than 15 months gap between one general meeting and the next.

If there is default in holding the meeting of its own, the company and every officer of the company who is in default shall be punishable with fine.

Extraordinary General Meeting : The meeting other than the annual general meeting is known as the extraordinary general meeting. The directors may call for a meeting other than an ordinary general meeting whenever they think fit.

Answer to Q. No. 5

Qualification of an auditor in a company :

Only a chartered accountant can be appointed as an auditor of a company.

Disqualification :

A body corporate, an officer or employee of a company, a partner or who is in employment and a person who is indebted to the company for an amount exceeding Rs. 1000/- or a person who has given guarantee of a third person to the company for an amount exceeding Rs. 1000/- are not qualified to be an auditor of the company.



11.15 MODEL QUESTIONS

1. How a company can be formed under the Companies Act ?
2. What is called Memorandum of Association ?
3. What is Share ? Discuss different kinds of shares under the Companies Act.
4. What are the different modes of winding up of a company ? Discuss the procedure for winding up of a company.

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UNIT - 12 : CONSUMER PROTECTION ACT

UNIT STRUCTURE

12.1 Learning Objectives
12.2 Introduction
12.3 Object and Scope
12.4 Important Definitions
12.5 Rights of Consumers
12.6 Nature and Scope of Complaints
12.7 Remedies available to Consumers
12.8 Let us Sum Up
12.9 Further Readings
12.10 Answer to Check Your Progress
12.11 Model Questions

12.1 LEARNING OBJECTIVES

After going through this unit you will be able to :

- explain the object and scope of Consumer Protection Act,1986
- define the different definitions
- describe rights of consumers
- explain nature and scope of complaints as well as remedies available to consumers.

12.2 INTRODUCTION

The Consumer Protection Act, 1986 is an important milestone in the history of consumer movement in India. The Act was enacted to provide protection and promotion of consumer rights through the establishment of Consumer Councils and quasi- judicial machinery. In this unit, we are going to discuss about the Consumer Protection Act, 1986 and details about its object and scope. This unit also encompasses different definitions. Through this unit you will be able to know about the rights of the consumers and remedies available to them. This unit discusses about the meaning of complaint.

Thus, you will able to understand through this unit, the basic object of passing of the Act and the redressal of the plight of the consumers.

The Consumer Protection Act, 1986 has been amended several times. For removing the obstacles in efficient implementation of the Act and securing effective functioning of the institutions established under the Act, the parliament introduced subsequent amendments vide the Consumer Protection (Amendment) Acts of 1991, 1993 and 2002.

12.3 OBJECT AND SCOPE

The Supreme Court in its decision in *Lucknow Development Authority v M K Gupta* [(1994) 1SCC 243,253], noted that the word 'consumer' is a comprehensive expression. It extends from a person who buys any commodity to consume either as eatable or otherwise from a shop, business house, corporation, store, fair price shop to use for private or public services.

The Consumer Protection Act, 1986 was enacted to provide for better protection of the interest of the consumers and for the purpose to make provisions for the establishment of consumer Councils and other authorities for the settlement of consumer disputes and for matters connected there-with. It seeks, inter-alia, to promote and to protect the rights of consumers.

The object is also to provide speedy and simple redress to consumer disputes. Quasi judicial bodies are set up at the District, State and National level and have been empowered to give relief of specific nature and to award, wherever appropriate compensation to consumers. Penalties for non compliance of orders given by quasi-judicial bodies have also been provided.



CHECK YOUR PROGRESS

Q.1. Mention one objective of the Consumer Protection Act, 1986.

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12.4 IMPORTANT DEFINITIONS

Some important definitions are given below—

a) **"Complainant"** means—

i) a consumer; or

ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force; or

iii) the Central Government or any State Government; or

iv) one or more consumers, where there are numerous consumers having the same interest;

v) in case of death of a consumer, his legal heir or representative; who or which makes a complaint;

b) **"Complaint"** means any allegation in writing made by a complainant that—

i) an unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider

ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;

iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;

iv) a trader or the service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price—

a) fixed by or under any law for the time being in force;

b) displayed on the goods or any package containing such goods;

c) displayed on the price list exhibited by him by or under any law for the time being in force;

d) agreed between the parties;

v) goods which will be hazardous to life and safety when used are being offered for sale to the public,

a) in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;

b) if the trader could have known with due diligence that the goods so offered are unsafe to the public;

vi) services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety;

c) **"Consumer"** means any person who,

i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

ii) [hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person [but does not include a person who avails of such services for any commercial purpose];

d) **"Consumer dispute"** means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;

e) **"Defect"** means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or [under any contract, express or implied, or] as is claimed by the trader in any manner whatsoever in relation to any goods;

f) **"Deficiency"** means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

g) **"District Forum"** means a Consumer Disputes Redressal Forum established under clause (a) of section 9;

h) **"Boods"** means goods as defined in the Sale of Goods Act, 1930 (3 of 1930);

i) **"Manufacturer"** means a person who—

   i) makes or manufactures any goods or parts thereof; or

   ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by others; or

   iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer;

j) **"Member"** includes the President and a member of the National Commission or a State Commission or a District Forum, as the case may be;

k) **"National Commission"** means the National Consumer Disputes Redressal Commission established under clause (c) of section 9;

l) **"Person"** includes—

   i) a firm whether registered or not;

   ii) a Hindu undivided family;

   iii) a co-operative society;

   iv) every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860) or not;

m) **"Restrictive trade practice"** means a trade practice which tends to bring about manipulation of price or its conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include—

   a) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price;

   b) any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition precedent to buying, hiring or availing of other goods or services;

n) **"State Commission"** means a Consumer Disputes Redressal Commission established in a State under clause (b) of section 9;



CHECK YOUR PROGRESS

Q.2. Define the term 'Consumer' under the Consumer Protection Act, 1986.

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12.5 RIGHT OF CONSUMERS

The Act recognizes six fundamental rights to every Indian consumer. These rights are mentioned in Section 6 of the Act and are as follows :

1) Right to be protected against the marketing of goods and services which are hazardous to life and property;

2) Right to be informed about quality, quantity, potency, purity, standard and price of goods or services so as to protect the consumers against unfair trade practices;

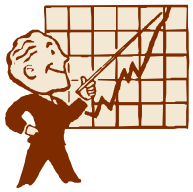
3) Right to be assured , wherever possible , access to a variety of goods and services at competitive prices;

4) Right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forum;

5) Right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and

6) Right to consumer education.

The United Nation Guidelines on Consumer Protection had stressed upon the importance of recognizing these consumer rights and as India is a signatory of the UN General Assembly Resolution, adopted these guide-lines in the Consumer Protection Act, 1986.



CHECK YOUR PROGRESS

Q.3. Discuss the reasons behind enumerating different rights of consumers under the Consumer Protection Act, 1986.

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12.6 NATURE AND SCOPE OF COMPLAINTS

Consumer Dispute is a kind of tort and it can only be initiated by filing a complaint by the consumers. A consumer court can not initiate proceedings against the opposite party unless a formal 'complaint' is made.

The complaint must be made in writing and it must contain the name, description and address of the complainant as well as the opposite party. Also, it must contain the facts and the relief sought, supported by documents, if any. Under the Consumer Protection Act, 1986 it was necessary that the complainant must have suffered loss / damage as a result of an unfair trade practice. But, the Amendment Act of 1993 had removed the anomaly and a complaint can be made in respect of any unfair or restrictive trade practice, whether the complainant has suffered loss or damage or not.

The definition of complaint has been expanded under Section 2(1)(c) by the 2002 Amendment.

Now a complaint can be made not only against the traders but also service providers for adopting unfair trade practices, deficiency in service etc. Thus, a complaint can be given in respect of defective goods or deficient services. No complaint can be given without asking a relief provided by the Act.

If any complaint made in consumer dispute redressal cannot be satisfactorily decided in time bound proceedings, the complainant should prosecute the remedy in civil court.

Similarly, when a matter is pending before a competent civil court, the consumer courts will not entertain a petition in respect of the identical subject matter.

12.7 REMEDIES AVAILABLE TO CONSUMERS

Section 14 of the Consumer Protection Act deals with the remedies available to the consumers. The reliefs can be granted to a complainant by the District Forum. However, the State Commission under Section 18 and the National Commission under Section 22 read with Rule 14(5) of the Consumer Protection Rules 1987 also have the similar power to grant the reliefs, enumerated herein.

By the Amendment of 2002, the scope of relief has been increased. Now the District Forum can direct the opposite party to pay punitive damage, cease manufacture of hazardous good and desist from offering services which are hazardous in nature etc.

Under the Consumer Protection Act, the District Forum is empowered to grant the following reliefs :

a) Removal of Defects : The Forum may direct the opposite party to remove the defect pointed out by the appropriate laboratory, from the goods.

b) Replacement of Goods : Where it is not possible to remove the defects alleged, the Forum may direct to replace the goods with new goods of similar description, which are free from similar defects.

c) Return of Price : For the goods of sub standard quality or deficiency in service, the Forum may order the opposite party to return the price or the charges paid by the complainant.

d) Compensation : If the consumer suffers any loss or injury due to the negligence of the opposite party, the District Forum may issue an order to pay such amount as compensation.

e) Removal of Defects/Deficiencies : The district Forum has been empowered to direct the opposite party to remove the defect or deficiency in the service in question.

f) Discontinuance of Unfair / Restrictive Trade Practice : When the opposite party is found guilty 'prima facie' of indulging unfair or restrictive trade practices, the Forum may direct it to discontinue or not to repeat it.

g) Not to offer Hazardous Goods for Sale : The District Forum has been empowered to order or direct the opposite party, not to offer the hazardous goods for sale.

h) To withdraw hazardous Goods : To protect the public in general and consumers in particular, the District Forum has power to direct the opposite party to withdraw the hazardous goods from being offered for sale.

i) To provide adequate costs to parties : The District Forum is empowered to award costs to complainants in fit cases.

Prior to the 1993 Amendment, the District Forum had the power to grant only the reliefs in clauses (a) to (d) above. But, 1993 Amendment inserted clauses (e) to (i) in Section 14(1) of the Act. These clauses vest the consumer courts with greater power.



CHECK YOUR PROGRESS

Q.4. Under what circumstances a Consumer Forum can award compensation to the complainant ?

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12.8 LET US SUM UP

- The Consumer Protection Act, 1986 is an important milestone in the history Consumer Movement in India.
- The Act provide quick and cheaper mode of disposal of disputes.
- The Act enumerated six fundamental rights to consumers.

- An aggrieved consumer can file a written complaint to the District Forum to get relief.
- The District Forum, State Commission or the National Commission has power to grant the relief to the aggrieved consumer.



12.9 FURTHER READINGS

1. Arun Kumar Sen and Jitendra Kumar Mitra (1977) *Commercial Law (including Company Law and Industrial Law);* World Press Private Limited.
2. R. P. Maheshwari and S. N. Maheshwari (2014) *Principles of Mercantile Law;* Himalaya Pub. House, New Delhi.
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5. V. K. Sareen, Mukesh Sharma & K. C. Garg (2015) *Business Law;* Kalyani Publishers.
6. The Consumer Protection Act, 1986 (Bare Act).



12.10 ANSWER TO CHECK YOUR PROGRESS

Answer to Q. No. 1

1) The main objective of the Consumer Protection Act, 1986 is to provide speedy and simple redressal to consumer disputes.

Answer to Q. No. 2

1) Section 2(1)(d) of the Act defines the 'Consumer' as a person who buys any goods for a consideration or hires or avails of any services for a consideration.

Answer to Q. No. 3

1) The United Nations General Assembly had adopted certain guidelines for the protection of interests of consumers. As India is a signatory of the UN General Assembly Resolution, becomes bound to incorporate those guidelines in domestic law. Therefore the different rights are enumerated for the consumers under the Consumer Protection Act.

Answer to Q. No. 4

1) A Consumer Forum can Award any compensation under the Act when the following circumstances are satisfied :
   a) The consumer must have suffered some loss or injury;
   b) The loss or injury must have been caused due to the negligence of the opposite party.



12.11 MODEL QUESTIONS

1. Explain the following terms under the Consumer Protection Act, 1986.
   a) Complaint
   b) Consumer dispute
2. Write the nature and scope of the Consumer Protection Act, 1986
3. How and where a complaint can be filed by a complainant ?
4. What are the different remedies available to a consumer ?

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UNIT - 13 : E-GOVERNANCE

UNIT STRUCTURE

13.1 Learning Objectives

13.2 Introductions

13.3 Concept of E-Governance

13.4 Director Identification Number

13.5 Corporate Identification Number

13.6 Digital Signature Certificate

13.7 Important features

13.8 e-Form

13.9 Importance of MCA 21 projects

13.10 Let Us Sum Up

13.11 Further Readings

13.12 Answers to Check Your Progress

13.13 Model Questions

13.1 LEARNING OBJECTIVES

After going through this unit you will be able to :

- discuss the Concept of E-Governance
- explain the Director Identification Number
- explain the Corporate Identification Number
- explain the Digital Signature Certificate
- learn the filing e-Form

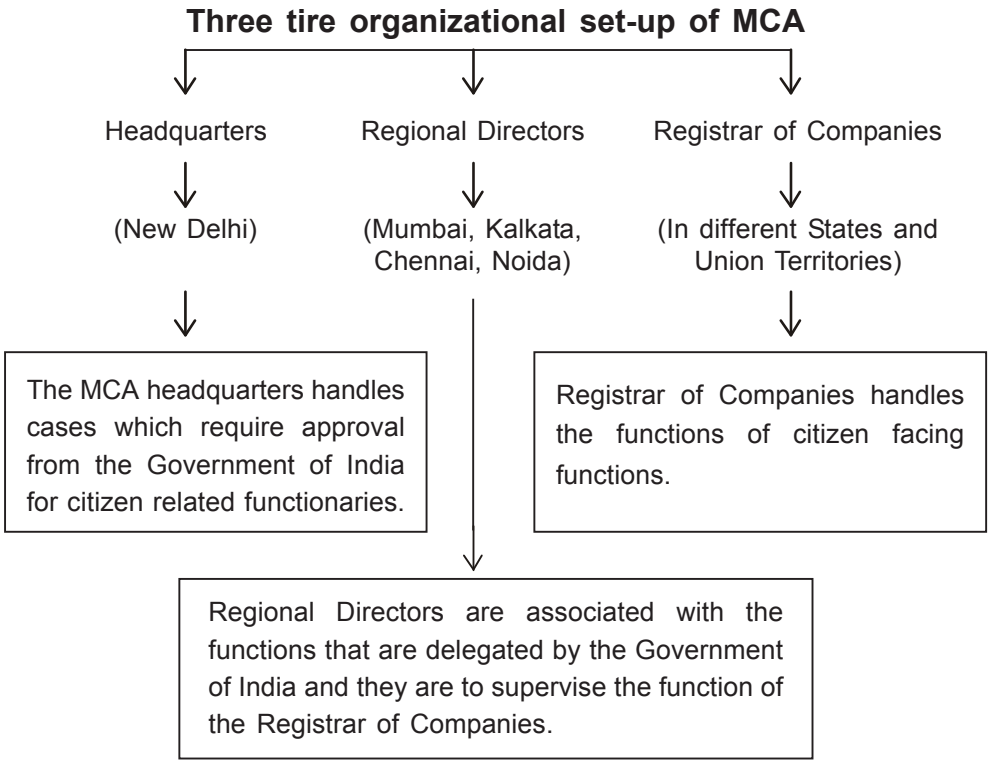
13.2 INTRODUCTION

The MCA-21 stands for Ministry of Company Affairs (MCA) in the 21st century. E-Governance is the application of information technology to the Government functioning in electronic form to bring simple and transparent governance. This unit encompass the Director Identification Number (DIN) as well as Corporate Identification Number (CIN), Digital Signature

Certificate, filing e-Form. Thus, in this unit you will gain knowledge about DIN, CIN, Digital Signature Certificate and filing e-Form which are the important segments of E-Governance.

13.3 CONCEPT OF E-GOVERNANCE

Under the Companies Act, 1956, the filing and registration of document of the companies are a statutory requirement. The Ministry is concerned with the administration of the Companies Act, 1956 and other allied Acts for regulating the functioning of the corporate sector in accordance with law. We must first understand the three tire organizational set up of MCA as shown below :



MCA-21 helps in easy and secure online access to all the services being provided by the Ministry of Company Affairs, including registration and filing of documents throughout the country. It takes less time and the corporate houses can use it in a manner that best suits them. The programme is based on the quality of services, to various stakeholders concerned with the corporate sector in the country. It also provide transparency, cost effective and speedy disposal of different services. To

protect the interest of the investors Government takes different initiatives in this regards. The complaints of the investor are acknowledged within 48 hours. Many Investor Protection Cells are opened not only for Ministry but also for all and Regional Directors and Registrars of Companies and Nodal Officers.



CHECK YOUR PROGRESS

Q.1. What is the three tier organizational set-up of MCA ?

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The e-governance projects are involving two components namely front office and back office.

Front Office :

It represents the interface of the corporate and public users with the MCA-21 system. Its implantation is done in two ways as Virtual Front Office (VFO) and Registrar's Front Office.

Virtual Front Office (VFO) : The VFO is what citizen has in front while accessing the MCA-21 portal. It represents a computer facility available to the stakeholders for statutory filing with ROC Offices across the country. It represents computer facility for the filing of digitally signed e-forms by accessing the MCA portal. It also helps in converting documents into PDF format and scanning the documents. The VFO provide different services like tracking transaction status, requesting certified copies, registering investor complaint etc.

Registrar's Front Office : The Registrar's Front Office facilitate the service related to change over from the Physical Document Filing to Digital Document Filing. It consists of trained manpower, scanner, printer etc. It helps the stakeholders for statutory filing with ROC Offices across the country.

Back Office :

It represents the office of the Registrar of Companies, Regional Directors and Headquarters. The e-forms along with the attachments that are stored in the electronic depository are viewed and processed by the staff of the MCA. It provides quicker response to the investor grievances. It checks, provides guidance and alerts when the tasks are not carried out within stipulated period. It also stores all approved documents, record of the shareholders etc.



CHECK YOUR PROGRESS

Q.2. What do you mean by front office ?

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Q.3. What are the two components of the e-governance project ?

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13.4 DIRECTOR IDENTIFICATION NUMBER

All the people who want to be the director of the company are required to obtain the Director Identification Number (DIN) within the prescribed time-frame. The concept of a Director Identification Number (DIN) has been introduced for the first time with the insertion of Sections 266A to 266G of Companies (Amendment) Act, 2006. Only one DIN is required for an individual irrespective of the number of directorships held by him. It is a unique identification number. This number is valid for life time.

It is mandatory for the director of Indian Companies who are not citizens of India. But it is not applicable for the directors of foreign companes having branch offices in India.

The process to be followed by the applicant is as under :

i. **Obtain provisional DIN :** The applicant is required to fill-up and submit the form DIN-1 online for obtaining on the homepage of MCA portal.

ii. **Pay DIN application fee :** 'DIN application fee' option has to select and enter the provisional DIN. Fee can be paid by the applicant using any of three modes of payment available on MCA portal. As the DIN application fee is paid, the Form DIN-1 will be processed.

iii. Dispatch DIN application to MCA DIN Cell : The following documents are required along with the **DIN application while the DIN application is ready to dispatch to MCA DIN Cell :**

1. A print-out of application Form DIN. Sign the DIN application form manually and fill up the Service Request Number (SRN) of the fee paid.
2. A resolution.
3. The photocopies of the 'Proof of Identity'
4. The 'Proof of Residence' days from the date of generation of provisional DIN online.

The DIN application form and all attached documents are scrutinized as these are received by MCA DIN Cell. If it is found to be in order the provisional DIN is approved and activated in the system. On the other hand, if any defect is found the provisional DIN is rejected.

13.5 CORPORATE IDENTIFICATION NUMBER

Every company is identified by its Corporate Identification Number which is found from the MCA-21 portal. It can be searched on MCA-21 portal either by ROC Registration number or by the name of the company or the old name of the company or the inactive CIN.



CHECK YOUR PROGRESS

Q.4. What is the difference between Corporate Identification Number and Director Identification Number ?

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13.6 DIGITAL SIGNATURE CERTIFICATE

To ensure security and authenticity of the documents submitted in electronic form Digital Signature is required under the Information Technology Act, 2000. Thus, all filings done by the companies under MCA21 e-Governance programme are required to be filed with the use of Digital Signatures by the person authorised to sign the documents. It is an electronic analogue of a written signature. Four types of persons are identified as users of Digital Signature and required to obtain the digital signature :

a. MCA (Government) Employees.

b. Authorised signatories of the company including Managing Director, Directors, Manager or Secretary.

c. Professionals (Company Secretaries, Chartered Accountants, Cost Accountants and Lawyers).

d. Representatives of Banks and Financial Institutions.

There are a total of seven Certification Agencies authorized which can issue the Digital Signature Certificates (DSCs) under the provisions of IT Act, 2000. The Digital Signature Certificates are issued with one year validity and two year validity and renewable on expiry of the period of initial issue.



CHECK YOUR PROGRESS

Q.5. Who are the identified users of Digital Signature ?

i) .....

ii) .....

iii) .....

iv) .....

13.7 IMPORTANT FEATURES

The Director Identification Number, Corporate Identification Number and Digital Signature Certificate are the important features under e-governance mode. But some other important features under e-governance mode are also essential like Certified Filling Centre (CFC), Service Request Number (SRN), stamp duty, mode of payment etc.

Certified Filling Centre (CFC) :

Certified Filling Centre is managed by the professional. The different stakeholders do the statutory filling with ROC office across the world. These are managed and operated by the professional like Secretaries, Chartered Accountants, and Cost Accountants on user charge basis. There are more than 550 Certified Filling Centres approved all over India.

Service Request Number (SRN) :

A user can check the status of the document or transaction through the SRN which is generated on filling an e-Form.

Stamp Duty :

Stamp duty is payable on Memorandum and Articles of Association of every company.

Mode of Payment :

The statutory fees can be paid under MCA-21 system in different modes i.e.

A. Off-line payment : Through the help of challan in the counter of notified Bank.

B. On-line Payment : Through Internet Banking or Credit Card.



CHECK YOUR PROGRESS

Q.6. Mention any three features of e-governance ?

i) .....

ii) .....

iii) .....

13.8 E-FORM

The Ministry of Company Affairs has introduced the MCA21 e-Governance programme. The MCA21 e-Governance programme provide all services relating to ROC offices on-line in e-Governance mode. Each e-Form contains form reference and the description. It also contains particular section of the Companies Act or relevant rules and regulations.

For the purpose simpler functioning the proposed e-Forms have been grouped under the following categories :

a. *Company Registration :* All the forms that are required in incorporating the companies e.g. Form 1A, 1, 18 etc.

b. *Compliance Related Filling :* All the statutory filings of e-Forms are grouped in this category e.g. Annual Return, Notice of appointment etc.

c. *Charge Management :* There are different charges applicable and it requires the filing of particulars for registration of charge created or modified.

d. Change Services : It relates to the change of authorised capital, capital structure, situation of registered office etc.

e. *Investor Services :* A separate e-Form is prescribed for filling the complaint.

f. *Informational services :* There are many informational services are provided for the purposes of filing documents in ROC e.g. resolution and agreement, declaration of solvency etc.

g. *Provisions relating to Management personnel :* This should include change in the number of directors, their appointment, remuneration, payment of commission etc.

h. *Approval of services :* The Regional Director is required to follow some matters like issue of licence, approval of contract, appointment or removal of auditors etc

13.9 IMPORTANCE OF MCA 21 PROJECTS

The MCA 21 fulfils the requirements of the different persons involved in different sectors like Corporate, Profession, Public Financial Institutions and Banks, Government etc. The importance of MCA 21 projects are :

a. Simplified and easy mode of filling of Forms or Returns.

b. Registration and verification of charges.

c. Timely redressal of investor grievances.

d. On-line incorporation of companies.

e. Transparency.

f. Easy customer relationship building.

g. Inspection of public document.

h. More qualitative analysis can be expected.



13.10 LET US SUM UP

- MCA-21 helps in easy and secure online access to all the services being provided by the Ministry of Company Affairs, including registration and filing of documents throughout the country.
- The VFO is what citizen has in front while accessing the MCA-21 portal.
- The Registrar's Front Office facilitates the service related to change over from the Physical Document Filing to Digital Document Filing.
- Back Office represents the office of the Registrar of Companies, Regional Directors and Headquarters.
- To ensure security and authenticity of the documents submitted in electronic form Digital Signature is required under the Information Technology Act, 2000.
- A user can check the status of the document or transaction through the SRN which is generated on filling an e-Form.
- Each e-Form contains form reference and the description. It also contains particular section of the Companies Act or relevant rules and regulations.
- The statutory fees can be paid under MCA-21 system in different modes i.e. through Off-line payment and On-line Payment.



13.11 FURTHER READINGS

1. Arun Kumar Sen and Jitendra Kumar Mitra (1977) *Commercial Law (including Company Law and Industrial Law);* World Press Private Limited.
2. R. P. Maheshwari and S. N. Maheshwari (2014) *Principles of Mercantile Law;* Himalaya Pub. House, New Delhi.
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5. V. K. Sareen, Mukesh Sharma & K. C. Garg (2015) *Business Law;* Kalyani Publishers.
6. The Consumer Protection Act, 1986 (Bare Act).



13.12 ANSWERS TO CHECK YOUR PROGRESS

Answer to Q. No. 1

A) The three tier organizational set-up of MCA –
   1. Headquarters
   2. Regional Directors
   3. Registrar of Companies

Answer to Q. No. 2

Front Office represents the interface of the corporate and public users with the MCA-21 system.

Answer to Q. No. 3

The two components of the e-governance project are front office and back office.

Answer to Q. No. 4

The difference between Corporate Identification Number and Director Identification Number is that every company is identified by its Corporate Identification Number and the every director isidentified by its Director Identification Number except the director of the foreign company having branch offices in India.

Answer to Q. No. 5

The identified users of Digital Signature are—

i. MCA (Government) Employees.

ii. Authorised signatories of the company including Managing Director, Directors, Manager or Secretary.

iii. Professionals (Company Secretaries, Chartered Accountants, Cost Accountants and Lawyers)

iv. Representatives of Banks and Financial Institutions.

Answer to Q. No. 6

Three features of e-governance are—

i. Certified Filling Centre (CFC),

ii. Service Request Number (SRN),

iii. Stamp duty.



13.13 MODEL QUESTIONS

1. Fill in the blanks :
   a. The MCA-21 stands for _____ in the 21st century.
   b. _____ are associated with the functions that delegated by the Government of India and supervise the function of Registrar of Companies.
   c. _____ implantation is done in two ways as Virtual Front Office and Registrar's Front Office.
   d. The concept of a Director Identification Number (DIN) has been introduced for the first time with the insertion of Sections _____ to _____ of Companies (Amendment) Act, 2006.
   e. There are more than _____ Certified Filling Centres approved all over India.
2. Explain the term Corporate Identification Number.
3. Write short note on –
   a. Director Identification Number
   b. Digital Signature Certificates
   c. Certified Filling Centre
   d. Service Request Number
4. What do you mean by Digital Signature Certificates ? Who are the persons that can act as identified as users of Digital Signature ?
5. Mention two modes through which statutory fees can be paid under MCA-21 system ?
6. What is the process to be followed by the applicant to get Director Identification Number ?
7. "The e-governance project involves two components as front office and back office." Explain.

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UNIT - 14 : REGULATION TO INFORMATION

UNIT STRUCTURE

14.1 Learning Objectives

14.2 Introduction

14.3 Right to Information Act, 2005

14.4 Information Technology Act, 2000

14.5 Electronic Governance and Secure Electronic Record

14.6 Digital Signatures and Digital Signature Certificates

14.7 Cyber Regulations Appellate Tribunal

14.8 Offences

14.9 Limitations of the Information Technology Act, 2000

14.10 Let us Sum Up

14.11 Further Readings

14.12 Answer to Check Your Progress

14.13 Model Questions

14.1 LEARNING OBJECTIVES

After going through this unit you will be able to :

- explain the Right to Information, Act 2005 and the Information Technology Act, 2000.
- explain the concept of E-Governance, Digital Signature and Digital Certificates.
- describe the functioning of Cyber Regulations Appellate Tribunal.
- describe the limitations of the Information Technology Act, 2000.

14.2 INTRODUCTION

The Information Technology Act, 2000

The Information Technology Act, 2000 came into existence as a response to the United Nations General Assembly recommendation that all states should give favourable consideration to the Model Law on Electronic

Commerce when they enact or revise their laws, for uniformity of the law of International Trade.

The main object of the law has been two folds :

1st – that the enactment of such a nature should not ignore the national or municipal perspectives on information technology and

2nd – that the enactment to have an international perspective as advocated by the Model Law on Electronic Commerce.

This Act applies to any offence or contravention committed outside India by any person, irrespective of his nationality, if such act or contravention involves a computer, computer system or computer located in India.

The Act is enacted to protect and provide a means of redressal even to owner of a single computer, computer system or computer network located in India.

Moreover, this Act further amends the Indian penal Code, 1860, the Indian Evidence Act, 1872, the Banker's Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934.

The Right to Information Act, 2005

The Act provides for the setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. To provide information the Act came into force on 15th June, 2005 and it becomes effective on 13th Oct. 2005.

By enacting this law, the Parliament of India gave a powerful tool to the citizens to get information from the Government as a matter of right.

The main object of the Act is to empower the citizens of India to keep vigil on the instruments of Governance. It also promotes transparency and accountability in the working of the Government.

Under this Act citizens can ask the Public Information Officer any information which is related to the administration only. The information asked for must relate to public affairs and shall not be associated with private matters.



CHECK YOUR PROGRESS

Q.1. Write two main objects of the Information Technology Act, 2000.

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14.3 THE RIGHT TO INFORMATION ACT, 2005

In October 13th, 2005 The Right to Information Act came into force. This Act aims to provide the transparency and accountability of the workings of the government department and empowers the citizens of India to get information.

Chapter II of the deals with the Right to Information and obligation of the public authorities. Under this Act the public authorities have an obligation to provide information suo motu to the public at regular intervals about the function and policy of the department.

Chapter III provides for the constitution of a body called the Central Information Commission to execute and perform the functions assigned to it under the Act. The Central Information Commissioner shall be appointed by the President of India.

Chapter IV deals with the constitution of the State Information Commission.

Chapter V provides for the powers and functions of the Information Commission, to receive the applications seeking information. It also deals with appeals and penalties.

Chapter VI deals with miscellaneous provisions.



CHECK YOUR PROGRESS

Q.2. Write is the aim behind passing of the Right to Information Act, 2005.

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14.4 INFORMATION TECHNOLOGY ACT, 2000

In May 2000, both the houses of the Indian Parliament passed the Information Technology Bill. The Bill received the assent of the President in August 2000, which is known as the Information Technology Act, 2000. Cyber laws are contained in the IT Act, 2000.

This Act provides the legal infrastructure for e-commerce in India. It also aims to provide for the legal framework to all electronic records and other activities carried out by electronic means to get the legal sanctity. The Act states that unless otherwise agreed, all communications done through electronic means have legal validity and enforceability. Some highlights of the Act can be stated as below :

Chapter-II of the Act specifically stipulates that any subscriber may authenticate an electronic record by affixing his digital signature. It further states that any person can verify an electronic record by use of a public key of the subscriber.

Chapter-III of the Act deals about Electronic Governance and states that where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is— rendered or made available in an electronic form and accessible so as to be usable for a subsequent reference.

The said chapter also details the legal recognition of Digital Signatures.

Chapter-IV of the said Act gives a scheme for Regulation of Certifying Authorities. The Act envisages a Controller of Certifying Authorities who shall perform the function of exercising supervision over the activities of the Certifying Authorities as also laying down standards and conditions governing the Certifying Authorities as also specifying the various forms and content of Digital Signature Certificates. The Act recognizes the need for recognizing foreign Certifying Authorities and it further details the various provisions for the issue of license to issue Digital Signature Certificates.

Chapter-VII of the Act details about the scheme of things relating to Digital Signature Certificates. The duties of subscribers are also enshrined in the said Act.

Chapter-IX of the said Act talks about penalties and adjudication for various offences. The penalties for damage to computer, computer systems etc. has been fixed as damages by way of compensation not exceeding Rs. 1,00,00,000 to affected persons. The Act talks of appointment of any officers not below the rank of a Director to the Government of India or an equivalent officer of state government as an Adjudicating Officer who shall adjudicate whether any person has made a contravention of any of the provisions of the said Act or rules framed there under. The said Adjudicating Officer has been given the powers of a Civil Court.

Chapter-X of the Act talks of the establishment of the Cyber Regulations Appellate Tribunal, which shall be an appellate body where appeals against the orders passed by the Adjudicating Officers, shall be preferred.

Chapter-XI of the Act talks about various offences and the said offences shall be investigated only by a Police Officer not below the rank of the Deputy Superintendent of Police. These offences include tampering with computer source documents, publishing of information, which is obscene in electronic form, and hacking.

The Act also provides for the constitution of the Cyber Regulations Advisory Committee, which shall advice the government as regards any rules, or for any other purpose connected with the said act.

14.5 ELECTRONIC GOVERNANCE (E-GOVERNANCE) AND SECURE ELECTRONIC RECORD

Electronic Governance is the application of Information and Communication Technology for delivering Government services, exchange of govt. information, communication, transactions, integration of various stand alone systems and services between govt. to customer, govt. to business, govt. to govt. as well as back office processes and interaction within the entire govt. framework. In simple words it can be said that E-Governance facilitate a much faster, convenient, transparent and dynamic interaction between the government and its people.

Chapter III of the Act gives legal recognition to the E-Governance. E-governance or Electronic Governance is dealt with under Sections 4 to 10A of the IT Act, 2000.

Section 4 of the Act provides for the legal recognition of E-record and made it as a functional equivalent of writing or type written or printed form.

Section 5 provides for legal recognition of Digital Signatures. Where any law requires that any information or matter should be authenticated by affixing the signature of any person, then such requirement shall be satisfied if it is authenticated by means of Digital Signatures affixed in such manner as may be prescribed by the Central Government.

Section 6 lays down the foundation of Electronic Governance. It provides that the filing of any form, application or other documents, creation, retention or preservation of records, issue or grant of any license or permit or receipt or payment in Government offices and its agencies may be done through the means of electronic form.

Section 7 provides that the documents, records or information which is to be retained for any specified period shall be deemed to have been retained if the same is retained in the electronic form.

Section 8 provides that where any law requires the publication of any rule, regulation, order, bye-law, notification or any other matter in the Official Gazette, then such requirement shall be deemed to be satisfied if the same is published in an electronic form.

Section 9 of the Act provides that the conditions stipulated in sections 6, 7 and 8 shall not confer any right to insist that the document should be

accepted in an electronic form by any Ministry or department of the Central Government or the State Government.

The e-governance has made the system more transparent, by cutting down the practice of red-tapes, corruption by the officials, as now the government can reach the citizens directly. E-governance brings the benefit of improving the revenue collections, and helps the government to gain higher revenue for enhancing the welfare of citizens.

Secure Electronic Records : The Act is concerned with the application of the security procedures at the user's level.

Sections 14 to 16 of the Act deals with securing electronic records and electronic signatures.

According to Section 14, where any security procedure has been applied to an electronic record at a specific point of time, then such record shall be deemed to be a secure electronic record from such point of time to the time of verification.

Here the presumption is that an electronic record is a secured one from that specific point of time when any security procedure has been applied to it to the time of its verification at the recipient's end, till the recipient proves it otherwise.

Section 15 provides for the security procedure to be applied to Digital Signatures for being treated as a secure digital signature.

Section 16 provides for the power of the Central Government to prescribe the security procedure in respect of secure electronic records and secure digital signatures.



CHECK YOUR PROGRESS

Q.3. What is Secure Electronic Records ?

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14.6 DIGITAL SIGNATURES AND DIGITAL SIGNATURE CERTIFICATES

Digital Signature (As Amended in 2008) :

Section 3 gives legal recognition to electronic records and digital signatures.

The digital signature is created in two distinct steps.

First the electronic record is converted into a message digest by using a mathematical function known as “hash function” which digitally freezes the electronic record thus ensuring the integrity of the content of the intended communication contained in the electronic record. Any tampering with the contents of the electronic record will immediately invalidate the digital signature.

Secondly, the identity of the person affixing the digital signature is authenticated through the use of a private key which attaches itself to the message digest and which can be verified by anybody who has the public key corresponding to such private key. This will enable anybody to verify whether the electronic record is retained intact or has been tampered with since it was so fixed with the digital signature. It will also enable a person who has a public key to identify the originator of the message.

Digital Signature Certificates (DSC)

A Digital Signature Certificates (DSC) is an important instrument of trust identifying the subscriber over the networks. The DSC creates a binding linkage between the subscriber and the issuer. The binding linkage comes to an existence between the issuer and the subscriber, as and when a DSC is issued to the subscriber by the issuer.

Section 35 : Certifying Authority to issue Digital Signature Certificate

- Any person may make an application to the Certifying Authority for the issue of a Digital Signature Certificate.
- Every such application shall be accompanied by the prescribed fee.
- Every such application shall be accompanied by a certification practice statement or where there is no such statement, a statement containing such particulars, as may be specified by regulations.

- On receipt of an application the Certifying Authority may, after consideration of the certification practice statement or the other statement and after making such enquiries as it may deem fit, grant the Digital Signature Certificate.

Provided that no Digital Signature Certificate shall be granted unless the Certifying Authority is satisfied that—

- The applicant holds the private key corresponding to the public key to be listed in the Digital Signature Certificate.
- The applicant holds a private key, which is capable of creating a digital signature.
- The public key to be listed in the certificate can be used to verify a digital signature affixed by the private key held by the applicant :

  Provided further that no application shall be rejected unless the applicant has been given a reasonable opportunity of showing cause against the proposed rejection.

Section 36 : Representations upon issuance of Digital Signature Certificate

A Certifying Authority while issuing a Digital Signature Certificate shall certify that—

- It has complied with the provisions of this Act and the rules and regulations made there under.
- It has published the Digital Signature Certificate or otherwise made it available to such person relying on it and the subscriber has accepted it.
- The subscriber holds the private key corresponding to the public key, listed in the Digital Signature Certificate.
- The subscriber's public key and private key constitute a functioning key pair.
- The information contained in the Digital Signature Certificate is accurate, and
- It has no knowledge of any material fact, which if it had been included in the Digital Signature Certificate would adversely affect the reliability of the representations made in clauses (a) to (d).

Section 37 : Suspension of Digital Signature Certificate

The Certifying Authority which has issued a Digital Signature Certificate may suspend such Digital Signature Certificate—

i) On receipt of a request to that effect from—
   - The subscriber listed in toe Digital Signature Certificate, or
   - Any person duly authorized to act on behalf of that subscriber

ii) If it is of opinion that the Digital Signature Certificate should be suspended in public interest
   - A Digital Signature Certificate shall not be suspended for a period exceeding fifteen days unless the subscriber has been given an opportunity of being heard in the matter.
   - On suspension of a Digital Signature Certificate under this section, the Certifying Authority shall communicate the same to the subscriber.

Section 38 : Revocation of Digital Signature Certificate

i) A Certifying Authority may revoke a Digital Signature Certificate issued by it—
   - Where the subscriber or any other person authorized by him makes a request to that effect, or
   - Upon the death of the subscriber, or
   - Upon the dissolution of the firm or winding up of the company where the subscriber is a firm or a company.

ii) Subject to the provisions of sub-section (3) and without prejudice to the provisions of sub-section (1), a Certifying Authority may revoke a Digital Signature Certificate which has been issued by it at any time, if it is of opinion that—

iii) A material fact represented in the Digital Signature Certificate is false or has been concealed.

iv) A requirement for issuance of the Digital Signature Certificate was not satisfied.

v) The Certifying Authority's private key or security system was compromised in a manner materially affecting the Digital Signature Certificate's reliability.

vi) The subscriber has been declared insolvent or dead or where a subscriber is a firm or a company, which has been dissolved, wound-up or otherwise ceased to exist.

vii) A Digital Signature Certificate shall not be revoked unless the subscriber has been given an opportunity of being heard in the matter.

viii) On revocation of a Digital Signature Certificate under this section, the Certifying Authority shall communicate the same to the subscriber.

Section 39 : Notice of suspension or revocation

Where a Digital Signature Certificate is suspended or revoked under section 37 or section 38, the Certifying Authority shall publish a notice of such suspension or revocation.

CHECK YOUR PROGRESS

Q.4. How Digital Signature can be created ?

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14.7 CYBER REGULATIONS APPELLATE TRIBUNAL

The Act has established the Cyber Regulations Appellate Tribunal having appellate jurisdiction both on facts and in law over a decision or order passed by the Controller of Certifying Authorities or the Adjudicating officer.

According to Section 48 of the Act the Central Government shall by notification, establish one or more appellate tribunals to be known as Cyber Regulations Appellate Tribunal. But Rule 13 of the Cyber Regulations Tribunal (Procedure) Rules, 2000 makes it clear that there shall be only one tribunal and it shall hold its sittings at New Delhi.

By the Amendment Act of 2008

Section 49 : The Tribunal shall consist of a Chairperson and members selected by the Central Govt.and Chief Justice of India.

Section 50 : Qualification for appointment as chairperson and member: The Chairperson should have qualification to be a judge of a High Court.

Section 51 : Terms of office for Presiding Officer :

- Chairperson or member shall hold office for a term of 5 years or to the age of 65 years
- Chairperson or member should have no financial or other interest that could be prejudicial
- The Central govt. or State govt. officers must leave service first to be chairperson or member.

Section 54 : Resignation or removal :

A Chairperson or member can resign from office with 3 months notice or appointment of his successor, whichever is earlier.

Under Section 58, The Tribunal is vested with the same power as a Civil Court.

14.8 OFFENCES

Cyber offences deal with computer, computer system or computer network related to serious offences. Here the offender has to face criminal prosecution. The offender is punishable with imprisonment for a term or fine or with both.

Chapter XI of the Act classified certain kinds of offences which can be enumerated as follows :

1. Tampering with computer source documents (Section 65)
2. Hacking with computer system (Section 66)
3. Publishing of information which is obscene in electronic form (Section 67)
4. Power of the Controller to give direction (Section 68)
5. Directions of Controller to a subscriber to extend facilities to decrypt (Section 69)
6. Protected system (Section 70)

7. Penalty for misrepresentation (Section 71) and Breach of confidentiality and privacy (Section 72)
8. Penalty for publishing Digital Signature Certificate false in certain particulars (Section 73)
9. Publication for fraudulent purpose (Section 74)
10. Failing to surrender license (Section 33)



CHECK YOUR PROGRESS

Q.5. What is Cyber Offence ?

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14.9 LIMITATIONS OF THE INFORMATION TECHNOLOGY ACT, 2000

Though the Act has been successful in setting down the frame work of regulations in Cyber Space and addresses a few pressing concerns of misuse of technology, it suffers from a few limitations.

1. Provisions in Section 1 (2) is not clearly drafted, as to how and in what particular manner, the Act shall apply to any offence or contravention there under committed outside India by any person.
2. The Information Technology Act does not discuss the issue of spamming at all.
3. The Act does not deal with any issues concerning the protection of Intellectual Property rights in the context of the online environment.
4. Phishing is typically carried out by e-mail and often directs users to enter personal and financial details at a website. Phishing is an example of social engineering technique used to fool users. There

is no law against phishing in the Information Technology Act though the Indian Penal Code talks about cheating, it is not sufficient to check the activity of phishing.

5. The IT Act excludes the Negotiable Instruments from its applicability.
6. Functions of adjudicatory officers are not clearly defined under this Act.
7. This Act is silent about the issues of online credit card payments, misuse and misappropriation of credit card numbers online.
8. In chapter XI, from section 65-78, there is no categorical mention as to whether the offences prescribed under these sections are bail able or not.



14.10 LET US SUM UP

- Cyber laws are contained in the IT Act, 2000. This Act provides the legal infrastructure for e-commerce in India. It got amended in the year 2008.
- The Right to Information Act aims to provide the transparency and accountability of the workings of the government department and empowers the citizens of India to get information.
- E-Governance facilitates a much faster, convenient, transparent and dynamic interaction between the government and its people.
- Chapter III of the Act gives legal recognition to the E-Governance. Electronic Governance is dealt with under Sections 4 to 10A of the IT Act, 2000.
- A Digital Signature Certificates is an important instrument of trust which creates a binding linkage between the subscriber and the issuer.
- The Cyber Regulations Appellate Tribunal has power like a Civil Court.



14.11 FURTHER READINGS

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6. The Consumer Protection Act, 1986 (Bare Act).



14.12 ANSWER TO CHECK YOUR PROGRESS

Answer to Q. No. 1

The main object of the Act has been two folds—

1st – that the enactment of such a nature should not ignore the national or municipal perspectives on information technology and

2nd – that the enactment to have an international perspective as advocated by the Model Law on Electronic Commerce.

Answer to Q. No. 2

The aim behind passing the Right to Information Act is to provide the transparency and accountability of the workings of the government department and also to empower the citizens of India to get information.

Answer to Q. No. 3

According to Section 14, where any security procedure has been applied to an electronic record at a specific point of time, then such record shall be deemed to be a secure electronic record from such point of time to the time of verification.

Answer to Q. No. 4

The digital signature is created in two distinct steps.

First— the electronic record is converted into a message digest by using "hash function" which digitally freezes the electronic record thus ensuring the integrity of the content of the intended communication contained in the electronic record. Secondly— the identity of the person affixing the digital signature is authenticated through the use of a private key which can be verified by anybody who has the public key corresponding to such private key.

Answer to Q. No. 5

Cyber offence is the specific criminal violation that resulted from the unauthorized access to a computer, computer system or computer network.



14.13 MODEL QUESTIONS

1. What do you mean by E-Governance ?
2. What is Digital Signature ?
3. Write some utility of E-Governance.
4. How a member or the Chairperson can be removed from the Cyber Regulations Appellate Tribunal ?

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