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SEMESTER - IV

COMMERCE

KRISHNA KANTA HANDIQUI STATE OPEN UNIVERSITY

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COURSE INTRODUCTION

Legal environment plays an important role in the management of companies. The companies have to fulfill the various legal requirements befor starting their operation. At the same time the companies have to follow the legal procedure for their internal management. The course 'Company Law, has been designed to give the learners the knowledge of the legal formalities that companies have to observe in their functioning. The learners will gain knowledge regarding the formalities that joint stock companies have to follow before starting its business. The learners will come to know about the different documents that companies have to prepare for registering themselves, the qualifications and functions of directors, besides the different kinds of company meetings, recording of minutes, role of chairman in the meetings etc.

This course contains 15 units. The first unit of this course 'Basics of Company and Company Law' discusses the meaning and formation of a company and the evolution of company laws in India. In units 2 & 3 we will discuss the procedures of formation of a company and different types of companies under the new Companies Act. In unit 4,5 &6 we will discuss important documents that a company prepares i.e Memorandum of Association, Articles of Association and Prospectus. The other unit will discuss about the company directors, board of directors, company meetings, books and registers maintained by a company and inspection & investigation according to the provisions of new Companies Act-2013.

While going through a unit, you will notice that some along-sode boxes, which have been included to help you know some of the difficult, unseen terms. Some 'ACTIVITY' (s) has been included to help you apply your own thoughts. Again, we have included some relevant concepts in 'LET US KNOW' along with the text. At the end of sections, you will get 'CHECK YOUR PROGRESS' questions. These have been designed to self-check your progress of study. It will be better 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.

UNIT 1: BASICS OF COMPANY AND COMPANY LAW

UNIT STRUCTURE

1.1 Learning Objectives
1.2 Introduction
1.3 Meaning and Definition of Company
1.4 Important Features of Company
1.5 Company Forms of Organization Vis-À-Vis Other Forms of Business Organizations
1.5.1 Distinction between Company and Partnership
1.5.2 Distinction between Company and Hindu Undivided Family Business
1.6 Evolution of Company Laws in India
1.7 Evolution of Companies Act 2013
1.8 Some Important Definitions Under Companies Act 2013
1.9 Let Us Sum Up
1.10 Further Reading
1.11 Answers to Check Your Progress
1.12 Model Questions

1.1 LEARNING OBJECTIVES

After going through this unit you will be able to:

- explain the meaning of company
- discuss the important features of company
- distinguish between company and other forms of business organisations
- enumerate the evolution of company laws in India.

1.2 INTRODUCTION

Modern day business requires huge investment. Also, due to increasing competition in the market and fast changing technological environment, the element of risk is increasing. As a result, the company form of organisation is

being preferred by more and more business firms. Starting a company requires a lot of planning and activities. A number of formalities need to be observed for formation of a company. Detailed procedures are followed in order to register a company in India. Registrar of Companies (ROC) appointed by the Ministry of Corporate Affairs, is vested with the primary duty of registering companies. Ministry of Corporate Affairs (MCA) has started the process of filing or uploading of forms completely online together with the attachment of required documents to the Registrar of Companies for initiating the Incorporation Process as a part of its 'MCA21 e-Governance Project.'

In this unit, we are going to discuss the meaning and definition of a company, natures and characteristics of company and historical perspective of company law in India.

1.3 MEANING AND DEFINITION OF COMPANY

The word company is derived from two Latin words 'com' which means 'together' and 'pains' which means 'bread'. The original meaning of which is an association of persons who took their meals together.



MCA21 - e-governance project :
It is the e-governance initiative undertaken by the ministry of corporate Affairs, Govt. of India under the National e-governance plan.

A company is a voluntary association of persons formed for some common purpose, with capital divisible into parts called shares and with limited liability. It is regarded by law as a person, but, it has no natural personality (no physical existence). A company is a corporate body and a legal person having status and personality distinct and separate from the members constituting. It has perpetual succession and a common seal.

Hence, a company can be simply defined as an incorporated association which is an artificial persons created by law having a common seal and perpetual succession. Lord Justice Lindley, defines a company as "An association of many persons who contribute money or money's worth to a common stock, and employ it in some common trade or business (i.e. for a common purpose) and who share the profit or loss(as the case may be) arising therefrom. The common stock so contributed is denoted in money and is the capital of the company. The persons who contribute are the members. The proportion of capital to which each member is entitled is his share. Shares are always transferable, although the right to transfer them is often more or less restricted".

According to Prof. L.H. Haney, "Company is an artificial person created by law having separated entity with a perpetual succession and common seal".

In terms of the Companies Act, 2013 a "company" means a company incorporated under this Act or under any previous company law [Section 2(*20*)]**.** In common law, a company is a "legal person" or "legal entity" separate from, and capable of surviving beyond the lives of its members. However, an association formed not for profit also acquires a corporate character and falls within the meaning of a company by reason of a licence issued under Section 8(1) of the Act.

1.4 IMPORTANT FEATURES OF COMPANY

Following are the important features of company.

- **Artificial person:** A Company is an artificial person created by law. It is not a human being but it acts through human beings. A company has a separate legal entity. It bears its own name, acts under name, has a seal of its own. It is a different 'person' from the members who compose it. It purchases and sells goods in its own name. It incurs expenses and receives income in its own name. A company can enter into contracts, possess properties in its own name, it sues others and sued by others in its name. As such, the company behaves like human being but it is actually not a natural person, so it is called an artificial person.
- **Perpetual succession (Permanent life):** A company never dies. Company has a permanent life. Being a separate legal entity the life of company is unaffected by the death, incapability, lunacy and insolvency of any of its shareholders/member and it remains the same entity, despite total change in the membership. A company's life is determined by the terms of its Memorandum of Association. Professor L.C.B. Gower rightly mentions, "Members may come and go, but the company can go on forever. During the war all the members of one private company, while in general meeting, were killed by a bomb, but the company survived — not even a hydrogen bomb could have destroyed it".

- **Limited liability:** The Company, having separate legal identity and being a separate person, is the owner of its assets and bound by its liabilities. The most important feature of the joint stock company is that the liability of its shareholders is limited to the face value of shares allotted to them. This means that the liability of a member is limited. For example, if X holds shares of the total nominal value of 10000 and has already paid 4000/- as part payment at the time of allotment, he cannot be called upon to pay more than 6000/-, the amount remaining unpaid on his shares even if the company suffers losses worth crores of rupees. If he holds fully-paid shares, he has no further liability to pay even if the company is declared insolvent. In the case of a company limited by guarantee, the liability of members is limited to a specified amount of the guarantee mentioned in the memorandum.
- **Common seal:** A company being an artificial person, cannot sign documents for itself. The Common Seal acts as the official signature of a company. The name of the company is engraved on the common seal. Every document of the company bears this seal. The common seal as the symbol of company's signature holds importance. Any one acting on behalf of the company must affix the seal of the company together with his signature.
- **Democratic Management:** A company is managed in a democratic way. Shareholders are the actual owners of a company and they elect the board of directors. The day to day affairs of the company is managed by the board of directors who are responsible to the shareholders.
- **Transferability of Shares:** The capital of a company is divided into small small parts, called shares. Company raises money by issuing shares. The shares are movable property and, subject to certain conditions, freely transferable. Whenever the shareholder wants the money back he may sell his shares in the open market and realize the value of share. This special feature also ensures that the company will not be required to refund the capital. The shares of the company are purchased and sold in the stock exchange. This provides liquidity to the shareholders (as he can freely sell his shares) and ensures

stability to the company (as the member is not withdrawing his money from the company).

- **Separate Property:** A company is a legal person distinct from its members, it is capable of owning, enjoying and disposing of property in its own name. Although its capital and assets are contributed by its shareholders, they are not the private and joint owners of its property. The company is the real person in which all its property is vested and by which it is controlled, managed and disposed of.

CHECK YOUR PROGRESS

Q 1: Define Company.

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Q 2: Mention two important features of Company.

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OMPANY FORMS OF ORGANIZATION VIS-À-S OTHER FORMS OF BUSINESS ORGANIZATIONS

In the following paragraphs we will discuss the differences of company forms of organizations with partnership and Hindu Undivided Family.

1.5.1 Distinction between Company and Partnership

Company	**Partnership**
i) A Company is treated as an artificial legal person.	Partnership is not a legal person.
ii) Company has perpetual succession.	Partnership firm does not have perpetual succession.
iii) Registration of a Company under Companies Act is mandatory.	For a partnership firm registration is not compulsory. It is guided by Indian Contract Act and Partnership Act.

iv) A Private Limited Company shall have at least 2 members and maximum 50 members. Public Ltd Company shall have minimum 7 members and there is no maximum limit.	Partnership firm shall have at least 2 members and maximum 20 members and for banking business, maximum 10 members.
v) Shares of a company can be transferred with ease.	Partners can transfer his share but the assignee does not become a partner. He is only entitled to share of Profits.
vi) Liability of a member is limited by shares or guarantee.	Liability of partners is unlimited.
vii) Ordinary members cannot take part in management of a company. Only director members can take part in management.	All Partners can take part in management of a firm.
viii) Private limited company shall have a minimum paid up capital of Rupees One Lakh and public limited company of Rupees Five Lakh.	There is no minimum paid up capital for a partnership firm.
ix) Member cannot bind the company by his act.	Partner is an agent of firm and other partners. Partner can bind the firm by his act.

1.5.2 Distinction between Company and Hindu Undivided Family

Hindu Undivided Family	Company
A Hindu Undivided Family Business consists of homogenous (unvarying) members since it consists of members of the joint family itself.	A company consists of heterogeneous (varied or diverse) members.

Hindu Undivided Family	Company
In a Hindu Undivided Family business, the Karta (manager) has the sole authority to contract debts for the purpose of the business,	There is no such system in a company.
other coparceners cannot do so.	
A person becomes a member of a Hindu Undivided Family business by virtue of birth.	There is no provision to that effect in the company.
No registration is compulsory for carrying on business for gain by a Hindu Undivided Family even if the number of members exceeds twenty.	Registration of a company is compulsory.
In a Joint Hindu Family business membership is restricted to male members only.	While in case of company, persons who are incompetent to enter in to contract cannot become member.
In the case of a Joint Hindu Family business a new member is admitted just by birth.	In case of company one can become member by holding shares.

1.6 EVOLUTION OF COMPANY LAWS IN INDIA

Company Legislation in India has closely followed the Company Legislation in England. The first legislative enactment for registration of Joint Stock Companies was passed in the year 1850 which was based on the English Companies Act, 1844. This Act recognized companies as distinct legal entities but did not introduce the concept of limited liability. The concept of limited liability, in India, was recognized for the first time by the Companies Act, 1857 closely following the English Companies Act, 1856 in this regard. The Act of 1857, however, kept the liability of the members of banking companies unlimited. It was only in 1858 that the limited liability concept

was extended to banking companies also. Thereafter in 1866, the Companies Act, 1866 was passed for consolidating and amending the law relating to incorporation, regulation and winding-up of trading companies and other associations. This Act was based on the English Companies Act, 1862. The Act of 1866 was recast in 1882 to bring the Indian Company Law in conformity with the various amendments made to the English Companies Act of 1862. This Act continued till 1913 when it was replaced by the Companies Act, 1913. The Act of 1913 had been passed following the English Companies Consolidation Act, 1908. It may be noted that since the Indian Companies Acts closely followed the English Acts, the decisions of the English Courts under the English Company Law were also closely followed by the Indian Courts. Till 1956, the business companies in India were regulated by this Act of 1913. Certain amendments were, however, made in the years 1914, 1915, 1920, 1926, 1930 and 1932. The Act was extensively amended in 1936 on the lines of the English Companies Act, 1929. Minor amendments were made a number of times thereafter. At the end of 1950, the Government of independent India appointed a Committee under the Chairmanship of H.C. Bhaba to go into the entire question of the revision of the Indian Companies Act, with particular reference to its bearing on the development of Indian trade and industry. This Committee examined a large number of witnesses in different part of the country and submitted its report in March 1952. Based largely on the recommendations of the Company Law Committee, a Bill to enact the present legislation, namely, the Companies Act, 1956 was introduced in Parliament. This Act, once again largely followed the English Companies Act, 1948. The major changes that the Indian Companies Act, 1956 introduced over and above the Act of 1913 related to: (a) the promotion and formation of companies;(b) capital structure of companies;(c) company meetings and procedures; (d) the presentation of company accounts, their audit, and the powers and duties of auditors; (e) the inspection and investigation of the affairs of the company; (f) the constitution of Board of Directors and the powers and duties of Directors, Managing Directors and Managers, and (h) the administration of Company Law. The Companies Act, 1956 has been amended several times since

then. The major amendments were introduced in the years 1960, 1962, 1963, 1964, 1965, 1966, 1967, 1969, 1974, 1977, 1985, 1988 and 1991.

In the wake of economic reforms processes initiated from July, 1991 onwards, the Government recognized that many provisions of the Companies Act had become anachronistic and were not conducive to the growth of the Indian corporate sector in the changing environment. Consequently, an attempt was made to recast the Act, which was reflected in the Companies Bill, 1993. The said Bill, however, was subsequently withdrawn. As a part of continuing reforms process and in the wake of enactment of the Depositories Act, 1996, certain amendments were, however, incorporated by the Companies (Amendment) Act, 1996.

In the year 1996, a Working Group was constituted to rewrite the Companies Act, following an announcement made by then Union Minister for Finance in his Budget Speech to this effect. The main objective of the Group was to re-write the Act of facilitate healthy growth of Indian corporate sector under a liberalized, fast changing and highly competitive business environment. Based on the report prepared by the Working Group and taking into account the developments that had taken place in structure, administration and the regulatory framework the world over, the Companies Bill, 1997 was introduced in Rajya Sabha on August 14, 1997 to replace by repealing the Companies Act, 1956. In the meantime, as part of the reforms process and in view of the urgency felt by the Government, the President of India promulgated the Companies (Amendment) Ordinance, 1998 on October 31, 1998 which was later replaced by the Companies (Amendment) Act, 1999 to surge the capital market by boosting morale of national business houses besides encouraging Foreign Institutional Investors as well as Foreign Direct Investment in the country. The amendments brought about number of important changes in the Companies Act. These were in consonance with the then prevailing economic environment and to further Government policy of deregulation and globalisation of the economy. The corporate sector was given the facility to buy-back company's own shares, provisions relating to the investments and loans were rationalized and liberalized besides the requirements of

prior approval of the Central Government on investment decisions was dispensed with, and companies were allowed to issue sweat equity in lieu of intellectual property. In order to make accounts of Indian Companies compatible with international practices, the compliance of Indian Accounting Standards was made mandatory and provisions for setting up of National Committee on Accounting Standards was incorporated in the Act. For the benefit of investors, provisions were made for setting up of Investor Education and Protection Fund besides introduction of facility of nomination to shareholders debenture holders etc.

The First Amendment of 2002 provides for producer companies. The Second Amendment of 2002 replaces the Company Law Board with National Company Law Tribunal and also creates an Appellate Tribunal. Apart from taking over the jurisdiction of the Company Law Board, the National Company Law Tribunal has been vested with the jurisdiction of the High Courts under the Companies Act.

The Companies (Amendment) Act, 2006 inserted new Sections 610B, 610C, 610D and 610E and and also certain sections pertaining to Director Identification Number (DIN). Salient features of the provisions of Companies (Amendment) Act, 2006 are as follows:

– DIN to be obtained by all existing directors and every other person, intending to become a director.
– The applications, balance sheet, prospectus, return, declaration, memorandum and articles of association, particulars of charges or any other particulars or document required to be filed or delivered, are to be filed in electronic form.
– The document, notice, any communication or intimation, required to be served or delivered under the Act to the Registrar of Companies, should be served or delivered through electronic form.
– Applications, balance sheet, prospectus, return, register, MOA and AOA, particulars of charges or any other document and return filed shall be maintained by Registrar in electronic form.
– Central Government may provide such value added services through the electronic form.

– All the provisions of Information Technology Act, 2000 relating to the electronic records, in so far as they are not inconsistent with the Companies Act, shall apply to the records in electronic form.



CHECK YOUR PROGRESS

Q 3: Mention two differences between Company and Partnership.

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Q 4: Mention two features of the provisions of Companies (Amendment) Act, 2006.

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1.7 EVOLUTION OF COMPANIES ACT 2013

With the increasing numbers and size of operations of corporate sector in India, the companies Act of 1956 was amended as many as 24 times. To frame a law that enables companies to achieve global competitiveness in a fast changing economy, the Government had taken up a fresh exercise for a comprehensive revision of the Companies Act. Accordingly a Committee was constituted on 2nd December, 2004 under the Chairmanship of Dr. J J Irani, Director, Tata Sons, for advising the Government on the proposed revisions to the Companies Act, 1956 with the objective to have a simplified compact law that will be able to address the changes taking place in the national and international scenario, enable the adoption of internationally accepted best practices. The Committee submitted its report to the Government on 31st May 2005. By keeping parity with the recommendations of Irani Committee the Companies Bill, 2009 was introduced in the Lok Sabha on 3rd August, 2009. The Bill laid greater emphasis on self regulation and minimization of regulatory approvals in managing the affairs of the company.

The objectives of the Bill were:

(i) Revising and modifying the Act in consonance with the changes in the National and International economy,

(ii) Bringing about compactness of company law by deleting the provisions that had become redundant and by re-grouping the scattered provisions,

(iii) Re-writing of various provisions of the Act to facilitate easy interpretation,

(iv) Delinking the procedural aspects from the substantive law and provide greater flexibility in rule making to enable adoption to the changing economic and technical environment.

(v) Enabling the corporate sector to operate in a regulatory environment of best international practices that fosters entrepreneurship, investment and growth.

The Companies Bill, 2009 after introduction in Parliament was referred to the Parliamentary Standing Committee on Finance for examination which submitted its report to Parliament on 31st August, 2010. Certain amendments were introduced in the Bill in the light of the report of the Committee and a revised Companies Bill, 2011 was introduced. This version was also referred to the Hon'ble Committee, which suggested certain further amendments. The amended Bill was passed by the Lok Sabha on 18th December,2012 and by the Rajya Sabha on 8th August, 2013. The Bill was retitled as Companies Bill, 2012. The Companies Bill, 2012 was assented to by the President of India on 29th August, 2013 and notified in the Gazette of India on 30 August, 2013. It finally became the Companies Act, 2013.

1.8 SOME IMPORTANT DEFINITIONS UNDER COMPANIES ACT 2013

Following are the some important definition under the Companies Act-2013

"associate company" [Section 2 (6)] in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. Explanation.-for the purposes of this clause, significant influence means control of at least 20% of total share capital, or of business decisions under an agreement.

"authorised capital" [Section 2 (8)] or “nominal capital” means such capital as is authorized by the memorandum of a company to be the maximum amount of share capital of the company.

"Board of Directors" [Section 2 (10)] or “Board”, in relation to a company, means the collective body of the directors of the company.

"company limited by guarantee"[Section 2 (21)] means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up.

"company limited by shares"[Section 2 (22)] means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them.

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

"financial statement" [Section 2 (40)] in relation to a company, includes-

(i) a balance sheet as at the end of the financial year;

(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;

(iii) cash flow statement for the financial year;

(iv) a statement of changes in equity, if applicable; and

(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

Provided that the financial statement, with respect to one person company,small company and dormant company, may not include the cash flow statement foreign company[Section 2 (42)] means any company or body corporate incorporated outside India which-

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

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

"Holding company" [Section 2 (46)] in relation to one or more other companies, means a company of which such companies are subsidiary companies

"key managerial personnel" [Section 2 (51)], in relation to a company, means-

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

(ii) the company secretary;

(iii) the whole-time director;

(iv) the Chief Financial Officer; and

(v) such other officer as may be prescribed;

"Listed company" [Section 2 (52)] means a company which has any of its securities listed on any recognised stock exchange;

"sweat equity shares" [Section 2 (88)] means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;



1.9 LET US SUM UP

In this unit we have discussed the following -

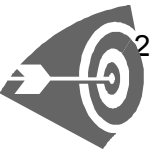
- A company is a voluntary association of persons formed for some common purpose, with capital divisible into parts called shares and with limited liability.

- A Company is an artificial person created by law.
- A company is managed in a democratic way.
- Company Legislation in India has closely followed the Company Legislation in England.
- A Committee was constituted on 2nd December, 2004 under the Chairmanship of Dr. J J Irani, Director, Tata Sons, for advising the Government on the proposed revisions to the Companies Act, 1956.
- The Companies Bill, 2012 was assented to by the President of India on 29th August, 2013 and notified in the Gazette of India on 30 August, 2013. It finally became the Companies Act, 2013.



1.10 FURTHER READING

1. Company Law (2018), Avtar Singh, Seventh Edition, Easterm Book Company
2. Companies Act,2013



1.11 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: A company is a voluntary association of persons formed for some common purpose, with capital divisible into parts called shares and with limited liability.

Ans to Q No 2: Following are the two features of a company:

a) A Company is an artificial person created by law.

b) The liability of its shareholders is limited to the face value of shares allotted to them.

Ans to Q No 3: Two differences between company and partnership are:

a) A Company is treated as an artificial legal person but Partnership is not a legal person.

b) Company has perpetual succession but Partnership firm does not have perpetual succession.

Ans to Q No 4: Two features of the provisions of Companies (Amendment) Act, 2006 are as follows:

a) DIN to be obtained by all existing directors and every other person, intending to become a director.

b) The applications, balance sheet, prospectus, return, declaration, memorandum and articles of association, particulars of charges or any other particulars or document required to be filed or delivered, are to be filed in electronic form .



1.12 MODEL QUESTIONS

Q 1: Discuss the features of a company.

Q 2: Distinguished between company and partnership.

Q 3: Enumerate the evolution of company laws in India.

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UNIT 2 : FORMATION OF A COMPANY

UNIT STRUCTURE

2.1 Learning Objectives

2.2 Introduction

2.3 Formation of a Company

2.3.1 Promoter

2.4 Duties of a Promoter

2.5 Liabilities of Promoter

2.6 Stages of Formation of a Company

2.7 Certificate of Incorporation

2.8 Certificate of Commencement of Business

2.9 Let Us Sum Up

2.10 Further Reading

2.11 Answers to Check Your Progress

2.12 Model Questions

2.1 LEARNING OBJECTIVES

After going through this unit you will be able to:

- explain the meaning of formation of a company
- explain the stages of formation of a company
- explain the documents required for incorporation of a company
- explain the meaning of certificate of incorporation
- explain the meaning of certificate of commencement of business.

2.2 INTRODUCTION

Starting a company requires a lot of planning and activities and more than that there are a number of formalities which need to be complied with. Here, you will able to know about the documents required for incorporation 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 documents required for formation of a company, stages of formations of a company, certificate of incorporation and certificate of commencement of business.

In this unit, we are going to discuss about the promoters, their duties and liabilities, different stages in formation of a company etc.

2.3 Formation of a Company

Promotion of company is a difficult task. Promotion generally means forming 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 undertake the necessary steps to convert it into reality. Such persons are called 'Promoter'. In India we have seen promotion of company is generally done by individuals who are entrepreneurs as 'occasional promoters'.

2.3.1 Promoter

Section 2 (69) of the Companies Act, 2013 defines the term 'promoter' as under:-

"Promoter" means a person—

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the board of directors of the company is accustomed to act. Provided that sub-clause (c) shall not apply to a person who is acting merely in a professional capacity. By virtue of above definition, persons in accordance with whose advice, directions or instructions the board of directors of the company is accustomed to act are also treated as promoters. However, if a person is merely acting in a professional capacity i.e. giving



Fiduciary relationship: When one person places complete confidence in another in regard to a particular transaction or one's general affairs or business.

only professional advice to the board of directors, he shall not be treated as a promoter. Further, according to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, "promoter" includes:

(i) the person or persons who are in control of the issuer;

(ii) the person or persons who are instrumental in the formulation of a plan or programme pursuant to which specified securities are offered to public;

(iii) the person or persons named in the offer document as promoters.

To start a business an idea has to come and it should be 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. A promoter is neither an agent of, nor a trustee for, the company because it is not in existence. The promoter stands in a fiduciary relationship towards the company.

Person who provide services during promotion of a company as a professional like lawyer, chartered accountant, etc. are not termed as promoter.

Functions of a Promoter

Promoters perform the following activities:

- Conceiving the idea of forming company
- Assembling the required number of subscribers;
- Applying for Corporate Identity Number (CIN), Global Location Number (GLN) & PAN/TAN to relevant authorities;
- Getting documents of company ready i.e articles of association and memorandum of association;
- Finding bankers, brokers and legal advisors;
- Preparation and circulation of prospectus;
- Raising capital via Initial Public Offering (IPO), private placement, debenture or public deposits or external commercial borrowing;

- Vetting and due compliance of laws and regulations relating to corporate financing and disclosures via annual and periodic returns to Registrar of Companies, Regional Directors, SEBI, Ministry of Corporate Affairs, Foreign Investment Promotion Board, Serious Fraud Investigation Office and Reserve Bank of India.
- Settling the terms and conditions of pre-incorporation agreements.

2.4 DUTIES OF A PROMOTER

Though there are no clear provision in Indian Companies Act, 2013 regarding the duties of a promoter, but Sec.34 and 35 imposes liability on promoter for untrue statement in prospectus and for fraudulent trading. In particular two duties of promoter in fiduciary position are:

i. Duty not to make secret profit; and

ii. Duty to disclose to the company any interest in a transaction

i. Duty not to make secret profit

A promoter enjoys an advantageous position in relation with access to information, business opportunity and opportunity to sell in company formation process. He may sell his own land, intellectual property, professional services at reasonable rate to companies and in that he can make disclosed profits but he is not allowed to make secret profits. In cases of of first annual general meeting of public companies, all dimensions of promotion and all types of pre-incorporation agreements are investigated so as to check whether promotion was done meticulously and honestly or not and if promoter is found to make secret profit he may be made accountable for that. However, a promoter is allowed to make profit if the same is disclosed.

Therefore, where the promoter wishes to sell his own property to the company, he should either disclose the fact:

(a) to an independent board of directors; or

(b) in the articles of association of the company; or

(c) in the prospectus; or

(d) to the existing and intended shareholders directly.

In addition to disclosing secret profits, a promoter has the duty to disclose to the company any interest he has in a transaction entered into by him.

ii. Duty to disclose interest

A promoter is duty bound to disclose to the company any interest which he has in a transaction entered in-to or proposed to be entered in-to by him. This is applicable even when he wants to sells his own property to the company raised by him because he acquired the property before the promotion of the company. Such disclosures must be made to the company and in full. After incorporation of the company if a property is received by the promoter as a trustee of such property, the same must be handed over to the company in due course, otherwise the promoter may be held liable for conversion or misappropriation or breach of trust.

A company is a baby child of promoter so he does not dispose off, such properties which are worthless on a high rate but there can be cases where he may try to wash off his hands from bad properties by selling the same to a company promoted by him as he has a better access to it.

iii. Other duties

(a) As per section 13(8), a company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.

(b) As per section 168(3), where all the directors of a company resign from their offices, or vacate their offices under the provisions of the Act, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.

(c) As per section 284(1), the promoters, directors, officers and employees, who are or have been in employment of the company or acting or associated with the company shall extend full cooperation to the company liquidator in discharge of his functions and duties during winding up by the tribunal.

(d) Duty under Indian Contract Act: Promoters' duties cannot depend on a contract because at the time the promotion begins, the company is not incorporated, and so cannot contract with its promoters. The promoter's duties must be the same as that of a person acting on behalf of another individual without a contract of employment. If he does make any misrepresentation in a prospectus he may be held guilty of fraud under Section 17 of the Indian Contract Act, 1872 and would be held liable for damages.



CHECK YOUR PROGRESS

Q 1: Who is a promoter?

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Q 2: Mention two duties of a promoter.

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2.5 LIABILITIES OF PROMOTERS

LIABILITIES OF PROMOTERS

A promoter is subject to the following liabilities under the various provisions of the Companies Act, 2013:-

i. **Incorporation of company by furnishing false information:-** As per section 7(6), where, at any time after the incorporation of a company, it is proved that the company has been incorporated by furnishing any false or incorrect information or misrepresentation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent

action, the promoters, the persons named as the first directors of the company and the persons making declaration shall be liable for fraud under section 447.

ii. **Civil Liability for misstatements in prospectus:-** A promoter is liable for any misleading statement in the prospectus to a person who has subscribed for any securities of the company on the faith of the prospectus. By virtue of section 35(1), where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and certain persons as mentioned in the said section, including a promoter of the company shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage. No promoter shall be liable under this section, if he proves that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

iii. **Criminal Liability for misstatement in prospectus:** Besides civil liability, the promoters are criminally liable under Section 34 for the issue of prospectus containing untrue or misleading statements in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead. Section 447 imposes severe punishment for fraud on promoters who make untrue or misleading statements in prospectus with a view to obtaining capital. The punishment prescribed is imprisonment for a term which shall not be less than six months but which may extend to ten years and also a fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. Further, where the fraud in question involves public interest, the term of imprisonment shall not be less than three years. A promoter can, however, escape the punishment if he proves that-

(i) the statement or omission was immaterial; or

(ii) he had reasonable grounds to believe, up to the time of the issue of prospectus, that the statement was true or the inclusion or omission was necessary.

iv. **Punishment for fraudulently inducing persons to invest money**:- As per section 36, any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into, (a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or (b) any agreement, the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or (c) any agreement for, or with a view to obtaining credit facilities from any bank or financial institution, shall be liable for punishment for fraud under section 447.

v. **Contravention of provisions relating to private placement:** If a company makes an offer or accepts monies in contravention of the provisions of private placement as stated in section 42, the company, its promoters and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two crore rupees, whichever is higher, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty. [Section 42(10)].

2.6 STAGES OF FORMATION OF A COMPANY

Lord Justice Lindley, defines the company as,

"A company is voluntary association or an organization of many persons who contribute money or money's worth to a common stock and employ it in some trade or business and who share the profit or loss arising there from. 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."

Thus, a company is an association of persons incorporated under the Companies Act, having separate legal existence from its members. Following are the stages of formation of a company.

1. Registration, Incorporation and Commencement of Business (Procedural aspects)

After introduction of Companies Act, 2013, many new things have come up. Like, before registration of a company the promoter must obtain digital signatures and Director Identification Number which need to put in the application form.

Digital Signatures

After the enactment of Companies Act, 2013, various document prescribed under the Act are required to be filed with the digital signature of the managing director or director or manager or secretary of the Company, Therefore, it is mandatory to obtain a digital signature certificate from authorized digital signature certificate issuing authority for at least one director to sign the E-forms related to incorporate like form INC.1, INC.7 and other documents.

Director Identification Number (DIN)

According to Sec. 153 of the Companies Act, 2013, every individual intending to be appointed as director of a company shall make an application to the Central Government for allotment of Director Identification Number in form DIR.3 in such form and manner and along with such fees as may be prescribed. Therefore, before submission of e-Form INC.1 for availability of name, all the directors of the proposed company must ensure that they are having DIN.

For registration of a company the promoters need to fill up two forms viz- Application for reservation of Name (Form No. Inc.1) and

application for incorporation of company (Form No. Inc.7) in accordance with provisions of the Companies Act, 2013 and the Companies (Incorporation) Rules, 2014

Application for reservation of Name (Form No. Inc.1): As per section 4(4) of the Companies Act, 2013 and pursuant to rule 8 and 9 of The Companies (Incorporation) Rules, 2014 an application for the reservation of a name shall be made in Form No. INC.1 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

According to Section 4(2), the name stated in the memorandum of association shall not—

(a) be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law; or

(b) be such that its use by the company—

(i) will constitute an offence under any law for the time being in force; or

(ii) is undesirable in the opinion of the central government.

Section 4(3) provides that without prejudice to the provisions of section 4(2), a company shall not be registered with a name which contains—

(a) any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the central government, any state government, or any local authority, corporation or body constituted by the central government or any state government under any law for the time being in force; or

(b) such word or expression, as may be prescribed unless the previous approval of the central government has been obtained for the use of any such word or expression.

Section 4(5) (i) lays down that upon receipt of an application under sub-section (4), the registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of 60 days from the date of the application.

Rule 8 of Companies (Incorporation) Rules, 2014 states that in determining whether a proposed name is identical with another, the differences on account of certain aspects may be disregarded.

Application for Incorporation of Company (FORM NO. INC.7):

As per Section 7(1) of the Companies Act, 2013 and pursuant to Rule 10, 12, 14 and 15 of the Companies (Incorporation) Rules, 2014, the promoters need to apply for incorporation of company to the registrar of companies. Following are the some of the documents that need to attach while filling up the INC-7.

i. Memorandum of Association and Articles of Association:

Memorandum of association is the constitution of the company which specifies the area of the company, within which it can operate.

According to Section 4(1) of the Companies Act, 2013, the memorandum of a company shall state—

(a) the name of the company with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company;

(b) the State in which the registered office of the company is to be situated;

(c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;

(d) the liability of members of the company;

(e) in the case of a company having a share capital,— (i) the amount of share capital with which the company is to be registered (ii) the number of shares each subscriber to the memorandum intends to take, must indicate opposite to his/her name;

(f) in the case of One Person Company, the name of the person who, in the event of death of the subscriber, shall become the member of the company.

Section 5(1) states that the articles of association of a company shall contain the regulations for management of the company. (We will discuss memorandum of association and articles of association in the latter part of this study material)

ii. Declaration from the professional

Section 7(1) (b) of the Companies Act, 2013, requires filing of a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the

formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made there under in respect of registration and matters precedent or incidental thereto have been complied with.

iii. Particulars of subscribers:

Section 7(1) (e) of the Companies Act, 2013, requires the filing of the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed; Rule 16 of Companies (Incorporation) Rules states that particulars of every subscriber to be filed with the registrar at the time of incorporation.

(1) The following particulars of every subscriber to the memorandum shall be filed with the Registrar-

(a) Name (including surname or family name) and recent Photograph affixed and scan with MOA and AOA:

(b) Father's/Mother's name:

(c) Nationality:

(d) Date of Birth:

(e) Place of Birth (District and State):

(f) Educational qualification:

(g) Occupation:

(h) Income-tax permanent account number:

(i) Permanent residential address and Present address (Time since residing at present address and address of previous residence address (es) if stay of present address is less than one year) similarly the office/business addresses :

(j) Email id of Subscriber;

(k) Phone No. of Subscriber;

(l) Fax no. of Subscriber (optional)

Explanation.- information related to (i) to (l) shall be of the individual subscriber and not of the professional engaged in the incorporation of the company;

(m) Proof of Identity: For Indian Nationals:

- PAN Card (mandatory) and any one of the following
- Voter's identity card
- Passport copy
- Driving License copy
- Unique Identification Number (UIN)

For Foreign nationals and Non Resident Indians

- Passport

It was clarified by MCA vide Circular No. 16/2014 that, a declaration from foreign national in the prescribed format shall be furnished as an attachment of INC 7 (Application for Incorporation), in case he does not have a PAN.

(n) Residential proof such as bank statement, electricity bill, telephone / mobile Bill: Provided that bank statement or electricity bill, telephone or mobile bill shall not be more than two months old;

(o) Proof of nationality in case the subscriber is a foreign national.

(p) If the subscriber is already a director or promoter of a company (s), the particulars relating to

(i) Name of the company;

(ii) Corporate Identity Number;

(iii) Whether interested as a director or promoter;

(q) the specimen signature and latest photograph duly verified by the banker or notary shall be in the prescribed Form No.INC.10.

(2) Where the subscriber to the memorandum is a body corporate, then the following particulars shall be filed with the registrar-

(a) Corporate Identity Number of the Company or Registration number of the body corporate, if any

(b) GLN (The Global Location Number), if any;

(c) the name of the body corporate

(d) the registered office address or principal place of business;

(e) E-mail Id;

(f) if the body corporate is a company, certified true copy of the board resolution specifying inter alia the authorization to subscribe to the memorandum of association of the proposed company and to make investment in the proposed company, the number of shares proposed to be subscribed by the body corporate, and the name, address and designation of the person authorized to subscribe to the Memorandum;

(g) if the body corporate is a limited liability partnership or partnership firm, certified true copy of the resolution agreed to by all the partners specifying inter alia the authorization to subscribe to the memorandum of association of the proposed company and to make investment in the proposed company, the number of shares proposed to be subscribed in the body corporate, and the name of the partner authorized to subscribe to the Memorandum;

(h) the particulars as specified above for subscribers in terms of clause (e) of sub- section (1) of section 7 for the person subscribing for body corporate;

(i) in case of foreign body corporate, the details relating to-

(i) the copy of certificate of incorporation of the foreign body corporate; and

(ii) the registered office address.

iv. Particulars of first directors along with their consent to act as directors

The particulars of each person mentioned in the articles as first director of the company and his interest in other firms or bodies corporate along with his consent to act as director of the company shall be filed in Form No.DIR.12 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

v. Particulars of payment of stamp duty

Necessary amount of stamp duty need to deposit along with the application for incorporation of company. The detail of paying such stump duty need to be attach along with the application.

2.7 CERTIFICATE OF INCORPORATION

If after filling the requisite forms for incorporation with the registrar of companies along with fees, registrar of companies (ROC) is satisfied with the contents of the documents filed, ROC will issue the Certificate of Incorporation in Form no.INC 11 as directed by Rule-18 of Companies (Incorporation) Rules, 2014. The certificate of incorporation given by the registrar 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 the certificate of commencement of business from the registrar of companies. To get the certificate of commencement of business, a public company has to pass through capital subscription stage i.e. raising sufficient capital to commence its business. There are two ways of raising capitals i.e. from private sources and from the public.

Conclusiveness of the Certificate of Incorporation:

The Certificate of Incorporation is conclusive evidence that all the requirements relating to formation of the company under the Companies Act, 2013, is complied with and it is conclusive that-

- all the requirements of the Act have been complied with in respect of the registration;
- the company is duly registered; and
- the company came into existence on the date mentioned in the certificate.

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

2.8 CERTIFICATE TO COMMENCE BUSINESS

Certificate to Commence Business

As per the provisions of the Companies Act, 2013, a Public and Private Limited company having share capital cannot commence business until it has obtained the certificate to commence business from the registrar of companies. Normally, a new company will comply with the required

formalities and obtain the commencement of business certificate from the Registrar as soon as possible after formation because it cannot commence any business activities or exercise its borrowing powers without it.

E-form INC.21 is required to be filed with concerned registrar of companies for obtaining approval for commencement of business and exercise of borrowing powers. This E-form is required to be filed by all companies incorporated under the Companies Act, 2013. Following documents required to be filed as an attachment of form INC.21:

1. E-form INC.10 of specimen signature, which have been attached with Form INC 1 at the time of incorporation.
2. A declaration on stamp paper of Rs. 20/- signed by the directors. This stamp paper should be in the name of the company.
3. Board resolution stating that company has received the subscription money in full, which will be deposited into company bank account.



CHECK YOUR PROGRESS

Q 3: Mention two documents to be attached with Application for Incorporation of Company.

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Q 4: Who issue the Certificate of incorporation?

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2.9 LET US SUM UP

I this unit we have discuss the following aspects-

- The promoter is a person who originates the idea to start a business and plan to bring it into reality.
- Promoter is not allowed to make secret profits.

- A promoter is liable for any misleading statement in the prospectus to a person who has subscribed for any securities of the company on the faith of the prospectus.
- Before registration of a company the promoter must obtain Digital Signatures and Director Identification Number.
- If after filling the Requisite forms for incorporation with the Registrar of Companies along with fees, Registrar of Companies is satisfied with the contents of the documents filed, ROC will issue the Certificate of Incorporation.
- A Public and Private Limited company having share capital cannot commence business until it has obtained the certificate to commence business.



2.10 FURTHER READING



1. Company Law (2018), Avtar Singh, Seventh Edition, Easterm Book Company
2. Companies Act,2013

2.11 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: The promoter is a person who originates the idea to start a business and plan to bring it into reality.

Ans to Q No 2: Two duties of a promoter are-

a) Duty not to make secret profit

b) A promoter is duty bound to disclose to company any interest which he has in a transaction entered in to or proposed to be entered in-to by him.

Ans to Q No 3: Two documents to be attached with application for incorporation of company- Memorandum of Association and Articles of Association

Ans to Q No 4: Certificate of incorporation is issued by Registrar of Companies.



2.12 MODEL QUESTIONS

Q 1: Define the term 'promoter'.

Q 2: What are the functions of the promoter?

Q 3: Discuss the duties of the promoter.

Q 4: Discuss the liabilities of the promoter.

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UNIT 3 : TYPES OF COMPANY

UNIT STRUCTURE

3.1 Learning Objectives

3.2 Introduction

3.3 Types of Company

3.4 On the basis of formation

- 3.4.1 Statutory Company
- 3.4.2 Registered Company

3.5 On the basis of liability

- 3.5.1 Company limited by shares
- 3.5.2 Company limited by guarantee
- 3.5.3 Unlimited Company

3.6 On the Basis of Ownership

- 3.6.1 Private Company
- 3.6.2 Public Company
- 3.6.3 Government Company

3.7 On the Basis of Control

- 3.7.1 Holding Company
- 3.7.2 Subsidiary Company

3.8 New Forms of Companies

- 3.8.1 One Man Company
- 3.8.2 Section 8 Company
- 3.8.3 Small Company
- 3.8.4 Dormat Companies

3.9 Let Us Sum Up

3.10 Further Reading

3.11 Answer to Check Your Progress

3.12 Modle Questions

3.1 LEARNING OBJECTIVES

After going through this unit you will be able to:

- Classify different types of company
- explain statutory company
- explain private company
- know about public company
- Define some modern types of companies

3.2 INTRODUCTION

You may have come across the name of organisation with suffix limited (Ltd.), for example National Thermal Power Corporation Limited, Steel Authority of India Limited or Reliance Industries Limited etc. Names of organisations with Ltd. indicate that these are forms of oganisations which are different from other forms of organizations. These organisations are called joint stock companies. There are different types of company in India. The Companies Act of 1956 sets down rules for the establishment of both public and private companies. The most commonly used corporate form is the limited company, unlimited companies being relatively uncommon.

In this unit we will discuss different types of companies operating in India.

3.3 TYPES OF COMPANY

In India companies can be classified in the following heads:

1. On the basis of formation
2. On the basis of liability
3. On the basis of ownership
4. On the basis of Nationality
5. On the basis of control

3.4 ON THE BASIS OF FORMATION

a. Statutory Company

b. Registered Company

3.4.1 Statutory Company

A company formed by a special Act passed either by the Central or State Legislature is called a statutory company. Such companies are usually formed to carry on the work of some special public importance and for which the undertaking requires extraordinary powers, sanctions and privileges. Any change in the structure of a statutory company is possible only through a legislative amendment. A major objective for incorporating such companies is not so much to earn profit but to serve people.

Although statutory companies are governed by the provisions of their special Acts, the provisions of the Companies Act, 1956 which are not inconsistent with the special Acts apply to these companies.

Some examples of statutory company are Life Insurance Corporation, Unit Trust of India, Employees State Insurance Corporation, ASEB etc.

Characteristics of Statutory Company

Following are the characteristics of a statutory company:

a. **Created by a special law:** a statutory company is created by a special law of Parliament or State Legislature defining its objects, powers and privileges and prescribing the form of management and its relationship with Government departments.

b. **A body corporate:** Each statutory corporation is a body corporate and can sue and be sued, enter into contracts and acquire property in its own name.

c. **Management:** Statutory corporations are managed by the Board of Directors, appointed by the government.

d. **Autonomy:** Another distinguishing characteristic of a public corporation is that excluding the officers taken from the Government department on deputation, its employees are not civil servants and are not governed by Government regulations in respect of conditions of service.

e. **Distinct relation with the government:** The most important provision which regulate the relationship of public corporation and government is the government's power to issue directions.

f. **Independent finance:** A major of autonomy of a statutory corporation is its independence in respect of its finances. Except for appropriations to provide capital or to cover losses, it is usually independent in its finances.

g. **Commercial audit:** Except in the case of the banks, the financial institutions and the LIC, where chartered accountants are auditors, in all the other corporations, the audit has been entrusted to the Comptroller and Auditor General of India (CAG).

3.4.2 Registered Company

Companies registered under the Indian Companies Act are known as Registered Companies. These companies are governed and regulated by the provisions of the Companies Act. These companies may be limited by shares or limited by guarantee or unlimited companies.

3.5 ON THE BASIS OF LIABILITY

a. Company limited by shares
b. Company limited by guarantee
c. Unlimited Company

3.5.1 Company limited by shares

According to section.2(22) of the companies act 2013, A company limited by shares means a company having the liability of its members limited by the memorandum to such amount, if any, unpaid on the shares respectively held by them. The company can enforce this liability either during the lifetime of the company or at the time of winding up.

For example, if X Ltd. has a share capital of 1,00,000 shares of Rs. 10 each. Mr. A has purchased 100 shares on which he has paid so far Rs. 6 per share, the maximum liability of A is only Rs. 4 per share (the unpaid amount).

No member of a company limited by shares can be called upon to pay more than the nominal value of the shares held by him. If the shares of the shareholder are fully paid up, he has nothing more to pay. But in the case of partly paid share, the unpaid portion is payable at any time during the existence of the company on a call being made, whether the company is a going concern or is being wound up. These types of companies are quite common in the commercial, trading and industrial world. A large majority of companies registered in India belongs to this category.

3.5.2 Company limited by guarantee

A company limited by guarantee is defined under section 2(21) of Companies Act 2013 as "a company limited by guarantee means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up."

In a simpler term, a company limited by guarantee is a company without any shareholders but it is owned by members called guarantors who agrees to pay a nominal amount in the event of company's being wound up. It's a specific form used for non-profit organisation. Under this form, profits earned by the company are reinvested again in the company to use it for different purposes. Hence, it's a legally preferred structure for non-profit companies, clubs, charitable trusts and other similar set ups. A company limited by guarantee has a separate legal identity. It can carry out activities in the name of the company such as employing human resources, borrowing credit, buy and sell of property and defending a lawsuit

etc. Memorandum of association is specifically drafted for such type of companies.

There can be two types of company limited by guarantee:

a. Company limited by guarantee and having share capital,
b. Company limited by guarantee and not having share capital.

Features of company limited by guarantee

a. A company limited by guarantee is a distinct legal entity from its owner/guarantor.
b. Guarantors are not personally held liable for any of company's debts. Hence, their personal assets are protected. They are only responsible to pay agreed amount as per their guarantee only at the time of insolvency.
c. Any person or corporate body can be a guarantor. It requires a single director and a single guarantor to get established. A same person can assume both the position that makes it easy for anyone to start a company. However, multiple directors and guarantors are also allowed.
d. Company limited by guarantee is normally established for non-profit purposes. Any profit generated by the company are reinvested and used for promoting its non-profit activities.
e. Company limited by guarantee must include the suffix ''limited'' in its name. This word gives a kind of trust to clients and investors.

3.5.3 Unlimited Company

According to section 2(21) of Companies Act 2013 " unlimited company means a company not having any limit on the liability of its members." Members and Shareholders are fully liable to cover its debts. In the case of unlimited company the liability of each member extends to the whole amount of the company's debts and liabilities, but he will entitle to claim the contribution from other members. Unlimited companies may be either private or public companies.

Unlimited company can be registered with or without share capital. It can reduce or increase its share capital without restriction. For alteration of share capital a special resolution with an application need to submit to the registrar of companies.



CHECK YOUR PROGRESS

Q 1: What is meant by registered company?

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Q 2: Define company limited by guarantee.

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3.6 ON THE BASIS OF OWNERSHIP

On the basis of ownership companies can be classified as:

3.6.1 Private Company

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

(i) restricts the right to transfer its shares;

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

(iii) prohibits any invitation to the public to subscribe for any securities of the company.

A private company can be started with only two members. It can start its operation immediately after receiving the certificate of incorporation. A private company is not required to prepare prospectus.

Characteristics of Private Company

1. **Members**– To start a private company, a minimum number of

2 members are required and a maximum number of 200 members as per the provisions of the Companies Act, 2013.

2. **Name:** It is necessary for all private company to use the word "private limited company" at the end of its company name. Every company has to send 5-6 names for approval to the registrar of the company and all the names should be unique and expressive.
3. **Limited Liability**– The liability of each member or shareholders is limited. Members are not accountable for the debts of the company. The shareholders are only liable for their share of money which they have invested in the company. Shareholders liability is limited to their unpaid amount of shares only.
4. **Perpetual succession**– The company keeps on existing in the eyes of law even in the case of death, insolvency, the bankruptcy of any of its members. This leads to perpetual succession of the company.
5. **Register of members**– A private company has a privilege over the public company as they don't have to keep an index of its members whereas the public company is required to maintain an index of its members.
6. **Number of directors**– A private company need to have only two directors. With two directors, a private company can come into operations.
7. **Prospectus**– Prospectus is a detailed statement of the company affairs which is issued by a company for its public. However, in the case of private limited company, there is no such need to issue a prospectus since private companies do not invite public to subscribe for the shares of the company.
8. **Quorum:** In the case of a private company, two members personally present, shall be the quorum for a meeting of the company.

3.6.2 Public Company

According to Companies Act, 2013, a public company means a company which is not a private company.

Features of public company

Following are the some advantages of public company:

1. **Members:** A public company should have a minimum of 7 members. The maximum numbers of members is unlimited.
2. **Limited liability:** The liability of the members of the company is limited upto the face value of shares held by him. A member is liable to pay only the uncalled money due on shares held by him when called upon to pay and nothing more, even if liabilities of the company far exceeds its assets.
3. **Board of Directors:** Every company shall have a Board of Directors. It should have a minimum of 3 and can have a maximum of 15 directors in the board. They are elected from among the shareholders by the shareholders of the company in annual general meetings. The elected directors act as representatives of the shareholders in managing the company and taking decisions.
4. **Transparency:** Private limited companies are strictly regulated and are required by law to publish their complete financial statements annually to ensure the true financial position of the company is made clear to their owners (shareholders) and potential investors.
5. **Capital:** A public company can raise capital from the public by issuing shares through stock markets. Public companies can also raise capital by issuing bonds and debentures that are unsecured debts issued to a company on the basis of financial performance and integrity of the company.
6. **Transferable shares**: A public limited company's shares are purchased and sold in the security market. They are freely transferred.

7. **Prospectus:** As per provisions of the Companies Act issuing prospectus is mandatory for a public company. The prospectus contains names and addresses of the registered office of the company, company secretary, chief financial officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed; dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time; capital structure of the company in the prescribed manner etc.

3.6.3 Government Company

A Company of which not less than 51% of the paid up capital is held by the central government or by state government or jointly by central and state government is known as a government company. It includes a company subsidiary to a government company. The share capital of a government company may be wholly or partly owned by the government, but it would not make it the agent of the government. The auditors of the government company are appointed by the government on the advice of the Comptroller and Auditor General of India. The annual report along with the auditor's report is placed before both the House of the parliament. Some of the examples of government companies are State Trading Corporation (STC), Minerals as metals training corporation (MMTC), Bharat Heavy Electricals Ltd.(BHEL).

3.7 ON THE BASIS OF CONTROL

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

3.7.1 Holding Company

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

3.7.2 Subsidiary Company

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

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

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

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

For example, Where a company (company A) is subsidiary of another company (Company B) the former (Company A) becomes the subsidiary of the controlling company (company B).

3.8 NEW FORMS OF COMPANIES

3.8.1 One Man Company

As the name suggests, one person company is a form of private company with separate legal entity which is formed with only one person as its member. As per Section 2(62) of the Companies Act 2013, *“One Person Company means a company which has only one person as a member.”*

Following are the featunes of one person company :-

- A one person company can be incorporated as a private limited company only.
- It has only one person as a member / share holder.
- It must have a minimum of one director, the sole shareholder can himself be the sole director. The company may have a maximum of fifteen directors.
- If the Articles of Association do not contain the name of the first director, member of the one person company will be

deemed to be the first director till the time director(s) is duly appointed.

- The minimum paid up share capital is 1 Lakh.
- The word "One Person Company "must be mention in brackets below the name of the company to distinguish it from other forms of companies.
- It need not to hold any annual general meeting (AGM) in every year.
- The provision regarding calling of an extra ordinary general meeting by the board or tribunal do not apply to one person Company.
- All provisions regarding annual general meetings like notice period, contents of notice, explanatory statement, quorum requirements, proxies, voting etc. do not apply to one person company.
- The memorandum of one person company shall indicate the name of the other person/nominee, who shall, in the event of the subscribers' death or his incapability to contract become the member of the company, till the date of transmission of shares to legal heirs.
- The written consent shall be filed with the registrar at the time of incorporation of the one person company along with its memorandum of association & articles of association.
- The nominee/other person can withdraw his consent at any time.
- The nominee may be change at any time, by notice to the other person & intimate the same to the company. Then the company should intimate the same to the registrar.
- The financial statements of a one person company consist of the profit & loss account, balance Sheet, notes to account. The cash flow statement may not include in the financial statements.
- Only one director is sufficient to sign the financial statements/ directors' report.

- one person company should file the copy of the financial statements with registrar with in a period of 180 days from the closure of financial year.
- The annual return of a one person company shall be signed by the company secretary, or where there is no company secretary, by the director of the company.
- It should inform to the registrar about every contract entered and also should record in the minutes of the meeting within 15 days from the date of approval by the board of directors.
- A person shall not be eligible to incorporate more than one person company or become nominee in more than one such company.
- A minor cannot become a member or nominee of the one person company or can hold share with beneficial interest.
- One person company cannot carry out non banking financial investment activities including investment in securities of anybody corporate.
- All the businesses to be transacted at the meeting of the board shall be entered into minutes book maintained under section 118.
- One person company cannot voluntarily converted into any kind of company unless two years have been expired from the date of incorporation except in case its paid up share capital exceeds Rs. 50 Lakhs or its average turnover during the relevant period exceeds Rs. 2 Crores.



CHECK YOUR PROGRESS

Q 3: Mention two features of one Person Company.

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Q 4: Define holding company.

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3.8.2 Section 8 Company

In India, a non-profit organisation can be registered as a private limited non-profit company under Section 8 company under the Companies Act, 2013. A section 8 company is the same as the popular Section 25 company under the old Companies Act, 1956, which was one of the most popular forms of Non- Profit organisations in India. The company registered under this section shall enjoy all the privileges and be subject to all the obligations of limited companies. A firm may be a member of the company registered under this section.

Where it is proved to the satisfaction of the central government that a person or an association of persons proposed to be registered under this Act as a limited company—

(a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

(b) intends to apply its profits, if any, or other income in promoting its objects; and

(c) intends to prohibit the payment of any dividend to its members, the Central Government may, by licence issued in such manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word “Limited”, or as the case may be, the words “Private Limited”, and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section.

3.8.3 Small Company

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

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

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

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

Provided that nothing in this defintion shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

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

3.8.4 Dormant Companies

The Companies Act, 2013 has recognized a new set of companies called as dormant companies.

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

The term “inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial

years, or has not filed financial statements and annual returns during the last two financial years;

The term "significant accounting transaction" means any transaction other than—

(a) payment of fees by a company to the registrar;

(b) payments made by it to fulfill the requirements of this Act or any other law;

(c) allotment of shares to fulfill the requirements of this Act; and

(d) payments for maintenance of its office and records.

As per section 455(2), the registrar on consideration of the application shall allow the status of a dormant company to the applicant and issue a certificate in such form as may be prescribed to that effect.

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

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



3.9 LET US SUM UP

- A company formed by a special Act passed either by the Central or State Legislature is called a statutory company.
- Companies registered under the Indian Companies Act are known as Registered Companies.
- According to section 2(21) of Companies Act 2013 " unlimited company means a company not having any limit on the liability of its members."
- A Company of which not less than 51% of the paid up capital is held by the Central Government or by State Government or jointly by central and state government is known as a Government Company.

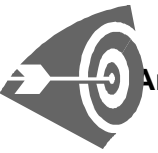
- As per Section 2(62) of the Companies Act 2013, *"One Person Company means a company which has only one person as a member."*
- In India, a non-profit organisation can be registered as a private limited non-profit company under Section 8 Company under the Companies Act, 2013.



3.10 FURTHER READING

1. Company Law (2018), Avtar Singh, Seventh Edition, Easterm Book Company
2. Companies Act,2013

3.11 ANSWERS TO CHECK YOUR PROGRESS



Ans to Q No 1: Companies registered under the Indian Companies Act are known as Registered Companies.

Ans to Q No 2: A company limited by guarantee "a company limited by guarantee means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up."

Ans to Q No 3: Following are the two features of One Man Company

- A One Person Company can be incorporated as a private limited company only.
- It has only One Person as a member / share holder.

Ans to Q No 4: According to Sec.2(46) of Companies Act,2013, A holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies.



3.12 MODEL QUESTIONS

Q 1: Discuss the characteristics of a statutory company.

Q 2: Discuss the characteristics of a private company.

Q 3: Define small company.

Q 4: Define section 8 company. Discuss its features.

*** ***** ***

UNIT 4: MEMORANDUM OF ASSOCIATION

UNIT STRUCTURE

4.1 Learning Objectives

4.2 Introduction

4.3 Meaning of Memorandum of Association

4.4 Clauses / Content of Memorandum of Association

4.5 Alteration of Memorandum of Association

4.6 Limitations on Power of Alteration

4.7 Let Us Sum Up

4.8 Further Reading

4.9 Answers to Check Your Progress

4.10 Model Questions

4.1 LEARNING OBJECTIVES

After going through this unit you will be able to:

- define the meaning of Memorandum of Association
- explain the clauses and content of Memorandum of Association
- discuss the process of alternation of Memorandum
- explain the limitations on power of alteration of Memorandum.

4.2 INTRODUCTION

In this unit, we are going to discuss about one of the documents that have to be filed with the registrar of companies at the time of incorporation of a company. Here, you will be able to know the details of memorandum of association and its clauses / content. This unit also encompasses the alteration of the memorandum of association and discusses the limitations on power of the alteration of the memorandum of association.Thus, you will be able to understand through this unit the basic concept of memorandum of association, its clauses / content and the alternation of memorandum of association.

4.3 MEANING OF MEMORANDUM OF ASSOCIATION

Memorandum of association defines the scope of the company's activities. It is the document that sets out the constitution of the company. According to Lord Macmillan, the purpose of memorandum of association is "to enable the shareholders, creditors and those who deal with the company to know what is the permitted range of enterprise." It is one of the most essential documents for incorporating a registered company.

According to Section 2(56) of the Companies Act," Memorandum" means memorandum of association of a company as originally framed or altered from time to time in pursuance of any previous companies law or this Act. Section 4 of the Act specifies in clear terms the contents of this important document which is a charter of the company. It contains the fundamental provisions of the company's constitution. It contains the essential conditions upon which the company can be incorporated.

The main purpose of the memorandum of association of a company is two folded. First, the intending shareholders before making investment in the company should know the purpose for which it is going to be used and what risk he is taking in making the investment.

The second purpose is that anyone dealing with the company will know the permitted range of activities of the company.



CHECK YOUR PROGRESS

Q 1: Mention the two purposes of the memoran dum of association of a company.

i) .....ii)

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.....

4.4 CLAUSES / CONTENT OF MEMORANDUM OF ASSOCIATION

As per section 4(1), the memorandum of association of every company must contain the following clauses:

1. The name of the company with "Limited" as the last word in case of public limited company and with " Private Limited " as the last word in the case of private limited company.
2. The name of the state in which the registered office of the company is to be situated.
3. The object of the company-
   a. The main object of the company,
   b. Other objects not included above.
4. The liability of members is limited if the company is limited by shares or by guarantee.
5. Companies having share capital must mention the amount of share capital with which the company proposes to be registered.

CHECK YOUR PROGRESS



Q 2: Mention any three contents of memoran dum of association of a company?

i) .....

ii) .....

iii) .....

The above clauses are compulsory and are designated as "conditions" prescribed by the Act, on the basis of which a company is incorporated.

Brief discussions of various clauses of memorandum of association are as follows-

A. NAME CLAUSE [SECTION 4(1) (a) 4(2) (3) (4)]:

A company being a legal entity must have a name of its own to establish its separate identity. No company shall be registered by name which in the opinion of the Central Government is undesirable. Here, 'undesirable' means the name which is identical with or which too nearly resembles with the name of other existing company. The Registrar has to make preliminary enquiries to ensure the applicability of the name. The object is to prevent the use of a name that is likely to mislead the public; e.g. a company is not allowed to use a name which is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950.

A person cannot be permitted to name a company even after his personal name if that name resembles the name of an existing company. Every public company must write the word 'Limited' after its name and every 'Private Limited' company must write the word 'private limited 'after its name. But the company whose liabilities are not limited is prohibited from using the word 'Limited'. The name of the company and the address of its registered office must be painted or affixed outside every office or place at which its business is carried on, in a conspicuous position and in letters easily legible in English and in the language in general use in the locality.

B. REGISTERED OFFICE CLAUSE [SECTION 4(1) (b), Sec-12]:

A company should have registered office within 15 days after incorporation. The registered office clause must mention the state where it is situated mainly for two reasons. Firstly, it ascertains the domicile, nationality and the jurisdiction of the court with reference to the registered office of the company.

Secondly, it is the place where all the essential records must be kept and can be used as communication address where all communication, notices etc can be sent.



CHECK YOUR PROGRESS

Q 3: Within how many days of its incorparation a company should have its registered office?

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C. OBJECT CLAUSE [SECTION 4 (1) (c)]:

This is the most important clause of memorandum of association, as it defines for which the company is formed as well as determines the extent of the powers which the company can exercise. All companies registered under the Companies Act, 2013, divide their object clause into two sub-clauses, namely-

i) Main Objects: These are the objects incidental or ancillary to the attainment of the main objects.

ii) Other objects: These are the objects which are not included in the "Main Object" but pursued by the company at any time in the future.

Thus this clause determines the purpose and capacity of the company and the acts which are ultra vires. The subscribers to the memorandum of association enjoy almost unrestricted freedom to choose the objects. The only restriction is that objects should not be illegal and against the provisions of the Companies Act, 2013.



ULTRA VIRES:

An act which is void and does not bind the company.

The subscribers to the memorandum of association cannot undertake activities beyond the objectives stated in the clause. It has certain restrictions, like:

1. The objectives should not be against the policy of the constitution.
2. The objects must not be against the public policy.
3. The objects should not include anything which is illegal.

D. LIABILITY CLAUSE [SECTION 4(1) (d)]:

This clause states the liability of the members of the company. The liability may be by shares or guarantee. The effect of this clause is that in a company limited by shares, no member may be called upon to pay more than the amount which remains unpaid. For example, if his shares are fully paid up, his liability is nil. But, if is holding shares amounting to Rs. 100 and he has paid Rs. 25 then, he can be called upon to pay the balance amount i.e. Rs. 75.

In a company limited by guarantee, the liability clause states the amount which each member undertake to contribute to the assets of the company in the event of liquidation of the company. He cannot be called upon to pay anything before the company goes into liquidation.

E. CAPITAL CLAUSE [SECTION 4 (1) (e)]:

This clause states the amount of capital with which the company is registered, unless the company is an unlimited company. The shares into which the capital is divided must be of fixed value, which is commonly known as the nominal value of the share. The capital is variously described as ‘nominal’, ‘authorised’ or ‘registered’.

The usual way to state the capital in the memorandum is:" The capital of the company is Rs 20, 00,000 divided into 2, 00,000 equity shares of Rs. 10 each". The company cannot issue shares beyond this limit without altering the memorandum.

If both equity and preference shares are issued, then the division of the capital is shown under two heads. A company is not authorised to issue capital bayond its authorised/nominal/registered capital. If it receives applications for shares more than the shares offered by it then the amount received on excess number of applications should be returned to the applicants.

F. ASSOCIATION CLAUSE AND SUBSCRIPTION:

The last clause of the memorandum is the association or subscription clause. In this clause the members have to put their signature indicating their willingness to form the company as well as to take the qualification shares. They must sign the memorandum in the presence of atleast one witness who must attest the signatures. Each subscriber must state against his name the number of shares that he will take.



LET US KNOW

In case of a private company, the memorandum must be signed by at least two persons while in case of a public company, it must be signed by atleast seven persons. The subscribers to the memorandum must take atleast one share as qualification share.

4.5 ALTERATION OF MEMORANDUM OF ASSOCIATION (SECTION-13)



ALTERATION:

It means successive change.

The alteration of the memorandum of association may be effected in respect of the following :

- By changing its name
- By altering its registered office clause
- By altering its object clause

- By altering its share capital
- By reorganizing its share capital
- By reducing its capital
- By making the liability of the directors unlimited

For the alteration of the memorandum of association, a rigid procedure is to be followed and strict compliance of the procedure is demanded by law. Failure to comply with the provisions made under the Act for the purpose of alteration of the conditions contained in the memorandum will be deemed as void.

(i) ALTERATION OF NAME CLAUSE:

The name of the company can be changed by a special resolution and with the approval of central government. Approval of the central government is not necessary if the change relates to the addition or deletion of the word 'private' from the name. For this purpose an application with fee of Rs. 500/- to ascertain availability of name has to be made to the registrar. This change has to be communicated to the registrar along with a printed form of the special resolution along with explanatory statement within 30 days of the passing thereof. The change in name has to be sanctioned in the light of guidelines prescribed by the central government.

In the light of the provisions of the Act, the company has to take the following procedural steps:

1. Issue notice in writing to every director of the company at his address registered with the company and the notice shall be sent by hand delivery, or by post or by electronic means as per the provisions of Section 173 (3) of the Companies Act 2013. The notice must be a seven day notice. The notice must contain time, date and venue for the board meeting and detailed agenda of the business to be transacted.
2. Hold the Board meeting to –
   (i) consider and approve the proposed name by passing a resolution. The board should use search facility at portal of the Ministry of Corporate affairs to check the availability of name. In case of

any doubt for availability, the board may consider and decide five more names in order of their preference. These names are required to be given in the application for availability of name to be made to the registrar of companies in Form INC – 1 for his consideration. If the proposed name is not available, the five additional names may be considered by the registrar and whichever of those names is available, the same be reserved for the company. A formal board resolution is required to be passed at the meeting.

(ii) authorise the company secretary/director to make the required application to the registrar of companies in Form INC - 1 for seeking availability of the proposed name and pay the prescribed application fee.

3. The application in Form INC - 1, to the registrar of companies accompanied by a fee paid electronically should have the following documents as attachment:

(i) In case of change of name of an existing company, a copy of board resolution;

(ii) If change of name is due to direction received from the central government , then copy of such direction;

(iii) In case the proposed name(s) are based on a registered trademark or is a subject matter of an application pending for registration under the Trade Marks Act, 1999, the approval of the owner of the trademark or the applicant of such application for registration of trademark;

(iv) Copy of central government approval In case the proposed name contains such word(s) or expression(s) for which the approval of Central Government is required;

(v) Proof of relation;

(vi) In principle approval from the concerned regulator;

(vii) NOC from the sole proprietor/partners/other associates;

(viii) NOC from existing company,

(ix) Copy of affidavit, in case proposed name including phrase 'Electoral Trust'

(x) Resolution of unregistered companies in case of Chapter XXI (Part I) companies;

(xi) Order of competent authority as required.

(xii) NOC from such other persons as required in Rule 8(4) of Companies (Incorporation) Rules, 2014.

(xiii) Optional attachment, if any.

The Registrar will enter the new name in his register and fresh certificate of incorporation and the change of name will be effective only thereafter. The changed name should be noted in each copy of the memorandum and articles of association.

The change in the name will not affect any rights and obligations of the company or legal proceedings commenced under the old name.

(ii) ALTERATION OF REGISTERED OFFICE CLAUSE:

Alteration of registered office may involve any of the following–

a. Change within the local limit of the same town:

A company can change its registered office within the local limit of the same town or village provided that it takes the board resolution and a notice should be given to the registrar within 30 days of such change.

b. Change from one city to another within the same state:

A company may change its registered office from one city to another within the same state, provided that special resolution is passed and notice is given to the registrar within 30 days of such change.

c. Change within the same state from the jurisdiction of one registrar of companies to the jurisdiction of another registrar of companies:

A company may change its registered office within the same State from the jurisdiction of one registrar of companies to the jurisdiction of another registrar of companies, provided that prior confirmation is taken from the regional director by giving an application. The regional director passes the necessary orders within 4 weeks from the date of receipt of the application.

Thereafter, the company files a copy of the confirmations order with the registrar of companies within 2 months from the date of the confirmation order.

d. Change of Registered office from one state to another:

A company may change its registered office from one state to another provided that a special resolution to that effect must be passed and it must be confirmed by the central government.

(iii) ALTERATION OF OBJECTS CLAUSE:

A company is permitted to alter objective clause under sub – section (1) of Section 13 of the Act through a special resolution. However, sub – section (8) of Section 13 restrict change in object of a company, which has raised money from public through prospectus and still has any unutilized amount out of the money so raised unless a special resolution is passed by the company and the details of such resolution shall be published in one vernacular language and one english language newspaper in circulation at the place of the registered office of the company as well as on the website of the company indicating the justification for such change in object. The dissenting shareholders shall be given an opportunity to exit from the company in accordance with the regulations specified by the Securities and Exchange Board of India.

The change in objects of the company shall be effective only registration of special resolution. According to Rule 22(16)(a) of the Companies (Management and Administration) Rules 2014, special resolution for alternation of object clause shall be passed only through postal ballot. The company need to file with the ROC Form MGT – 14 with a certified true copy of each special resolution passed at the general meeting along with the explanatory statement and altered copy of memorandum of association and articles of association and prescribed filing fee. The registrar shall register any alteration of memorandum with respect to the objects of the company and certify the registration within a period of 30 days from the date of filing of the special resolution. No alteration shall have effect until it is registered.

(iv) ALTERATION OF LIABILITY CLAUSE:

The liability clause of the memorandum cannot be altered to make the liability of the members unlimited. If the articles permit, a limited company by a special resolution can make the liability of the future directors or manager unlimited.

(v) ALTERATION OF CAPITAL CLAUSE:

Through ordinary resolution the company can alter its capital clause under the following circumstances:

i) Increase its share capital by issue of new shares.

ii) Convert fully paid up shares into stock or vice versa.

iii) Sub-divide its shares or any of them into shares of smaller amount then fixed by memorandum in the proportion between the amount paid and unpaid shall remain the same.

iv) Consolidate existing shares into shares of larger denomination.

v) Cancel unissued shares and to that extent reducing the amount of its share capital.

4.6 LIMITATIONS ON POWER OF ALTERATION

The different contents or clauses of memorandum of association can be altered only when resolution is passed or when it is allowed by the articles of association or when the alteration is not ultra vires or as whatsoever applicable under the Companies Act.

The word ultra vires means beyond the powers. A company which owes its incorporation under statutory authority cannot go beyond the powers expressly conferred upon it by statute.

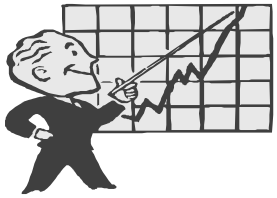
Whether a transaction is ultra vires for a company, it can be decided on the basis of the following:

1. If a transaction entered into by a company falls within the objects, it is not ultra vires and hence not void.
2. If a third party who has knowledge that a transaction entered into, is ultra vires for the company and which was in excess of the company's powers, such a transaction cannot be enforced.

3. If a transaction is outside the capacity of the company, it is ultra vires.
4. If a transaction is in excess the powers of a company, such transaction will be set aside by the shareholders.

Effects of ultra vires of a company:

a. The ultra vires transaction is void.
b. The members can get an injunction to restrain the company wherein ultra vires act has been undertaken.
c. It is the duty of the directors of the company that they use the capital of the company only for the purpose of the company and hence if the capital is diverted in violation of the object clause of the company's memorandum of association, it is void and the directors are liable for the same.
d. Where a company's money has been used ultra vires to acquire some property, the company's right over such property is held secure and the company has the right to protect the property.



CHECK YOUR PROGRESS

Q 4: Who approved the change in the name clause in the memorandum of association?

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4.7 LET US SUM UP

In this unit, we have discussed the following:

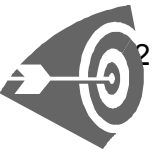
- The memorandum of association is a document which set out the constitution of the company.
- The object of the name clause is to prevent the use of name which is likely to mislead the public.
- A company should have registered office from the day on which it begins to carry on business or within 15 days after incorporation, whichever is earlier.

- The effect of liability clause is that in a company limited by shares, no members can be called upon to pay more than the amount what remains unpaid on his shares. In case of the company limited by guarantee, the clause states the amount which each member should undertake to contribute to the assets of the company in the event of liquidation of the company.
- The change in the name will not affect any rights and obligations of the company or legal proceedings commenced under the old name.
- A company cannot undertake any activity which is not permitted by its memorandum of association.
- Subject to certain limitations, a company may alter its memorandum.



4.8 FURTHER READING

1. Company Law (2018), Avtar Singh, Seventh Edition, Easterm Book Company
2. Companies Act,2013



4.9 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: The two purposes of the memorandum of association of a company are -

i) The purpose for which the investment is going to be used and the risk he is going to take in making such investment can be known by the shareholders from the memorandum.

ii) Anyone dealing with the company will know the permitted range of activities of the company.

Ans to Q No 2: Any three contents of memorandum of association of a company are-

i. Name of the company.

ii. Object of the company.

iii. The name of the State in which the registered office of the company is situated.

Ans to Q No 3: Within 15 days.

Ans to Q No 4: The central government.



4.10 MODEL QUESTIONS

Q 1: What do you understand by memorandum of association? What is its purpose?

Q 2: What are the different contents of memorandum of association?

Q 3: What is the importance of object clause of memorandum of association?

Q 4: Write short notes:

a. Name clause

b. Alteration of registered office clause

c. Alteration of capital clause

d. Alteration of objects clause

Q 5: What do you mean by ultra vires? How can you decide whether the activities of a company is ultra vires ?

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UNIT 5: ARTICLES OF ASSOCIATION

UNIT STRUCTURE

5.1 Learning Objectives

5.2 Introduction

5.3 Meaning of Articles of Association

5.4 Constituent of Articles of Association

5.5 Alternation of Articles of Association

5.6 Differences between Memorandum and Articles of Association

5.7 Doctrine of Indoor Management

5.8 Let Us Sum Up

5.9 Further Readings

5.10 Answers to Check Your Progress

5.11 Model Questions

5.1 LEARNING OBJECTIVES

After going through this unit you will be able to:

- define the meaning of articles of association
- explain the constituent of articles of association
- define the alternation of articles of association
- explain the limitations on power of alteration.

5.2 INTRODUCTION

In this unit, we are going to discuss the articles of association that has to be filed with the registrar of companies at the time of incorporation. Here, you will be able to know details about the relevancy of documents for the purpose .This unit also encompasses the alteration of the articles of association.Through this unit, you will be able to know the difference between memorandum of association and articles of association.

The unit discusses the limitations on power of the alteration of the articles of association. Thus, you will able to understand through this unit,

the basic concept of Articles of Association, constituent and the alternation of articles of association.

5.3 MEANING OF ARTICLES OF ASSOCIATION

The articles of association contains the bye-laws which govern the internal management of the company. According to Section 2 (5) of the Companies Act, 2013, "Articles means the articles of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act". It is the subordinate to the memorandum of association. The Articles of Association can not contain anything which alters the condition of memorandum of association. The articles of association must not have any conditions which are contrary to the provisions of Companies Act.

According to Lords Cairns," The articles play a part subsidiary to the memorandum of association. They accept the memorandum of association as the charter of incorporation of the company and so accepting it, the articles proceed to define the duties, the rights and powers of the governing body as between themselves and the company at large and the mode and the form in which changes in the internal regulations of the company may from time to time be made."

Statutory Requirements

The articles must be printed, divided into paragraphs, numbered consecutively, stamped adequately, signed by each subscriber to the memorandum and duly witnessed and filed along with the memorandum. The articles must not contain anything illegal or *ultra vires* the memorandum, nor should it be contrary to the provisions of the Companies Act, 2013.

REGISTRATION OF ARTICLES

Section 7(1) provides that at the time of incorporation of a company there shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the memorandum and articles of the company duly signed by all the subscribers to the memorandum

in the prescribed manner. Every type of company whether public or private and whether limited by shares or limited by guarantee having a share capital or not having a share capital or an unlimited liability company must register their articles of association.



CHECK YOUR PROGRESS

Q 1: What is articles of association?

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5.4 CONSTITUTENT OF ARTICLES OF ASSOCIATION

The Articles of Association of a company should contain the following matters:

1. Exclusion wholly or in part of Table F.
2. Adoption of preliminary contracts.
3. Number and value of shares.
4. Issue of preference shares.
5. Allotment of shares.
6. Calls on shares.
7. Lien on shares.
8. Transfer and transmission of shares.
9. Nomination.
10. Forfeiture of shares.
11. Alteration of capital.
12. Buy back.
13. Share certificates.
14. Dematerialisation.
15. Conversion of shares into stock.
16. Voting rights and proxies.
17. Meetings and rules regarding committees.
18. Directors, their appointment and delegations of powers.

19. Nominee directors.
20. Issue of Debentures and stocks.
21. Audit committee.
22. Managing director, Whole-time director, Manager, Secretary.
23. Additional directors.
24. Seal.
25. Remuneration of directors.
26. General meetings.
27. Directors meetings.
28. Borrowing powers.
29. Dividends and reserves.
30. Accounts and audit.
31. Winding up.
32. Indemnity.
33. Capitalisation of reserves.

The matters stated in the articles of association is subject to the Companies Act and anything contrary to the provisions of the Act is inoperative and void. It contains the rules which regulate the business of the company. There are certain matters in respect of which powers can be exercised by the company, only if its articles permits.



CHECK YOUR PROGRESS

Q 2: Mention any five contents of articles of association?

i) .....

ii) .....

iii) .....

iv) .....

v) .....

Effects of Articles of Association:

The registered memorandum of association and articles of association bind the company as well as its members. Thus, members are

bound to the company; the company is bound to the members and the members are bound to the other members by whatever is contained in the documents. The effects may be-

a. The members to the company
b. The company to the members
c. The member bound to member
d. The company to the outsiders.

Let us dicuss these in detail

a. **The members are bound to the company:** The articles of association binds the company as well as its members. Therefore, the company can enforce articles of association against any member. But an alteration of articles which increase the liability like subscribing more shares can not bind the member unless he agree to the same in writing.
b. **The company is bound to the members:** As the articles of association binds the company, it can exercise the right against any members only in pursuance of and in accordance with the articles of association.
c. **The member bound to member:** The articles regulates the rights of the members which can be enforced only through the company. Each member is bound by the articles of association by way of implied contract.
d. **The company to the outsiders:** The articles of association does not constitute any contract between the company and the outsiders. An outsider is not entitled to enforce the articles against the company for any breach of right which is conferred on him by the articles.



Implied Contract: Contract made not in writing but, by way of conduct.

5.5 ALTERATION OF ARTICLES OF ASSOCIATION

Procedure for Altering Articles of Association

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

1. Convene and hold a Board meeting to –

(i) Consider and decide which of the articles are to be altered and pass a formal resolution in this respect.

(ii) Fix time, date and venue for holding a general meeting of the company for passing a special resolution as required by Section 14 of the Companies Act, 2013.

(iii) Approve notice, agenda and explanatory statement to be annexed to the notice of the general meeting as per 102 of the Act.

(iv) Authorise the company secretary or any other competent officer of the company to issue notice of the general meeting as approved by the board.

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

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

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

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

5. Forward a copy of the proceedings of the general meeting to the concerned stock exchanges as per the listing agreement.

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

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

A company by special resolution can alter or add to its articles of association. The altered articles should be filed with the registrar within 30 days, in the printed form. However there are certain limitations regarding alteration of articles of association.

Limitations regarding alteration of articles of association:

- The alteration must not be in contrary to any provision of memorandum of association.
- The alteration must not be in contrary to any provision of Companies Act or any Statute.
- The alteration must not contain anything which is illegal or oppose to public policy.
- The alteration must be for the benefit of the company as a whole.
- Approval for alteration from the central government must be obtained where necessary.
- A company cannot justify breach of contract with third parties or avoid a contractual liability by altering its articles.
- The articles cannot be made unalterable.
- The alteration of articles of association should not increase the liability of the members.
- The alteration of articles of association should be made only by special resolution.



CHECK YOUR PROGRESS

Q 3: Mention five limitations on power of alteration?

i) .....

ii) .....

iii) .....

iv) .....

v) .....

Q 4: State whether the following statements are true or false–

(a) Articles of Association can be altered by passing an ordi nary resolution.

(b) The articles can be altered to increase the liability of the members.

(c) The articles bind the company to the members.

(d) The rights of the members of a company are not requlated by the articles.

5.6 DIFFERENCES BETWEEN MEMORANDUM AND ARTICLES OF ASSOCIATION

The memorandum of association and articles of association are public documents and has to be filed to the registrar of companies. But, both the document is different from each other.

Memorandum of Association	Articles of Association
1. Memorandum of association is the charter of the company. It defines the scope of the company.	1. Articles of association regulates the internal management of the company.
2. It defines the relation of the company with the outside world.	2. It deals with the rights of the members.
3. It is the supreme document of the company.	3. It is the subordinate document of the company which can not alter any provision of the memorandum of association.
4. It is the fundamental document of the company. But, it does not state any rules and regulations for the company.	4. It states the rules and regulations for the company which bind the members as well as the company as a whole.
5. Memorandum of association can not be altered except in the manner and to the extent provided by the Act.	5. Articles of association can be altered by passing special resolution.



CHECK YOUR PROGRESS

Q 5: Mention two differences between memorandum and articles of association?

i) .....

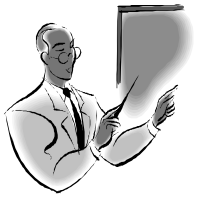
ii) .....

5.7 DOCTRINE OF INDOOR MANAGEMENT

The memorandum and articles of association are public documents which can be assessable in the office of the registrar of companies. On the other hand, all the third parties are presumed that they knew the provisions stated in these document. These documents are open for public inspection on payment. When any person whether a shareholder or outsider enters into any contract which is ultra vires, can not bind the company to do such act. This is known as constructive notice of memorandum and articles of association.

'Doctrine of indoor management' is a rule of exception of constructive notice. Persons dealing with a company is deemed to have knowledge of the memorandum and articles of association. Thus, if a person enters into a transaction with the company which is ultra vires of memorandum and articles, that transaction is not binding on the company. At the same time, the company is also liable if it undertakes any transaction in contravention of the provisions of these two documents.

In many cases, it is not possible for the investors, vendars, creditors etc. to ask whether prior approval is taken for a particular act or it is necessary to take prior approval for a particular transaction, particularly where the directors or other officers of the company are empowered under the articles to exercise certain powers. In such a case, those dealing with the company etc. can assume that if the directors or other officers are entering into those transactions, they would have obtained the necessary sanctions. This is known as "doctrine of indoor management".



LET US KNOW

The doctrine had its origin in the leading case of Royal British Bank v. Turquand.

The facts of the case are:

The directors of the bank issued a bond to Mr. Turquand. The articles provided that the directors had the power to issue bond if authorised by a proper resolution of the company. No such

resolution was passed. It was held that Turquand could sue on the bond as he was entitled to assume that the resolution must have been passed. It was observed that person dealing with the company bound to read the registered documents and to see that the proposed dealing is not inconsistent therewith. But they are not bound to do more; they need not inquire into the regularity of internal proceedings.

Here the point decided is that:

The outsider's dealing with the company are entitled to presume that as far as the internal management of the company is concerned, every thing has been regularly done.

There are certain exceptions to the doctrine of indoor management: The outsiders can not claim relief on the ground of doctrine of indoor management in the following circumstances:

1. *Knowledge of irregularity:*

   A person shall not get any relief under this doctrine, when he knows fully that the directors do not have the authority to make the transaction but still enter in to it.

2. *Negligence:*

   When any officer of the company does any such act for which he is not having power, the person dealing with him must make proper enquiry and satisfy himself as to the officer's authority. But, if he fails to do so, he is not getting any relief under this rule.

3. *Forgery:*

   The rule of doctrine of indoor management can not be invoked in favour of transaction involving forgery or otherwise void.

4. *Acts outside the apparent authority:*

   If any act of an officer is beyond the power of the officer, the person entering into such transaction with him can not claim the protection of the Rule.

5. *No knowledge of the contents of articles:*

   The person, who has not read the memorandum and articles of association and entered into the contract, can not seek relief under this Rule.



CHECK YOUR PROGRESS

Q 6: What is doctrine of indoor management? (Answer within 60 words)

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Q 7: Mention any three exceptions to the rule of doctrine of indoor management?

i) .....

ii) .....

iii) .....



5.8 LET US SUM UP

In this unit, we have discussed the following:

- The articles of association contains the bye-laws which govern the internal management of the company.
- According to Section 2 (2) of the Companies Act, 1956,"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".
- Members are bound to the company; the company is bound to the members and the members are bound to the other members by whatever is contained in the memorandum and articles of association.
- A company by special resolution can alter or add to its articles of association. This should be filed with the registrar within 30 days, in the printed form.
- The articles of association does not constitute any contract between the company and the outsiders.
- The articles must not override any provisions of memorandum of association.
- A company can alter its articles subject to certain limitations.

- The alteration of articles of association should not increase the liability of the members.
- The outsiders dealing with the company are entitled to presume that as far as the internal management of the company is concerned, everything has been regularly done and that they know about the memorandum and articles of association of the company.



5.9 FURTHER READING

1) Gupta, Vijay & K.C. Garg (2006). Company law: Text book for Gauhati University. Guwahati, Kalyani Publishers
2) Jain, N. K, (2007). Company law: Law and practice. New Delhi, Deep & Deep Publications Pvt. Ltd.
3) Mahanta, Babita (2008). Company Law. Guwahati, Kalyani Publishers
4) P.P.S. Gogna (2007). A text book of company law. New Delhi, S. Chand Company.
5) Singh Avtar (1989). Company law. Uttar Pradesh. Eastern Book Company.

5.10 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Articles of association is a document which contains the bye-lows for the day to day working of a company. It is a subordinate document to the memorandum and Companies Act. Hence, it cannot contain anything contrary to the memorandum and the Companies Act. The articles must be signed by the members who have signed the memorandum of association.

Ans to Q No 2: Five contents of articles of association are-

1. Allotment of shares;
2. Fixation of minimum subscription;

3. Dividends, reserves and depreciation funds;
4. Directors, their qualifications, remuneration, rotation etc and board meeting;
5. Definition of important words and phrases;

Ans to Q No 3: Five limitations on power of alteration are-

i) The alteration must not contain anything which is illegal or opposes public policy.
ii) The alteration must be for the benefit of the Company as a whole
iii) Approval for alteration from the Central Government is also required in certain cases.
iv) A company cannot justify breach of contract with third parties or avoid a contractual liability by altering article.
v) The alteration should not violate the memorandum of association.

Ans to Q No 4: (a) False (b) False (c) True (d) False

Ans to Q No 5: Two differences between memorandum and articles of association are-

i) Memorandum of association is the charter of the company. It defines the scope of the company. But, articles of association regulates the internal management of the company.
ii) Memorandum of association defines the relation of the company with the outside world. But, articles of association deals with the rights of the members.

Ans to Q No 6: Doctrine of indoor management states that a person like investor, creditor etc. dealing with a company is deemed to have knowledge of the memorandum and articles of the company. Therefore, he cannot bind the company by a transaction which is ultra vires. Similarly, a company is restricted to undertake any activity which is not permited by its memorandum and articles.

Ans to Q No 7: Three exceptions to the doctrine of indoor management are-

i) Knowledge of irregularity

ii) Negligence

iii) Forgery



5.11 MODEL QUESTIONS

Q 1: What do you understand by the articles of association?

Q 2: What are the different contents of articles of association?

Q 3: How can articles of association be altered?

Q 4: Discuss the various limitations regarding alteration of articles of association?

Q 5: Distinguish between memorandum and articles of association.

Q 6: Explain the doctrine of indoor management and state the exceptions, if any, to the doctrine?

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UNIT 6: PROSPECTUS

UNIT STRUCTURE

6.1 Learning Objectives
6.2 Introduction
6.3 Meaning of Prospectus
6.4 Constituent of Prospectus
6.5 Deemed Prospectus
6.6 Abridged Prospectus
6.7 Red Herring Prospectus
6.8 Shelf Prospectus
6.9 Dating & Signing and Registration of Prospectus
6.10 Remedies for Mistepresentation in Prospectus
6.11 Liability for Mis-statements in Prospectus
6.12 Let Us Sum Up
6.13 Further Reading
6.14 Answers to Check Your Progress
6.15 Model Questions

6.1 LEARNING OBJECTIVES

After going through this unit you will be able to:

- define the meaning of Prospectus
- explain the constituent of Prospectus
- know about the registration of Prospectus
- define the statement in lieu of Prospectus
- explain the penalties for misrepresentation in Prospectus
- explain the meaning of minimum subscription.

6.2 INTRODUCTION

In this unit, we are going to discuss the topic 'Prospectus'. Here, you will be able to know the details about the constituent of prospectus .This unit also encompass the registration of prospectus. Through this unit, you will be able to know about the statement in lieu of prospectus and

penalties for misrepresentation in prospectus. The unit discusses the meaning of minimum subscription. Thus, you will able to understand through this unit, the basic concept of prospectus, its constituent and the statement in lieu of prospectus.

6.3 MEANING OF PROSPECTUS

Prospectus is an invitation issued to the public to offer for purchase or subscribe shares or debentures of the company. Section 2(70) defines a prospectus as "Any document described or issued as a prospectus which includes any notice, circular, advertisement or other document inviting deposit from the public or inviting offer from the public for the subscription or purchase of any shares in, or debentures of a body corporate." Thus, the following ingredients may be said to constitute a 'prospectus'-

a. there must be an invitation to the public,
b. the invitation must be made " by or on behalf of the company or in relation to an intended company.
c. the invitation must be " to subscribe or purchase."
d. the invitation must relate to shares or debentures or such other instrument.

A prospectus is not an offer in itself, but an invitation to make an offer to subscribe shares and debentures of the company. Any advertisement stating,' some shares are still available for sale according to the terms of the prospectus of the company which can be obtained on application is held to be a prospectus as it invites public to purchase shares. The prospectus is usually a circular or newspaper advertisement published by the promoter to induce public to subscribe the shares.

The prospectus should be issued to the public. According to the Companies Act, the term public includes any section of the public, whether selected as members or debentureholders of the company or as clients of the company issuing the prospectus. The public is not restricted to the public at large but includes any section of the public.

A private placement where the company's director requests a few investors to subscribe share is not prospectus. But a document addressed to the public, even if it is in fact shown to one person only to subscribe will be a prospectus and deemed to be 'issued'.

Thus, an issue will not be "Public", if-

(i) it is directed to a specified person or a group of persons, and

(ii) it is not calculated to result in the shares or debentures becoming available to other persons.

WHEN PROSPECTUS IS NOT REQUIRED TO BE ISSUED:

The issue of a prospectus containing the by section is not necessary in the following cases:

1. Where a person is a bona fide invitee to enter into an underwriting agreement with regard to shares or debentures;
2. Where the shares or debentures are not offered to the public.
3. Where the offer is made only to existing members or debenture holders of the company with or without a right to renounce.
4. Where the shares or debentures offered are in all respect uniform with shares or debentures previously issued and dealt in or quoted on a recognized stock exchange.
5. Where any prospectus is published as a newspaper advertisement, it shall not be necessary to specify the contents of the memorandum, or the names etc of the signatories to the memorandum, or the number of shares subscribed for by them.



CHECK YOUR PROGRESS

Q 1: Write the meaning of Prospectus.

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Q 2: Mention two points when prospectus is not required to be issued.

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6.4 CONSTITUENT OF PROSPECTUS

Section 26 lays down that every company shall disclose all the following matters in the prospectus:-

(1) Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall—

(*a*) state the following information, namely:—

(*i*) names and addresses of the registered office of the company, company secretary, chief financial officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed;

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

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

(*iv*) details about underwriting of the issue;

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

(vi) the consent of trustees, solicitors or advocates, merchant bankers to the issue, registrar to the issue, lenders and experts;

(vii) The details of directors including their appointment and remuneration, and particulars of the nature and extent of their interests in the company shall be disclosed

(*viii*) the authority for the issue and the details of the resolution passed therefor;

(*ix*) procedure and time schedule for allotment and issue of securities;

(*x*) capital structure of the company in the prescribed manner;

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

(*xii*) main objects and present business of the company and its location, schedule of implementation of the project;

(*xiii*) particulars relating to—

(*A*) management perception of risk factors specific to the project;

(*B*) gestation period of the project;

(*C*) extent of progress made in the project;

(*D*) deadlines for completion of the project; and

(*E*) any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company;

(*xiv*) minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash;

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

(*xvi*) disclosures in such manner as may be prescribed about sources of promoter's contribution;

(*b*) set out the following reports for the purposes of the financial information, namely:—

(*i*) reports by the auditors of the company with respect to its profits and losses and assets and liabilities and such other matters as may be prescribed;

(*ii*) reports relating to profits and losses for each of the five financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries and in such manner as may be prescribed.

Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in such manner as may be prescribed, the reports relating to profits and losses for each of the financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries;

(*iii*) reports made in the prescribed manner by the auditors upon the profits and losses of the business of the company for each of the five financial years immediately preceding issue and assets and liabilities of its business on the last date to which the accounts of the business were made up, being a date not more than one hundred and eighty days before the issue of the prospectus:

Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in the prescribed manner, the reports made by the auditors upon the profits and losses of the business of the company for all financial years from the date of its incorporation, and assets and liabilities of its business on the last date before the issue of prospectus; and

(*iv*) reports about the business or transaction to which the proceeds of the securities are to be applied directly or indirectly.

(c) The details of acts of material frauds committed against the company in the last five years, if any, and if so, the action taken by the company.

(d) A fact sheet shall be included at the beginning of the prospectus which shall contain -

(i) the type of offer document ("Red Herring Prospectus" or "Shelf Prospectus" or "Prospectus").

(ii) the name of the issuer company, date and place of its incorporation, its logo, address of its registered office, its

telephone number, fax number, details of contact person, website address, email address;

(iii) the names of the promoters of the issuer company;

(iv) the nature, number, price and amount of securities offered and issue size, as may be applicable;

(v) the aggregate amount proposed to be raised through all the stages of offers of specified securities made through the shelf prospectus;

(vi) the name, logo and address of the registrar to the issue, along with its telephone number, fax number, website address and e-mail address;

(vii) the issue schedule -

  (i) date of opening of the issue;

  (ii) date of closing of the issue;

  (iii) date of earliest closing of the issue, if any.

(viii) the credit rating, if applicable;

(ix) all the grades obtained for the initial public offer;

(x) the name(s) of the recognised stock exchanges where the securities are proposed to be listed;

(xi) the details about eligible investors;

(xii) coupon rate, coupon payment frequency, redemption date, redemption amount and details of debenture trustee in case of debt securities.

6.5 DEEMED PROSPECTUS

According to section 25(1) of the Companies Act, 2013, when a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made, shall, for all purposes, be deemed to be a prospectus issued by the company. Section 25(2) provides that unless the contrary is proved, it shall be the evidence

that an allotment of, or an agreement to allot, securities was made with a view to securities being offered for sale to the public if it is shown:-

(A) that an offer of securities or of any of them for sale to the public was made within six months after the allotment or agreement to allot, or

(B) that at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it.

6.6 ABRIDGED PROSPECTUS

According to section 2(1) of the Act "abridged prospectus" means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf.

Section 33 of the Act provides that no form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an abridged prospectus.

6.7 RED HERRING PROSPECTUS

Red herring Prospectus means a prospectus which does not include complete particulars of the quantum or price of the securities included therein. In simple terms a red herring prospectus contains most of the information pertaining to the company's operations and prospects, but does not include key details of the issue such as its price and the number of shares offered. According to section 32 a company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus. Such company proposing to issue a red herring prospectus shall file it with the registrar at least three days prior to the opening of the subscription list and the offer.

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

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

6.8 SHELF PROSPECTUS

Shelf prospectus means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. In simple terms Shelf prospectus is a single prospectus for multiple public issues. Issuer is permitted to offer and sell securities to the public without a separate prospectus for each act of offering for a certain period.

Under the Act any class or classes of companies, as the Securities and Exchange Board (SEBI) may provide by regulations in this behalf, may file a shelf prospectus with the registrar. Such prospectus is to be submitted at the stage of the first offer of securities which shall indicate a period not exceeding one year as the period of validity of such prospectus. The validity period shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required. An information memorandum is required to be filed by a company filing a shelf prospectus which shall contain all material facts relating to-

- new charges created,
- changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities, and
- such other changes as may be prescribed, with the registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

According to the rules the information memorandum shall be prepared in Form PAS-2 and filed with the registrar along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within one month prior to the issue of a second or subsequent offer of securities under the shelf prospectus. The section also provides a benefitting provision for the investors, the proviso provides that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.

6.9 DATING & SIGNING AND REGISTRATION OF PROSPECTUS

According to Section 26(1) of the Act, every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed. The date indicated in the prospectus shall be deemed to be the date of its publication. The prospectus shall be signed by every person who is named therein as a director or proposed director of the company or by his duly authorised attorney. Prospectus shall be issued by or on behalf of a company or in relation to an intended company only when it has been delivered to the registrar for registration a copy of signed prospectus on or before the date of its publication. The registrar shall not register a prospectus unless the requirements with respect to its registration are complied with and the prospectus is accompanied by the consent in writing of all the persons named in the prospectus. Prospectus is to be issued within ninety days from the date of delivery of prospectus to the registrar. No prospectus shall be valid if it is issued more than ninety days after the date on which a copy thereof is delivered to the registrar.

6.10 REMEDIES FOR MISREPRESENTATION IN PROSPECTUS

A company is responsible for a statement in prospectus only if it is shown that the prospectus was issued by the company or by someone with the authority of the company, e.g., the board of directors. The company is also liable for misstatement in prospectus even though the prospectus is issued by the promoters & the board ratifies and adopts the issue of prospectus.

The first remedy against the company is to rescind the contract. A person who takes securities on the faith of a prospectus containing false statements, may apply to the court for setting contract aside, and striking off his name from the register of members. He may also claim his money back. But the allottee must act within a reasonable time, before any proceedings to wind up the company have been commenced, and before he does anything after notice of misrepresentation which is inconsistent with the right to rescind.

The second remedy against the company is to sue for damages for deceit. This suit is founded on the tort of deceit, and is not a case of fraud on the part of directors or promoters. The allottee may recover damages from the company for any loss he may have suffered if the invitation to take securities is emanating from the company and the persons making it on behalf of the company have fraudulently mis-represented material facts. The allottee cannot both retain the securities and get damages against the company. In actual practice, however, suits for damages against the company are rarely filed. Damages are generally claimed from the directors, promoters and other persons who authorised the issue of the prospectus.

Remedies against Directors or Promoters

A person who subscribed for shares on the faith of a false prospectus may claim from directors or promoters:

(i) damages for fraudulent misrepresentation,

(ii) Compensation under Section 35 of the Act,

(iii) Damages for non-compliance with the requirements of Section 26 of the Act.

(i) Damages for fraudulent misrepresentation

An allottee may sue the director for damages for deceit, if there are fraudulent misrepresentations in the prospectus. But the directors will not be liable for damages for mis-statement if they believed them to be true [Derry v. Peek, (1889) 14 AC 337].

(ii) Compensation for untrue Statement

An allottee is also entitled to claim compensation from directors, promoters and any other persons who authorised the issue of the false prospectus, for damages sustained by reason of any untrue statement in it.

As per section 35(1), where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company, then, the following persons are liable to pay compensation to every person who has sustained loss or damage by reason of untrue statement included in a prospectus:

(a) every person who is a director of the company at the time of the issue of the prospectus;

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

(c) every person who is a promoter of the company;

(d) every person who has authorised the issue of the prospectus; and

(e) is an expert referred to in sub-section (5) of section 26

The above stated liability shall be without prejudice to any punishment to which any person may be liable under section 36.

When civil liability can be avoided [Section 35(2)]

No person referred above shall be liable for civil action if he proves:

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

(ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or Further an expert may also escape the liability, if he proves that having given his consent under Section 26 to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration to the registrar.

6.11 LIABILITY FOR MIS-STATEMENTS IN PROSPECTUS

Criminal liability for mis-statements in prospectus.(Sec-34)— Where a prospectus, issued, circulated or distributed includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorises the issue of such prospectus shall be liable under section 447:

Provided that nothing in this section shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

Civil liability for mis-statements in prospectus.(Sec-35) —

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

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

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

(c) is a promoter of the company;

(d) has authorised the issue of the prospectus; and

(e) is an expert referred to in sub-section (5) of section 26,

shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.

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

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

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

(3) Not with standing anything contained in this section, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in subsection (*1*) shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.



CHECK YOUR PROGRESS

Q 2: State whether the following statements are true or false–

i) It is not compulsory to file a copy of prospectus with the registrar of Companies.

ii) A prospectus should be properly dated.

iii) The prospectus must be signed by the directors.



6.12 LET US SUM UP

In this unit, we have discussed the following:

- A public company issue prospectus to invite public to subscribe to its shares and debentures.
- A company can issue a statement in lieu of prospectus which contains information similar to a prospectus.
- The prospectus must give true information about the company.
- Misrepresentation in prospectus results in civil and criminal liability.
- Any person prompted by misrepresentation in prospectus may sue the company, director, promoter, proposed director and every person who has authorised the issue of prospectus.
- Any person who has purchased the shares or debentures on the basis of misrepresented prospectus, may rescind the contract or can claim damages.



6.13 FURTHER READINGS

1. Company Law (2018), Avtar Singh, Seventh Edition, Easterm Book Company
2. Companies Act,2013

6.14 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Prospectus is an invitation issued to the public to offer for purchase or a subscribe shares or debentures of the company.

Ans to Q No 2: Prospectus is not required to be issued in case of -

i) Where a person is a bona fide invitee to enter into an underwriting agreement with regard to shares or debentures; [Section 56(3)]

ii) Where the shares or debentures are not offered to the public.

[Section 56(3) (b)]

Ans to Q No 3:

i) False

ii) True

iii) True



6.15 MODEL QUESTIONS

Q 1: What do you understand by the prospectus?

Q 2: When prospectus is not required to be issued?

Q 3: What do you mean by statement in lieu of prospectus?

Q 4: What are the remedies for misrepresentation in prospectus?

Q 5: When the statement in lieu of prospectus is issued?

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UNIT 7: MEMBERS OF A COMPANY

UNIT STRUCTURE

7.1 Learning Objectives

7.2 Introduction

7.3 Members of a Company

7.4 Modes of Acquiring Memberships

7.5 Restriction on Memberships

7.6 Rights and Privileges of Members

7.7 Liability of Members

7.8 Let Us Sum Up

7.9 Further Reading

7.10 Answers to Check Your Progress

7.11 Model Questions

7.1 LEARNING OBJECTIVES

After going through this unit you will be able to:

- explain the concept of member of a company
- define the modes of acquiring membership
- elaborate the restrictions, rights and privileges of members
- explain the appointment procedure and qualification of directors
- discuss the remuneration, duties and power of directors

7.2 INTRODUCTION

In this unit, we are going to discuss about the members of a company, what the modes to acquire membership, and what are the restrictions, right and privileges of membership. A company has its own entity distinct from its members. A company is composed of members and these members make the company a corporate entity. Here lies the importance of different restrictions imposed on the members. A person can acquire the membership by various modes in a company. In the same way, the members are entitled

to exercise different rights and privileges in the company. You will find this unit interesting as it will help you in understanding the different modes of acquiring membership in a company.

7.3 MEMBERS OF A COMPANY

A company has to maintain a register of members. The inclusion of name in the register differentiate the term ‘member’ and 'shareholder'. Usually, both the terms are used interchangeably. Generally, every shareholder is a member and every member is a shareholder. There may be certain exception like, a person 'X' become the shareholder by transfer i.e. he may hold the share of ' Y' but he is not a member until this transfer is not included in the register of the company. Similarly, 'x' will remain as member in the company though he does not hold the share until his name is removed from the register and write the name of 'Y' in the register of the company.

Definition of 'Member':

According to the Section 2(55) of the Companies Act, 2013,

(1) The subscribers of the memorandum of a company shall be deemed to have agreed, to become members of the company and on registration, they shall be entered as members in the register of members.

(2) Every other person who agrees in writing to become a member of a company and whose name is entered in the register of members shall, be a member of the company.

(3) Every person holding equity share capital of a company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a member of the concerned company.

WHO MAY BECOME A MEMBER

Subject to the Memorandum and Articles, a person who is competent to contract) except the company itself, can become a member of a company. However, it is important to note the following points inrelation to certain organizations and persons:

(a) ***Company as a member of another company:*** A company is a legal person and so is competent to contract. Therefore, it can become a member of any other company. However, it must be authorised by its Memorandum of Association to invest in the shares of that company or any other company. Also a company cannot become a member of itself. As per section 19 of the Companies Act, 2013, a subsidiary company cannot become a member of its holding company. However, a subsidiary can hold shares in its holding company only under the following exceptional circumstances—

(i) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or

(ii) where the subsidiary company holds such shares as a trustee; or

(iii) where the subsidiary company is a shareholder even before it became a subsidiary company of the

(b) ***Partnership firm as a member:*** A partnership firm is not a legal person and as such it cannot, in its own name, become a member of a company except in company registered u/s 8 of Companies Act, 2013.

(c) ***Limited Liability Partnership,*** being an incorporated body under the statute, can become a member of a company.

(d) ***Section 8 company:*** A non-profit making company licensed under Section 8 of the Companies Act, 2013 can become a member of another company if it is authorised by its Memorandum of Association to invest into shares of the other company.

(e) ***Foreigners as members:*** A foreigner may take shares in an Indian company and become a member subject to the provisions of the Foreign Exchange Management Act, 1999, but in the event of war with his country, he becomes an alien enemy and his power of voting and his rights to receive notices are suspended.

(f) ***Minor as member:*** A member who is not a *sui juris* e.g., a minor, is wholly incompetent to enter into a contract and as such cannot become

a member of a company. Consequently, an agreement by a minor to take shares is void *ab-initio*.

(g) ***Insolvent as member:*** An insolvent may be a member of a company as long as he is on the register of members. He is entitled to vote, but he loses all beneficial interest in the shares and company will pay dividend on his shares to the Official Assignee or Receiver [*Morgan* v. *Gray*, (1953) All E.R. 213].

(h) ***Pawnee:*** A pawnee has no right of foreclosure since he never had the absolute ownership at law and his equitable title cannot exceed what is specifically granted by law. In this sense, a pledge differs from a mortgage. In view of the above, a pawnee cannot be treated as the holder of the shares pledged in his favour, and the pawner continues to be a member and can exercise the rights of a member [*Balakrishna Gupta* v. *Swadeshi Polytex Ltd*., (1985) 58 Com Cases 563 (S.C.)].

(i) ***Receiver:*** A receiver whose name is not entered in the register of members cannot exercise any of the membership rights attached to a share unless in a proceeding to which company is a party and an order is made therein. Mere appointment of a receiver in respect of certain shares of a company without more rights cannot, deprive the holder of the shares whose name is entered in the register of members of the company, the right to vote at the meeting of the company [*Balakrishna Gupta* v. *Swadeshi Polytex Ltd.*, (1985) 58 Com Cases 563 (S.C.)].

(j) ***Persons taking shares in fictitious names:*** A person who takes shares in the name of a fictitious person, becomes liable as a member besides incurring criminal liability under Section 38 of the Act, wherein punishment is provided for commission of fraud. As per section 447, any person who is found guilty of fraud, is punishable with imprisonment which shall not be less than six months but which may extend to ten years and also liable to pay fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount

involved in the fraud. However, where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

(k) ***Trade Union as member:*** A trade union registered under the Trade Union Act, can be registered as a member and can hold shares in a company in its own corporate name [*All India Bank Officers Confederation* vs. *Dhanlakshmi Bank Ltd.*, (1997) 90 Com Cases 225].

7.4 MODES OF ACQUIRING MEMBERSHIP

As per section 2(55) of the Companies Act 2013, a person may acquire the membership of a company:

a) by subscribing the memorandum of association; or

b) by agreeing in writing to become a member :

   (i) by making an application to the company for allotment of share; or

   (ii) by executing an instrument of transfer of share as transferee; or

   (iii) by consenting to the transfer of share of a deceased member in his name; or

   (iv) by acquiescence or estoppel.

c) by holding equity share capital of a company whose name is entered as beneficial owner in the records of the depository (under the Depositories Act, 1996); shall be deemed to be a member of the company.



Depository: A bank or company or an institution which holds funds or securities and facilitates the exchange of such securities.

(a) Subscribing the Memorandum of Association:

The promoter of a company generally selects the person who subscribes the memorandum of association of the company. They have agreed to subscribe at least one share of the company. On the incorporation of the company, they become liable to subscribe the shares i. e they have to pay the money of the shares agreed to be taken by them. On registration of the company, the subscribers become the members of the company. The names of the subscribers shall be placed on the register of the members on registration of the company.

(b) Agreement in writing:

(i) Making an Application to the company for Allotment of Share:

A person becomes the member of a company when the shares are allotted in his name. For this purpose the intending shareholders must make an application for purchasing the shares in prescribed form to the company. When the application is accepted and shares are allotted to the shareholders by the company, he becomes the member of the company. The investor should read carefully the terms and conditions of the prospectus of issuing of Share Capital of a company and also the various risk factors, management background etc of the company. A person who applies for shares become a member when shares are allotted to him; a notice of allotment is issued to him and his name is entered in the register of members of the company.



INCORPORATION: Document through which a private limited company can start its business i.e. the company gets registered under Companies Act, 1956.

(ii) By Transfer of Shares:

A person can become a member by acquiring shares from an existing member and by having the transfer of shares registered in the book of the company, i.e. by getting his name entered in the register of members of the company, in the manner as provided in the articles of the company and the Companies Act, 2013.

(iii) By Transmission of Shares:

A person becomes the member of a company by operation of law i.e. if he succeeds to the estate of a deceased member. On the death of a member of the company , the successor / nominee of the deceased has to inform the company / the Depository Participant together with death certificate and probate of the will/ Succession Certificate for requesting transmission of the shares held by the deceased in his name in the company's register of members.

(iv) By Acquiescence or Estoppel:

If any person allows his name without sufficient cause, to be on the register of members of the company or otherwise holds him out or allows himself to be held out as a member, he will become member of the company. In such a case, such a person is estopped from denying his membership.

c. Holding Equity Share Capital of a company whose name is entered as Beneficial Owner in the records of a Depository:

Under section 41 of the Depositories Act, 1996, holding equity share capital of a company whose name is entered as beneficial owner in the records of a depository shall be deemed to be a member of the company.



CHECK YOUR PROGRESS

Q 1: State whether the following statements are true or false–

(i) Creditors are the members of a company.

.....

(ii) The subscribers to the memorandum of association of a company are the members of that company.

.....

(iii) Allotment of shares leads to granting of membership.

.....

(iv) A shareholder becomes a member of a company after purchasing the shares of a company.

.....

7.5 RESTRICTION ON MEMBERSHIP

By virtue of Section 2(68)(ii) of the Companies Act, 2013, the maximum number of members of a private company except in the case of One Person Company is limited to two hundred excluding the present and past employees of the company who continue to be members of the company. The minimum number of members in a private company are two, whereas, it is seven for public limited company. On the other hand, the maximum number of members in a private company is limited to fifty excluding the present and past employees of the company who continue to be the members of the company. But, there is no restriction with regard to the maximum numbers of members of a public company. The company

whose minimum number falls below the statutory limit, may be wound-up by the Tribunal. The purpose is to withdraw the benefits of incorporation in the event of default of the condition of incorporation with regards to minimum number of members.

A person ceases to be a member of a company when his or her name is removed from the register of members, depending on various situations, such as:

1. The company may be wound up.
2. Share warrant may be issued in exchange of fully paid shares.
3. The member may transfer shares to another person and the transfer is recorded in the register of the company and his name is removed from the register of members.
4. His share may be forfeited.
5. His share may be sold by the company to enforce a lien.
6. He dies (his estate, however, remains liable for calls)
8. He is adjudged as insolvent and the official assignee disclaims his shares.
9. His redeemable preference shares are redeemed.
10. He rescinds the contract of membership on the ground of fraud or misrepresentation or a genuine mistake.
11. His shares are purchased either by another member or by the company itself under an order of the Tribunal.
12. The member is a company which is being wound -up in India, and the liquidator disclaims the shares.

Though one ceases to be a member, he remains liable as a contributory and he is also entitled to share in the surplus, if any.



LET US KNOW

Forfeitures of shares:

A company can raise its capital by issue of shares. But, an individual has to follow the company's procedure to become the shareholder of the company under the Companies Act.

Forfeiture of shares means confiscation of the shares of a shareholder by way of penalty for non-payment of any call made in respect thereof. A company has no statutory right to forfeit shares, but it may be authorised by express provision to that effect in its articles.

7.6 RIGHTS AND PRIVILEGES OF MEMBERS

The members' rights of a company are determined by the Companies Act, Memorandum of Association, Articles of Association and the terms of issue of shares. Once a person becomes the member of a company, he is entitled to exercise all rights and privileges of being the member of the company until he ceases to be the member in accordance to the Companies Act, 2013. Some of these rights and privileges can be exercised by him individually and others along with other members unless the member himself holds shares equivalent to the minimum holding prescribed under the various provisions of the Companies Act, 2013.

A. INDIVIDUAL RIGHTS:

There are certain rights of the members of a company, which they can enjoy in their individual capacity. These rights are basically contractual right and cannot be taken away except with the written consent of the member concerned, like;

1. Right to attend the meeting of the shareholders.
2. Right to receive copies of the following documents like:
   - (i) Abridge financial statement and auditor, report incase of a listed company (sec 136).
   - (ii) Report of cost auditor, if so directed by the government.
   - (iii) Notice of the general meetings of the company.
3. Right to inspect the following documents:
   - (i) Debenture trust deed
   - (ii) Register of charges
   - (iii) Register of members
   - (iv) Shareholders' Minutes Book

(v) Register of Contract

(vi) Register of Directors etc.

4. Right to receive Share Certificates.
5. Right to transfer shares.
6. Right to receive dividend.
7. Right of Nomination.
8. To have right shares, etc.

B. CORPORATE MEMBERSHIPS RIGHTS:

Corporate rights are the rights, which, each member has agreed, to be exercised by majority at general body meetings. This involves the principles of submission by all members to the will of the majority, provided that the will is exercised in accordance with the law and Memorandum and Articles of Association of the Company.

C. VOTING RIGHTS OF MEMBERS':

The right to vote in the shareholders' meeting is an important right of the members. The Companies Act does not leave the members to the will of the directors to call the general meeting. Section 47, of the Companies Act confers the right to the members to deposit a requisition setting out the matters for the consideration of which the meeting is to be called and if the Board of Directors does not proceed, within twenty-one days of the requisition to call a meeting within forty-five days of the requisition, the members may themselves call the meeting.

Preference shareholders can vote only on matters directly relating with the rights attached with preference share capital. If the preference shares are cumulative and their dividends remain unpaid for an aggregate period of two years, before the date of any meeting of the company , they are entitled to vote on every resolution before the meeting.

D. SHAREHOLDERS' PRE-EMPTIVE RIGHTS':

The Companies Act, secures the shareholder's pre-emptive rights with regards to the further issue of share capital by the company, though its existence and scope can be affected by the articles of association of the company.

E. VARIATION OF MEMBER'S RIGHTS:

The rights of the members depend on the Companies Act, Memorandum of Association, Articles of Association and the terms of issue of shares of the company. These rights attached to a class of shares are known as "class rights". The rights attached to the shares of any class like equity shares or preference shares can be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or with sanction through special resolution at a separate meeting of the holder's shares of the class.

F. RIGHTS OF DISSENTIENT MEMBERS:

The rights of different class of shares are varied. According to the section 48(2) of Companies Act, the holders of shares may or may not give their consent or vote in favour of the resolution taken for any variation of such right. The holders of not less than ten percent of such class who do not give their consent or vote for the resolution take for any variation of right can apply to the court or tribunal. The variations will not effective until it is confirmed by the Court.

7.7 LIABILITY OF MEMBERS

The liability of a member depends on the nature of the company. If the company is registered with unlimited liability, every member is liable in full for all the debts of the company contracted during the period of his membership. Where the company is limited by guarantee, each member will be bound to contribute in the event of winding up a sum specified in the liability clause of the memorandum of association. In case of company limited by shares, each member is bound to contribute the full nominal value of shares and his liability ends there. If before the full nominal value of the shares is paid, the company goes into liquidation, the member becomes liable as contributory to pay the balance when called upon to pay, by the liquidator of the company. Where a company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or

declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants, direct that liability of the members shall be unlimited. [Section 7(7)]

If a member ceased to be member of a company within one year prior to the commencement of the winding up of the company he is liable to pay on the shares which he held to the extent of the amount unpaid thereon, if:

(i) on the winding up, debts exist which were incurred while he was a member, and

(ii) it appears to the Tribunal that the present members are not able to satisfy the contribution required from them in respect of their shares.

A person is liable as member in spite of a valid transfer of shares by him, if the name of the transferee is not placed on the register of members, in place of the transferors' name. If a person applies for shares in the name of a fictitious person or a person not in existence or uses another person's name for himself, or uses an alias, and shares are allotted in that name or alias, he will be liable as a member.



CHECK YOUR PROGRESS

Q 2: Mention any three rights and privileges of the members of a company?

i) .....

ii) .....

iii) .....

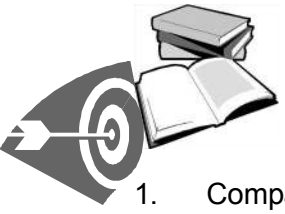


7.8 LET US SUM UP

In this unit, we have dealt with the following-

- A company is composed of members, though it has its own entity distinct from its members.

- As per the Companies Act 2013, a person may acquire the memberships of a company -
  - by subscribing the memorandum of association; or
  - by agreeing in writing to become a member, or
  - by holding equity share capital of a company whose name is entered as beneficial owner in the records of a depository.
- The company whose minimum number falls below the statutory limit, may be wound-up by the Tribunal.
- A person ceases to be a member of a company when his name is removed from its register of members.
- The minimum number of members in a private company are two, whereas, it is seven for public limited company.
- On becoming of the member, the person enjoys certain rights as per the provisions of the Companies Act, 2013.



7.9 FURTHER READINGS

1. Company Law (2018), Avtar Singh, Seventh Edition, Easterm Book Company
2. Companies Act,2013

7.10 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: (i) False (ii) True (iii) True (iv) False

Ans to Q No 2: Three rights and privileges of the members of a company are -

i) Corporate membership rights,

ii) Shareholder's pre-emptive right and

iii) Voting rights.



7.11 MODEL QUESTIONS

Q 1: Who can become a company member? explain.

Q 2: How a person can become member of a company ?

Q 3: Discuse the rights and liabilities of company members.

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UNIT 8 : COMPANY DIRECTOR-I

UNIT STRUCTURE

8.1 Learning Objectives

8.2 Introduction

8.3 Concept and Definition of Company Directory

8.4 Minimum and Maximum Number of Directors

8.5 Number of Directorship

8.6 Types of directors

8.7 Director Identification Number (DIN)

- 8.7.1 Procedure for application for allotment of DIN
- 8.7.2 Procedure for Allotment of DIN
- 8.7.3 Cancellation/Surrender/Deactivation of DIN

8.8 Appointment of a Director

- 8.8.1 Appointment of First Director

8.9 Duties of Directors

8.10 Disqualification for Appointment of Director

8.11 Subsequent Directors

8.12 Removal of Directors

8.13 Retirement of Director

8.14 Resignation of Director

8.15 Vacation of office of Director

8.16 Let Us Sum Up

8.17 Further Readings

8.18 Answers to Check Your Progress

8.19 Model Questions

8.1 LEARNING OBJECTIVES

After going through this unit you will be able to:

- explain the meaning of director
- discuss the provisions related to appointment of director

- know about DIN
- know the concept of different types of director.

8.2 INTRODUCTION

We all know that a company is treated as an artificial person in the eyes of law. A company has separate legal entity. A company cannot acts of its own but it acts through human beings. It has a common seal, which is affixed on all the legal documents executed on behalf of the company in the presence of and signed by authorised signatory or signatories. It is empowered to hold all properties in its own name and in its own right. It can sue others and can be sued by others in its own name.

The activities of a company are managed by a group of persons known as board of directors. Individually they are called director. The directors play a very important role in the day to day functioning of the company. Success and growth of a company depends upon the efficiency of its directors.

The Companies Act, 2013 brought in many new provisions related to directors. In this unit we shall discuss the legal concept of director, their qualifications, appointment, vacation, removal, etc.

8.3 CONCEPT AND DEFINITION OF COMPANY DIRECTORY

A director is a person who with other directors (collectively called board of directors) has the responsibility of determining and implementing the company's policy. She/he is appointed to manage the business. They are the top administrator of the company. The shareholders who invests money into the business entrusts the directors to look after the business so that the money that they invest are used for meeting the business objectives. In other words they are the caretaker of the company who monitors and governs the business. She/he can enter into any legal contract with third parties on behalf of the company.

The Companies Act, 2013 does not contain an exhaustive definition of the term "director". Section 2 (34) of the Act prescribed that "director" means a director appointed to the Board of a company.

Appointment of directors other than first directors can be made only in the annual general meeting. No person can be made a director unless prior consent is taken. The consent must be filed with the registrar of companies within 30 days of appointment.

8.4 MINIMUM AND MAXIMUM NUMBER OF DIRECTORS

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

8.5 NUMBER OF DIRECTORSHIP

A person can hold 20 directorships at a time including any alternate directorship in other words a person can be director of 20 companies at a time. However, the number of directorships in public companies/ private companies that are either holding or subsidiary company of a public company shall be limited to 10.

The members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors.

If a person accepts an appointment as a director in contravention of above mentioned provisions, he shall be punishable with fine which shall not be less than Rs. 5,000 but which may extend to Rs. 25,000 for every day after the first day during which the contravention continues.

8.6 TYPES OF DIRECTORS

1) Resident director: Every company shall have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year.

2) Independent director: Every listed public company shall have a least one third of the total number of directors as independent directors and central government may prescribe the minimum number of independent directors in case of any public company.

3) Small shareholder director: According to section 151 of the Act, every listed company may have one director elected by small shareholders. Small shareholder means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

4) Right of other persons to stand for directorship: A person who is not a retiring director be eligible to be appointed as director if he or any member gives a notice proposing him to be appointed as director. The notice must be sent at the registered office of the company, not less than 14 days before the meeting, along with the deposit of one lakh rupees. The deposit of one lakh rupees shall be refunded to the person if he gets elected as a director or gets more than 25% of total valid votes cast either on show of hands or on poll on such resolution.

5) Alternate director: Alternate director shall be appointed for a director during his absence for 3 months or more from India. The Board of Directors, if so authorised by articles or by a resolution passed in general meeting, appoint a person to act as an alternate director.

8.7 DIRECTOR IDENTIFICATION NUMBER (DIN)

DIN is a unique Director Identification Number allotted by the central government to any person intending to be a director or an existing director of a company. DIN is specific to a person, which means even if he acts as director in 2 or more companies, he has to obtain only 1 DIN. And if he leaves a company and joins some other company, the same DIN would work.

According to Sec. 153 of the Companies Act, 2013, every individual intending to be appointed as director of a company shall make an application to the central government for allotment of Director Identification Number in form **DIR.3** in such form and manner and along with such fees as may be

prescribed. Therefore, before submission of e-Form **INC.1** for availability of name, all the directors of the proposed company must ensure that they are having DIN.

8.7.1 Procedure for application for allotment of DIN (Section 153 & Rule 9)

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

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

(3) (a) The applicant shall download Form DIR-3 from the portal, fill in the required particulars and attaching photograph; proof of identity; proof of residence; and verification by the applicant in Form DIR-4, specimen signature duly verified and sign the form digitally.

(b) Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own digital signature certificate and shall be verified digitally by -:

(i) a chartered accountant or a company secretary in practice or a cost accountant; or

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

8.7.2 Procedure for Allotment of DIN (Section 154 and Rule 10)

The central government shall, within one month from the receipt of the application under section 153, allot a Director

Identification Number to an applicant in such manner as mentioned below:

(1) On the submission of the Form DIR-3 on the portal and payment of the requisite amount of fees through online mode the provisional DIN shall be generated by the system automatically which shall not be utilized till the DIN is confirmed by the central government.

(2) After generation of the provisional DIN, the central government shall process the application. It may approve or reject the application and communicate the same to the applicant within a period of one month from the receipt of application. The communication may be sent by post or electronically or in any other mode.

(3) If the central government, on examination, finds such application to be defective or incomplete in any respect, it shall give intimation of such defect or incompleteness, by placing it on the website and by email to the applicant who has filed such application, directing the applicant to rectify such defects or incompleteness by resubmitting the application within a period of fifteen days of such placing on the website and email. Provided that central government shall-

   (a) reject the application and direct the applicant to file fresh application with complete and correct information, where the defect has been rectified partially or the information given is still found to be defective;

   (b) treat and label such application as invalid in the electronic record in case the defects are not removed within the given time; and

   (c) Inform the applicant either by way of letter by post or electronically or in any other mode.

(4) In case of rejection or invalidation of application, the provisional DIN so allotted by the system shall get lapsed automatically and the fee so paid with the application shall neither be refunded nor adjusted with any other application.

(5) All Director Identification Numbers allotted to individual(s) by the central government before the commencement of these rules shall be deemed to have been allotted to them under these rules.

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

8.7.3 Cancellation/Surrender/Deactivation of DIN

The Competent Authority may, upon being satisfied on verification of particulars or documentary proof attached with the application received from any person, cancel or deactivate the DIN in case –

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

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

(c) of the death of the concerned individual;

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

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

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



CHECK YOUR PROGRESS

Q 1: Who is a director?

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Q 2: What is meant by DIN.

.....

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8.8 APPOINTMENT OF A DIRECTOR

Before learning how a director can be appointed it must be kept in mind that only an individual can be a director. Individual here means a human being. Section 152 of the Companies Act governs the appointment of directors.

8.8.1 Appointment of First Director

The first directors of most of the companies are named in their articles. If they are not so named in the articles of a company, then subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed.

In the case of a One Person Company, an individual being a member shall be deemed to be its first director until the director(s) are duly appointed by the member in accordance with the provisions of Section 152.

General provisions relating to appointment of directors:

1. Except as provided in the Act, every director shall be appointed by the company in general meeting.
2. Director Identification Number is compulsory for appointment of director of a company.
3. Every person proposed to be appointed as a director shall furnish his Director Identification Number and a declaration that he is not disqualified to become a director under the Act.

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

   Company shall file Form DIR-12 (particulars of appointment of directors and KMP along with the form DIR-2 as an attachment within 30 days of the appointment of a director, necessary fee. {Rule8}

5. Articles of the Company may provide the provisions relating to retirement of the all directors. If there is no provision in the article, then not less than two-thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement by rotation and eligible to be reappointed at annual general meeting. Further independent directors shall not be included for the computation of total number of directors. At the annual general meeting of a public company one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office. The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment.

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

If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless—

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

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

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

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

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

8.9 DUTIES OF DIRECTORS (SEC.166)

For the first time, duties of directors have been defined in the Act. A director of a company shall:

(I) Act in accordance with the articles of the company.

(II) Act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.

(III) Exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

(IV) Not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

(V) Not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.

(VI) Not assign his office and any assignment so made shall be void.

If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than Rs. 1,00,000 but which may extend to Rs. 5,00,000.

8.10 DISQUALIFICATION FOR APPOINTMENT OF DIRECTOR (SEC.164)

(1) A person shall not be eligible for appointment as a director of a company, if —

(a) he is of unsound mind and stands so declared by a competent court;

(b) he is an undischarged insolvent;

(c) he has applied to be adjudicated as an insolvent and his application is pending;

(d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence. If a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;

(e) an order disqualifying him for appointment as a director has been passed by a court or tribunal and the order is in force;

(f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;

(g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or

(h) he has not got the DIN.

(2) Any person who is or has been director of any company which has not filed any financial statements and Annual Return for 3 continuous financial year or has defaulted in payment of debentures/deposit/dividend etc, shall also not be eligible for appointment as director of any public company and for re- appointment in the same company for a period of five years from the date on which the said company fails to do so.

(3) A private company may by its articles provide for any disqualifications for appointment as a director in addition to aforesaid mentioned Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall not take effect—

i. for thirty days from the date of conviction or order of disqualification;

ii. where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed off; or

iii. where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed off.

8.11 SUBSEQUENT DIRECTORS

As per the provision of section 152(2) of the Companies Act 2013, every director shall be appointed by the company in general meeting. In simple words director other than the first director can be appointed in annual general meeting of the company.

Appointment of directors by the Board :

Following directors can be appointed by the board of directors

i. Additional Director

ii. Alternate Director

iii. Nominee Director

iv. Casual Vacancy

It must be kept in mind that such directors (above 4) can be appointed by the board only if it authorised by the articles of association.



CHECK YOUR PROGRESS

Q 3: Mention two duties of a director.

.....

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.....

Q 4: Mention two disqualifications for appointment of director.

.....

.....

8.12 REMOVAL OF DIRECTORS

Power to remove a director has always been bestowed on shareholders. Shareholders can remove any director before the expiry of his tenure, except any director appointed by tribunal for prevention of oppression or mismanagement under section 242 and a director appointed under principle of proportionate representation u/s 163.

Right to remove a director is a legal right of the shareholders by passing an ordinary resolution. Following are the steps for removal of a director:

1. A special notice of the intention to move a resolution for the removal of director be furnished by any member at least 14 days before the meeting at which it is to be moved, exclusive of the day on which the notice is served and the day of the meeting.
2. The company shall immediately after the notice of the intention to move any such resolution has been received by it, give it members notice of resolution in the same manner as it gives notice to the meeting.
3. If it is not possible for the company to give notice to all the members, publish by advertisement in the newspaper having an appropriate circulation not less than 7 days before the meeting.
4. The company must give intimation to the concerned director of the intended resolution by sending a copy of the special notice received by it. The director shall have the right to be heard on the resolution at the meeting.
5. The director, who is sought to be removed, can make a representation in writing against his removal and request the company to notify it to the company's shareholders. If representation could not be sent because it was received too late or because the company made a

default in sending it, the company must read out the representation at the annual general meeting, if the director required it to do so. In addition the director can make oral representation in the AGM.

6. Hold and convene a general meeting to discuss matters including the removal a director. An ordinary resolution is to be passed for removal of a director.
7. In case of listed companies, the company has to file a copy of resolution in the stock exchange where the securities of the company are listed.
8. File with the registrar of companies within 30 days of passing resolution a From no.12. and pay necessary fees.

8.13 RETIREMENT OF DIRECTOR

Directors retirement by rotation is covered in Section 152(6) of Companies Act 2013. The retirement of directors by rotation is one of the most important provisions introduced to bring dynamism to a company's management. Directors are retired by rotation regularly at every annual general meeting of the company. You should note that the provision of retirement of directors by rotation is not applicable to private companies.

Articles of the company may provide the provisions relating to retirement of the all directors. If there is no provision in the article, then not less than two-thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement by rotation and eligible to be reappointed at annual general meeting. 'Total number of directors' shall not include independent directors appointed on the board of a company.

Nominee directors appointed by a financial institution or by central Government under section 408 of the Companies Act, 2013 shall not be included in the 'total number of directors' for the purpose of section 152(6) of the Act. At the annual general meeting of a public company one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.

The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment. As between the persons who became directors on the same day, the directors who shall retire may be determined by agreement among themselves. In the absence of any such agreement the persons liable to retire shall be chosen by lot.

Government companies have been exempted vide notification dated June 5, 2015 from the applicability of this section. Accordingly, directors in government companies are not liable to retire by rotation.

At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.

If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

8.14 RESIGNATION OF DIRECTOR

A director may resign from his office by giving a notice in writing to the company and the board shall on receipt of such notice take note of the same and the company shall intimate the registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company:

(1) Provided that the director shall also forward a copy of his resignation along with detailed reasons for the resignation to the registrar within thirty days of resignation in such manner as may be prescribed.

(2) The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later:

Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

(3) Where all the directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the central government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.

8.15 VACATION OF OFFICE OF DIRECTOR

1. The office of a director shall become vacant in companies in case-
   a) He incurs any of the disqualifications specified in section 164 of the Companies Act.
   b) He absents himself from all meetings of the board of directors held during a period of twelve months with or without seeking leave of absence of the board.
   c) He acts in contravention of the provision of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested
   d) He fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, , in contravention of the provisions of section 184
   e) He becomes disqualified by an order of a court or the tribunal
   f) He is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for no less than six months.

      Provided that the office shall be vacated by the director even if he has filed an appeal against the order of such court
   g) He is removed in pursuance of the provisions of the Act.
   h) He, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company ceases to hold such office or other employment in that company.
2. If a person functions as a director even when he knows that the office of the director held by him has become vacant on account of an disqualifications specified in sub section (1) he shall be punishable

with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

3. Where all the director of a company vacates their offices under any of the disqualifications specified in sub-section (1), the promoter or, in his absence, the central government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.
4. A private company may, by its articles, provide any other ground for the vacation of the office of the director in addition to those specified in sub-section (1).



8.16 LET US SUM UP

- A director is a person who with other directors (collectively called board of directors) has the responsibility of determining and implementing the company's policy.
- Appointment of directors other than first directors can be made only in the annual general meeting.
- A person can hold 20 directorships at a time including any alternate directorship.
- To be a director He/She must have Director Identification Number (DIN).
- Power to remove a director has always been bestowed on shareholders.
- Directors are retired by rotation regularly at every annual general meeting of the company.



8.17 FURTHER READINGS

1. Company Law (2018), Avtar Singh, Seventh Edition, Easterm Book Company
2. Companies Act,2013



8.18 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: A director is a person who with other directors has the responsibility of determining and implementing the company's policy.

Ans to Q No 2: DIN is a unique director identification number allotted by the Central Government to any person intending to be a Director or an existing director of a company.

Ans to Q No 3: Following are the two duties of a director—

a. Act in accordance with the articles of the company.

b. Act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.

Ans to Q No 4: A person shall not be eligible for appointment as a director of a company, if

(a) he is of unsound mind and stands so declared by a competent court;

(b) he is an un-discharged insolvent;

8.19 MODEL QUESTIONS

Q 1: Discuss the procedure of application and allotment of DIN.

Q 2: Laid down the provisions related to appointment of director.

Q 3: State the disqualification for appointment of director.

Q 4: Discuss the procedure for removal of a director.

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UNIT 9 : COMPANY DIRECTOR-II

UNIT STRUCTURE

9.1 Learning Objectives
9.2 Introduction
9.3 Independent Director
  9.3.1 Number of independent directors
  9.3.2 Selection of independent directors
  9.3.3 Code for independent directors
  9.3.4 Tenure of independent directors
  9.3.5 Liabilities of independent directors
  9.3.6 Remuneration of independent directors
9.4 Women Director
9.5 Small Shareholders' Director
9.6 Additional Director
9.7 Alternate Director
9.8 Let Us Sum Up
9.9 Further Readings
9.10 Answers to Check Your Progress
9.11 Model Questions

9.1 LEARNING OBJECTIVES

After going through this unit you will be able to:

- explain the meaning of independent director
- discuss the provisions related to code of conduct of independent director
- know about women director
- know Small Shareholders' Director and alternate director.

9.2 INTRODUCTION

Independent directors are directors on board of a company who are independent individuals, not having any other relationship or transaction with the company. An independent director is a non-executive director who is

independent and free from any relation directly or indirectly with business which would obstruct with the exercise of his independent judgment. The concept of Independent directors gained momentum in the late 1980s and early 1990s due to the uncovering of various corporate frauds and after recommendations of Cadbury Committee 1992 of the UK and the Sarbanes-Oxley Act of 2002 of the US.

Corporate governance gives a fair amount of emphasis on the independence of a board. The presence of Independent Directors in the board would make frauds, mismanagement, inefficient use of resources, and unaccountability of decisions to be detected and prevented at the earliest.

In this unit we shall discuss legal provisions relating to appointment, remuneration, code, tenure etc. of independent directors. We shall also discuss the concepts of small shareholders' director, women director, additional director and alternate director

9.3 INDEPENDENT DIRECTOR

An independent director is not a managing director or whole time director or a nominee director. Independent directors as the name suggests are directors on board of a company who are independent individuals, not having any other relationship or transaction with the company.

Section 149(6) gives the definition of independent director, in relation to a company, means a director other than a managing director or a whole time director or a nominee director,-

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

(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;

(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

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

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

(e) who, neither himself nor any of his relatives—

(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;

(iii) holds together with his relatives two per cent. or more of the total voting power of the company;or

(iv) is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or

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

9.3.1 Number of independent directors

Section 149(4) provides that every listed public company shall have at least one-third of the total number of directors as independent directors and the central government may prescribe the minimum number of independent directors in case of any class or classes of public companies. Rule 4 0f Companies (Appointment and Qualification of Directors) rules 2014, provides that the following class or classes of companies shall have at least two directors as independent directors-

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

(ii) the public companies having turnover of one hundred crore rupees or more; or

(iii) the public companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees.

9.3.2 Selection of independent directors [Sec.150 (1)]

1) An independent director may be selected from a databank, maintained by anybody, institute or association notified by central government, having expertise in creation and maintenance of such databank and put on their website for the use by company making the appointment of such director.

   Provided that the responsibility of exercising due diligence before selecting an independent director lie with the company making such appointment.

2) The appointment of independent director shall be approved by the company in general meeting as provided in sub-section (2) of section152 and the explanatory statement, annexed to the notice of the general meeting, shall indicate justification for choosing the appointee for appointment as independent director.

3) The databank referred to in point (1), shall create and maintain data of persons willing to act as independent director in accordance with such rules as may be prescribed.

4) The central government may prescribe the manner and procedure of selection of independent directors who fulfil the qualifications and requirements specified under section 149.

Following conditions or qualifications which are required to be satisfied by a person to become an independent director:

a) A person of integrity and possess relevant expertise and experience.
b) He is not a promoter of the company or its holding, subsidiary or associate company
c) He is not related to promoters or directors in the company, its holding, subsidiary or associate company.
d) He has no pecuniary relationship with the company, its holding or associate company, or their promoters or directors, during the two immediately preceding financial years or during the current financial year.
e) His relatives have no pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent or more of its gross turnover or total income of fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
f) He or his relative does not hold the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
g) He or his relative has not been in employment of firm of auditors, company secretary or cost auditors of the company or legal consultants of the company.
h) He does not hold together with his relatives two per cent or more of the total voting power of the company.
i) He or his relative has not been the chief executive or director of any non-profit organisation that receive twenty five per cent of

its receipt from the company, any of its promoters or directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the company.



CHECK YOUR PROGRESS

Q 1: Who is an independent director?

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Q 2: What is the minimum number of independent directors a listed public company should have?

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9.3.3 Code for independent directors

The code is a guide to professional conduct for independent directors. Adherence to these standards by independent directors and fulfilment of their responsibilities in a professional and faithful manner will promote confidence of the investment community, particularly minority shareholders, regulators and companies in the institution of independent directors.

I. Guidelines of professional conduct

An independent director shall:

(1) uphold ethical standards of integrity and probity;

(2) act objectively and constructively while exercising his duties;

(3) exercise his responsibilities in a *bona fide* manner in the interest of the company;

(4) devote sufficient time and attention to his professional obligations for informed and balanced decision making;

(5) not allow any extraneous considerations that will vitiate his exercise of objective independent judgment in the paramount interest of the company as a whole, while concurring in or dissenting from the collective judgment of the board in its decision making;

(6) not abuse his position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person;

(7) refrain from any action that would lead to loss of his independence;

(8) where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the board accordingly;

(9) assist the company in implementing the best corporate governance practices.

II. Role and functions:

The independent directors shall:

(1) help in bringing an independent judgment to bear on the especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;

(2) bring an objective view in the evaluation of the performance of board and management;

(3) scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;

(4) satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;

(5) safeguard the interests of all stakeholders, particularly the minority shareholders;

(6) balance the conflicting interest of the stakeholders;

(7) determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management;

(8) moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.

III. Duties

The independent directors shall—

(1) undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;

(2) seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;

(3) strive to attend all meetings of the board of directors and of the board committees of which he is a member;

(4) participate constructively and actively in the committees of the board in which they are chairpersons or members;

(5) strive to attend the general meetings of the company;

(6) where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting;

(7) keep themselves well informed about the company and the external environment in which it operates;

(8) not to unfairly obstruct the functioning of an otherwise proper board or committee of the board;

(9) pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company;

(10) ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;

(11) report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy;

(12) acting within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees;

(13) not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.

IV. Manner of appointment:

(1) Appointment process of independent directors shall be independent of the company management; while selecting independent directors the board shall ensure that there is appropriate balance of skills, experience and knowledge in the board so as to enable the board to discharge its functions and duties effectively.

(2) The appointment of independent director(s) of the company shall be approved at the meeting of the shareholders.

(3) The explanatory statement attached to the notice of the meeting for approving the appointment of independent director shall include a statement that in the opinion of the board, the independent director proposed to be appointed fulfils the conditions specified in the Act and the rules made there under and that the proposed director is independent of the management.

(4) The appointment of independent directors shall be formalised through a letter of appointment, which shall set out :

(a) the term of appointment;

(b) the expectation of the board from the appointed director; the board—level committee(s) in which the director is expected to serve and its tasks;

(c) the fiduciary duties that come with such an appointment along with accompanying liabilities;

(d) provision for directors and officers insurance, if any;

(e) the code of business ethics that the company expects its directors and employees to follow;

(f) the list of actions that a director should not do while functioning as such in the company; and

(g) the remuneration, mentioning periodic fees, reimbursement of expenses for participation in the Boards and other meetings and profit related commission, if any.

(5) The terms and conditions of appointment of independent directors shall be open for inspection at the registered office of the company by any member during normal business hours.

(6) The terms and conditions of appointment of independent directors shall also be posted on the company's website.

V. Re-appointment:

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

VI. Resignation or removal:

(1) The resignation or removal of an independent director shall be in the same manner as is provided in sections 168 and 169 of the Act.

(2) An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within a period of not more than one hundred and eighty days from the date of such resignation or removal, as the case may be.

(3) Where the company fulfils the requirement of independent directors in its board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director shall not apply.

VII. Separate meetings:

(1) The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management;

(2) All the independent directors of the company shall strive to be present at such meeting;

(3) The meeting shall:

(a) review the performance of non-independent directors and the board as a whole;

(b) review the performance of the chairperson of the company, taking into account the views of executive directors and non-executive directors;

(c) assess the quality, quantity and timeliness of flow of information between the company management and the board that is necessary for the board to effectively and reasonably perform their duties.

VIII. Evaluation mechanism:

(1) The performance evaluation of independent directors shall be done by the entire board of directors, excluding the director being evaluated.

(2) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.



CHECK YOUR PROGRESS

Q 3: Mention two duties of an independent director.

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Q 4: Mention two functions of an independent director.

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9.3.4 Tenure of independent directors

An independent director shall hold office for a term up to five consecutive years, but shall be eligible for reappointment by passing special resolution and require disclosure in board's report. He shall not hold office for more than two consecutive terms, but shall be eligible for appointment after expiration of 3 years of ceasing to become independent director.

9.3.5 Liabilities of independent directors

An independent director shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with the knowledge, attributable through board processes and with his consent or connivance or where he had not acted diligently.

9.3.6 Remuneration of independent directors

An independent director may receive remuneration, reimbursement of expenses and profit related to commission complying provisions of the Companies Act. A director may receive remuneration by way of fee for attending meetings or committee thereof of for any other purpose as may be decided by the board. The amount of such fees shall not exceed the amount as may be prescribed.

9.4 WOMEN DIRECTOR

Every listed company shall appoint at least one women director within one year from the commencement of the second proviso to Section 149(1) of the Act. Every other public company having paid up share capital of Rs. 100 crores or more or turnover of Rs. 300 crore or more as on the last date of latest audited financial statements, shall also appoint at least one woman director within 1 year from the commencement of second proviso to Section 149(1) of the Act. A period of six months from the date of company's incorporation has been provided to enable the companies incorporated under Companies Act, 2013 to comply with this requirement. It is better to say that existing companies (under the previous companies act) has to comply the above requirements within one year and new companies (under the new companies act) has to comply within 6 months from the date of its incorporation. Further if there is any intermittent vacancy of a woman director then it shall be filled up by the board of directors within 3 months from the date of such vacancy or not later than immediate next board meeting, whichever is later.

9.5 SMALL SHAREHOLDERS' DIRECTOR

According to section 151 of the Act every listed company may have one director elected by such small shareholders. For the purpose of this section, "small shareholder" means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

Rule 7, Companies (Appointment and Qualifications of Directors) Rules, 2014 laid down the following terms and conditions for appointment of small shareholder's director, which are as under:

(i) A listed company, may upon notice of not less than 1000 or one-tenth of the total number of small shareholders, whichever is lower, have a small shareholders' director elected by the small shareholders. A listed company may suo moto opt to have a director representing small shareholders.

(ii) The small shareholders intending to propose a person as a candidate for the post of small shareholder's director shall leave a signed notice of their intention with the company at least 14 days before the meeting specifying the their details and proposed director's details. The details include name, address, shares held and folio number etc. If the proposer does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice.

(iii) The notice shall be accompanied by a statement signed by the proposed director for the post of small shareholders' director stating-

  (a) his Director Identification Number;

  (b) that he is not disqualified to become a director under the Act; and

  (c) his consent to act as a director of the company.

(iv) If proposed director is qualified u/s 149 (6) for appointment as an independent director and has given declaration for his independence u/s 149 (7) then such director shall be considered as an independent director.

(v) The director's tenure as small shareholders' director shall not exceed a period of 3 consecutive years and he shall not be liable to retire by

rotation. Further he shall not be eligible for reappointment after the expiry of his tenure.

(vi) If the person is not eligible for appointment according to section 164, then he can't be appointed as small shareholder's director.

(vii) Small shareholders' director shall vacate the office if –

(a) he ceases to be a small shareholder, on and from the date of cessation;

(b) he incurs any of the disqualifications specified in section 164;

(c) the office of the director becomes vacant in pursuance of section 167;

(d) he ceases to meet the criteria of independence as provided section 149 (6).

(viii) Simultaneously he shall not hold the office of small shareholders' director in more than two companies. If second company is in competitive business or is in conflict with business of the first company then he shall not be appointed in second company.

(ix) He shall directly or indirectly not be appointed or associated in any other capacity with the company for a period of 3 years from the date of cessation as a small shareholder's director.

9.6 ADDITIONAL DIRECTOR

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

9.7 ALTERNATE DIRECTOR

According to Section 161 (2) of the Companies Act-2013,

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

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

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

(iv) If it is proposed to appoint an alternate director to an independent director, it must be ensured that the proposed appointee also satisfies the criteria for independent directors.

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

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



9.8 LET US SUM UP

- Independent directors as the name suggests are directors on Board of a company who are independent individuals, not having any other relationship or transaction with the company.
- Every listed public company shall have at least one-third of the total number of directors as independent directors and the central government may prescribe the minimum number of independent directors in case of any class or classes of public companies.
- The appointment of independent director shall be approved by the company in general meeting.
- The code is a guide to professional conduct for independent directors.
- The re-appointment of independent director shall be on the basis of report of performance evaluation.
- Every listed company shall appoint at least one women director.



9.9 FURTHER READINGS

1. Company Law (2018), Avtar Singh, Seventh Edition, Easterm Book Company
2. Companies Act,2013

9.10 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Independent directors as the name suggests are directors on board of a company who are independent individuals, not having any other relationship or transaction with the company.

Ans to Q No 2: Listed public company shall have at least one-third of the total number of directors as independent directors

Ans to Q No 3: Following are the two duties of an independent director-

(1) strive to attend all meetings of the board of directors and of the Board committees of which he is a member.

(2) participate constructively and actively in the committees of the Board in which they are chairpersons or members.

Ans to Q No 4: Following are the two functions of an independent director-

1. bring an objective view in the evaluation of the performance of board and management;
2. scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;



9.11 MODEL QUESTIONS

Q 1: Define independent director.

Q 2: Mention the procedure of selection of independent director.

Q 3: Explain the Code for independent directors.

Q 4: List the terms and conditions for appointment of small shareholder's director.

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UNIT 10 : BOARD OF DIRECTORS

UNIT STRUCTURE

10.1 Learning Objectives

10.2 Introduction

10.3 Meaning

10.4 Meeting of the Board

10.5 Requirements and Procedures for Convening and Conducting Board's Meetings

10.6 Board Committee

- 10.6.1 Audit Committee
- 10.6.2 Nomination and Remuneration
- 10.6.3 Coporate Social Responsibility Committee
- 10.6.4 Stakeholders Relationship Committee

10.7 Loans to Directors

10.8 Let Us Sum Up

10.9 Further Readings

10.10 Answers to Check Your Progress

10.11 Model Questions

10.1 LEARNING OBJECTIVES

After going through this unit you will be able to:

- explain the meaning of board of director
- discuss the provisions related to board meeting
- know about different board committees
- know the provisions related to loan to directors.

10.2 INTRODUCTION

In previous two units we learnt different provisions related to directors. Collectively directors are called board of director. The board of directors is the authority for conducting the affairs of the company. The Board of Directors is the most important decision making body of a company. They are authorised to do what the company is authorised to do, unless barred by

restrictions on their powers by the provisions of the Companies Act, 2013, the Memorandum or Articles of the company.

In this unit we shall discuss the procedure of conducting board meeting, functioning of different board committees and provisions related to loan to directors.

10.3 MEANING

In terms of section 2 (10) of the Companies Act, 2013 "Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company. Further, in terms of section 2 (34) of the CA, 2013 "Director" means a director appointed to the board of a company.

Every company shall have a board of directors consisting of individuals as directors and shall have—

(a) a minimum number of 3 directors in the case of a public company,

(b) 2 directors in the case of a private company, and

(c) 1 director in the case of a one person company; and

The maximum limit of directors in any company is 15 but a company may appoint more than 15 directors after approval of shareholders of the Company by way of passing a special resolution.

10.4 MEETING OF THE BOARD

1. In terms of section 173 of the Companies Act, 2013 every company shall:
   - hold the first meeting of the board of directors within thirty (30) days of the date of its incorporation;
   - hold a minimum number of four meetings of its board of directors every year.

   The time gap between two consecutive board meetings shall not exceed one hundred and twenty (120) days.
2. In case of One Person Company (OPC), small company and dormant company, at least one board meeting should be conducted in each half of the calendar year and the gap between two meetings should not be less than ninety days.

3. The quorum for a meeting of the board of directors of a company shall be one third of its total strength or two directors, whichever is higher.
4. The participation of directors in a meeting of the board may be either in person or through video conferencing or other audio visual means, as may be prescribed. However, the central government may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means.
5. A meeting of the board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means. However, a meeting of the board may be called at shorter notice.

10.5 REQUIREMENTS AND PROCEDURES FOR CONVENING AND CONDUCTING BOARD'S MEETINGS

Directors may participate in the meeting either in person or through video conferencing or other audio visual means. Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014 provides for the requirements and procedures, in addition to the procedures required for board meetings in person, for convening and conducting board meetings through video conferencing or other audio visual means:

(1) Every Company shall make necessary arrangements to avoid failure of video or audio visual connection.

(2) The chairperson of the meeting and the company secretary, if any, shall take due and reasonable care:

   (a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;

   (b) to ensure the availability of proper video conferencing or other audio visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting;

   (c) to record the proceedings and prepare the minutes of the meeting;

(d) to store for safekeeping and marking the tape recording(s) or other electronic recording mechanism as part of the records of the company at least before the time of completion of audit of that particular year;

(e) to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and

(f) to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting, but the differently abled persons, may make request to the Board to allow a person to accompany him.

3. (a) The notices of the meeting shall be sent to all the directors

(b) The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.

(c) A director intending to participate through video conferencing mode or audio visual means shall communicate his intention to the chairman or the company secretary of the company.

(d) If the director intends to participate through video conferencing or other audio visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangement in this behalf.

(e) The director, who desire, to participate may intimate his intention of participation through the electronic mode at the beginning of the calendar year and such declaration shall be valid for one calendar year.

(f) In the absence of any such intimation from the director, it shall be assumed that the director will attend the meeting in person.

(4) At the commencement of the meeting, a roll call shall be taken by the Chairperson when every director participating through video

conferencing or other audio visual means shall state, for the record, the following namely :

(a) name;

(b) the location from where he is participating;

(c) that he can completely and clearly see, hear and communicate with the other participants;

(d) that he has received the agenda and all the relevant material for the meeting; and

(e) that no one other than the concerned director is attending or having access to the proceedings of the meeting at the location mentioned in (b) above.

5. (a) After the roll call, the chairperson or the secretary shall inform the board about the names of persons other than the directors who are present for the said meeting at the request or with the permission of the chairman and confirm that the required quorum is complete. Explanation: It is clarified that a director participating in a meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum, unless he is to be excluded for any items of business under any provisions of the Act or the rules.

(b) The roll call shall also be made at the conclusion of the meeting and at the re-commencement of the meeting after every break to confirm the presence of a quorum throughout the meeting.

(6) With respect to every meeting conducted through video conferencing or other audio visual means authorised under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting, which shall be in India, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

(7) The statutory registers which are required to be placed in the board meeting as per the provisions of the Act shall be placed at the scheduled venue of the meeting and where such registers are required to be signed by the directors, the same shall be deemed to have been signed by the

directors participating through electronic mode if they have given their consent to this effect and it is so recorded in the minutes of the meeting.

(8) (a) Every participant shall identify himself for the record before speaking on any item of business on the agenda.

(b) If a statement of a director in the meeting through video conferencing or other audio visual means is interrupted or garbled, the chairperson or company secretary shall request for a repeat or reiteration by the director.

(9) If a motion is objected to and there is a need to put it to vote, the chairperson shall call the roll and note the vote of each director who shall identify himself while casting his vote.

(10) From the commencement of the meeting until the conclusion of such meeting, no person other than the chairperson, directors, secretary and any other person whose presence is required by the board shall be allowed access to the place where any director is attending the meeting either physically or through video conferencing without the permission of the board.

(11) (a) At the end of discussion on each agenda item, the chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, dissented from the decision taken by majority.

(b) The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio visual means.

(12) (a) The draft minutes of the meeting shall be circulated among all the directors within fifteen days of the meeting either in writing or in electronic mode as may be decided by the board.

(b) Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days or some reasonable time as decided by the board, after receipt of the draft minutes failing which his approval shall be presumed.

(c) After completion of the meeting, the minutes shall be entered in the minute book as specified under section 118 of the Act and signed by the chairperson.



CHECK YOUR PROGRESS

Q 1: Define board of director?

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Q 2: How many board meeting a company shall hold in a year?

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10.6 BOARD COMMITTEE

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

Boards should regularly review its own structure and performance and whether it has the right committee structure and an appropriate scheme of delegation from the board.

10.6.1 Audit Committee

The Act has enlarged the responsibilities of auditors to include monitoring of auditors' independence, evaluation of their performance, approval of modification of related-party transactions, scrutiny of loans and investments, valuation of assets and evaluation of internal controls and risk management. They have to establish a vigil mechanism and protection for any whistle-blower. Large companies must mandatorily have professional internal auditors.

1. In terms of section 177 of the Companies Act, 2013 following class of companies shall constitute an Audit Committee:
   - Every listed companies;
   - All public companies with a paid up capital of ten crore rupees or more;
   - All public companies having turnover of one hundred crore rupees or more;
   - All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits as per last audited financial statements exceeding fifty crore rupees or more.
2. The audit committee shall consist of a minimum of three directors with independent directors forming a majority. However, a majority of members of audit committee including its chairperson shall be the persons with ability to read and understand the financial statement.
3. A transition period of one year from the date on which the new Act comes into effect has been provided to enable companies to reconstitute the audit committee.
4. Every audit committee shall act in accordance with the terms of reference specified in writing by the board which shall among other things also include:-

- the recommendation for appointment, remuneration and performance, and appointment of auditors of the company;
- review and monitor the auditor's independence and performance, and effectiveness of audit process;
- examination of the financial statement and the auditors' report thereon;
- approval or any subsequent modification of transactions of the company with related parties; the audit committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed;
- scrutiny of inter-corporate loans and investments;
- valuation of undertakings or assets of the company, wherever it is necessary;
- evaluation of internal financial controls and risk management systems;
- monitoring the end use of funds raised through public offers and related matters;

5. The audit committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the board and may also discuss any related issues with the internal and statutory auditors and the management of the company.
6. The audit committee holds the authority to investigate into matters or referred by the board and has the powers to obtain professional advice from external sources and have full access to records of the company.
7. In addition to the auditor, the key managerial person (KMP) shall also have a right to be heard in the meetings of the audit committee when it considers the auditor's report, though they shall not have voting rights.
8. Every listed company and the companies belonging to the following class or classes shall establish a vigil mechanism for

their directors and employees to report genuine concerns or grievances (Rule 7):-

(1) The companies which accept deposits from the public;

(2) The companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees.

9. The companies which are required to constitute an audit committee shall oversee the vigil mechanism through the committee and if any of the members of the committee have a conflicted of interest in a given case, they should recuse themselves and the others on the committee would deal with the matter on hand.
10. In case of other companies, the board of directors shall nominate a director to play the role of audit committee for the purpose of vigil mechanism to whom other directors and employees may report their concerns.
11. This vigil mechanism shall provide for adequate safeguards against victimization of employees and directors who avail of the vigil mechanism and also provide for direct access to the chairperson of the audit committee or the director nominated to play the role of audit committee, as the case may be, in exceptional cases.
12. In case of repeated frivolous complaints being filed by a director or an employee, the audit committee or the director nominated to play the role of audit committee may take suitable action against the concerned director or employee including reprimand.
13. The vigil mechanism shall operate for directors and employees to enable them to bring to report genuine concerns. Further the said mechanism shall provide safeguards against victimization and provide for direct access to the chairperson of the audit committee in appropriate or exceptional cases.
14. The details of establishment of the vigil mechanism is required to be disclosed by the company on its website, if any and in the board's report.

Powers of Audit Committee

The audit committee shall have powers, which should include the following:

1. To investigate any activity within its terms of reference.
2. To seek information from any employee.
3. To obtain outside legal or other professional advice.
4. To secure attendance of outsiders with relevant expertise, if it considers necessary.

Role of Audit Committee

The role of the audit committee shall include the following:

1. Oversight of the company 's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.
2. Recommending to the board, the appointment, re-appointment and, if required, the replacement or removal of the statutory auditor and the fixation of audit fees.
3. Approval of payment to statutory auditors for any other services rendered by the statutory auditors.
4. Reviewing, with the management, the annual financial statements before submission to the board for approval, with particular reference to:
    a. Matters to be included in the director's responsibility statement to be included in the board's report;
    b. Changes, if any, in accounting policies and practices and reasons for the same;
    c. Major accounting entries involving estimates based on the exercise of judgment by management;
    d. Significant adjustments made in the financial statements arising out of audit findings;
    e. Compliance with listing and other legal requirements relating to financial statements;
    f. Disclosure of any related party transactions;
    g. Qualifications in the draft audit report.

5. Reviewing, with the management, the quarterly financial statements before submission to the board for approval.
6. Reviewing, with the management, the statement of uses / application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document / prospectus / notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and making appropriate recommendations to the board to take up steps in this matter.
7. Review and monitor the auditor 's independence and performance, and effectiveness of audit process.
8. Approval or any subsequent modification of transactions of the company with related parties.
9. Scrutiny of inter-corporate loans and investments.
10. Valuation of undertakings or assets of the company, wherever it is necessary.
11. Evaluation of internal financial controls and risk management systems.
12. Reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems.
13. Reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit.
14. Discussion with internal auditors of any significant findings and follow up there on.
15. Reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board.
16. Discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern.

17. To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non-payment of declared dividends) and creditors.
18. To review the functioning of the whistle blower mechanism
19. Approval of appointment of chief financial officer (CFO) (i.e., the whole-time finance director or any other person heading the finance function or discharging that function) after assessing the qualifications, experience and background, etc. of the candidate.
20. Carrying out any other function as is mentioned in the terms of reference of the audit committee.

10.6.2 Nomination and Remuneration Committee (NRC)

1. In terms of section 178 of the Companies Act, 2013 following class of companies shall constitute an nomination and remuneration committee:
   - Listed companies;
   - All public companies with a paid up capital of ten crore rupees or more;
   - All public companies having turnover of one hundred crore rupees or more;
   - All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits as per last audited financial statements exceeding fifty crore rupees or more.
2. The NRC consists of minimum 3 non-executive directors out of which half shall be independent directors.
3. The chairperson of the company (whether executive or non-executive) may be appointed as a member of the NRC but shall not chair such committee.
4. The NRC shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria lay down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance.

5. The NRC shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.

Duties of the Nomination and Remuneration Committee

The duties of the nomination and remuneration committee have now been specified. They include

(a) identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down;

(b) recommend to the board their appointment and removal;

(c) carry out evaluation of every director's performance;

(d) formulate the criteria for determining qualifications, positive attributes and independence of a director and

(e) recommend to the board a policy, relating to the remuneration for the directors, KMP and other employees.



CHECK YOUR PROGRESS

Q 3: Mention two powers of audit committee.

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Q 4: Mention two duties of the Nomination and Remuneration Committee.

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10.6.3 Coporate Social Responsibility Committee

According to section 135 of the Companies Act,2013,-

(1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year

shall constitute a corporate social responsibility committee of the board consisting of three or more directors, out of which at least one director shall be an independent director.

(2) The board's report shall disclose the composition of the corporate social responsibility committee.

(3) The Corporate Social Responsibility Committee shall,—

(*a*) formulate and recommend to the board, a corporate social responsibility policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;

(*b*) recommend the amount of expenditure to be incurred on the activities referred to in clause (*a*); and

(*c*) monitor the corporate social responsibility policy of the company from time to time.

The following additional features of the Section are relevant:

1. While spending the amount earmarked for CSR activities, the company shall give preference to the local area and areas around it where it operates;
2. If the Company fails to spend the amount, the board shall specify the reasons for not spending the amount in the board's report.
3. The eligible companies are required to spend in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years in pursuance of its CSR Policy. For this purpose, "Average Net Profit" shall be calculated in accordance with the provisions of Section 198 of the Companies Act, 2013.

10.6.4 Stakeholders Relationship Committee

1. The board of directors of a company which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a stakeholders relationship committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the board.

2. The stakeholders relationship committee shall consider and resolve the grievances of security holders of the company.

10.7 LOANS TO DIRECTORS

1. Applicability

In terms of Section 185 of Companies Act, 2013 there is total prohibition on advancing any loan/guarantee/security *directly or indirectly* to the following persons-

a) Any director of the lending company;

b) Director of a company which is holding company of the lending company;

c) Any partner or relative of any such director referred in above point (a) and (b);

d) Any firm in which any such director or relative is a partner;

e) Any private company of which any such director is a director or member;

f) Any body-corporate at a general meeting of which not less than 25% of the total voting power may be exercised or controlled by any such director, or by two or more such directors together;

g) Any body-corporate, the board of directors, managing director, or manager whereof is accustomed to act in accordance with the directions or institutions of the board, or of any director or directors, of the lending company.

2. Exemptions

- Loan to managing director (MD)/whole-time director (WTD) as a part of the conditions of service extended by the company to all its employees OR pursuant to any scheme approved by special resolution;
- Loan/guarantee/securities provided by company in the ordinary course of its business with interest not less than the bank rate as declared by Reserve Bank of India (RBI);
- Loan/guarantee/security by holding company to its wholly owned subsidiary (WOS) subject to the utilization of such loans for its principal business activities;

- Guarantee/security provided by holding company in respect of loan made by any bank/financial institution to its subsidiary company subject to the utilization of such loans for its principal business activities.

3. Non-Applicability to Private Companies

The provisions of section 185 i.e. loan to directors shall not apply to the private companies upon fulfillment of all of the following criteria:

- in whose share capital no other body corporate has invested any money;
- if the borrowings of such a company from banks or financial institutions or any body-corporate is less than twice its paid up share capital or fifty crore rupees, whichever is lower; and
- such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section;

4. Non-Applicability to Nidhi Companies

The provisions of section 185 shall not apply to nidhi company if the loan is given to a director or his relative in their capacity as members and such transaction is disclosed in the annual accounts by a note.

5. Non-Applicability to Government Companies

The provisions of Section 185 shall not apply to government company in case such company obtains approval of the ministry or department of the central government which is administratively in charge of the company, or, as the case may be, the state government before making any loan or giving any guarantee or providing any security under the section.

6. Penalties in case of violation of section 185

- The company shall be punishable with fine minimum of Rs.5 lacs and maximum of Rs.25 lacs; *and*
- The director or the other persons to whom any loan is advanced shall be punishable with fine of Rs.5 lacs and maximum of Rs.25 lacs or imprisonment up to 6 months or both.

Power of Board

1. In terms of section 179 of Companies Act, 2013 the board of directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do.

   However, the board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting.

2. No regulation made by the company in general meeting shall invalidate any prior act of the board which would have been valid if that regulation had not been made.

3. The board of directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the board, namely:-

   a) to make calls on shareholders in respect of money unpaid on their shares;

   b) to authorise buy-back of securities under section 68;

   c) to issue securities, including debentures, whether in or outside India;

   d) to borrow money

   e) to invest the funds of the company

   f) to grant loans or give guarantee or provide security in respect of loans;

   g) to approve financial statement and the board's report;

   h) to diversify the business of the company;

   i) to approve amalgamation, merger or reconstruction;

   j) to take over a company or acquire a controlling or substantial stake in another company;

   k) any other matter which may be prescribed.

The board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) hereinabove on such conditions as it may specify.



10.8 LET US SUM UP

- Every company shall hold the first meeting of the board of directors within thirty (30) days of the date of its incorporation and thereafter
- A board committee is a small working group identified by the board, consisting of board members, for the purpose of supporting the board's work.
- The board of directors of a company which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a stakeholders relationship committee.
- Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a corporate social responsibility committee.



10.9 FURTHER READINGS

1. Company Law (2018), Avtar Singh, Seventh Edition, Easterm Book Company
2. Companies Act,2013



10.10 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: "Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company.

Ans to Q No 2: A company must hold at least four board meetings in a year.

Ans to Q No 3: Following are the two powers of an audit committee-

1. To investigate any activity within its terms of reference.
2. To seek information from any employee.

Ans to Q No 4: Two duties of the Nomination and Remuneration Committee are-

(a) identifying persons who are qualified to become Directors and who may be appointed in senior management in accordance with the criteria laid down;

(b) recommend to the Board their appointment and removal;

10.11 MODEL QUESTIONS

Q 1: Discuss the provisions related to board meeting.

Q 2: what is meant by audit committee? Discuss the role of an audit committee in a company.

Q 3: List the powers of board.

Q 4: Discuss the provisions related to loan to directors.

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UNIT 11 : COMPANY MEETING-I

UNIT STRUCTURE

11.1 Learning Objectives

11.2 Introduction

11.3 Meaning

11.4 Requisites of Convening a Meeting (Section 103-120)

11.5 Notice of Meeting

11.6 Explanatory statement to be Annexed to Notice

11.7 Quorum for Meetings

11.8 Chairman of Meetings

11.9 Proxies

- 11.9.1 Inspection
- 11.9.2 Penalty

11.10 Voting

- 11.10.1 Restriction on voting rights
- 11.10.2 Voting by show of hands
- 11.10.3 Voting through electronic means
- 11.10.4 Voting by demand of poll
- 11.10.5 Voting by postal ballot

11.11 Let Us Sum Up

11.12 Further Readings

11.13 Answers to Check Your Progress

11.14 Model Questions

11.1 LEARNING OBJECTIVES

After going through this unit you will be able to:

- Know the requisites of convening a meeting
- Define proxy meeting
- know about quorum of a meeting
- know the procedure of voting.

11.2 INTRODUCTION

A Meeting has been defined as “coming together of two or more persons face to face so as to be in each other’s presence or company”. [In Re. Associated Color Laboratories Ltd. (1970) 12 D.L.R.]. Meeting plays a very important role in a company. Members and the directors are vested with the powers of decision-making regarding the affairs of the company and they exercise their respective powers through resolutions passed by them. The will of members of a company is expressed through resolutions passed at general meetings. A company meeting gives reasonable and fair opportunity to those entitled to participate in the meeting to take decisions as per the prescribed procedures. In this unit, we will learn some of the procedural aspects relating to meetings.

11.3 MEANING

A meeting may generally be defined as a gathering of persons for transacting a lawful business. It may a gathering for entertainment also or for any other purpose. There must be at least two persons to constitute a meeting. In case of company meetings, in certain exceptional cases, even one person may constitute a valid meeting. Company meetings must be convened and held in perfect compliance with the applicable provisions of the Companies Act 2013 and the rules framed there under.

11.4 REQUISITES OF CONVENING A MEETING (SECTION 103-120)

The term general meeting is used to describe a meeting of members or shareholders held as per provisions of the Act, whereas there exist other types of meetings as well, viz Board meetings i.e. meetings of board of directors and class meetings, i.e. meetings of special class of persons like creditors , preference shareholders, etc. The requisites of the meetings are in general applicable to all kinds of meetings, although the time limit may differ and there might be a specific mention of certain type of meeting in that section.

A meeting to be valid must be duly convened, legally constituted and properly conducted.

Meeting to be duly convened: Meeting to be duly convened means that the meeting must have been convened by the proper authority. The proper authority to convene the meeting is the board of directors, shareholders or the tribunal; and proper and adequate notice must have been given to those who are entitled to attend.

Meeting to be properly constituted: For a meeting to be properly constituted there must be a proper person in the chair, proper quorum and proper compliance with the provisions of the companies Act and articles of association of the company.

Meeting to be properly conducted: Conducting a meeting properly means that proper rules for ascertaining the sense of the meeting, the rules for discussion and order in debate must be observed. Proceeding should also be recorded properly.

11.5 NOTICE OF MEETING

A general meeting of a company may be called by giving not less than clear twenty-one days notice either in writing or through electronic mode in prescribed manner. However a general meeting may be called after giving shorter notice than that specified above if consent, in writing or by electronic mode, is accorded thereto—

(i) In the case of an annual general meeting, by not less than ninety-five per cent of the members entitled to vote; and

(ii) in the case of any other general meeting, by members of the company—

(a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or

(b) having, if the company has no share capital, not less than ninety-five per cent. of the total voting power exercisable at that meeting:

Moreover where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub section in respect of the former resolution or resolutions and not in respect of the latter.

Every notice of a meeting shall specify the place, date, day and the hour of the meeting and shall contain a statement of the business to be transacted at such meeting.

The notice of every meeting of the company shall be given to—

(a) every member of the company, legal representative of any deceased member or the assignee of an insolvent member;

(b) the auditor or auditors of the company; and

(c) every director of the company.

Any accidental omission to give notice to or the non-receipt of such notice by, any member or other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meeting.

These provisions of notice shall be applicable to private company also, unless specified otherwise in respective sections or the articles of the company.

11.6 EXPLANATORY STATEMENT TO BE ANNEXED TO NOTICE

A notice should contain a statement of the business to be transacted at the meeting called agenda .

If special business is to be transacted, an explanatory statement shall be annexed to the notice calling such meeting namely:—

(a) the nature of concern or interest, financial or otherwise, if any, of—

(i) every director and the manager, if any;

(ii) every other key managerial personnel; and

(iii) relatives of the persons mentioned in sub-clauses (i) and (ii);

The statement should also contain any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon. Where

any item of special business to be transacted at a meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every promoter, director, manager, if any, and of every other key managerial personnel of the first mentioned company shall, if the extent of such shareholding is not less than two per cent of the paid-up share capital of that company, also be set out in the statement.

Here all businesses to be transacted at an annual general meeting shall be deemed to be special, other than the following namely:—

(i) the consideration of financial statements and the reports of the Board of Directors and auditors

(ii) the declaration of any dividend;

(iii) the appointment of directors in place of those retiring;

(iv) the appointment of, and the fixing of the remuneration of, the auditors; and

In the case of any other meeting, all business shall be deemed to be special.

11.7 QUORUM FOR MEETINGS

Quorum is the minimum number of members required to constitute a valid meeting and to transact business thereat. Any resolution passed at a meeting without quorum shall be invalid. The main purpose of having a quorum is to avoid decisions being taken at a meeting by a small minority which may be found to be unacceptable to the vast majority of members. Section 103 of the companies act relates to quorum of meeting of a company. As per provisions of this Section unless the articles of the company provide for a larger number,—

(a) in case of a public company,—

(i) five members personally present if the number of members as on the date of meeting is not more than one thousand;

(ii) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand;

(iii) thirty members personally present if the number of members as on the date of the meeting exceeds five thousand;

(b) in the case of a private company, two members personally present, shall be the quorum for a meeting of the company.

If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company—

(a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the board may determine; or

(b) the meeting, if called by requisitionists under section 100, shall stand cancelled:

In case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give not less than three days notice to the members either individually or by publishing an advertisement in the newspapers (one in english and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

(3) If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.



CHECK YOUR PROGRESS

Q 1: How many days before a General Meeting the notice is to be served?

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Q 2: What is the quorum for a meeting of a private company?

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11.8 CHAIRMAN OF MEETINGS

Section 104 of the companies Act 2013 seeks to provide that unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one among themselves to be the chairman thereof on a show of hands.

The section further provides that if a poll is demanded on the election of the chairman, the chairman elected on a show of hands shall continue to be the chairman of the meeting until some other person is elected as Chairman as a result of the poll, and such other person shall be the Chairman for the rest of the meeting.

In case of private company the same provision shall apply ,unless otherwise specified in respective sections or the articles of the company provide otherwise.

Chairman referred here is chairman of the meeting and not chairman of the company. Here chairman is one who manages the meeting and ensures that proper decorum is maintained at all times till the meeting is concluded and after that executes the minutes of the meeting. He has the authority to decide all questions which arises at a meeting and which require decision at the time. In order to fulfil his duty properly, he must observe strict impartiality, even though he may personally opposed any matter.

The chairman has a casting vote in Board meetings and general meetings, if specially empowered by the articles of the company. A casting vote means that in case of equality of vote in a particular business being transacted at the meeting, the chairman shall have a right to cast a second vote.

11.9 PROXIES

A proxy is a person, being a representative of a shareholder at a meeting of the company who may be described as his agent to carry out which the shareholder has himself decided upon. Lord Hansworth in cousins vs international Brick Co. Ltd.

A proxy is not entitled to act contrary to the instructions of the shareholder whom he represents. It is a relationship of principal and agent. Section 105 provides following laws related to proxy:

It provides that any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf. However a proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll.

Unless the articles of a company otherwise provide, this provision shall not apply in the case of a company not having a share capital. The central government may however prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy.

A person appointed as proxy shall act on behalf of such member or number of members not exceeding fifty and holding in aggregate not more than 10 percent of the total share capital of the company carrying voting right .However a member who is holding in more than 10 percent of the total share capital of the company carrying voting right, may appoint a single person as a proxy and such person shall not act as a proxy for any other person or shareholder.

Every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, shall state a statement with reasonable prominence that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member.

Section 105(4) provides that a proxy received forty-eight hours before a meeting of the company will valid even if the articles provide for a longer period.

The instrument appointing a proxy shall be in writing and be signed by the appointer or his attorney duly authorised in writing. If the appointer is a body corporate, then it must be under its seal or be signed by an officer or an attorney duly authorised by it.

An instrument appointing a proxy, if in the form no MGT11, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company.

11.9.1 Inspection

Every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, can inspect the proxy form deposited with the company provided he had given at least three days' notice in writing to the company of his intention to inspect.

Inspection can, however, be done beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting. Inspection of proxies lodged can be done at any time during the business hours of the company.

11.9.2 Penalty

- If default is made in stating in the notice of the meeting that a member entitled to attend and vote is entitled to appoint a proxy, and that proxy need not be a member, every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees.
- For the purpose of any meeting of a company, issuing invitations at the company's expense to appoint named person as proxy, every officer of the company who knowingly issues such invitations or wilfully authorises or permits their issue shall be punishable with fine which may extend to one lakh rupees:
- For refusing the inspection to members at any time during the business hours, the company and every officer who is in default shall be punishable with fine upto Rs10,000 and where the contravention is a continuing one, with a further fine upto Rs1,000 per day of default.

These provisions shall apply In case of private company unless otherwise specified in respective sections or the articles of the company provide otherwise.



CHECK YOUR PROGRESS

Q 3: Who select chairmen of a meeting?

.....

.....

Q 4: What is Proxy?

.....

.....

11.10 VOTING

A meeting takes place to take decisions by the company members on crucial matters for the working of the company. These decisions require consensus of the members of the company attending the meeting. This consensus is reached through voting. As per companies act, 2013, the voting in a meeting can take place in the following ways—

- Voting by show of hands
- Voting by electronic means
- Voting by demand of poll
- Voting by postal ballot

The right to vote is a personal right of shareholder. He may vote for or against the resolution. The act under section 106 put some restriction on the right of shareholders to vote in case they are liable to pay on calls on shares, if the Articles authorise.

11.10.1 Restriction on Voting Rights

Section 106. (1) provides that, the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien. Also, such member cannot sign a requisition for extraordinary general meeting.(2) The Act also provides that a company shall not; prohibit any member from exercising his voting right on any other ground except on the grounds specified in sub-section (1),(3) on a poll taken at a meeting of a company, a member entitled to more than one vote, or his proxy, where allowed, or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses.

11.10.2 Voting by show of hands

1) At any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 109 or the voting is carried out electronically, be decided on a show of hands.

(2) A declaration by the chairman of the meeting of the passing of a resolution or otherwise by show of hands and an entry to that effect in the books containing the minutes of the meeting of the company shall be conclusive evidence of the fact of passing of such resolution or otherwise.

11.10.3 Voting through Electronic Means

Section 108 provides that the central government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means. This is a new mode of voting which has been introduced by the companies Act 2013.Rule 20 of the companies (Management & Administration) Rules, 2014 provides that every company which has listed its equity shares on a recognised stock exchange and every company having not less than one thousand members shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.

11.10.4 Voting by demand of poll

Sec 109 provides that before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf by the person or persons specified below, namely

(a) in the case a company having a share capital, by any member or members present in person or by proxy, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and

(b) in the case of any other company, by any member or members present in person or by proxy, and having not less than one-tenth of the total voting power.

The demand for a poll may be withdrawn at any time by the persons who made the demand.

A poll on a resolution for adjournment of the meeting or appointment of chairman of the meeting shall be immediately taken.

A poll demanded on any question other than adjournment of the meeting or appointment of chairman shall be taken at such time, not being later than forty-eight hours from the time when the demand was made, as the chairman of the meeting may direct.

Where a poll is to be taken, the chairman of the meeting shall appoint such number of persons, as he deems necessary, to scrutinise the poll process and votes given on the poll and to report thereon to him in the manner as may be prescribed.

The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.

The chairman of the meeting shall have power to regulate the manner in which the poll shall be taken subject to the provisions of this Act.

The above provisions of voting by poll shall apply to private companies also unless otherwise specified in respective sections or the articles of the company provide otherwise.

11.10.5 Voting by postal ballot

Section 110 allows casting of votes by member through postal ballot in certain cases and subject to certain conditions. Voting

by postal ballot means voting by post or through any electronic mode [Sec 2(65)].

Section 110 seeks to provide that the central government may, declare items of business to be transacted only by means of postal ballot; and also in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting.

Section 110(2) makes a deeming provision that if a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf. Manner in which postal ballot shall be conducted is prescribed in Rule 22 of the Companies (Management & Administration) Rules,2014.

List of items that must be transacted through postal ballot:

Pursuant to clause (a) of sub-section (1) of section 110, the following items of business shall be transacted only by means of voting through a postal ballot-

(a) alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum;

(b) alteration of articles of association in relation to insertion or removal of provisions which, under sub-section (68) of section 2, are required to be included in the articles of a company in order to constitute it a private company;

(c) change in place of registered office outside the local limits of any city, town or village as specified in sub-section (5) of section 12;

(d) change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised under sub-section (8) of section 13;

(e) issue of shares with differential rights as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of section 43;

(f) variation in the rights attached to a class of shares or debentures or other securities as specified under section 48;

(g) buy-back of shares by a company under sub-section (1) of section 68;

(h) election of a director under section 151 of the Act;

(i) sale of the whole or substantially the whole of an undertaking of a company as specified under sub-clause (a) of sub-section (1) of section 180;

(j) giving loans or extending guarantee or providing security in excess of the limit specified under sub-section (3) of section 186:

Provided that any aforesaid items of business under this sub-rule, required to be transacted by means of postal ballot, may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section:

It may be noted that one person company and other companies having members upto two hundred are not required to transact any business through postal ballot.



11.11 LET US SUM UP

- A meeting may generally be defined as a gathering of persons for transacting a lawful business.
- A meeting to be valid must be duly convened, legally constituted and properly conducted.
- Every notice of a meeting shall specify the place, date, day and the hour of the meeting and shall contain a statement of the business to be transacted at such meeting.
- Any resolution passed at a meeting without quorum shall be invalid.

- A proxy is not entitled to act contrary to the instructions of the shareholder whom he represents.



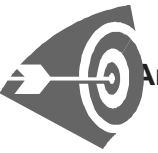
11.12 FURTHER READINGS

1. Company Law (2018), Avtar Singh, Seventh Edition, Easterm Book Company
2. Companies Act,2013

11.13 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: 21 days before a general meeting the notice is to be served.

Ans to Q No 2: In the case of a private company, two members personally present, shall be the quorum for a meeting of the company.



Ans to Q No 3: Unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one among themselves to be the chairman.

Ans to Q No 4: A proxy is a person, being a representative of a shareholder at a meeting of the company who may be described as his agent to carry out which the shareholder has himself decided upon.



11.14 MODEL QUESTIONS

Q 1: What are the businesses that may be transacted at an AGM of a company?

Q 2: Write a short note on voting by poll.

Q 3: What are the requisites of convening a valid meeting?

*** ***** ***

UNIT 12: COMPANY MEETING-II

UNIT STRUCTURE

12.1 Learning Objectives

12.2 Introduction

12.3 Meaning of a Meeting

12.4 Kinds of Company Meetings

12.5 Meaning of Minute

12.6 Recording and Signing of Minutes

12.7 Minutes to be evidence

12.8 Role of Chairman

12.9 Resolution and its different Kinds

12.10 Let Us Sum Up

12.11 Further Readings

12.12 Answers to Check Your Progress

12.13 Model Questions

12.1 LEARNING OBJECTIVES

After going through this unit you will be able to:

- explain the meaning of a company meeting and its different kinds.
- explain the meaning of minute.
- elaborate the recording and signing of minutes.
- explain the role of the chairman in company meetings and know about postal ballot
- elaborate the meeting of directors and details about minutes and evidence.

12.2 INTRODUCTION

In this unit, we are going to discuss the meaning of company meeting and its different kinds, how the discussion of the company's meeting is recorded in the form of minutes etc. The role of the chairman in a company

meeting is very important. This unit discusses the role of the Chairman and the postal ballot. The recording of each statement in a company general meeting in the form of minute acts as important evidence in the eye of law. Thus, you will able to understand through this unit, the different kinds of meetings, the recording of evidence in the form of minute and the role of the chairman in the company.

12.3 MEANING OF A 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 number of persons for transacting any lawful business. It should be conducted under prescribed rules and regulation of the Companies Act, 2013. The shareholders and directors can take their decisions by calling the meeting.

12.4 KINDS OF COMPANY MEETINGS

The meeting of a company may be classified, as-

1. Meeting of the members (shareholders):
   - (i) Annual General Meeting (Sec-96)
   - (ii) Extraordinary General Meeting (Sec-100)
   - (iii) Class Meeting
2. Meetings of the debentureholders.
3. Meetings of the creditors.
4. Meetings of the Board of Directors. (Sec-173)

1. Meeting of the members (shareholders):

(i) *Annual General Meeting:*

As the term denotes, annual general meeting is the meeting under section 96 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–

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 Articles 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. They are:

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

(ii) ***Extraordinary General Meeting:***

A General meeting other than the statutory meeting and the annual general meeting is called 'Extraordinary General Meeting'. 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:

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

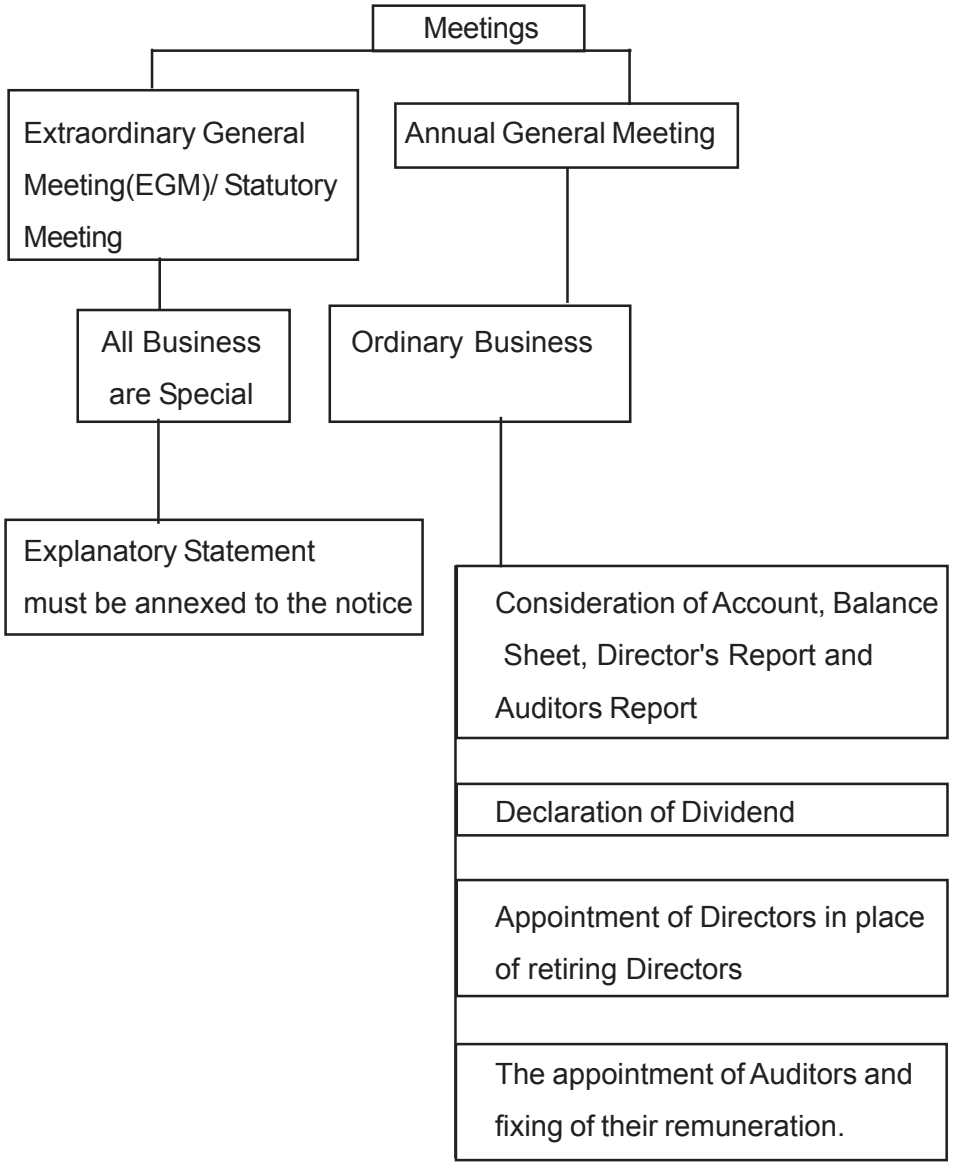
c. a company not having share capital , by such of the requisitionists as represent not less than one tenth of the voting power of the members of the company.

The meeting must be held within 3 months of the deposit of valid requisition.

4. Extraordinary general meeting convened by the Tribunal:

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:



(iii) *Class Meeting:*

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 articles permit, 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.

Regulation 6 of the Table F of Schedule I of the Act provides :

(a) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may,subject to the provisions of section 48, and whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class.

(b) To every such separate meeting, the provisions of these regulations relating to general meetings shall mutatis mutandis apply, but so that the necessary quorum shall be at least two persons holding at least one-third of the issued shares of the class in question. The articles of companies will have to be suitably modified or incorporated depending on the needs of each case on the above lines. A class meeting will have to be convened by the Board of directors in the same manner as calling any other extraordinary general meeting. The Board will authorise the secretary or any other competent officer to issue the notice.

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 articles of association of the company. But for Board Meeting, it is 1/3rd of the total number of the members or two directors, whichever is higher.

f. Chairman of the Meeting:

There should be a chairman 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. Creditors Meeting :

Meeting of creditors means a meeting called by a company to formulate any scheme or take any decision with its creditors. The Companies Act, 2013 not only gives powers to the company to negotiate with the creditors but also lays down the process of doing so. Creditors meeting are also organized in the case of creditor’s voluntary winding up. At the meeting of creditors, the board of directors of the company must present a statement of the posotion of the company affairs jointly with a list of the creditors of the company and the projected amount of theirclaims. The notice of any resolution that is passed at a meeting of creditors must be filed with the registrar within a period of 10 days of passing.

4. Meetings of the Board of Directors: (173)

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 1: What do you mean by "Extraordinary General Meeting"?

.....

.....

12.5 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 chairman, it becomes a prima facie evidence of the proceedings of the meetings and the decisions recorded there are deemed valid.



CHECK YOUR PROGRESS

Q 2: Mention three advantages of a minute?

a) .....

b) .....

c) .....

12.6 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 committee 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.
2. The minutes of each meeting must contains fair and correct records.
3. All the appointments and decisions made in the meeting must be included in the minutes.
4. In case of the Board Meeting and Committee of Board Meeting, the minute must record,
   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 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.

12.7 MINUTES TO BE EVIDENCE

Minutes are constituted as the official records of all decisions, transactions, resolutions made in a meeting. 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. All the records of the minutes of the different meetings of the company may act as evidence.

12.8 ROLE OF CHAIRMAN

The chairman is the person who has been elected to conduct the proceeding of the meeting. If the Articles of Association does not permit to elect the chairman, then he is elected under section 104. In this regards, the section 104 lays down,

(i) Unless the articles of a company otherwise provides, the member personally present at the meeting shall elect one of them to be the chairman thereof.

(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 as 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 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. 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.

12.9 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 articles, 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 L td.

(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



12.10 LET US SUM UP

- 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.
- 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.



12.11 FURTHER READINGS

1. Company Law (2018), Avtar Singh, Seventh Edition, Easterm Book Company
2. Companies Act,2013



12.12 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 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).

Ans to Q No 2: 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.

12.13 MODEL QUESTIONS

Q 1: Write brief Answer:

(i) Define Meeting. What are the different types of meeting?

(ii) Who can convene the 'Extraordinary General Meeting'?

(iii) "The essential rules and regulations of a valid meeting are contained in the debenture trust deed", Explain.

(iv) What are the legal obligations in maintaining the record in the form of minute?

(v) Explain: "Minute to be evidence".

(vi) Discuss different types of meetings.

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UNIT 13 : BOOKS OF COMPANY AND CORPORATE SOCIAL RESPONSIBILITY

UNIT STRUCTURE

13.1 Learning Objectives

13.2 Introduction

13.3 Books of Accounts to be Kept by Company, Section (128)

13.4 Inspection by Directors

13.5 Period of Preservation of Books [Section 128 (5)]

13.6 Persons Responsible for Keeping Books of Accounts [Section 128 (6)]

13.7 Penality for Default

13.8 Financial Statements

- 13.8.1 Re-opening of accounts on court's or Tribunal's orders [Section (130)]
- 13.8.2 Voluntary revision of financial statements or Board's report [Section 131]

13.9 Financial Statement, Board's Report, etc [Section 134]

13.10 Board's Report [Section 134(3) & (4)]

13.11 Directors' Responsibility Statement [Section 134(3)]

13.12 Signing of Board's Report [134(6)]

13.13 Corporate Social Responsibility [Section 135]

13.14 Let Us sum Up

13.15 Further Readings

13.16 Answers To Check Your Progress

13.17 Model Questions

13.1 LEARNING OBJECTIVES

After going through this unit you will be able to

- Learn about the preparation and maintenance of books of account etc to be kept by company.
- Learn about the requirement as to preparation and filing of financial statement and other related matter.

- Know about the procedures of reopening and revision of financial statements.
- Explain various concepts related to corporate social responsibility.

13.2 INTRODUCTION

There is a need to disclose to annual information to the shareholders by the directors about the working and financial position of the company, so that shareholders are aware of the affairs of the company. Therefore the Companies act 2013 mention various provisions for the maintenance of proper books of account of the companies through required compliances.

In this unit we will discuss different types of books of accounts maintained by the company and various provisions of maintaining such books of accounts

13.3 BOOKS OF ACCOUNTS TO BE KEPT BY COMPANY, Section (128)

Every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which gives a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any.

As per section 2(13) “books of account” includes records maintained in respect of—

i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;

(ii) all sales and purchases of goods and services by the company;

(iii) the assets and liabilities of the company; and

(iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;

Though section 128 requires every company to keep its books of accounts at its registered office yet proviso to section 128(1) allows the company to keep all or any of the books of account as aforesaid and other relevant papers at such other place in India as the board of directors may

decide. Where such a decision is taken by the company, it shall, within seven days thereof, file with the registrar a notice in writing giving the full address of that other place.

Again Section 128(2) allows proper books of account relating to the transactions effected at the branch office are to be kept at that office. However proper summarised returns periodically are required to be sent by the branch office to the company at its registered office or the other place referred to in section 128 (1).

The provision to Section 128(1) also permits the company to keep the books of account or other relevant papers in electronic mode. If the books of account are maintained in electronic mode, the Rule 3 of companies (accounts) Rules 2014 provides the manner in which the books of account are to be kept in electronic mode. It requires-

(1) The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference.

(2) The books of account and other relevant books and papers referred to in sub-rule (1) shall be retained completely in the format in which they were originally generated, sent or received, or in a format which shall present accurately the information generated, sent or received and the information contained in the electronic records shall remain complete and unaltered.

(3) The information received from branch offices shall not be altered and shall be kept in a manner where it shall depict what was originally received from the branches.

(4) The information in the electronic record of the document shall be capable of being displayed in a legible form.

(5) There shall be a proper system for storage, retrieval, display or printout of the electronic records as the audit committee, if any, or the board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law:

Provided that the back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis.

(6) The company shall intimate to the registrar on an annual basis at the time of filing of financial statement-

(a) the name of the service provider;

(b) the internet protocol address of service provider;

(c) the location of the service provider (wherever applicable);

(d) where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider.

Explanation- For the purposes of this rule, the expression "electronic mode" includes "electronic form" as defined in clause (r) of sub-section (1) of section 2 of Information Technology Act, 2000 (21 of 2000) and also includes an electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000) and "books of account" shall have the meaning assigned to it under the Act.

13.4 INSPECTION BY DIRECTORS

Section 128(*3*) provides that the books of account and other books and papers maintained by the company shall be open for inspection at the registered office of the company or at such other place in India by any director during business hours. However the inspection in respect of any subsidiary of the company shall be done only by the person authorised in this behalf by a resolution of the board of directors in this regard.

13.5 PERIOD OF PRESERVATION OF BOOKS [SECTION128 (5)]

Section 128(*5*) states that the books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year. where the company had been in existence for a period less than eight years, in respect of all the preceding years together with the vouchers

relevant to any entry in such books of account shall be kept in good order. The provision of the Income Tax Act also be complied with in this regard.

Where an investigation has been ordered in respect of the company, the Central Government may direct that the books of account may be kept for such longer period longer than 8 years as it may deem fit.

13.6 PERSONS RESPONSIBLE FOR KEEPING BOOKS OF ACCOUNTS [Section 128(6)]

As per Section 128(6) the following person shall be held responsible to take all reasonable steps to comply with the requirement of maintenance of books of account under the companies Act

The managing director, the whole-time director in charge of finance, the chief financial officer or any other person of a company charged by the board with the duty of complying with the provisions under section 128.

13.7 PENALTY FOR DEFAULT

If the managing director, the whole-time director in charge of finance, the chief financial officer or any other person of a company charged by the board with the duty of complying with the provisions of this section 128, fails to comply with the provisions, such managing director, whole-time director in charge of finance, chief financial officer or such other person of the company shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.



CHECK YOUR PROGRESS

Q 1: For how many years books of account are required to be preserved?

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Q 2: Where a company need to keep its books of account?

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13.8 FINANCIAL STATEMENTS

The Section 129(1) of the companies Act requires that every company shall prepare its financial statement at the end of the financial year to give true and fair view of the state of affairs of the company. Such statement shall comply with the accounting standards notified under section 133 of the Act and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III. Section 2(40) of the Companies Act, 2013 has given an inclusive definition of the expression 'financial statement'. The "financial statement" in relation to a company, includes—

(i) a *balance sheet* as at the end of the financial year;

(ii) a *profit and loss account*, or in the case of a company carrying on any activity not for profit, an *income and expenditure account* for the financial year;

(iii) *cash flow statement* for the financial year;

(iv) a statement of *changes in equity,* if applicable; and

(v) any *explanatory note annexed* to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

With respect to One Person Company, small company and dormant company, the Cash flow statement for purpose of inclusion in financial statement need not be prepared.

The financial statements for the financial year are required to be presented by the board of directors before the annual general meeting of members [Sec129(2)]. As the AGM is required to be hold within six months of the close of the financial year u/s 96(1), financial statements must be ready within six months of the close of the financial year.The financial statements are required to be prepared for each financial year.

Again section 2(41) states "financial year", in relation to any company or body corporate, means the period ending on the 31st day of March every year. Where it has been incorporated on or after the 1st day of January of a year, the financial year will end on the 31st day of March of the following year. The first financial year of the company may be shorter or longer than 12 months. A company which is either a holding company or a subsidiary of

a company incorporated outside India and which is required to follow a different financial year for consolidation of its accounts outside India, the tribunal may, if it is satisfied, allow any period as its financial year, and whether or not that period is a year.

A company or body corporate which was in existence on the commencement of this Act following accounting period different than that ending on 31st March, shall within a period of two years from the commencement of this Act, align its financial year as per the provisions of this Act.

The above provision shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company.

13.8.1 Re-opening of accounts on court's or Tribunal's orders [Section (130)]

A company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by

a) the central government,
b) the Income-tax authorities,
c) the Securities and Exchange Board,
d) any other statutory regulatory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—
   (*i*) the relevant earlier accounts were prepared in a fraudulent manner; or
   (*ii*) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

Serving of notice: The court or the tribunal shall give notice to the central government, the Income-tax authorities, the Securities and exchange board or any other statutory regulatory body or

authority concerned and shall take into consideration the representations, if any, made by that government or the authorities, securities and exchange board or the body or authority concerned before passing any order under this section.

13.8.2 Voluntary revision of financial statements or Board's report [Section 131]

Section 131 allows the directors to prepare revised financial statement or a revised board's report if it appears to them that the company 's financial statement or the board's report did not comply with the requirements of Section 129 or Section 134, after obtaining approval of the tribunal. The company is required to apply to the Tribunal. The application to the tribunal shall be made within 2 weeks of the decision taken by the board and the company shall disclose in the application if the majority of directors and auditors have been changed immediately before such decision. The tribunal will issue notice and hear the auditor of original financial statement.

Tribunal shall give notice and take into account the representations, if any, of the central government and of the income tax department. Such revised financial statements or report shall not be prepared or filed more than once in financial year. Further, where copies of financial statements or report has been sent out to members or delivered to registrar or laid before general meeting, the revisions must be confined to specified limits provided in the section and a certified copy of the order of the tribunal shall be filed with the registrar within 30 days of the date of receipt of the certified copy.

Such revision in financial statements or report cannot be prepared or filed more than once in a financial year. The detailed reasons for revision of such financial statements or report shall be disclosed in the board's report in the relevant financial year in which such revision is being made.

On receipt of approval from tribunal a general meeting may be called. Notice of such general meeting along with reasons for change in financial statements may be published in newspaper in english and in vernacular language. In such general meeting, the said revised financial statements, statement of directors and the statement of auditors may be put up for consideration before a decision is taken on adoption of the revised financial statements.

On approval of the general meeting, the revised financial statements along with the statement of auditors or revised report of the board, as the case may be shall be filed with the registrar within 30 days of the date of approval by the general meeting.

The central government may make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the correction to be made. The previous financial statement or report may be replaced by revised financial statement or revised report of the board, and supplemented by:

(a) A summarised statement of revisions effected

(b) The copy of the order of the tribunal.

(c) The revised auditor's report on the revised financial statement, if applicable

It shall be ensure that the word "revised" is prefixed prominently on all the documents forming part of the revised financial statements/ revised board report.

The functions of the auditor pursuant to an order of the tribunal allowing revision of the financial statement shall be as under:

(i) To carry out the audit procedures necessary in the changed circumstances.

(ii) To review the steps taken by the company to ensure that anyone who is in receipt of the previously issued financial statements together with the auditor's report thereon is informed of the situation.

(iii) To ensure that the revised audit report specifically refers to the revision of the financial statements.

(iv) To issue a revised auditor's report on the revised financial statements and sign the same.

(v) To ensure that the revised auditor's report contains a paragraph in bold explaining the reasons for the revision of the financial statements with cross reference to the earlier report issued by the auditor.

(vi) If the Auditor qualifies his report, the board shall address the same in the manner provided in subsection (3) of section 134 of the Act.

13.9 FINANCIAL STATEMENT, BOARD'S REPORT, ETC [SECTION 134]

Section 134 deals with financial statement as well as board's report. The auditor's report is to be attached to every financial statement. A report by board of directors containing details on the matters specified, including director's responsibility statement, shall be attached to every financial statement laid before company. The board's report and every annexure has to be duly signed .A signed copy of every financial statement shall be circulated, issued or published along with all notes or documents, the auditor's report and board's report.

Authentication/Requirements of Financial statements section 134 (1), (2), & (7)

(*1*) The financial statement, including consolidated financial statement, if any, shall be approved by the board of directors before they are signed on behalf of the board at least by the following:

a) the chairperson of the company where he is authorised by the Board or

b) by two directors out of which one shall be managing director and the other chief executive officer, if he is a director in the company,

c) the chief financial officer if appointed and

d) the company secretary of the company, if appointed, and in the case of a one person company, only by one director, for submission to the auditor for his report thereon.

(*2*) The auditors' report shall be attached to every financial statement.

(3) A signed copy of every financial statement shall be circulated, issued or published along with all notes or documents, the auditor's report and board's report



CHECK YOUR PROGRESS

Q 3: Who approves financial statement of a company?

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13.10 BOARD'S REPORT [Section 134(3) & (4)]

There shall be attached to financial statements laid before a company in general meeting, a report by its board of directors, which shall include—

(*a*) the extract of the annual return as provided under sub-section (*3*) of section 92;

(*b*) number of meetings of the board;

(*c*) Directors' responsibility statement;

(*d*) a statement on declaration given by independent directors under sub-section (*6*) of section 149;

(*e*) in case of a company covered under sub-section (*1*) of section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (*3*) of section 178;

(*f*) explanations or comments by the board on every qualification, reservation or adverse remark or disclaimer made—

  (*i*) by the auditor in his report; and

  (*ii*) by the company secretary in practice in his secretarial audit report;

(*g*) particulars of loans, guarantees or investments under section 186;

(*h*) particulars of contracts or arrangements with related parties referred to in sub-section (*1*) of section 188 in the prescribed form;

(*i*) the state of the company's affairs;

(*j*) the amounts, if any, which it proposes to carry to any reserves;

(*k*) the amount, if any, which it recommends should be paid by way of dividend;

(*l*) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;

(*m*) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed;

(*n*) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;

(*o*) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;

(*p*) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the board of its own performance and that of its committees and individual directors;

(*q*) such other matters as may be prescribed.

In case of a one person company, the report of the board of directors to be attached to the financial statement under this section shall mean a report containing explanations or comments by the board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

The board's report shall be prepared using the financial statements of the company on a standalone basis. The performance and financial position of each of the subsidiaries, joint venture companies and associates included in the consolidated financial statement shall be reported separately in the report.

13.11 DIRECTORS' RESPONSIBILITY STATEMENT [SECTION 134(3)]

Section 134(3c) requires The directors' responsibility statement to be furnished as a part of the director's report. It reinforces the responsibility of the board in laying down the internal controls, maintenance of accounting records and preparation of financial statement. The directors' responsibility statement shall state that—

(*a*) the applicable accounting standards had been followed in the preparation of the annual accounts, along with proper explanation relating to material departures;

(*b*) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;

(*c*) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;

(*d*) the directors had prepared the annual accounts on a going concern basis; and

(*e*) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Here the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

(*f*) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

13.12 SIGNING OF BOARD'S REPORT [134(6)]

The board's report and any annexure thereto shall be signed by its chairperson of the company if he is authorised by the board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director. If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

13.13 CORPORATE SOCIAL RESPONSIBILITY [SECTION 135]

The companies Act 2013 lays down provisions requiring corporate to mandatorily spend a prescribed percentage of their profit on some specified area of social upliftment in discharge of their social responsibilities. Broadly, corporate social responsibility (CSR) implies a concept, whereby companies decide voluntarily to contribute to a better society and a cleaner environment- a concept, whereby the companies integrate social and other useful concerns in their business operations for the betterment of its stakeholders and society in general in a voluntary way. While CSR is not mandatory for companies, the rules are in line with the 'Comply or Explain' principle with penalties applicable only if an explanation is not offered. According to the provisions of the new companies Act every company must constitute a CSR Committee.

i) Which companies are required to constitute CSR committee

Every company including its holding or subsidiary, and a foreign company as defined u/s 2(42) having its branch office or project office in India, having

1) net worth of rupees five hundred crore or more, or
2) turnover of rupees one thousand crore or more or

3) a net profit of rupees five crore or more during any financial year shall constitute a corporate social responsibility committee of the board.

ii) Composition of CSR committee

a) Every company shall constitute a corporate social responsibility committee of the board consisting of three or more directors, out of which at least one director shall be an independent director.

b) An unlisted public company or a private company which is not required to appoint an independent director shall have its CSR committee without such director.

c) a private company having only two directors on its board shall constitute its CSR committee with two such directors.

d) The board's report under section 134(3) shall disclose the composition of the CSR committee.

iii) Duties of CSR committee

The Corporate Social Responsibility Committee shall,—

(*a*) formulate and recommend to the board, a corporate social responsibility policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;

(*b*) recommend the amount of expenditure to be incurred on the activities referred to in clause (*a*); and

(*c*) monitor the corporate social responsibility policy of the company from time to time.

iv) Duties of the Board in relation to CSR

The board of every company referred to in sub-section (*1*) shall,—

(*a*) after taking into account the recommendations made by the corporate social responsibility committee, approve the corporate social responsibility policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and

(*b*) ensure that the activities as are included in corporate social responsibility policy of the company are undertaken by the company.

v) Amount of contribution towards CSR

a) The board of every company shall ensure that the company spends, in every financial year, at least two percent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its corporate social responsibility policy.

b) The company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for corporate social responsibility activities.

c) If the company fails to spend such amount, the board shall, in its report, specify the reasons for not spending the amount.



CHECK YOUR PROGRESS

Q 4: Mention one duties of CSR committee?

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Q 5: Mention two items which are included in a board's report.

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.....



13.14 LET US SUM UP

- Every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year.
- the companies Act requires that every company shall prepare its financial statement at the end of the financial year.
- books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year.
- The auditor's report is to be attached to every financial statement.
- The board's report and any annexure thereto shall be signed by its chairperson of the company if he is authorised by the Board.

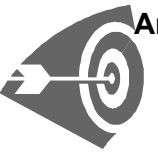
- The corporate social responsibility committee shall formulate and recommend to the board, a corporate social responsibility policy for the company.



13.15 FURTHER READINGS

1. Company Law (2018), Avtar Singh, Seventh Edition, Easterm Book Company
2. Companies Act,2013

13.16 ANSWERS TO CHECK YOUR PROGRESS



Ans to Q No 1: Books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year.

Ans to Q No 2: Every company need to keep its books of accounts at its registered office.

Ans to Q No 3: Financial statement of a company shall be approved by the Board of Directors.

Ans to Q No 4: formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;

Ans to Q No 5: two items which are included in a Board's report are-

(*a*) the extract of the annual return as provided under sub-section (*3*) of section 92;

(*b*) number of meetings of the Board;



13.17 MODEL QUESTIONS

Q 1: Discuss the manner in which the books of account are to be kept in electronic mode.

Q 2: Discuss the provisions related to Voluntary revision of financial statements or Board's report.

Q 3: List the requirements of financial statements.

Q 4: List the contents of board's report.

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UNIT 14 : REGISTER OF MEMBERS AND ANNUAL RETURN

UNIT STRUCTURE

14.1 Learning Objectives

14.2 Introduction

14.3 Register of Members

- 14.3.1 Particulars in the Register of Members
- 14.3.2 Maintenance of the register of members etc. under section 88
- 14.3.3 Penalty

14.4 Register of debenture holders or any other security holders

- 14.4.1 Index of names to be included in register

14.5 Foreign Register of Members Section 88(4)

14.6 Declaration in respect of beneficial interest in any shares

14.7 Closure of register of members or debenture holders or other security holders (Section 91)

14.8 Annual Return [Section 92-94)

- 14.8.1 Preparation of annual return
- 14.8.2 Signing of annual return
- 14.8.3 Certification by company secretary in practice (PCS)
- 14.8.4 Annual return by foreign company
- 14.8.5 Preservation of annual return

14.9 Let Us Sum Up

14.10 Further Readings

14.11 Answers to Check Your Progress

14.12 Model Questions

14.1 LEARNING OBJECTIVES

After going through this unit you will be able to-

- Learn about the members registers maintained by the company
- Know various provisions related to maintenance of the register of members

- Discuss various provisions related to preparation of annual return.

14.2 INTRODUCTION

Every listed company in India need to maintain registers of different types of members. Maintaining member's registers is mandatory under the provisions of companies Act. Every company also needs to prepare annual return under the provisions of the Companies Act. This chapter deals with the provisions related to maintenance of members registers and annual return. It is covered by section from 88 to 95 of the companies Act 2013.It is divided under the following headings—

- Registers (section 88 -91 & 95)
- Annual Return (92-94)

14.3 REGISTER OF MEMBERS

Section 88 requires that every company shall keep and maintain the following registers in the prescribed manner, namely:—

(*a*) register of members indicating separately for each class of equity and preference shares held by each member residing in or outside India;

(*b*) register of debenture-holders; and

(*c*) register of any other security holders.

Every register maintained as stated above shall include an index of the names included therein. The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be the corresponding register and index for the purpose of this Act

The form and manner in which these registers are to be maintained is contained in the companies (Management and Administration) Rules 2014.The following provision may be noted regarding Register of Members.

14.3.1 Particulars in the Register of Members

Every company limited by shares shall from the date of its registration maintain a register of its members in Form No MGT1.MGT 1 required the following particulars to be included in it.viz name of the

compny, its registered office ,class of share, nominal value of share, total shares held, folio no, personal details, membership details.

Contents: In case of companies not having share capital register of members shall contain the following particulars, in respect of each member, namely,

(a) name of the member; address (registered office address in case the member is a body corporate); e-mail address; Permanent Account Number or CIN; Unique Identification Number, if any; Father's/Mother's/Spouse's name; Occupation; Status; Nationality; in case member is a minor, name of the guardian and the date of birth of the member; name and address of nominee;

(b) date of becoming member;

(c) date of cessation;

(d) amount of guarantee, if any;

(e) any other interest if any; and

(f) instructions, if any, given by the member with regard to sending of notices etc:

In the case of existing companies, registered under the Companies Act, 1956, particulars shall be compiled within six months from the date of commencement of these rules.

14.3.2 Maintenance of the Register of members etc. under section 88

Every company shall maintain the registers under clauses (a), (b) and (c) of sub-section (1) of section 88 in the following manner namely:-

(1) The entries in the register: The entries in the registers maintained under section 88 shall be made within seven days after the board of directors or its duly constituted committee approves the allotment or transfer of shares, debentures or any other securities, as the case may be.

(2) **Place of keeping:** The registers shall be maintained at the registered office of the company unless a special resolution is passed in a general meeting authorising the keeping of the register at any other place within the city, town or village in which the registered office is situated or any other place in India in which more than one-tenth of the total members entered in the register of members reside.

(3) **Changes in the Entries:** Consequent upon any forfeiture, buy-back, reduction, sub-division, consolidation or cancellation of shares, issue of sweat equity shares, transmission of shares, shares issued under any scheme of arrangements, mergers, reconstitution or employees stock option scheme or any of such scheme provided under this Act or by issue of duplicate or new share certificates or new debenture or other security certificates, entry shall be made within seven days after approval by the board or committee, in the register of members or in the respective registers, as the case may be.

(4) **Change in the status of holder of securities:** If any change occurs in the status of a member or debenture holder or any other security holder whether due to death or insolvency or change of name or due to transfer to Investor Education Protection Fund or due to any other reason, entries thereof explaining the change shall be made in the respective register.

(5) **Rectification in the Register:** If any rectification is made in the register maintained under section 88 by the company pursuant to any order passed by the competent authority under the Act, the necessary reference of such order shall be indicated in the respective register.

(6) **Attachment of Securities :** If any order is passed by any judicial or revenue authority or by Security and Exchange Board of India (SEBI) or Tribunal attaching the shares, debentures or

other securities and giving directions for remittance of dividend or interest, the necessary reference of such order shall be indicated in the respective register.

(7) Particulars of Pledge, etc in case of listed companies: In case of companies whose securities are listed on a stock exchange in or outside India, the particulars of any pledge, charge, lien or hypothecation created by the promoters in respect of any securities of the company held by the promoter including the names of pledgee/pawnee and any revocation therein shall be entered in the *register within fifteen days from such an event.*

(8) Pledge or hypothecation particular by the promoter of joint venture company: If promoters of any listed company, which has formed a joint venture company with another company have pledged or hypothecated or created charge or lien in respect of any security of the listed company in connection with such joint venture company, the particulars of such pledge, hypothecation, charge and lien shall be entered in the register members of the listed company within fifteen days from such an event.

14.3.3 Penalty

If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of the Act, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day, after the first during which the failure continues.[Section 88(5)].

14.4 REGISTER OF DEBENTURE HOLDERS OR ANY OTHER SECURITY HOLDERS

Section 88(1b) of the companies Act refers to the form and manner of maintenance of register of debenture holders which corresponds to Rule 4 of companies (Management And Administration) Rules 2014 which states that every company which issues or allots debentures or any other security shall maintain a separate register of debenture holders or security holders, as the case may be, for each type of debentures or other securities in Form No.MGT.2.

14.4.1 Index of names to be included in Register

Section 88(2) mentions that every register maintained under sec 88(1) shall include an index of the names included therein. The relevant rule 6 of companies (Management And Administration) Rules 2014 states that the index shall, in respect of each folio, contain sufficient indication to enable the entries relating to that folio in the register to be readily found. It also states that the maintenance of index is not necessary in case the number of members is less than fifty.

The company shall make the necessary entries in the index simultaneously with the entry for allotment or transfer of any security in such register.

14.5 FOREIGN REGISTER OF MEMBERS SECTION 88 (4)

As per Section 88(4) a company may, if so authorised by its articles, keep in any country outside India, in prescribed manner, a part of the register as referred above, called “foreign register” containing the names and particulars of the members, debenture holders, other security holders or beneficial owners residing outside India. The foreign register shall be maintained in the same format as the principal register

14.6 DECLARATION IN RESPECT OF BENEFICIAL INTEREST IN ANY SHARES

Section 89 of the companies act seeks to provide that a declaration is to be given to the company by any person who is a member but not holding the beneficial interest in such shares.

Further the person holding the beneficial interest shall declare the nature of his interest and other particulars on those shares to the company.

Any change in the beneficial interest is also to be declared.

The section also provides that the company shall make note of all the above incidents, as and when they occur and intimate the same to ROC within the time and manner as prescribed in rule 9 of the companies (management and administration) rules 2014.

Rule 9 prescribes the procedure to be followed in case of declaration in respect of beneficial interest in any shares.

(1) A person whose name is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares (hereinafter referred to as "the registered owner"), shall file with the company, a declaration to that effect in Form No.MGT.4 in duplicate, within a period of thirty days from the date on which his name is entered in the register of members of such company. Any change occurs in the beneficial interest in such shares, the registered owner shall, within a period of thirty days from the date of such change, make a declaration of such change to the company in Form No.MGT.4 in duplicate.

(2) Every person holding and exempted from furnishing declaration or acquiring a beneficial interest in shares of a company not registered in his name (hereinafter referred to as "the beneficial owner") shall file with the company, a declaration disclosing such interest in Form No. MGT.5 in duplicate, within thirty days after acquiring such beneficial interest in the shares of the company:

Where any change occurs in the beneficial interest in such shares, the beneficial owner shall, within a period of thirty days from the date of such change, make a declaration of such change to the company in Form No.MGT.5 in duplicate.

(3) Where any declaration is received by the company under section 89, the company shall make a note of such declaration in the register of members and shall file, within a period of thirty days from the date of receipt of declaration by it, a return in Form No.MGT.6 with the Registrar in respect of such declaration with the required fee.

14.7 CLOSURE OF REGISTER OF MEMBERS OR DEBENTURE HOLDERS OR OTHER SECURITY HOLDERS.-(SECTION 91)

This section 91 is divided into two parts—subsection (1) deals with the time limits for which the register of member is allowed to be closed and subsection (2) mentions the penalty for the contravention of the provisions of subsection(1)

This section states that a company may close the register of members or the register of debenture holders or the register of other security holders by giving of previous notice of at least seven days or such lesser period as may be specified by Securities and Exchange Board of India for listed companies or the companies which intend to get their securities listed. It may close the registers for any period or periods not exceeding in the aggregate forty-five days in each year, but not exceeding thirty days at any one time, in prescribed manner.

If the register of members or of debenture-holders or of other security holders is closed without giving the notice as provided in sub-section (1), or after giving shorter notice than that so provided, or for a continuous or an aggregate period in excess of the limits specified in that sub-section, the company and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for every day subject to a maximum of one lakh rupees during which the register is kept closed.

Private company is exempted from issuing public notice in newspapers provided it issues 7 days notice to its members before effecting closure of the registers.

Rule 10 of the companies (Management and Administration) Rules 2014 states the procedure to be followed for closing of register of members or debenture holders or other security holders

A company closing the register of members or the register of debenture holders or the register of other security holders shall give at least seven days previous notice and in such manner, as may be specified by Securities and Exchange Board of India, if such company is a listed company or intends to get its securities listed, by advertisement at least once in a vernacular newspaper in the principal vernacular language of the district and having a wide circulation in the place where the registered office of the company is situated, and at least once in english language in an english newspaper circulating in that district and having wide circulation in the place where the registered office of the company is situated and publish the notice on the website as may be notified by the central government and on the website, if any, of the company.

The provisions contained in sub-rule (1) shall not be applicable to a private company provided that the notice has been served on all members of the private company not less than seven days prior to closure of the register of members or debenture holders or other security holders.



CHECK YOUR PROGRESS

Q 1: How the Register of members can be closed?

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Q 2: Where the Register of Members can be kept by a company?

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14.8 ANNUAL RETURN [SECTION 92-94]

Section-92 of the companies act, 2013 deals with the annual return of the company. Every company needs to file this annual return with the registrar of Companies within 60 days from the date of annual general meeting of the company.

14.8.1 Preparation of Annual Return

Every company shall prepare annual return in the prescribed Form No.MGT-7 containing the following Particulars as they stood on the close of the financial year:

- Details of the registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
- Details of shares, debentures and other securities and shareholding pattern; its indebtedness;
- Details of members and debenture-holders along with changes therein since the close of the previous financial year;
- Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
- Meetings of members or a class thereof, Board and its various committees along with attendance details;
- Remuneration of directors and key managerial personnel;
- Penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
- Matters relating to certification of compliances, disclosures as may be prescribed;
- Details as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them and
- Such other matters as may be prescribed.

14.8.2 Signing of Annual Return

Annual return shall be signed by a director and the company secretary, or– Where there is no company secretary, by a company secretary in practice. However in case of one person company and small company annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

14.8.3 Certification by company secretary in practice (PCS)

The annual return, filed by a listed company or, by a company having such paid-up capital of Rs.10 Crores and turnover of Rs.50 Crores or more shall be certified by a company secretary in practice (PCS) in Form No. MGT-8 stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.

14.8.4 Annual Return by Foreign Company

Every foreign company shall prepare and file, within a period of sixty days from the last day of its financial year, to the registrar annual return in Form FC.4 along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 containing the particulars as they stood on the close of the financial year.

14.8.5 Preservation of annual return

Copies of all annual returns and copies of all certificates and documents required to be annexed thereto shall be preserved for a period of 8 years from the date of filing with the registrar.

The registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company(Sec.94).

These registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total numbers of members entered in the register of members reside. This should be approved by a special resolution passed at a general meeting of the company and the registrar has been given a copy of the proposed special resolution in advance.



CHECK YOUR PROGRESS

Q 3: Within how many days from the date of holding annual general meeting of the company the annual return need to file with the registrar of companies?

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Q 4: Who signs the annual return of a company?

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14.9 LET US SUM UP

In this unit we have discussed the following –

- Every company shall keep and maintain registers of members, debenture holders and any other security holders.
- Every company limited by shares shall from the date of its registration maintain a register of its members in Form No MGT1.
- If a company fails to maintain the registers in accordance with the provisions of the Act, the company and every officer of the company who is in default shall be punishable.
- Every company needs to file this annual return with the registrar of companies within 60 days from the date of annual general meeting of the company.

- Annual return shall be signed by a director and the company secretary, or– Where there is no company secretary, by a company secretary in practice.
- Copies of all annual returns and copies of all certificates and documents required to be annexed thereto shall be preserved for a period of 8 years .



14.10 FURTHER READINGS

1. Company Law (2018), Avtar Singh, Seventh Edition, Easterm Book Company
2. Companies Act,2013

14.11 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: A company may close the registers by giving of previous notice of at least seven days or such lesser period as may be specified by Securities and Exchange Board of India.

Ans to Q No 2: The company shall maintained registers at the registered office of the company.

Ans to Q No 3: The annual return needs to file with the Registrar of Companies within 60 days from the date of holding Annual General Meeting of the company.

Ans to Q No 4: Annual Return shall be signed by a director and the company secretary, or, where there is no company secretary, by a company secretary in practice.



14.12 MODEL QUESTIONS

Q 1: Write a note on Register of members.

Q 2: State the significance of Register of members of a company.

Q 3: What is an Annual Return?

Q 4: State the contents of Annual Return.

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UNIT 15 : INSPECTION AND INVESTIGATION

UNIT STRUCTURE

15.1 Learning Objectives

15.2 Introduction

15.3 Purpose of Inspection

15.4 Powers of Registrar

15.5 Conduct of Inspection and Inquary

15.6 Investigation

15.7 Types of Investigation

15.8 Investigation into affairs of Company by Serious Fraud Investigation Office

15.9 Investigation into Company's Affairs in Other Cases

15.10 Investigation of Ownership of Company

15.11 Powers of Inspectors

- 15.11.1 Power to compel production of document
- 15.11.2 Power to examine on oath
- 15.11.3 Power of civil court
- 15.11.4 Penalty
- 15.11.5 Power to seek support from other
- 15.11.6 Power to seek evidence in other countries
- 15.11.7 To conduct investigation into affairs of related companies, etc.

15.12 Inspector's report

15.13 Penalty for furnishing false statement, mutilation, destruction of documents

15.14 Let Us Sum Up

15.15 Further Readings

15.16 Answers to Check Your Progress

15.17 Model Questions

15.1 LEARNING OBJECTIVES

After going through this unit you will be able to-

- Learn about the purpose of inspection
- Know various power of the Registrar
- Know about investigation
- Discuss various powers of inspectors.

15.2 INTRODUCTION

A company is a legal person, and separate from the members composing it. The ownership of the property or capital is vested in the company itself. But in reality that capital has been raised from the members (also known as shareholders).Though the shareholders are the investors, but the power of management is vested in the board of director to the total exclusion of the shareholders. There is no effective control over the management against corporate abuses. It became, therefore, necessary for the central government to arm with certain powers to investigate the affairs of the company in appropriate cases particularly where there was reason to believe that the business of the company was being conducted with intent to defraud its creditors or members or for a fraudulent or unlawful purpose, or in any manner oppressive of any of the members.

Section 206 to 229 of the Companies Act 2013 contains the provisions relating to inspection, inquiry and investigation of the affairs of company. In this unit we will discuss the purpose of inspection, power of registrar, investigation, power of inspector etc.

15.3 PURPOSE OF INSPECTION

The purpose of inspection is to keep a watch on the performance of the companies and to evaluate the level of efficiency of the company. Inspection may also prove to be a useful instrument for ascertaining whether investigation of affairs of company is justified.

Section 206 of the Companies Act 2013 deals with inspection of documents and books and papers of any company. The section empowers

the Registrar or Inspectors appointed by central government to conduct inspection in order to ascertain that all the transactions have been validly entered into and recorded in appropriate books and those applicable laws, rules and procedures have been compiled by the company. Section 206 does not specify the circumstances or pre conditions which must be satisfied to invoke these provisions. Some of the objectives of conducting such inspections may be thus:

1. To detect concealment of income by falsification of accounts.
2. To secure knowledge about the mismanagement of the business of a company and transactions entered into with an intent to defraud creditors, shareholders or otherwise for fraudulent or unlawful purposes.
3. To ascertain whether the statutory auditors have discharged their functions and duties in certifying the true and fair view of a company's accounts and their proper maintenance.
4. To enable the government to ascertain the quantum of profits accrued but not adequately accounted for.
5. To detect misapplication of funds leading a company to a state of perpetual financial crisis.
6. To keep a watch on performance of a company.
7. To detect misuse of fiduciary responsibilities by the company's management for personal aggrandizement.

Inspection is intended to be a routine and not ad hoc or special affair. However, if sufficient evidence of the company's affairs being mismanaged and/or managed in fraudulent way is revealed, the inspection can lead to orders for investigation into the affairs of the company.

15.4 POWERS OF REGISTRAR

(i) Power of the Registrar to call for information, explanation or documents: According to section 206(1) of the Companies Act, 2013, where on a scrutiny of any document filed by a company or on any information received by him, the Registrar is of the opinion that any

further information or explanation or any further documents relating to the company is necessary, he may by a written notice require the company-

(a) to furnish in writing such information or explanation; or

(b) to produce such documents, within such reasonable time, as may be specified in the notice.

(ii) Duty of the company and its officers: On the receipt of a notice under sub-section (1) of section 206, it shall be the duty of the company and of its officers concerned to furnish such information or explanation to the best of their knowledge and power and to produce the documents to the Registrar within the time specified or extended by the registrar [Section 206 (2)].

(iii) Duty of past officers of the company: According to the proviso to sub-section (2) of section 206, where such information or explanation relates to any past period, the officers who had been in the employment of the company for such period, if so called upon by the registrar through a notice served on them in writing, shall also furnish such information or explanation to the best of their knowledge.

(iv) Power of issuing Additional written notice by the Registrar [Section 206 (3)]:

(a) If no information or explanation is furnished to the registrar within the time specified under Section 206 (1); or

(b) If the registrar on an examination of the documents furnished is of the opinion that the information or explanation furnished is inadequate; or

(c) If the registrar is satisfied on a scrutiny of the documents furnished that an unsatisfactory state of affairs exists in the company and the information or documents do not disclose a full and fair statement of the information required.

The registrar may by another written notice call on the company to produce for his inspection such further books of account, books, papers and explanations as he may require at such place and at such time as he may specify in the notice:

Before issuing any notice under this sub-section, the Registrar shall record his reasons in writing for issuing such notice.

v) Power of Registrar to conduct Inquiry [Section 206 (4)]:

(a) The Registrar may call on the company to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein and carry out such inquiry as he deems fit after providing the company a reasonable opportunity of being heard, if the registrar is satisfied:

(1) on the basis of information available with or furnished to him; or

(2) on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act; or

(3) the grievances of investors are not being addressed,

(b) Before calling the company to furnish in writing any information or explanations and carrying out inquiry, the registrar has to inform the company of the allegations made against it by a written order.

(c) The central government may, if it i satisfied that the circumstances so warrant, direct the registrar or an inspector appointed by it for the purpose to carry out the inquiry under this sub-section.

(d) It is further provided that where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in section 447.

(vi) Power of Central Government to direct inspection of books etc: The Central Government may, if it is satisfied that the circumstances so warrant, direct inspection of books and papers of a company by an inspector appointed by it for the purpose [Section 206 (5)].

(vii) The central government may, having regard to the circumstances by general or special order, authorise any statutory authority to carry out the inspection of books of account of a company or class of companies [Section 206 (6)].

(viii) Punishment for non compliance (Failure to furnish information): If a company fails to furnish any information or explanation or produce any document required under this section, the company and every officer of the company, who is in default shall be punishable with a fine which may extend to 1 lakh rupees and in the case of a continuing failure, with an additional fine which may extend to 500 rupees for every day after the first during which the failure continues [Section 206 (7)].

15.5 CONDUCT OF INSPECTION AND INQUIRY

Section 207 of the Companies Act, 2013 provides for the conduct of inspection and inquiry as follows:

(i) Duty of director, officer or employee to render assistance to the Registrar or Inspector [Sub-Section (1)]:

It shall be the duty of every director, officer or other employee of the company:

(a) to produce all such documents to the Registrar or inspector; and

(b) to furnish him with such statements, information or explanations in such form as the Registrar or inspector may require; and

(c) to render all assistance to the Registrar or inspector in connection with such inspection.

(ii) Powers of the Registrar or inspector to take copies of books of account [Sub-section (2) and (3)]:

(a) The Registrar or inspector making an inspection or inquiry under section 206 may, during the course of such inspection or inquiry, as the case may be-

(1) make or cause to be made copies of books of account and other books and papers; or

(2) place or cause to be placed any marks of identification in such books in token of the inspection having been made.

iii) Registrar or Inspector to have power of civil court

The Registrar or inspector making an inspection or inquiry shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:

(1) The discovery and production of books of account and other documents, at such place and time as may be specified by such Registrar or inspector making the inspection or inquiry;

(2) Summoning and enforcing the attendance of persons and examining them on oath; and

(3) Inspection of any books, registers and other documents of the company at any place.

Penalty for Contravention [sub-section (4)]:

If any director or officer of the company disobeys the direction issued by the registrar or the inspector under this section 207, the director or the officer shall be punishable with imprisonment which may extend to 1 year and with fine which shall not be less than 25,000 rupees but which may extend to 1 lakh rupees.

If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.

Report on inspection (Section 208 of the Companies Act, 2013)

Section 208 of the Companies Act, 2013 provides for the submission of the report on inspection made. According to this section:

The registrar or inspector shall, after the inspection of the books of account or an inquiry under section 206 and other books and papers of the company under section 207, submit a report in writing to the central government along with such documents, if any and such report may, if necessary, include a recommendation that further investigation into the affairs of the company is necessary giving his reasons in support.

15.6 INVESTIGATION

Investigation of affairs of a company means investigation of all its business affairs, profit and loss account, and assets including goodwill, contracts and transactions investments and other property interests and control of subsidiary companies too.

The object of an investigation is to discover something which is not apparently visible to the naked eye. If the allegations are apparent from the balance sheet of the company, no investigation need be ordered. Prima facie evidence should lead to the conclusion that an investigation is necessary.

Scope of investigation

Investigation of affairs of a company is ordered by central government. Section 210(1) of the companies Act provides that central government may order investigation of affairs of a company on receipt of a report from registrar or inspector under sec 208 or where a company has passed a special resolution for the Investigation of affairs of a company or in public interest. The central government has discretionary power to order investigation of affairs of a company as the expression used is 'may'.

Section 210(2) makes it obligatory for the central government to order Investigate the affairs of a company if there is a order by the court or tribunal directing that the affairs of the company ought to be investigated. Be it discretionary or mandatory, the central government may appoint one or more person to investigate the affairs of a company.

15.7 TYPES OF INVESTIGATION

The Companies Act, 2013 provides for carrying out the following kinds of investigation:

1. Investigation of the affairs of the company if it's necessary to investigate into the affairs of the company in public interest (Section 210);
2. Investigation of the affairs of related companies (Section 218);
3. Investigation about the ownership of a company
4. Investigation of foreign companies

5. Investigation by serious fraud investigation office directed by central government under (section 212)
6. Investigation on the order of tribunal. (Section 213 – Not yet enforced)

Investigation into affairs of company

Section 210 of the Companies Act, 2013 provides for the following Investigation into affairs of company. According to this section:

i. **Investigation in the opinion of Central Government:** Where the Central government is of the opinion, that it is necessary to investigate into the affairs of a company, —
   a. on the receipt of a report of the registrar or inspector under section 208;
   b. on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or
   c. in public interest,

   it may order an investigation into the affairs of the company. [Sub -section (1)]

ii. **Investigation on the order by a court or the Tribunal:** Where an order is passed by a court or the tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central government shall order an investigation into the affairs of that company [Sub-section (2)].

iii. **Appointment of inspectors**: For the purposes of this section, the central government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the central government may direct [Sub-section (3)].



CHECK YOUR PROGRESS

Q 1: What is meant by investigation?

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Q 2: Mention two types of investigation?

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15.8 INVESTIGATION INTO AFFAIRS OF COMPANY BY SERIOUS FRAUD INVESTIGATION OFFICE

i. Section 212 of the Companies Act, 2013 provides for investigation into affairs of company by the Serious Fraud Investigation Office (SFIO). The central government shall, by notification, establish an office to be called the serious fraud investigation office to investigate frauds relating to a company. [Section 211 (1)]

According to section 212(1), without prejudice to the provisions of section 210, the Central Government - is of the opinion that it is necessary to investigate into the affairs of a company by the SFIO, the central government may, by order, assign the investigation into the affairs of the said company to the SFIO under the following circumstances—

a. on receipt of a report of the registrar or inspector under section 208;
b. on intimation of a special resolution passed by a company that its affairs are required to be investigated;
c. in the public interest; or
d. on request from any department of the central government or a state government,

On receipt of such order, the director, SFIO may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.

ii. Where any case has been assigned by the central government to the SFIO for investigation under this Act, no other investigating agency of central government or any state government shall proceed with investigation in such case in respect of any offence under this Act. In case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the

relevant documents and records in respect of such offences under this Act to SFIO [Sub section (2)].

iii. Where the investigation into the affairs of a company have been assigned by the central government to SIFO, it shall conduct the investigation in the manner and follow the procedure provided in this Chapter (Chapter XIV - Inspection, Inquiry and Investigation) and submit its report to the central government within such period as may be specified in the order [Sub section (3)]

iv. The director, SFIO shall cause the affairs of the company to be investigated by an investigating officer who shall have the power of the inspector under section 217 [Sub section (4)]

v. The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, document s and assistance to the investigating officer as he may require for conduct of the investigation [Sub section (5)]

vi. If the director, additional director or assistant director of SFIO authorised in this behalf by the central government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest. [Sub section (8)]

vii. The SFIO shall submit an interim report to the central government, if the central government so directs [Sub section (11)].

viii. The SFIO shall submit the investigation report to the Central Government on completion of the investigation [sub section (12)].

ix. Notwithstanding anything contained in this Act or in any other law for the time being in force, a copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court [Sub section (13)].

x. On receipt of the investigation report, the central government may, after examination of the report (and after taking such legal advice, as it may

think fit), direct the SFIO to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected

xi. with the affairs of the company [Sub section (14)]

xii. In case SFIO has been investigating any offence under this Act, any other investigating agency, state government, police authority, income-tax authorities having any information or documents in respect of such offence shall provide all such information or documents available with it to the SFIO [Sub section (17) (a)].

(xiii) The SFIO shall share any information or documents available with it, with any investigating agency, state government, police authority or income tax authorities, which may be relevant or useful for such investigating agency, state government, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law [Sub section (17) (b)].

15.9 INVESTIGATION INTO COMPANY'S AFFAIRS IN OTHER CASES

Section 213 deals with the investigation into company's affairs in other cases. According to this section:

The tribunal may pass an order, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the central government . If such an order is passed by the tribunal, the central government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the central government may direct. The tribunal shall pass such an order after giving a reasonable opportunity of being heard to the parties concerned. It will pass such an order in the following conditions

a. on an application made by—

i. not less than one hundred members or members holding not less than one-tenth of the total voting power, in the case of a company having a share capital; or

ii. not less than one-fifth of the persons on the company's register of members, in the case of a company having no share capital, and supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company; or

b. Order by tribunal: On an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that—

i. the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose;

ii. persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or

iii. the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company,

c. Punishment in case of guilty: If after investigation, it is proved that—

i. the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or

ii. any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447.

15.10 INVESTIGATION OF OWNERSHIP OF COMPANY

It might sometimes become necessary in public interest for the central government to know the persons who are financially interested in a company and who controls the policy or materially influence it. For this purpose

i) Section 216 of the Companies Act, 2013 provides (1), where it appears to the central government that there is a reason so to do, it may appoint one or more inspectors to investigate and report on matters relating to the company, and its membership for the purpose of determining the true persons—

   a. who are or have been financially interested in the success or failure, whether real or apparent, of the company; or

   b. who are or have been able to control or to materially influence the policy of the company.

ii) sub-section (2) of sec 216 requires the central government to appoint one or more inspectors under that sub-section, if the tribunal, in the course of any proceeding before it, directs by an order that the affairs of the company ought to be investigated as regards the membership of the company and other matters relating to the company, for the purposes of determining the true owner who are or have been financially interested in the success or failure, whether real or apparent, of the company; or who are or have been able to control or to materially influence the policy of the company.

iii) While appointing an inspector under sub-section (1), the central government may define the scope of the investigation, whether as respects the matters or the period to which it is to extend, and in particular, may limit the investigation to matters connected with particular shares or debentures [Sub-section (3)]

iv) Subject to the terms of appointment of an inspector, his powers shall extend to the investigation of any circumstances suggesting the

existence of any arrangement or understanding which, though not legally binding, is or was observed or is likely to be observed in practice and which is relevant for the purposes of his investigation [Sub - section (4)]

15.11 POWERS OF INSPECTORS

Section 217 of the Companies Act, 2013 provides for procedure, powers, etc., of inspectors as under:

15.11.1 Power to compel production of document

As per sub- section (1), it shall be the duty of all officers and other employees and agents including the former officers, employees and agents of a company which is under investigation, and where the affairs of any other body corporate or a person are investigated under section 219, of all officers and other employees and agents including former officers, employees and agents of such body corporate or a person-

a. to preserve and to produce to an inspector or any person authorised by him in this behalf all books and papers of, or relating to the company or, as the case may be, relating to the other body corporate or the person, which are in their custody or power; and

b. otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

The inspector may require any body corporate, other than a body corporate referred in point (i) to furnish such information to, or produce such books and papers before him or any person authorised by him in this behalf as he may consider necessary, if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation [Sub section (2)].

The inspector shall not keep in his custody any books and papers produced under point (i) or point (ii) for more than 180 days and return the same to the company, body corporate, firm or individual by whom or on whose behalf the books and papers were produced [Sub section (3)].

However, the books and papers may be called for by the inspector if they are needed again for a further period of 180 days by an order in writing.

15.11.2 Power to examine on oath

As per sub-section (4), an inspector may examine on oath —

a) any of the persons referred to in subsection (1) of section 217; and

b) any other person with the prior approval of the central government,

He may require any of these persons to appear before him personally.

However, in case of an investigation under section 212, the prior approval of director, SFIO shall be sufficient if the investigation is being conducted under section 212.

15.11.3 Power of civil court

As per sub- section (5), notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the inspector, being an officer of the central government making an investigation under this chapter, shall have all the powers as are vested in a civil court under the code of civil procedure, 1908, while trying a suit in respect of the following matters, namely:—

a. the discovery and production of books of account and other documents, at such place and time as may be specified by such person;

b. summoning and enforcing the attendance of persons and examining them on oath; and inspection of any books, registers and other documents of the company at any place.

15.11.4 Penalty

If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than 25,000 rupees but which may extend to 1 lakh rupees [Sub section (6) (i)].

If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company [Sub section (6) (ii)].

Further section 217(8) provides that, if any person fails without reasonable cause or refuses —

a. to produce to an inspector or any person authorised by him in this behalf any book or paper which is his duty to produce;
b. to furnish any information which is his duty to furnish;
c. to appear before the inspector personally when required to do so to answer any question which is put to him by the inspector in pursuance of that point; or
d. to sign the notes of any examination,

shall be punishable with imprisonment for a term which may extend to 6 months and with fine which shall not be less than 25,000 rupees but which may extend to 1 lakh rupees, and also with a further fine which may extend to 2,000 rupees for every day after the first during which the failure or refusal continues.

15.11.5 Power to seek support from other

The inspector may, with the prior approval of the central government require support from the officers of the central government, state government, police or statutory authority for the purpose of inspection, inquiry or investigation. Such authorities or officers are bound to provide necessary support or assistance to the inspector [Sub section (9)].

The central government may enter into an agreement with the government of a foreign State for reciprocal arrangements to assist in any inspection, inquiry or investigation under this Act or under the corresponding law in force in that state and may, by notification, render the application of this chapter in relation to a foreign state with which reciprocal arrangements have been made subject to such modifications, exceptions, conditions and qualifications as may be deemed expedient for implementing the agreement with that state [Sub section (10)].

15.11.6 Power to seek evidence in other countries

If, in the course of an investigation into the affairs of the company, an application is made to the competent court in India by the inspector stating that evidence is, or may be, available in a country or place outside India, such court may issue a letter of request to a court or an authority in such country or place, competent to deal with such request, to examine orally, or otherwise, any person, supposed to be acquainted with the facts and circumstances of the case, to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing, which may be in his possession pertaining to the case, and to forward all the evidence so taken or collected or the authenticated copies thereof or the things so collected to the court in India which had issued such letter of request [Sub section (11)].

15.11.7 To conduct investigation into affairs of related companies, etc. (Section 219 of the Companies Act, 2013)

Section 219 of the Companies Act, 2013 provides for power of inspector to conduct investigation into affairs of related companies, etc. as under:

i. **Investigation into affairs of related companies:** If an inspector appointed under section 210 or section 212 or section 213 to investigate into the affairs of a company considers it necessary for the purposes of the investigation, can also investigate the affairs of—
   a. any other body corporate which is, or has at any relevant time been the company's subsidiary company or holding company, or a subsidiary company of its holding company;
   b. any other body corporate which is, or has at any relevant time been managed by any person as managing director or as manager, who is, or was, at the relevant time, the managing director or the manager of the company;
   c. any other body corporate whose board of directors comprises nominees of the company or is accustomed to act in accordance with the directions or instructions of the company or any of its directors; or
   d. any person who is or has at any relevant time been the company's managing director or manager or employee.

ii. **Report of inspector:** The inspector shall, subject to the prior approval of the central government, investigate into and report on the affairs of the other body corporate or of the managing director or manager, in so far as he considers that the results of his investigation are relevant to the investigation of the affairs of the company for which he is appointed.



CHECK YOUR PROGRESS

Q 3: Mention two powers of inspector?

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Q 4: To whom the inspector submits interim report?

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15.12 INSPECTOR'S REPORT

Section 223 of the Companies Act, 2013 lays down the following provisions in respect of the inspector's report on investigation conducted under this chapter:

i. **Submission of interim report and final report [Sub section (1)]:** An inspector appointed under Chapter XIV may, and if so directed by the central government shall, submit interim reports to that government, and on the conclusion of the investigation, shall submit a final report to the central government.

ii. **Report to be in writing or printed [Sub section (2)]:** Every report made under sub section (1) above, shall be in writing or printed as the central government may direct.

iii. **Obtaining copy of report [Sub section (3)]:** A copy of the above report may be obtained by making an application in this regard to the central government.

iv. **Authentication of report [Sub section (4)]:** The report of any inspector appointed under this chapter shall be authenticated either—

a. by the seal, if any, of the company whose affairs have been investigated; or

b. by a certificate of a public officer having the custody of the report, as provided under section 76 of the Indian Evidence Act, 1872, and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.

15.13 PENALTY FOR FURNISHING FALSE STATEMENT, MUTILATION, DESTRUCTION OF DOCUMENTS (SECTION 229)

Where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation,—

a. destroys, mutilates or falsifies, or conceals or tampers or unauthorisedly removes, or is a party to the destruction, mutilation or falsification or concealment or tampering or unauthorised removal of, documents relating to the property, assets or affairs of the company or the body corporate;

b. makes, or is a party to the making of a false entry in any document concerning the company or body corporate; or

c. provides an explanation which is false or which he knows to be false, he shall be punishable for fraud in the manner as provided in section 447.



15.14 LET US SUM UP

- The purpose of inspection is to keep a watch on the performance of the companies and to evaluate the level of efficiency of the company.
- The registrar may call on the company to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein and carry out such inquiry as he deems fit.
- The registrar or inspector shall, after the inspection of the books of account or an inquiry under section 206 and other books and papers of the company under section 207, submit a report in writing to the central government.

- The Registrar or inspector making an inspection or inquiry shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908.
- The central government may enter into an agreement with the government of a foreign state for reciprocal arrangements to assist in any inspection, inquiry or investigation under this Act.



15.15 FURTHER READINGS

1. Company Law (2018), Avtar Singh, Seventh Edition, Easterm Book Company
2. Companies Act,2013

15.16 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Investigation of affairs of a company means investigation of all its business affairs, profit and loss account, and assets including goodwill, contracts and transactions investments and other property interests and control of subsidiary companies too.

Ans to Q No 2: Following are the two types of investigation-

i) Investigation into affairs of company

ii) Investigation of ownership of company

Ans to Q No 3: Two powers of inspector are –a) Power to seek support from other authority and b) Power to compel production of document.

Ans to Q No 4: The inspector submits interim report to the central government.



1.17 MODEL QUESTIONS

Q 1: Discuss the powers of registrar.

Q 2: Discuss the provisions related to conduct of inspection and inquiry under the Companies Act.

Q 3: Discuss the powers of inspector.

Q 4: Discuss different types of investigation.

Q 5: What are the penalties if any director or officer of the company disabeys the directions of register of a company?

Q 6: What are the contents of an inspector's report?

*** ***** ***



REFERENCE

1. Company Law (2018), Avtar Singh, Seventh Edition, Easterm Book Company
2. Companies Act,2013

কাকতৰ নাম ঃ
পাঠ্যবিষয়ৰ কোড (সাংকেতিক সংখ্যা) ঃ

আভ্যন্তৰীণ গুণগত আশ্বাসন কেন্দ্ৰ (CIQA)
কৃষ্ণকান্ত সন্দিকৈ ৰাজ্যিক মুক্ত বিশ্ববিদ্যালয়
নগৰ কাৰ্যালয়, হাউছফেড কমপ্লেক্স, গুৱাহাটী-০৬

পাঠ্যবিষয় সন্দর্ভত শিক্ষার্থীৰ সঁহাৰি

প্ৰিয় শিক্ষার্থী,

ওপৰত উল্লেখ কৰা পাঠ্যবিষয়টোৰ সন্দর্ভত আপোনাৰ বহুমূলীয়া মতামত আৰু মন্তব্য বিচৰা হৈছে। আপোনাৰ সঁহাৰিয়ে আমাক ভৱিষ্যৎ স্ব-শিক্ষণ সামগ্ৰীবোৰৰ মান উন্নত কৰাত সহায় কৰিব। অনুগ্ৰহ কৰি তলৰ প্ৰবিৱৰণবোৰৰ বিপৰীতে আপোনাৰ মতামত উপযুক্তভাৱে প্ৰতিফলিত কৰা বিকল্পটোত চিন দিয়ক। মন্তব্যৰ সৈতে সম্পূৰ্ণ সঁহাৰি জনোৱাৰ পাছত পৃষ্ঠাটো ফালি তলৰ ঠিকনাত ডাকযোগে প্ৰেৰণ কৰে যেন।

সঞ্চালক,

আভ্যন্তৰীণ গুণগত আশ্বাসন কেন্দ্ৰ, কৃষ্ণকান্ত সন্দিকৈ ৰাজ্যিক মুক্ত বিশ্ববিদ্যালয়
হাউছফেডকমপ্লেক্স, দিছপুৰ, গুৱাহাটী-০৬
ই-মেইল ঠিকনা ঃ ciqa@kkhsou.in

১) পাঠ্যবিষয়ৰ অন্তৰ্ভুক্ত অধ্যায়বোৰ পঢ়িবলৈ আপুনি আনুমানিকভাৱে কিমান ঘণ্টা ব্যয় কৰিলে ? [ ][ ][ ]

২) খণ্ডটো অধ্যয়ন কৰাৰ অন্তত তলৰ প্ৰবিৱৰণবোৰ সন্দর্ভত আপোনাৰ মতামত ব্যাখ্যা কৰক (✓ চিন দিয়ক)

ক্ৰমাংক	প্ৰবিৱৰণ					
i)	পাঠ্যবিষয়ৰ স্ব- শিক্ষণ সামগ্ৰীবোৰে প্ৰতিটো অধ্যায়ৰ আৰম্ভণিতে ধাৰ্য কৰি লোৱা শিক্ষণ উদ্দেশ্যবোৰ পূৰণ কৰিব পাৰিছে	দৃঢ়ভাৱে একমত	একমত	একমতো নহয় অসন্মতো নহয়	অসন্মত	দৃঢ়ভাৱে অসন্মত
ii)	স্ব- শিক্ষণ সামগ্ৰীত সন্নিৱিষ্ট অধ্যায়বোৰে মোৰ শৈক্ষিক প্ৰয়োজনীয়তা আৰু প্ৰত্যাশা পূৰণ কৰিব পাৰিছে					
iii)	অধ্যায় লেখক/লেখিকাসকলৰ পাঠ্যবিষয়ত সন্নিৱিষ্ট পাঠসমূহৰ উত্তম জ্ঞান আছে					
iv)	অধ্যায়বোৰত সন্নিৱিষ্ট পাঠবোৰৰ ভাষা আৰু বিষয়বস্তু মই সহজে বুজি পোৱা ধৰণে উপস্থাপন কৰা হৈছে					
v)	অধ্যায়বোৰত কাৰ্যকলাপত ভাগ ল'ব পৰাকৈ/অনুশীলনীত অংশগ্ৰহণ কৰিব পৰাকৈ পৰ্যাপ্ত সুযোগ আছে					
vi)	ধাৰণাবোৰ স্পষ্ট কৰিবলৈ পৰ্যাপ্ত চিত্ৰ (ৰেখাচিত্ৰ, তালিকা ইত্যাদি) সংলগ্ন কৰা হৈছে					
vii)	পাঠবোৰত সন্নিৱিষ্ট বিষয়বস্তুসমূহ চিত্তাকৰ্ষক, প্ৰাসংগিক আৰু শেহতীয়া তথ্যভিত্তিক					
viii)	'অগ্ৰগতি নিৰীক্ষণ' শিতানৰ প্ৰশ্নবোৰ যথেষ্ট উপযোগী					
ix)	'আৰ্হি প্ৰশ্ন' আৰু 'অগ্ৰগতিৰ খতিয়ান' শিতান দুটাই মোক যথেষ্ট উপকৃত কৰিছে					

অতিৰিক্ত মন্তব্য (অনুগ্ৰহ কৰি মুকলিমূৰীয়াকৈ মতামত আগবঢ়াওক) ঃ

১) আপোনাৰ মতে স্ব-শিক্ষণ সামগ্ৰীবোৰৰ কোনকেইটা দিশ সবাতোকৈ ফলপ্ৰসূ হৈছে?

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২) স্ব-শিক্ষণ সামগ্ৰীবোৰৰ সামগ্ৰিক গুণ উন্নত কৰিবলৈ কৃষ্ণকান্ত সন্দিকৈ ৰাজ্যিক মুক্ত বিশ্ববিদ্যালয়ে কেনেধৰণৰ পৰিৱৰ্তন/উন্নতি সাধন কৰিব পাৰে বুলি আপুনি ভাবে?

প্ৰ-পত্ৰ পূৰাবলৈ সময় উলিওৱাৰ বাবে আপোনাক ধন্যবাদ জনালোঁ।