STUDY MATERIAL FOR B.COM

COMPANY LAW

SEMESTER – V

ACADEMIC YEAR 2025-26

PREPARED BY

COMMERCE DEPARTMENT

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COMPANY LAW

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UNIT - I

INTRODUCTION OF COMPANY LAW

Company Law is said to be a set of several legal factors that control the formation, operation, and dissolution of a company. With regard to the Senior Management of the Company and Board of Directors, their responsibilities, roles, and accountability; stakeholder rights and equitable treatment; transparency; timely disclosures; legal and regulatory compliances; and appropriate risk management measures to safeguard and advance the interests of all stakeholders, the Companies Act of 2013 aims to improve corporate governance.

The Companies Act 2013 (No. 18 of 2013) is an Act of the Parliament of India which forms the primary source of Indian company law. It received presidential assent on 29 August 2013, and largely superseded the Companies Act 1956.

The Act was brought into force in stages. Section 1 of this act came into force on 30 August 2013. 98 different sections came into force on 12 September 2013 with a few changes. A total of another 183 sections came into force from 1 April 2014. The Ministry of Corporate Affairs thereafter published a notification exempting private companies from the ambit of various sections under the act.

The Act increased the responsibilities of corporate executives in the information technology sector, increasing India's safeguards against organised cybercrime by allowing CEOs and CTOs to be prosecuted in cases of IT failure.

The Act established the National Company Law Tribunal (NCLT), which was constituted on 1 June 2016, based on the recommendation of the Justice Eradi committee on the law relating to insolvency and winding up of companies. Further, the National Financial Reporting Authority (NFRA) was established in March 2018 as an oversight body to investigate matters of professional misconduct by Chartered accountants or CA firms.

History of Companies Act in India

Certain commercial guilds in England are referred as Regulated Companies. In 1600, the East India Company was founded by Royal Charter. The Joint Stock Companies Act was initially passed in England in 1844. A provision for company registration was included in this statute.

A provision to register a joint stock company in India was created in the year 1850, using the English Joint Stock Companies Act 1844 as a foundation. Following this, India established the Joint Stock Companies Act in 1857. Following that, in 1866, the Companies Act was established. The Act combined and modified the laws pertaining to the foundation, management, and dissolution of organizations and trading enterprises.

The Indian Companies Act 1913 eventually took the place of the Act. But after independence, in 1950, the Government formed a Committee to review the Indian Companies Act of 1913, with Shri H.C. Bhaba serving as its chairman. In 1952, the committee formed and submitted its report.

The English Companies Act 1948 and the committee's suggestion led to the implementation of the Companies Act 1956 on April 1st, 1956.The 1956 Indian Companies Act was superseded by the 2013 Indian Companies Act. All public and unlisted firms in India are governed by extensive provisions set forth in the firms Act of 2013.

The President of India sanctioned the Companies Act, 2013, which was approved by Parliament on August 29, 2013. The Act unifies and modifies company-related laws. On August 30, 2013, the Companies Act, 2013 was published in the Official Gazette.

DEFINITION OF A COMPANY:

According to Section 2(20) of the Act, a "company" is defined as a company incorporated under this Act or any previous company law. Essentially, it means any entity that has been established under company law.

The Act defines a company as an association of persons, whether natural or juridical, formed and registered under its provisions or under any previous Companies Act.

Justice James: “A company is an association of persons united for a common object.”

Prof. Haney: “A company is an artificial person created by law, having a separate legal entity with perpetual succession and a common seal.”

Lord Lindley: “By a company is meant associations of many persons who contribute money or money’s worth to a common stock and employ it for some common purpose. The common stock so contributed is denoted in money and is the capital of the company.”

CHARACTERISTICS OF A COMPANY:

The definition of a company in law carries several distinct characteristics that differentiate it from other business forms like sole proprietorships or partnerships. Here are the primary legal characteristics of a company:

Artificial Legal Person

A company is a legal entity created by law. It has all the rights and responsibilities of a natural person, such as entering into contracts, owning assets, and suing or being sued. However, it cannot physically act; it operates through its Board of Directors.

Separate Legal Entity

A company has a distinct legal identity from its members. This ensures that the company’s assets and liabilities are separate from those of its shareholders. The principle of separate legal personality was affirmed in the Salomon case, protecting shareholders from personal liability for the company’s debts.

Limited Liability

The liability of a company's shareholders is limited to the unpaid value of their shares. This ensures that the personal assets of shareholders are protected, even if the company faces financial difficulties.

Perpetual Succession

The company's existence is not affected by the death, insolvency, or retirement of its members. It continues to exist until it is legally dissolved through winding-up procedures.

Transferability of Shares

In a public company, shares can be freely transferred, providing liquidity to investors. However, private companies may impose restrictions on share transfers through their Articles of Association.

Common Seal (Optional)

Though optional under the Companies Act 2013, many companies use a common seal as their official signature for validating documents.

Representative Management

The shareholders elect a Board of Directors to manage the company's affairs. This ensures professional and efficient management, as the day-to-day operations are overseen by directors.

Voluntary Association for Profit

A company is formed voluntarily by individuals or entities with the intention of conducting business for profit. Profits are shared among shareholders as dividends.

LIFTING OR PIERCING THE CORPORATE VEIL:

The Companies Act, 2013, allows for "lifting" or "piercing" the corporate veil, which means ignoring the legal distinction between a company and its owners or directors in certain situations. This occurs when a company's actions are used to commit fraud, avoid legal responsibilities, or conceal wrongdoing, according to the Indian Journal of Integrated Research in Law.

Fraudulent Conduct:

If a company uses its separate legal entity to defraud creditors or others, the court can disregard the corporate veil and hold the individuals responsible.

Avoidance of Legal Obligations:

If a company uses its structure to avoid legal responsibilities or tax liabilities, the court can lift the veil.

Non-Compliance with Incorporation Requirements:

If a company fails to comply with the requirements for incorporation, as outlined in Section 464 of the Act, the court may lift the veil.

Fraudulent Applications:

If fraudulent applications are made to remove a company's name from the registry of companies (Section 251), individuals involved may be held liable.

Misrepresentations in Prospectuses:

If a company issues a prospectus with misrepresentations, the court can impose liability on those responsible, says NAS College.

Investigating Ownership:

The Central Government can appoint inspectors under Section 216 to investigate a company's ownership and determine the true persons behind its actions, potentially lifting the veil.

Improper Use of Company Name:

If an officer of a company uses the company's name incorrectly, they may be held personally liable, according to SSRN.

DIFFERENCE BETWEEN PARTNERSHIP & LIMITED LIABILITY PARTNERSHIP FIRM

Partnership and Limited Liability Partnership (LLP) are two different types of business structures with some distinct differences. Understanding the difference between Partnership & LLP is crucial for entrepreneurs looking to start a new business or change the form of an existing one. This article will examine the key differences between Partnership & Limited Liability Partnership firm, including liability, legal status, taxation, compliance, and management.

Partnership firm

In the partnership business structure, two or more people own and operate the business together. In a partnership Firm, the partners share the profits and losses of the company and are personally liable for its debts and obligations.

Limited liability partnership firm

On the other hand, a limited liability partnership (LLP) is a type of Partnership where the partners have limited liability for the debts and obligations of the business. If the company incurs debts or legal action, the partners' assets are not at risk. LLPs are typically used in professional services such as accounting, law, and consulting.

DIFFERENCE BETWEEN PARTNERSHIP & LIMITED LIABILITY PARTNERSHIP FIRM:

Particulars	Partnership Firm	LLP
Registration	The registration of a partnership firm under the Indian Partnership Act is voluntary.	LLP registration is mandatory.
Registering authority	The firm must submit the Partnership firm registration form and other subsequent forms to the Registrar of Firms.	An LLP must submit the registration form and all the subsequent Forms to the Registrar of Companies (ROC).
Annual form filling	A partnership firm need not file any annual returns with the Registrar of Firms.	The LLP must also file an annual statement of accounts, solvency, and yearly return with the Registrar of Companies annually.
Governing law	The Indian Partnership Act of 1932	The Limited Liability Partnership Act 2008
Liability	the partners have unlimited liability, which means they are personally liable for all the debts and obligations of the business	the liability of each partner is limited to the amount of money they have invested in the business
Legal Status	A partnership is an unincorporated business structure, meaning it does not have a separate legal entity from its owners	an LLP is a registered corporate entity with a separate legal existence from its partners.
Taxation	Partnerships are not taxed as separate entities. Instead, each partner is responsible for paying taxes on their share of the business's profits.	LLPs are taxed as a separate legal entity, and the partners are taxed only on the income they receive as a salary or profit distribution.
Compliance	LLPs have more regulatory and compliance requirements than partnerships	LLPs must file annual reports with the registrar of companies and maintain more extensive records than partnerships.
Management:	The partners themselves typically manage partnerships.	There are designated partners who are responsible for managing the business.

Name	A partnership firm may have any name, and it is not required to include any words.	LLPs must have the word 'LLP' at the end of their names.
Maximum partners	A partnership firm's maximum number of partners is limited to 100.	There is no limit on the maximum number of partners in an LLP.
Ownership of assets	All assets belonging to the partnership firm are owned jointly by the partners.	The LLP has the ownership of assets that are independent of the partners. No partner owns the help of the LLP.
Administration	The partners themselves handle the administration of the partnership firm—Tappoint managerial personnel.	An LLP's designated partners manage the day-to-day business and other statutory compliance matters.
Foreign National	Foreign nationals cannot form a partnership firm in India.	A foreign national and an Indian resident can form an LLP together.
Audit of accounts	Partnership firms are required by the Income Tax Act to have their accounts audited.	LLPs must get their accounts audited annually according to the LLP Act (except for those with turnovers or contributions below Rs.40 lakh).
Dissolution	LLPs can be dissolved voluntarily or by the National Company Law Tribunal (NCLT) order.	An agreement between partners, mutual consent of partners, court order, insolvency, etc., can dissolve a partnership firm.

TYPES OF COMPANIES UNDER THE COMPANIES ACT 2013

The Companies Act 2013 provides several classifications of companies to suit different business needs. Here are the primary types of companies based on various factors:

On the Basis of Incorporation:

Chartered Companies: These companies are formed by royal charters and no longer exist in India.

Statutory Companies: These are established by an Act of Parliament or state legislature for specific purposes. Example: Reserve Bank of India (RBI).

Registered Companies: Registered companies are formed under the Companies Act 2013 and are the most common business entities in India.

On the Basis of Liability:

Companies Limited by Shares: Shareholders' liability is limited to the unpaid value of their shares.

Companies Limited by Guarantee: Members guarantee a specific amount to be paid in case the company is wound up.

Unlimited Liability Companies: The liability of members is unlimited, making them personally responsible for the company's debts.

On the Basis of Number of Members:

A Private Company is a type of business entity that is limited to a maximum of 200 members. It cannot invite the general public to subscribe to its shares or debentures. One of the key legal requirements for a private company is that it must include the words "Private Limited" at the end of its name.

On the other hand, a Public Company has no restriction on the maximum number of members. It is allowed to raise capital from the public by issuing shares or debentures through public offerings. Public companies are generally subject to stricter regulatory requirements due to their ability to access public funds.

On the Basis of Control:

Holding Company: A company that holds majority control over another company's Board or share capital.

Subsidiary Company: A company controlled by a holding company.

On the Basis of Ownership:

Government Company: A company where 51% or more of the share capital is held by the government.

Non-Government Company: A company owned and operated by private individuals or entities.

Foreign Company: A company registered outside India but operating within India.

One-Person Company (OPC): Introduced under the Companies Act 2013, an OPC allows a single individual to run a company with the benefits of limited liability and ease of management.

UNIT – II

FORMATION OF COMPANY:

The word 'company' is derived from Latin word 'Com' which means 'Together' and the word 'panies' which means 'bread'. A company is thus an association of persons who took their meal together. In simple language the term company means an association of persons formed for some common purpose. When a few persons form a company for the purpose of some business of profit it is called Joint Stock Company. The persons forming the company are called 'shareholders'. The liability of the members of the company is usually limited.

MEANING:

A joint stock company is an artificial person created by law having separate legal entity with a perpetual succession and common seal.

DEFINITION

According to Section 3(1) of the Companies Act 1956, "a company means a company formed andϖ registered under the act or an existing company" and "Existing Company means a company formed and registered under any of the previous companies act."

According to section 2(20) of the Companies Act,2013, "The term Company means a Companyϖ incorporated under the Companies Act 2013 or any previous Company Law".

According to Lord Justice Lindley "Company is a voluntary association of many persons whoϖ contribute money or money's worth to a common stock and employs it in some trade or business and who share the profit and loss arising there from"

FEATURES:

Voluntary association

A joint stock company is a voluntary association or organization of persons. No person can be compelled to become a member of a company, or to give up the membership

Registration-

The Company is created only when registered under the companies Act 1956. But for the formation of a public company at least seven persons and for private company at least two persons are necessary. It is on incorporation that company becomes a body corporate and gets separate legal entity.

Legal Entity

Artificial legal entity

A company is an artificial person created by law. The company can acquire and dispose of property, can enter into contract with third parties in its own name, can sue and be sued in its name. It acts through the board of directors elected by the shareholders.

Separate legal entity

A company has a legal entity distinct from and independent of its members. It is regarded as an entity separate from its shareholders or members. Hence a shareholder can sue the company and be sued by it. The property of the company is for the benefit of the company and not for its members, shareholders or individuals.

Common seal

The company being an artificial legal entity or person cannot act on its own. So its acts through the natural persons like directors or secretary who is authorized hence, there is a need for a common seal of the company for all the contracts entered into by the company through the directors. The common seal is like the signature of the company and the seal bears the name of the company engraved on it.

Perpetuity

The Company created by law has continuous existence. It never dies or has any retirement and therefore it is commonly said that 'Men may come, men may go but company goes on forever'

Limited liability

A company may be limited by shares or limited by guarantee.

If a company is limited by shares then the shareholder is liable to pay only to the extent of• face value of the shares held by him.

If a company is limited by guarantee the liability of the members is limited to such an amount as the members may decide to contribute to the assets of the company in the event of winding up.

Separate of Ownership and Management

In a company, the shareholders are the owners but the management is entrusted to the board of directors who are separate from the body of shareholders. Further a shareholder is not an agent of the company or the other shareholders cannot bind them by his act.

Transferability of shares

The shares of public limited company can be easily transferable from one person to another.

Separate property

A company has a right to own and transfer property in its own name since it is a legal entity. The shareholder has no proprietary rights in the company but merely to their shares. Therefore the claims of the company's creditors will be against the company property and that of shareholders.

Specific objectives

A joint stock company is formed for specific objectives only which are expressly stated in the constitution. This objective is laid down in the Memorandum of Association. A company can undertake only those activities which are intended to achieve the special objective.

Large Membership

A JSC has a large number of membership and there is no maximum limit on number of members in case of public company.

12. A company is not a citizen

A company on incorporation assumes a legal personality distinct from its members but it cannot claim to be citizen of a country under the constitution of India.

PROMOTION OF A COMPANY:

The person who undertakes responsibility to bring the company into existence are called promoters. The steps which are taken to persuade a mummer of persons to come together for the achievement of a common objective through the company form of organisation are called promotion. According to Guthmann and Doughall, "A Promoter is a person who assembles the men, money and the materials into a going concern."

STEPS IN COMPANY PROMOTION:

Discovery of an idea:

The promoter starts out with an idea to start some business either in a new field which has not been commercially exploited or in some existing lines of manufacture or business. He makes a preliminary investigation to find out whether it is worthwhile to make a detailed investigation.

Detailed Investigation:

The promoter needs to make a detailed investigation of his idea with the assistance of many experts. It will help him to know whether the estimated income is adequate to cover the estimated costs and compensate the owner fort the risks and services.

Assembling:

After a detailed investigation, if the promoter is satisfied with the practicability and profitability of the proposed concern, he starts assembling. Assembling means getting the support and consent of some other persons to act as directors or founders, arranging for patents, a suitable site for the company, machinery and equipment and making contracts for filling the positions.

Financing the proposition:

After assembling the proposition, the promoter prepares a prospectus to present to public and to underwriters to persuade them to finance the proposition.

FUNCTIONS OF PROMOTERS:

Promotion of the company:

The most important function of the promoters is the promotion of the company. They undertake various processes of promotion.

Incorporation of the company:

Promoters also undertake the function of getting the company registered. They prepare necessary do necessary documents such as M.O.A, A.O.A, etc and submit them to the registrar and the company incorporated

Raising Capital:

In the case of public limited company having Share capital promoters raise the required capital and obtain business commencement certificate.

Nursing the company:

Promoters are also associated with the company and nurse the company (They work for the growth of the company).

Types of promoters:

Professional promoters:

They are experts who specialize in company promotion. They float the company and hand it over to the shareholders or their respective. Promotion is their main profession or occupation.

Occasional promoters:

They promoters take interest in floating some companies. They are not engaged in promotion work on a regular basis. They take up the promotion of some company and once it is over they go to their original profession. For instance, engineers, lawyers etc. May float some companies.

Entrepreneur promoters:

They are both promoters and entrepreneurs. They conceive idea of a new business unit, does the ground work to establish it and subsequently become a part of the management.

Financier Promoters:

Some financial institutions, like investment banks or industrial banks, may take up the promotion of a company with a view to find opportunities for investment.

INCORPORATION:

The second stage is the formation of the company is incorporation stage where in, the company must be registered with the registrar of the companies.

a) Approval of name:

It has to be ensured that the name selected for the company does not match with the name of any other company. For this, the promoter has to fill in a "name availability form" and submit it to the registrar of companies along with necessary fees.

b) Filing of documents:

For registration an application has to be filed with the registrar of the companies along with the following documents:

Memorandum of association properly stamped and signed by the signatories

Articles of association properly stamped and signed by the signatories.

Notice of the address of the registered office of the company.

Copy of the letter received from the department of company law and administration of the Government, giving intimation about the availability of the proposed names of the company.

Statutory declaration stating that all the requirements of the companies act have been compiled with Statement of nominal capital of the company

Details of persons (name, addresses, occupation etc.) who have accepted to act as the first directors of the company The written consent of the directors to act so

An undertaking by the directors to take up and pay for the qualification shares

Particulars of managing directors, manager, secretary, etc., if any.

c) Payment of filing and registration fees:

Along with application and the necessary documents promoter must also pay required stamp duty, filing fees, registration fees. The registrar will scrutinise the documents and if satisfied will enter the name of the company in the register and will issue the company its birth certificate called the 'Certificate of Incorporation.'

MEMORANDUM OF ASSOCIATION (MOA):

The Memorandum of association is the most important document of the company. This is a document which sets out the constitution of a company. It defines the company's relations with the outside world, and the scope of its activities. Its purpose is to enable the shareholders, creditors as well as those who deal with the company to know the company's permitted range of enterprises.

CLAUSES OF MEMORANDUM:

Name Clause:

The clause contains the name of the company. The name selected should not be similar to or identical with that of any existing company. Also the name must not be one which is considered undesirable by the Central Government. The name of the company should end with the word 'Limited' if it this public company. If it is private company the name should end with the words 'private limited'. The purpose of adding the word 'Limited' is to enable all those who deal with the company to know that the liability of the members is limited.

Situation Clause:

In this clause, the state in which the company's registered office is located should be given. To avoid any unnecessary legal formalities and expenses if there is a subsequent change in the address of the company, the exact address within the state is not given and only the name of the state is given.

Object Clause:

It should specify in unambiguous language the objects for which the company is formed. Great care would be taken in drawing up this clause, as the company will not be allowed to do any business which is not specifically mentioned here. As it is difficult to alter the pobject clause later, it is necessary that promoter's should include in this clause, all possible types of business in which a company may engage in the future.

Liability Clause:

This clause states that the liability of members is limited to the face value of shares taken up by them. If a member has already paid some amount on the shares, he can be called upon to pay only the unpaid amount of the shares.

Capital Clause:

In this clause, particulars regarding the amount of share capital with which the company is proposed to be registered and the division for the capital into shares is fixed amount are included.

Association or subscription clause:

This contains a declaration by the subscribers to the memorandum. This declaration just precedes the names of the signatories to the memorandum.

ALTERATION OF MEMORANDUM OF ASSOCIATION:

Alteration of Memorandum of Association (Section 13 of Companies Act, 2013)

"Alteration" The expression 'alter' means to modify, change or vary; to make or become different; to change in character, appearance, etc; to change in some respect.

What are the steps required for Alteration in MOA?

1. A Notice of Board meeting is issued at least 7 days before the date of Board meeting.

2. In the board meeting, a board resolution is being passed for the alteration in MOA subject to approval of shareholder meeting.

3. Fix the date, time and venue for convening the shareholder meeting.

4. A notice of Shareholder meeting is issued at least 21 days before the date of shareholder meeting.

5. After the shareholder's resolution is being passed, Form MGT-14 is filed within 30 days from passing of the special resolution along with the Explanatory statement, altered copy of MOA. Company can alter its Memorandum by way of alteration in following clause of Memorandum of Association

Clause	Nature of Change	Procedure of Change
Name Clause	1. Any change in the name of the company	Conformity with provisions of Sec. 4 + Special Resolution in General Meeting + l Approval of Central Government in writing. In Approval of name using web form RUN (Reserve Unique Name).
	2. Change involving addition thereto or deletion there from, of the word 'Private' on conversion.	Special Resolution in General Meeting. Change of name using web form RUN.
	3. Rectification of name of the company (Sec.16): (a)if a name on first registration or registration by new name in the opinion of the Central Government is identical with or too nearly resembles the name of the previously registered company, it may direct the company to change its name or new name as the case may be.	(i) with in a period of 3 months from the issue of such direction after adopting an Ordinary Resolution. Within 15 days of change give notice to Registrar along with order of Central Government. Necessary changes in the Certificate of Incorporation and Memorandum shall be made. ii)in case of non-compliance of direction within 3 months, new name of company shall be the letters ORDNC (Order of Regional Director not complied), the year of passing of the direction, the serial number and the existing CIN of the company. The Registrar shall enter such name in Register of Companies and Company will have

		to mention 'ORDNC' in brackets below the name of company wherever printed, affixed or engraved. This will continue until company subsequently changes its name in accordance with Sec. 13. [Rule 33A inserted by Companies (Incorporation) Fifth Amendment Rules, 2021 w.e.f. 1/9/2021].
	(b)on application by a registered proprietor of a trade mark with in 3 years of incorporation of a company, if in the opinion of the Central Government, name on first registration or registration by a new name is identical with or too nearly resembles to an existing trade mark, it may direct the company to change its name.	(i) within a period of 3 months from the issue of such direction after adopting an Ordinary Resolution. Within 15 days of change give notice to Registrar along with order of Central Government. Necessary changes in the Certificate of Incorporation and Memorandum shall be made. (ii)in case of non-compliance of direction within 3 months, new name of company shall be the letters ORDNC (Order of Regional Director not complied), the year of passing of the direction, the serial number and the existing CIN of the company. The Registrar shall enter such name in Register of Companies and Company will have to mention 'ORDNC' in brackets below the name of company wherever printed, affixed or engraved. This will continue until company subsequently changes its name in accordance with Sec. 13. [Rule 33A inserted by Companies (Incorporation) Fifth Amendment Rules, 2021, w.e.f. 1/9/2021] 2.
Domicile Clause	1. From one place to another within the same city, town or village	Board Resolution
	2. From one city, town or village to another city, town or village where it involves change in jurisdiction of RoC. where it does not involve change in jurisdiction of RoC	Special Resolution in General Meeting + Approval of Regional Director. Special Resolution in General Meeting.
	3. Change of Registered Office from one state to another.	Form No. INC-23 to be filed with Special Resolution passed in General Meeting + Approval of Central Government (Central Government shall give its approval only after

		having 'No Objection' from Creditors, debenture holders and the persons concerned with the company and ensuring that no employee shall be retrenched). Shifting not allowed during pendency of any enquiry/inspection/ investigation/prosecution against the company. Where the management of the company has been taken over by new management under a resolution plan approved under Insolvency Bankruptcy Code, 2016 and no appeal against the resolution plan is pending in any Court or Tribunal and no inquiry, inspection, investigation is pending or initiated after the approval of the said resolution plan, the shifting of the registered office may be allowed (enforced w.e.f. 21st October 2023). RoC of State where office is shifted shall issue fresh Certificate of Incorporation indicating alteration.
3. Object Clause	1. A company which has raised money from public through prospectus and still has unutilized amount shall change its objects for which it raised the money.	Special Resolution General Meeting + details be published in two newspapers, one English and one in Vernacular Language plus on website of the company indicating justification of change + the dissenting shareholders shall be given an opportunity to exit. RoC shall register alteration within 30 days of filing of Special Resolution.
	2. In other cases	Special Resolution in General Meeting. RoC shall register alteration within 30 days of filing of Special Resolution.
4. Capital Clause	1. Increase of Authorised Capital. Sec. 61(1)(a) 2. Conversion of shares into stock or vice versa. Sec. 61(1)(c) 3. Consolidation or splitting of shares. Sec. 61(1)(b) and Sec. 61(1) (d) 4. Diminution of Capital (Cancellation) of unsubscribed portion of capital. Sec. 61(1)(e)	Authorisation by Articles + Ordinary Resolution
	5. Reduction of capital (Sec. 66)	Special Resolution in General Meeting +

	by extinction or reduction of liability on any of its shares in respect of share capital not paid up or either with or without extinction or reduction of liability on any of its shares:	Approval of Tribunal on 'No Objection' from: Creditors Central Government Registrar SEBI
	I)cancel any paid up share capital which is lost or unrepresented by available assets, or (ii)payoff any paid-up share capital which is in excess of the wants of the company.	Tribunal shall not sanction any application for reduction unless accounting treatment for reduction proposed is in conformity with provisions regarding it. Officers knowingly concealing or mis-representing the nature, amount or claim of any creditor (or being privy to such concealment or mis-representation) shall be liable under Sec. 447

LEGAL EFFECTS OF THE MOA:

The Memorandum of Association (MOA) is a primary legal document under the Companies Act, 2013, that defines a company's constitution, scope of activities, and relationship with its shareholders. It's a public document that provides a framework for the company's operations and ensures transparency about its formation and objectives.

Establishes the company:

The MOA is the foundational document for company formation, outlining its name, registered office, objectives, liability of members, and authorized share capital.

Defines the company's powers and limitations:

The MOA specifies the permitted scope of business activities, and any actions outside this scope are considered "ultra vires" (beyond the powers) and invalid.

Provides a contract between the company and its members:

The MOA, along with the Articles of Association, forms a contract between the company and its shareholders, outlining their rights and obligations.

Protects investors:

The MOA ensures that shareholders and other parties have clear knowledge of the company's objectives and limitations, safeguarding their interests.

Public document:

The MOA is a public document filed with the Registrar of Companies, providing constructive notice of the company's scope and powers to the public.

ARTICLES OF ASSOCIATION:

Meaning:

The articles are the internal regulation of the company on the basis of which its internal affairs are managed. They lay down the powers of the directors, shareholders and officers. It is not compulsory for the public company to prepare its own article of association as it can follow Table A of companies act whereas preparation of articles of association is compulsory for private company.

Contents:

The following are the contents of AOA:

Share capital and variation of rights

Exercise of lien by the company

Calls on shares

Transfer, transmission, forfeiture and surrender of shares

Issues of shares warrants

Alteration and reduction of capital

Voting powers of members

Borrowing powers

Proceedings at the board and at the general body meeting

Appointment, powers, duties qualifications, remuneration etc, of directors.

Appointment of manager, managing director and secretary

Dividends and reserves

Maintenance of books of accounts and their audit

The company’s seal

Winding up

CERTIFICATE OF INCORPORATION:

Registered firm’s ‘birth certificate’ showing its legal name and date of incorporation. A certificate of incorporation is a legal document relating to the formation of a company or corporation. It is a license to form a corporation issued by state government. It is also called as 'Certificate of registration'.

Filing of documents to get Certificate of Incorporation:

For registration an application has to be filed with the registrar of the companies along with the following documents:

Memorandum of association properly stamped and signed by the signatories

Articles of association properly stamped and signed by the signatories.

Notice of the address of the registered office of the company.

Copy of the letter received from the department of company law and administration of the Government, giving intimation about the availability of the proposed names of the company.

Statutory declaration stating that all the requirements of the companies act have been compiled with

Statement of nominal capital of the company

Details of persons (name, addresses, occupation etc.) who have accepted to act as the first directors of the company. The written consent of the directors to act so

An undertaking by the directors to take up and pay for the qualification shares

Particulars of managing directors, manager, secretary, etc., if any

PROSPECTUS

MEANING:

According to sec 2(70) of the companies act of 2013, "A prospectus, notice, circular, advertisement or Other document inviting offers for the public for the subscription or purchase of any shares in BMSCW Department of Commerce 12 Or debentures of a body corporate".

Objects of prospectus:

To inform the public about the forming of a new company

To induce the investors to invest in its shares and debentures

To preserve an authentic record of the terms on which the investors have been invited and to make the directors responsible for the statements in the prospectus

CONTENTS OF PROSPECTUS:

The revised format is effective from 1st November 1991.

Part 1 of schedule II 1.

General Information

a) Name and address of registered office of the company

b) Date of opening of the issue

c) Name and address of auditors and lead managers

II. Capital Structure of the Company

a) Authorised capital

b) Issued capital

c) Subscribed capital

d) Paid up capital

III. Terms of the present issue

a) Right of the instrument holders

b) How to apply, availability of forms, prospectus and mode of payment

c) Any special tax benefits for company and its shareholders

IV. Particulars of the issue

a) Objects b) Project cost

V. Company, Management and Project

a) History and main objects and present business of the company

b) Subsidiary of the company if any

c) Promoter and their background d) Infrastructure facilities for raw materials and utilities like water, electricity etc.

e) Nature of products

f) Approach to marketing

g) Export possibilities and export obligations if any

h) Future prospects – expected capacity utilization during the first three years from the date of commencement of production and the expected year when the company would be able to earn cash profits and net profits.

TYPES OF PROSPECTUS:

• Red-herring prospectus:

A prospectus for stocks and bonds are issued in different stages – the first stage is the Preliminary prospectus, which contains the details of the business and proposed financial action. It is nicknamed as Red Herring. When a company decides to attract investors to invest in their company, they use a prospectus named Red Herring Prospectus. It is basically a prospectus which is used in the public issue to attract different investors. In this prospectus, the price and quantum are not mentioned or disclosed.

• Pink-herring prospectus

A prospectus that is issued without disclosure of the number of securities being offered or, in an initial public offering, the estimated or indicative price range. It is a preliminary prospectus that precedes the filing of a red-herring prospectus.

• Free-writing prospectus:

Any sort of written, electronic, or graphic statement that describes an offer in terms of its issuer or securities. It includes a legend stating that the investor can have a copy of the prospectus at the website of relevant securities commission. Typically, the issuer must file this prospectus with the securities commission no later than the first date it is obtained. In the case of inexperienced issuers, the securities commission may require that a preliminary prospectus is filed before the filing of a free-writing prospectus.

• Abridged prospectus:

Abridged Prospectus is the actual summary of a prospectus. It contains all the salient features of a prospectus. The original prospectus that a company files to the exchange regulator is too large. The abridged prospectus contains the summary of the same prospectus. Reading the entire prospectus may be too much time consuming for an investor. Instead, they go through the abridged prospectus, which gives them the basic idea about the company. The abridged prospectus contains all the important and materialistic information. No company will issue the share buying from without the abridged prospectus attached to it so that investors can take a well-informed decision.

• Reconfirmation prospectus:

A prospectus that a shell company must prepare and submit for the approval of relevant securities and exchange authorities (the SEC) prior to considering a reverse merger. This prospectus contains detailed information about the private company merging into the shell. It is handed over to purchasers in the shell's initial public offering (IPO) who must reconfirm their investment after perusing the prospectus before the merger can be finalized. At least 80 percent of purchasers must reconfirm so that the merger transaction can be effected. Purchasers who do not confirm will receive their investment back (of course, less expenses).

• Other types:

Shelf prospectus

Shelf means 'life' or 'validity' of a prospectus. Only selected companies bring their shelf prospectus. All companies are not eligible for designing a shelf prospectus. Normally finance-based companies are eligible for bringing out their shelf prospectus.

Shelf prospectus has validity with a maximum of one year. There are various companies which frequently raise funds (ex. banks) for issuing loans. If any company submits their Shelf prospectus, they don't have to file the prospectus again and again while raising funds for that particular year.

Deemed prospectus

A prospectus that is deemed to have been made by the issuer, though it is actually offered to the public by a third party or the issue house. The issuer saves the underwriting expenses in selling its securities.

PROSPECTUS LIABILITY:

Prospectus Liability Insurance is a specialist insurance solution that can respond to claims alleging a breach of securities law - in connection with the issue of defective disclosure documents. For example, a prospectus or information memorandum in relation to a particular transaction such as an initial or secondary public offering, private equity placements, debt raisings, etc. Claims may allege the related documents (or presentations) contain errors, omissions, untrue or misleading statements, or that wrongful acts were committed in conjunction with the sale or offer process.

Typically a policy will pay damages, settlements and defence costs. Most policies extend cover to the company and its directors and officers for claims made against them.

Marsh can tailor Prospectus Liability Insurance cover to form part of a comprehensive risk management programme. This is designed to provide protection against the exposures the company and its directors and officers face when engaged in capital raising activities.

TYPES OF PROSPECTUS LIABILITY

1. Civil Liability in case of misstatements in prospectus

If a person who has subscribed for a company's securities suffers any loss or harm as a result of any statement made in the prospectus, or any inclusion or omission of an item included in the prospectus that is deceptive, and acts on the content of the prospectus, then the company and everyone involved who:

is a director of the company at the time of the prospectus's issue,

or is named in the prospectus as a director of the company or agreed to become one,

or is a promoter of the company,

or has authorized/allowed the prospectus's issue, and is an expert who has been engaged or interested in the company's formation, management, or promotion. Shall be liable to pay compensation to every person, without prejudice to any punishment to which any person may be liable, to every person who has suffered such loss or damage.

2. Criminal Liability in case of misstatements in prospectus

Criminal liability for misstatements in prospectuses is dealt with in Section 63 of the Companies Act.

Every person who authorises the issue, circulation, or distribution of a prospectus that contains any statement that is incorrect or misleading in any form in which it is contained, or where any inclusion or omission of any matter is likely to mislead, is responsible for fraud.

Sec. 447 defines "fraud" as any act, omission, or concealment of any fact with the aim to deceive, obtain an unfair advantage, or harm the company, its shareholders, creditors, or any other person. It is not required that such a conduct result in any unjust profit or loss. If a person abuses his or her position that is also deemed fraud under this provision.

SHARE CAPITAL:

The Share capital definition refers to the funds raised by an entity to issue shares to the general public. Simply put, share capital is the money contributed to a firm by its shareholders. It is a long-term capital source and facilitates smooth operations, profitability, and financial growth.

Primarily, capital represents the assets used to carry on a business. Alternatively, it may be the resources required to launch a venture. The terms capital and share capital are interchangeable. In the Indian Companies Act, share capital refers to a company's percentage of capital or interest.

The Company's Memorandum of Association mentions the maximum amount of share capital. The company may increase the maximum share capital with an amendment to its Memorandum of Association. Moreover, a company limited by stock issues share capital, whereas a company limited by guarantee does not have any capital.

From a financial reporting standpoint, share capital appears under liabilities in a balance sheet. In the case of liquidation, the shareholders receive the residual assets after payment of all other liabilities.

Classes of Share Capital:
Broadly, there are two classes of share capital available to a company

A. Preferred Share Capital

Preferred share capital refers to funds raised by the issue of shares with privileged rights. Preferential rights include fixed dividends. Also, preferred share capital entitles shareholders to receive share capital before common shareholders. A company must pay preferred dividends irrespective of cash flows like debt instruments. The company may accrue dividends and pay preferred equity holders at a later date or upon maturity.

B. Common or Equity Share Capital

Common equity refers to share capital raised with the issuance of ordinary shares. Equity share capital extends a share in profits and voting rights to the shareholders. However, the company is under no obligation to pay dividends. Additionally, the company may offer bonus shares or right issues to its common shareholders.

TYPES OF SHARE CAPITAL

Authorized Share Capital

Authorized share capital refers to the maximum number of shares a company may issue. The Memorandum of Association limits the authorized capital to a fixed amount. Authorized share capital is more than the total outstanding shares.

A company may increase its authorized capital for several reasons, such as acquiring another company or employee stock options. Any change in the authorized capital requires shareholder approval since an increase in the authorized capital may shift the balance of power between the shareholders and other stakeholders.

2. Unissued Share Capital

Unissued shares still need to be issued to the general public or employees. Unissued stock forms part of the company's treasury and does not impact the shareholders. The Board of Directors controls unissued shares. Unissued shares are not tradable in the secondary market.

Most companies hold a significant percentage of their unissued shares. The value of unissued share capital is low. The objective is to sell or allocate unissued shares at a premium in the future. The company may use unissued stock to pay off debt or to raise money for new investments. Directors may even allocate unissued shares to a minority shareholder if necessary.

3. Issued Share Capital

Issued share capital is the number of shares a company issues to its shareholders. Issued share capital is a mix of common equity shares and preferred capital.

It is a major component of the shareholder's funds under the liabilities of a balance sheet. Also, analysts use issued capital to evaluate the worth of common equity stock. For example, ABC Ltd issues thousand shares with a face value of Rs. 10. The company issues the shares for Rs. 15 per share. Therefore, ABC Ltd. raises Rs. 10,000 from the initial sales of shares. Rs. 5,000 is surplus and constitutes the company's reserves.

4. Subscribed Capital

A company's authorized share capital is equal to its registered capital. A fraction of the issued capital is the subscribed capital. Shareholders promise to purchase or subscribe to a company's shares. The payment of subscribed share capital may be in instalments.

Subscribed capital represents the portion of a company's issued capital accepted by the public. The public shows interest in a company by way of a subscription. A company can only issue part of the share capital in one instance.

It may issue additional shares over time. Moreover, the company may only require payment of part of the share's entire face value.

5. Paid-Up Capital

Paid-up capital is investment received by a company from a share issue. Typically, a company issues fresh capital to raise funds. Fresh share capital constitutes the company's paid-up capital. As per the Companies Act 2013, the minimum paid-up capital requirement is Rs. 1 lakh.

Paid-up Capital is essential for fundamental analysis. A company with a low paid-up capital may have to rely on debt to finance its operations. Conversely, high paid-up capital signifies less reliance on borrowed funds.

6. Called-Up Capital

Called-up Capital is the subscribed capital section that consists of the shareholder's payment. The balance sheet separately captures called-up capital under the shareholders' equity. Called-up capital is useful for companies with unforeseen or emergency fund requirements.

On issuance of shares, the company calls upon its shareholders to pay a part of the capital. Thus, called-up capital offers more flexibility in the investment and payment terms.

7. Reserve Share Capital

Reserve capital refers to share capital that a company cannot access except in case of bankruptcy. The company can issue reserve share capital only with a special resolution. Moreover, a company cannot modify the articles of association to issue reserve share capital. The purpose of reserve share capital is to make liquidation easier. Reserve capital represents the company's emergency funds and is subject to multiple restrictions.

8. Uncalled Share Capital

Uncalled share capital is shares issued but not claimed. Uncalled share capital appears in the company's contingent liabilities. It represents the balance amount after the adjustment of the called-up capital from the total shares allotted.

ISSUE OF SHARES:

The meaning of the Issue of Shares is that the shares of an enterprise or any financial asset are distributed among shareholders who wish to purchase them. These shareholders can be either individuals or corporate who take part in buying the shares at a specific price.

A company called XYZ has a total capital of Rs. 6 lakhs. It has divided the capital into 6000 units of shares each amounting to Rs. 100. Therefore, you can see that each unit or share of the company costs Rs. 100. Individuals or corporations can purchase the share at this price.Hence, holding a share in an organization is often regarded as partial ownership as well. It is for the same reason that anyone holding a share is termed as a shareholder.

Steps involved in Issue of Shares:

The process of issues of shares is primarily divided into three significant steps, which are:

Prospectus Issue

This is the first step of the Issue of Shares wherein an enterprise releases a prospectus to the public. It contains the details that a new enterprise has come into being and that it would require funds from the public to operate, for which the public can purchase shares of that particular enterprise.

The prospectus has all the necessary details of that share issuing authority along with details pertaining to how they will collect money from investors.

Application Receipt

The second step in share issuing is the receipt of application as and when an investor wishes to purchase a share of that asset or enterprise. However, they have to follow the necessary rules and regulations as cited in the prospectus issued earlier.

They also have to deposit the amount against shares they are willing to purchase. The money has to be deposited to any scheduled bank along with the application.

Share Allocation

This is the last step in issues of shares wherein after completing the formalities from the investor's side, the enterprise will issue the shares to the investors. As there is a minimum subscription limit, one has to wait till that quota is fulfilled.

Once that limit is fulfilled, the shares will be allocated to those investors who have subscribed for the capital shares. A letter of allotment is also sent out to those who have been allocated with shares.

Therefore, this process makes up for an authentic way of trading shares between investors and enterprises.

The main reason for issuing new shares by the company is to raise money to finance the business. The following are some of the examples where an Allotment of Shares may be considered.

A number of shares will usually be issued when the company is established. With the help of a share issue, the company will be able to trade, along with any money that the company may borrow.

Allotment of Shares is considered when the company requires new funds to grow the business organically. There are various factors that influence how many shares to issue.

In order to repay all or some of the company's borrowing, shares can be issued.

Shares can be issued to fund the purchase of another company, which means raising cash from a share issue and using that cash to acquire the new business.

Shares can also be issued to continue trading after a particularly difficult period, to repair a damaged balance sheet or in case of problems across an industry or part of a wider downturn in the whole economy.

The company can make a capitalization Issue of Shares to existing shareholders. Rather than the shareholders needing to pay for the shares themselves, the company uses its own money to fund the allotment. This generally has the effect of reducing the value of the shares in issue, which may, in turn, make them more merchantable to investors.

If shareholders prefer not to receive a cash dividend, the company may offer them a 'scrip' dividend instead by allotting shares of the same value as the cash dividend. This is often popular among companies because issuing shares as a dividend does not impact cash flow in the way a cash dividend does.

In case a director or employee of the company takes on a share option after being permitted by the company, the company may acquire shares.

The company may consider allotting the shares in case a new director or senior employee joins the business or an existing employee becomes a director. This can demonstrate the commitment of an employee or a new director to the business, and they will have a clear interest in the company's success. The shares would either be passed to the employee or new director through a transfer from existing shareholders or by a new Allotment of Shares.

ALTERATION OF SHARE CAPITAL:

MEANING:

The term "alteration of share capital" describes the act of changing the structure or composition of a company's share capital. It involves changing the rights to existing share classes as well as the overall number of shares that the company issues. This change can be made in numerous ways, including dividing or consolidating current shares, changing the authorized share capital, or converting shares from one class to another. These changes may be made for many reasons, such as raising capital, redistributing ownership, or responding to evolving business requirements. The Articles of Association (AOA) must approve the Change in Share Capital Clause This is an important decision that needs to be made legally and by regulations to protect shareholder interests and uphold corporate transparency.

Types of Alteration of Share Capital:

Section 61 of the Companies Act of 2013 states that the alteration in share capital can be done in 5 different ways:

Spike In Authorized Capital:

Authorized capital can also be referred to as nominal or registered capital. This sum of money is required for establishing a business. The company may enhance its share capital by updating the Memorandum of Association's capital clause.

Consolidation of Shares:

This involves creating a single, bigger denomination share by combining multiple smaller denomination shares.

Subdivision of Shares:

When a company splits up its existing shares into several smaller nominal-value shares, this is known as subdivision (or splitting of shares). This raises the number of outstanding shares, each with a lower market value, but does not affect the total value of the company's share capital.

Conversion of Shares:

The conversion of shares into stock is the process by which a company unifies all of its fully paid-up shares into one indivisible share of stock. More flexibility in management and the transfer of ownership interests are possible.

Shares Cancellation:
The procedure through which a company takes its shares out of circulation permanently and so lowers its share capital is known as the cancellation of shares. The shares that are cancelled are not reissued or resold, and this might happen through buybacks or redemption of shares. By raising the ownership proportion of surviving shareholders, this method can increase shareholder value.

Process for Alteration of Share Capital:
Alteration in Article of Association:

The set of guidelines that control the internal activities of the company are contained in the Articles of Association, which is a legal document. Therefore, it is necessary to check the Articles of Association to see if there is a clause allowing for an alteration in the authorized capital of the company before taking any action regarding the authorized capital. We need to arrange a board meeting. A notice of the agenda will be sent to each director at their registered address at least seven days before the meeting. The agenda, date, time, and place of the meeting must be disclosed to the shareholders. To all directors, shareholders, and auditors, an extraordinary general meeting must be called. At least 21 days before the scheduled Extraordinary General Meeting, a notice of the meeting must be sent out. Only with the consent of at least 95% of the members eligible to vote at the meeting will a shorter notice period be granted.

Conducting an Extraordinary General Meeting:

Once the meeting has started, the subject of the increase in share capital is brought up. To decide the matter, voting then occurs in a predetermined order. The resolution is passed, and the appendix containing the explanation is added, after which the authorized capital is increased.

Registrar of Companies:

Within 30 days of the resolution being passed, the company must file eForm SH-7 and, if applicable, eForm MGT-14 with the Registrar, together with the required payments.

DIVIDEND:

Meaning

"Dividend" is the profit portion a company distributes to its shareholders, usually as cash or bonus shares, based on their shareholdings.

Dividends are a percentage of a company's earnings paid to its shareholders as their share of the profits. Dividends are generally paid quarterly, with the amount decided by the board of directors based on the company's most recent earnings. Dividends may be paid in cash or additional shares.

Definition of Dividend:

The term 'dividend' has been defined under Section 2(35) of the Companies Act, 2013. The term "Dividend" includes any interim dividend. It is an inclusive and not an exhaustive definition.

According to the generally accepted definition, "dividend" means the profit of a company, which is not retained in the business and is distributed among the shareholders in proportion to the amount paid-up on the shares held by them.

Importance and Impact of Dividend:

1. Investor Confidence:

Dividends signal financial health and profitability, attracting investors seeking regular income and long-term investment stability.

2. Capital Allocation:

Companies use dividends to distribute profits to shareholders while retaining funds for business expansion, research, and development, or debt reduction.

3. Corporate Governance:

Dividend policies reflect the board's commitment to transparent governance, shareholder value creation, and prudent financial management.

Companies Act Section 2(35) Dividend

1. Distribution:

Dividends are distributed to shareholders as a reward for their investment in the company and to provide them with a share of the profits earned by the company.

2. Types of Dividends:

Cash Dividend: Paid in cash to shareholders based on the number of shares held.

Stock Dividend (Bonus Shares): Additional shares distributed to shareholders at no cost, usually in proportion to their existing shareholdings.

Interim Dividend: Declared and paid during the financial year before the approval of annual financial statements.

Final Dividend: Declared at the annual general meeting (AGM) after the approval of annual financial statements.

3. Declaration and Payment:

Dividends are declared by the board of directors based on the company's financial performance, profitability, and available distributable reserves.

Shareholders approve the declaration of dividends at general meetings, either as interim or final dividends, depending on the timing and financial position of the company.

4. Legal and Regulatory Framework:

The declaration and payment of dividends must comply with the provisions of the Companies Act, 2013, including rules related to the utilization of profits, reserves, and compliance with regulatory requirements.

Dividends cannot be paid out of capital or other restricted reserves unless permitted by law, and the board must ensure sufficient profits or reserves exist to cover the dividend payments.

5. Rights of Shareholders:

Shareholders have the right to receive dividends in proportion to their shareholdings, as approved by the company's board and shareholders.

Non-payment or improper declaration of dividends may lead to legal actions by shareholders to enforce their rights under company law.

DEBENTURES UNDER COMPANIES ACT, 2013

A debenture is a kind of document acknowledging the money borrowed containing the terms and conditions of the loan, payment of interest, redemption of the loan, the security offered (if any) by the company. The present article briefs the Debentures under Companies Act, 2013 and its features and types.

Debentures under Companies Act, 2013

As per Section 2(30) of Companies Act, 2013 "debenture" includes debenture stock, bonds, or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not; (a) the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and (b) such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company, shall not be treated as debenture;] From the above definition, we conclude that debentures are a type of bond or loan which a company takes against security or in any other form From the above definition, we conclude that Debentures under the Companies Act, 2013 are a type of bond or loan which a company takes against security or in any other form A person holding debenture or debentures is called a debenture holder. A debenture holder is the creditor of the company. A debenture is a document issued under the seal of the company. It is an acknowledgment of the loan received by the company equal to the nominal value of the debenture. It bears the date of redemption and rate and mode of payment of interest.

Issue of Debentures

A Debenture is a unit of the loan amount. When a company intends to raise the loan amount from the public it issues debentures. Issuing debentures means the issue of a certificate by the company under its seal which is an acknowledgment of debt taken by the company. The procedure of issue of debentures by a company is similar to that of the issue of shares. A Prospectus is issued, applications are invited, and letters of allotment are issued. On rejection of applications, application money is refunded. In the case of partial allotment, excess application money may be adjusted towards subsequent calls. For more details on the Issue of Debentures by a Company.

Features of debentures

A debenture is a debt tool used by a company that supports long-term loans. Here, the fund is a borrowed capital, which makes the holder of debenture a creditor of the business. The debentures are redeemable and unredeemable, freely transferable with a fixed interest rate. It is unsecured and sustained only by the issuer's credibility.

A debenture is a loan document that acknowledges a debt

The debentures are the part of the borrowed fund capital

It is in the form of a certificate issued under the seal of the company called a debenture deed

The interest is payable irrespective of the profit level, which means that even when the company is at loss, it has to pay the interest

Debentures can be secured against the assets of the company or maybe unsecured.

Debentures are generally freely transferable by the debenture holder.

Debenture holder does not have the right to vote in the company's general meetings of shareholders, but they may have separate meetings to vote.

The debenture holders are eligible to get a fixed rate of interest.

In the event of liquefying the company, the debenture holder get preference in terms of repaying the borrowed amount

DIFFERENT TYPES OF DEBENTURES

Unlike shareholders, the debenture holders who are the creditor of the company do not hold any voting rights. The debentures are of the following types:

Types of Debentures based on Security

Secured Debentures

Secured debentures are the kind of debentures where a charge is being established on the properties or assets of the enterprise for any payment. The charge might be either floating or fixed. The fixed charge is established against those assets which come under the enterprise's possession for the purpose to use in activities not meant for sale whereas floating charge comprises all assets excluding those accredited to the secured creditors. A fixed charge is established on a particular asset whereas a floating charge is on the general assets of the enterprise.

Unsecured Debentures

This type of debentures does not have a particular charge on the assets of the enterprise. However, a floating charge may be established on these debentures by default. Usually, these types of debentures are not circulated.

Types of Debentures based on Tenure

Redeemable Debentures

These debentures are those debentures that are due on the cessation of the time frame either in a lump-sum or in installments during the lifetime of the enterprise. Debentures can be reclaimed either at a premium or at part.

Irredeemable Debentures

These debentures are also called Perpetual Debentures as the company doesn't give any attempt for the repayment of money acquired or borrowed by circulating such debentures. These debentures are repayable on the closing up of an enterprise or the expiry (cessation) of a long period.

Types of Debentures based Convertibility

Convertible Debentures

Debentures that are changeable to equity shares or in any other security either at the choice of the enterprise or the debenture holders are called convertible debentures. These debentures are either entirely convertible or partly changeable.

Non-Convertible Debentures

The debentures which can't be changed into shares or in other securities are called Non-Convertible Debentures. Most debentures circulated by enterprises fall in this class.

Types of Debentures based Coupon Rate

Specific Coupon Rate Debentures

Specific Coupon Rate Debentures Debentures are circulated with a mentioned rate of interest, and it is known as the coupon rate.

Zero-Coupon Rate Debentures

These debentures don't normally carry a particular rate of interest. To restore the investors, such types of debentures are circulated at a considerable discount and the difference between the nominal value and the circulated price is treated as the amount of interest associated with the duration of the debentures.

Types of Debentures based Registration:

Registered Debentures

These debentures are such debentures within which all details comprising addresses, names, and particulars of holding of the debenture holders are filed in a register kept by the enterprise. Such debentures can be moved only by performing a normal transfer deed.

Bearer Debentures

These debentures are debentures that can be transferred by way of delivery and the company does not keep any record of the debenture holders Interest on debentures is paid to a person who produces the interest coupon attached to such debentures.

Nature of Debentures

Debentures for cash

As defined above, debentures are usually issued for raising funds for the company. They are mainly issued for cash. The Debentures can be issued either at par, at discount, or at a premium

Debentures as collateral security

Collateral security is additional security along with the primary security when a company obtains a loan or overdrafts facility from a bank or any other financial institution. Debentures issued as such a collateral liability are a contingent liability for the company, Only when the company defaults on such a loan plus interest will this liability arise.

Debentures issued as consideration other than cash

This is another type of issue of debentures. Sometimes a company requires some assets or types of machinery, plants, equipment that are huge in cost. The company need not have money at that particular time for the payment So, instead of making payment in cash, the Company issues debentures to the vendor against such purchase with the terms of payment of the consideration other than cash.

Unit - III

MEETING:

In the world of corporate governance, company meetings play a pivotal role in decision-making and ensuring the smooth operation of a business. These gatherings bring together the key stakeholders of a company, such as directors and members, to discuss important matters and make crucial decisions. In this article, we will delve into the various types of company meetings, the requirements for a valid meeting, and the key considerations that need to be taken into account.

GENERAL MEETING IN A LIMITED COMPANY:

Any formal meeting of limited company members (the shareholders or guarantors) is called a general meeting. The conduct of these meetings is governed by the Companies Act 2006, the articles of association, and any shareholders agreement that has been drawn up.

Directors usually call a general meeting when there is a need for members to discuss and make formal decisions on the following types of matters:

The appointment of directors or removal of directors

Changing the directors' powers

Altering the articles of association

Altering the shareholders' agreement

The appointment and removal of auditors

Reviewing annual accounts

Approving significant financial transactions

Changing the name or structure of the company

Altering the company's objects (its purpose and aims)

Approving the issue or transfer of shares where the directors are not authorised to do so

Altering the company's share capital

Approving the creation of new share classes

Aissolving the company

Members themselves also have the power to request a general meeting if they represent at least 5% of the company's paid-up share capital or voting rights.

Private limited companies are no longer required by law to hold general meetings unless explicitly required under the company's articles. However, best practice dictates that, at the very least, an Annual General Meeting of the members should be held.

TYPES OF COMPANY MEETINGS

1. Board Meetings

Board meetings, also known as meetings of the directors, are gatherings specifically for the directors of a company. These meetings focus on addressing issues related to the management and organization of the company. Typically, only directors are invited to board meetings, unless a member's presence is required due to their expertise or specific involvement in the matter at hand. Board meetings can be scheduled at any time and in any location, as long as proper notification is provided to the participants.

2. General Meetings

General meetings are convened to discuss matters that affect the members and the overall management of the company. These meetings are also referred to as meetings of the members and are further categorized into different types:

a. Statutory Meetings

Statutory meetings are specific to public companies and must be held within six months of incorporation. The purpose of these meetings is to discuss matters arising from the company's statutory report and any issues related to the company's formation and commencement of business. The directors are responsible for sending the statutory report to every member at least 21 days before the meeting and delivering a copy to the Corporate Affairs Commission for registration.

b. Annual General Meetings (AGMs)

AGMs are held once every year and are mandatory for all companies. The first AGM should take place within 18 months from the date of incorporation. During AGMs, various important matters are addressed, including the declaration of dividends, presentation of financial statements and reports, election of directors, appointment and remuneration of auditors, and disclosure of manager's remuneration.

c. Extraordinary General Meetings (EGMs)

EGMs are called whenever there is a need to address urgent matters that cannot wait until the next AGM. These meetings can be convened by the board of directors or by any member or member holding at least one-tenth of the company's paid-up capital or voting rights.

RESOLUTIONS:

A resolution is a legally binding agreement or decision made by company members or directors. The outcome of a resolution is determined by the votes cast for and against the decision. If the required majority is reached, the resolution is 'passed'. If the necessary majority is not reached, the proposed resolution fails.

A company resolution is a legally binding decision made by directors or shareholders. If a majority vote is achieved in favour of any proposed resolution, the resolution is 'passed' and legally binding. Shareholders can pass ordinary resolutions or special resolutions at general meetings. Alternatively, certain resolutions can be passed in writing, without the need to call and attend a general meeting.

TYPES OF RESOLUTIONS:

All types of collective decisions of directors are simply referred to as 'resolutions' or 'board resolutions'. These decisions can be made at board meetings or in writing.

Ordinary resolutions

Ordinary resolutions are used for all types of shareholder decisions other than those requiring a special resolution under the Companies Act 2006, the articles of association, or a shareholders' agreement.

The types of routine decisions made by ordinary resolution include:

Appointing and removing directors

Appointing and removing company secretaries

Directors' employment contracts

Amending the directors' powers set out in the articles and shareholders' agreement

Approving annual accounts

Authorising the transfer of shares

Approving shareholder dividends and directors' loans

To pass an ordinary resolution, a simple majority (above 50%) of eligible shareholders' votes must be cast in favour of the motion. Members cast their votes on a show of hands or a poll at a general meeting or by written resolution if a meeting is not required.

Special resolutions

A special resolution is a motion or proposal that requires the approval of at least 75% of eligible shareholders' votes. This kind of resolution is reserved for the most important and exceptional decisions that cannot be passed by an ordinary resolution, such as:

Changing a company name

Reducing issued share capital

Issuing more shares

Creating different share classes

Altering the articles of association

Adding, removing, or altering pre-emption rights of shareholders

Re-registering a company

Changing a private company to a public company, or vice versa

Winding up a company by members' voluntary liquidation

Members cast their votes on special resolutions at general meetings, either on a show of hands or a poll. Alternatively, they may be passed by written resolution, unless restricted under the company's articles or shareholders' agreement.

Special resolutions must be delivered to Companies House by post within 15 days of being passed. A copy must also be given to all shareholders and the company auditor. Furthermore, the company must keep a copy of all resolutions at its registered office address or SAIL address for a minimum period of 10 years.

Written resolutions:

Written resolutions are used when shareholders wish to make decisions without the need to call and attend a general meeting. They offer a practical solution where shareholders are unable to convene in person, for example, if they live in different places. Any written ordinary resolution must be passed by a simple majority of shareholders' votes. Written special resolutions require a 75% majority vote. Shareholders cast their votes either by signing the written resolution (if it is distributed on paper) or indicating their decision electronically (if it is distributed by email or on a website).

Board resolutions:

Board resolutions are formal decisions taken by the directors, either at board meetings or in writing. The types of decisions that company directors can make depend entirely on the powers they are granted by the shareholders. Their rights and powers are outlined in the articles of association and shareholders' agreement.

Typically, a simple majority vote of the directors is all that is required to pass a board resolution. However, some companies amend their articles to include provisions specifying that a higher majority or unanimous agreement is required for some or all board resolutions.

REQUIREMENTS FOR A VALID MEETING:

1. Notice of Meeting

Proper notification of the meeting should be given to all individuals entitled to attend. The length of the notice and its content are crucial aspects of meeting notifications:

Length of Notice: The law generally requires a notice period of 21 days for general meetings. However, shorter notice may be given if all members agree to it for general meetings, or if members with at least 95% of the total voting rights consent to the shorter notice for statutory and extraordinary general meetings. A waiver letter may be used to secure the consent of members for shorter notice.

Content of Notice: The notice should include the date, place, and time of the meeting, as well as the agenda. For general meetings, the notice should also state that members have the right to appoint proxies to attend and vote on their behalf. Proxy forms may be used for this purpose.

2. Place of Meeting

Statutory and annual general meetings must be held in the country where the company is registered. These meetings can take place in any part of the country, not necessarily at the company's business address. However, private companies may hold their general meetings virtually, as permitted by the new Companies and Allied Matters Act, of 2020.

3. Quorum

A quorum refers to the minimum number of persons required to be present at a meeting to conduct business and make valid decisions. The quorum is determined by the company's Articles of Association or its rules. For example, if a company's Articles state that the quorum for a board meeting is three directors, at least three directors must be present for the meeting to be valid. The quorum is the minimum number of members required to be present at a meeting for it to be valid. The quorum varies based on the number of members in the company:

For companies with less than 1000 members, a minimum of 5 members should be present.

For companies with more than 1000 members, at least 15 members should be present.

For companies with more than 5000 members, a minimum of 30 members must be present.

It is essential to note that the presence of the chairman is crucial for the proper functioning of the meeting. The chairman, elected by the members personally present at the meeting, regulates and supervises the conduct of the meeting. The chairman should be present within fifteen minutes after the scheduled time for the meeting.

4. Decision-Making Process

The process of decision-making at meetings is crucial for the validity of resolutions passed. The company's Articles or rules determine how decisions are made. For example, if a company's Articles state that decisions at a board meeting may be made by a majority vote, a resolution can only be passed if a majority (51%) of the directors present at the meeting vote in favour. Failure to adhere to the decision-making process as outlined in the Articles or rules can invalidate any resolutions passed at the meeting.

5. Minutes of Meeting

Minutes serve as a record of the proceedings and discussions that take place during a meeting. They include important details such as the agenda, decisions made, tasks or actions to be taken, and must be signed by the chairman and secretary of the company. Keeping accurate minutes is essential for proving that a meeting was duly convened. Companies are required to maintain a minute's book to record the proceedings and decisions of board meetings, board committee meetings, and general meetings.

VOTING:

Under the Companies Act, 2013, voting rights are primarily governed by Section 47, which outlines the voting rights of equity and preference shareholders. Equity shareholders generally have the right to vote on all resolutions, while preference shareholders have voting rights limited to resolutions directly affecting their preference shares or related to company winding up, repayment, or reduction of share capital. The Act also allows for differential voting rights, with the condition that such shares do not exceed 74% of the total paid-up share capital.

Section 47:

Equity Shareholders: Every member holding equity share capital has the right to vote on every resolution.

Voting Rights Proportional to Shareholding: The voting right on a poll is proportional to their share in the paid-up equity share capital.

Preference Shareholders:

Have voting rights limited to specific resolutions directly affecting their preference shares or related to company winding up, repayment, or reduction of share capital.

Differential Voting Rights:

Amendment: An amendment allows companies to issue equity shares with differential voting rights, according to Clear Tax.

Limit: The total paid-up equity share capital with differential voting rights cannot exceed 74% of the total paid-up share capital.

Demand for Poll:

Section 109: Allows for a poll to be taken on any resolution, before or after the declaration of the result of the show of hands, says Companies Act Integrated Ready Reckoner.

Chairman's Role: The Chairman can appoint people to scrutinize the poll process and votes.

Electronic Voting:

Section 108: Provides for electronic voting through electronic means.

Scrutinizer: The scrutinizer maintains a register to record assent or dissent, and the results are placed on the company's website within two days.

Voting by Proxy:

Section 105: Allows members to appoint a proxy to vote on their behalf.

Restrictions: There are restrictions on the appointment of proxies, including the need for the proxy instrument to be in a prescribed form and signed by the appointer.

Show of Hands:

Section 62: A declaration by the Chairman of the meeting of the passing of a resolution by show of hands is conclusive evidence of the passing of such resolution.

In essence, the Companies Act, 2013, establishes a framework for ensuring shareholder democracy by granting voting rights to shareholders, including the right to demand a poll and the right to vote by proxy. It also provides for differential voting rights within certain limits and allows for electronic voting to facilitate the voting process.

POLL:

Section 109(5) in The Companies Act, 2013

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.

Companies Act, Section 109: Demand for Poll

Section 109 of the Companies Act addresses the demand for a poll during general meetings of a company. A poll is a formal vote conducted on a particular resolution that may be taken instead of a vote by show of hands. The provision establishes the conditions under which a poll can be demanded, the procedures for taking a poll, and the responsibilities of the Chairman in overseeing the poll process. This ensures that shareholders can express their votes in a more detailed and transparent manner, especially when a show of hands might not sufficiently reflect the opinions of all members.

Detailed Breakdown of Section 109

1. Conditions for Demanding a Poll:

Under Section 109, a poll can be demanded before or on the declaration of the result of voting on any resolution that is put to a vote by show of hands during a general meeting. This ensures that members who are dissatisfied with the outcome of the show of hands can request a more formal voting procedure to ensure their voices are heard.

The Chairman of the meeting has the authority to order a poll on his own motion. In other words, the Chairman can initiate the poll even if no demand has been made by the members if he believes it is necessary.

A poll must be ordered if it is demanded by members under certain conditions, which vary depending on whether the company has a share capital or not:

For a company with share capital: A poll can be demanded by members who are present either in person or by proxy (if allowed), provided they hold at least one-tenth of the total voting power of the company. Alternatively, a poll may be demanded if these members hold shares that have an aggregate sum of not less than five lakh rupees (or such higher amount as may be prescribed).

For a company without share capital: A poll can be demanded by any member or members who are present in person or by proxy, provided they hold at least one-tenth of the total voting power of the company.

2. Withdrawal of Poll Demand:

Once a demand for a poll has been made, the demand can be withdrawn at any time by the persons who initially made the demand. This provides flexibility in the decision-making process, as the members who demanded the poll can opt to revert to voting by show of hands or other methods if they wish.

3. Immediate Poll on Certain Matters:

A poll that is demanded on the adjournment of the meeting or on the appointment of the Chairman of the meeting must be taken immediately. This ensures that decisions critical to the continuation of the meeting or the proper conduct of the meeting are resolved without delay.

4. Timeframe for Taking a Poll on Other Matters:

For any other matter that requires a poll, the Chairman must ensure that the poll is taken within 48 hours from the time the demand for the poll was made, unless the Chairman specifies a different time. This provision ensures that the voting process remains timely and that members' rights to participate in the decision-making process are not unduly delayed.

5. Scrutiny of the Poll Process:

When a poll is conducted, the Chairman is responsible for appointing sufficient personnel to scrutinize the poll process and the votes given. These individuals will report back to the Chairman on the results of the poll. The Chairman has the discretion to appoint as many persons as deemed necessary to ensure the poll is conducted properly and fairly, and that the integrity of the voting process is maintained.

6. Regulation of the Poll Process:

Subject to the provisions of this section, the Chairman has the power to regulate the manner in which the poll is taken. This includes the procedures for collecting votes, the manner in which votes are cast and counted, and any other aspects necessary to ensure that the poll is carried out efficiently and transparently.

7. Result of the Poll:

Once the poll is taken, the result is considered the final decision on the resolution on which the poll was demanded. The outcome of the poll, as reported by the appointed scrutineers, will be treated as the resolution passed or not passed, depending on the majority vote.

QUORUM:

The Companies Act, 2013 (hereinafter referred to as the Act) requires that a company established under the Act has to hold General meetings as well as Board meetings periodically. To ensure that the companies follow this regulation and that such meetings are held properly, it requires a quorum to be met for it to be deemed as a valid meeting.

A 'Quorum' in simple words means the minimum number of members that have to be present in a meeting. Under the Act, the quorum for a General Meeting, a Board Meeting and an Extraordinary General Meeting is enumerated within its provisions.

Quorum Required for a General Meeting:

Section 103 of the Act states the quorum required for a General Meeting. Under this Section, unless the Articles of Association of the company provide for a larger quorum, the minimum quorum must be:

For public companies:

5 members to be present if as on the date of the meeting being held, the number of members in the company does not exceed one thousand.

15 members to be present if as on the date of the meeting there are more that one thousand members but less than five thousand members.

30 members to be present if as on the date of the meeting there are more than five thousand members.

For private companies:

In the case of a private company regardless of the number of members, two members must be present for the quorum to be met for a meeting.

Non-Fulfilment of Quorum Requirement:

Sub-clause (2) and (3) of Section 103 of the Act provides for when the quorum has not been met. If the quorum is not present within half an hour of the time set for the meeting to begin, then the following options will be applicable:

The meeting will be adjourned, and it shall be held on the same day and at the same time next week, or any other date and time as the Board may determine. If the meeting is adjourned then the date, time and place of the meeting will be notified personally or via advertisement. The advertisement must be published in both English as well as the vernacular language in a newspaper which is in circulation at a place where the registered office of the company is situated.

The meeting, if called by requisitionists under Section 100, shall stand cancelled.

Under sub-clause (3), if the quorum is not present at the adjourned meeting, then the members present shall be the quorum.

Quorum Required for a Board Meeting:

A board meeting is a meeting that is held between the directors of a company. Such meetings are held usually to take important decisions about the company. To make sure that such decisions are not taken arbitrarily, the Act requires a quorum for the meeting and the decisions taken in the meeting to be valid. Section 174 of the Act provides the quorum for a board meeting.

Section 174 (1) of the Act

The quorum for a board meeting must be 1/3rd of the total number of directors or 2 directors whichever is the higher number. Therefore in case, there are only three directors in a company, then at least two must be present even though 1/3rd would entail that only one director needs to be present. If the directors are not physically present but take part in the meeting via any audio/visual means, they too shall be considered part of the quorum.

Section 174(2) of the Act

In the case where the quorum for a board meeting is not present, the directors may only take two courses of action:

They may act for the purpose of increasing the number of directors to that fixed for the quorum or,

They may act to summon a general meeting.

Section 174(3) of the Act

Where the number of interested directors, i.e. directors who have invested in the company, exceeds or is equal to 2/3rd of the board of directors, the number of not interested directors present at the meeting has to be at least 2 for the quorum.

Section 174(4) of the Act

In the case where the board meeting could not take place due to the lack of the quorum, the board meeting shall be adjourned. This is subject to the Articles of Association of the company. Therefore as long as the articles of the company states otherwise the meeting will be adjourned.

The meeting will be adjourned to the same time and place as the original meeting on the same day the following week. In the case where the adjourned date is a national holiday, then the board meeting will be held at the same place and time on the following day.

It is important to note the following points when calculating the quorum:

In the case where when calculating 1/3rd or 2/3rd of the strength of the board of directors, if the final number is in fractions, then it shall be rounded off to one.

When calculating the strength of the board of directors, one should not take into account directors whose place is vacant.

PROXY:

Under the Companies Act, 2013, a proxy is a person authorized by a member of a company to attend and vote on their behalf at a meeting. Section 105 outlines the key provisions related to proxies.

Appointment:

A member can appoint a proxy to attend and vote on their behalf.

Limitations:

A proxy cannot speak at the meeting unless permitted by the company's articles, and can only vote on a poll (a show of hands vote).

Companies without Share Capital:

This section doesn't apply to companies without share capital unless their articles of association permit it.

Central Government's Authority:

The Central Government can prescribe classes of companies whose members cannot appoint a proxy.

Proxy Representation:

A proxy can represent up to 50 members and a prescribed number of shares, as determined by the company's articles.

Proxy Form:

The proxy form must be deposited with the company at least 48 hours before the meeting, according to the iPleaders Blog.

Offence:

Soliciting the appointment of specific persons as proxy at the company's expense is an offense punishable by a fine.

ORDINARY RESOLUTION:

An ordinary resolution under the Companies Act, 2013, is a resolution passed by a simple majority of shareholders, meaning more than 50% of the votes cast must be in favor. It's typically used for routine or non-controversial matters, such as approving annual financial statements, appointing directors, or declaring dividends.

Simple majority:

It requires a majority of votes cast in favor of the resolution, meaning more than 50% of the votes.

Notice required:

A notice must be given to members before the meeting where the resolution will be considered.

General meetings:

Ordinary resolutions are typically passed at general meetings of the company.

Binding nature:

Once passed, an ordinary resolution is binding on all shareholders, regardless of whether they voted in favour or were present at the meeting.

Examples of matters that can be decided by ordinary resolution:

Appointment of directors, Adoption of financial statements, Declaration of dividends, Approval of changes to the company's articles of association, and Remuneration of auditors.

SPECIAL RESOLUTION

A special resolution under the Companies Act, 2013, requires a 75% majority vote of shareholders to pass a resolution. This type of resolution is used for matters that require a higher degree of shareholder approval than an ordinary resolution. For example, a special resolution is needed for changes to the company's memorandum and articles of association or for the sale of a substantial portion of the company's business.

Higher Vote Threshold:

A special resolution requires at least 75% of the votes cast by shareholders to be in favor.

Specific Notice Required:

The notice of the meeting must clearly state that a special resolution will be proposed.

Types of Matters Requiring Special Resolution:

This includes:

Mergers and Acquisitions: Significant changes to the company structure or ownership.

Alterations to the Memorandum and Articles of Association: Changes to the company's constitution.

Share Buybacks: Purchasing the company's own shares.

Selling a Substantial Part of the Business: Disposing of a key asset or business.

Appointment of Directors: Appointing more than 15 directors.

Importance:

Special resolutions ensure that significant company decisions are supported by a strong majority of shareholders.

Example:

A company wanting to change its name would need a special resolution.

DIFFERENCE BETWEEN ORDINARY RESOLUTION AND SPECIAL RESOLUTION:

Ordinary and special resolutions are two types of resolutions that a company can pass to make important decisions. The main difference between the two is the level of support required for them to pass.

A special resolution, on the other hand, requires a higher majority vote, typically 75% or more, of the shareholders present at a meeting or by proxy. It is used for important or significant matters such as changes to the company's articles of association, the removal of a director, or the sale of a significant portion of the company's assets.

In summary, ordinary resolutions are used for routine matters and require a simple majority vote while special resolutions are used for important matters and require a higher majority vote.

DIFFERENCE BETWEEN ORDINARY RESOLUTION AND SPECIAL RESOLUTION:

Ordinary Resolution	Special Resolution
Passed by a simple majority of votes	Passed by a higher percentage of votes, typically 75-90%
Used for routine matters such as approving annual budgets or electing board members	Used for significant matters such as amending the company's articles of incorporation or approving a merger
Can be passed by a show of hands or by a vote by proxy	Typically requires a vote in person or by proxy
Does not require a special meeting or advanced notice	Requires a special meeting and advanced notice to shareholders

Can be passed informally, without a formal vote	Requires a formal vote, often with a secret ballot
Does not require a special quorum	Requires a special quorum, such as a majority of shareholders present in person or by proxy
Can be passed by the board of directors or shareholders	Typically passed by the shareholders
Does not require additional legal or regulatory approvals	May require additional legal or regulatory approvals
Can be passed without any specific process	Requires a specific process, such as a vote by mail or electronic voting
Does not change the company's articles of incorporation	Changes the company's articles of incorporation

AUDIT:

A company audit means the inspection of its books of account to ensure that they are correct. The company must appoint an auditor to conduct the audit. The objective of an audit of the company's financial statements is to allow the auditor to express his/her opinion.

The auditor will have to check various books of accounts, vouchers and bills to check if they are accurate and properly maintained. The audit of a private limited company is an annual compliance requirement under the Act and Company Law Rules.

A company audit is a systematic examination of a company's financial records and operations to ensure accuracy, compliance, and integrity. It involves verifying financial statements, internal controls, and other relevant documents to provide an independent opinion on the company's financial health and performance. The goal is to ensure transparency and build investor confidence.

Types of Audit:

There are different types of audits of a private limited company carried out for various purposes. A few important types of audit of a private company are as follows:

Statutory Audit

The statutory audit is a mandatory audit that every private limited company must conduct irrespective of its profit or turnover. A company incurring loss must also conduct a statutory audit. Every private limited company must compulsorily get their annual accounts audited each financial year as per the Act and the Companies (Accounts) Rules, 2014.

The objective of the statutory audit is to determine if a company is providing an accurate representation of its financial situation after examining the information in the books of account, bank balance and financial statements.

Internal Audit

The internal audit of the private limited company is conducted as per the suggestion of its internal management. The Act and the Companies (Accounts) Rules, 2014, provides that the prescribed companies must appoint an internal auditor to conduct an audit of their activities and functions. The prescribed private limited companies that need to conduct internal audits are:

Private companies having a turnover of Rs.200 crore or more during the previous financial year

Private companies having outstanding borrowings or loans from Public Financial Institutions or banks exceeding Rs.100 crore or more

Internal audits are done to check the status of the company's finances and analyse its operational efficiency. They help the internal management review the finances and make the required changes to increase efficiency in its operations.

Cost Audit

The Companies (Cost Records and Audit) Rules, 2014 prescribes that the following private limited companies must perform cost audit:

Private limited companies engaged in the production of goods or providing services listed in table 3(A) of the Companies (Cost Records and Audit) Rules and having:

An annual turnover in the previous financial year of Rs.50 crore or more from all its services or products

An aggregate turnover of the individual service or product of Rs.25 crore or more

Private limited companies engaged in the production of goods or providing services listed in table 3(B) of the Companies (Cost Records and Audit) Rules and having:

An annual turnover in the previous financial year of Rs.100 crore or more from all its services or products

An aggregate turnover of the individual service or product of Rs.35 crore or more

TYPES OF AUDITOR:

Statutory Auditor

Every private limited company must appoint its first auditor to conduct the statutory audit of the company within 30 days from its registration date. At the company's first Annual General Meeting (AGM), the shareholders will confirm the appointment of the first auditor who will hold the office of auditor for a term of five years. The company can appoint only an independent practicing Chartered Accountant (CA), CA firm or LLP with the majority of partners practising in India as its auditor.

Internal Auditor

The company's internal audit can be performed by the company's internal staff or an independent party. The internal auditor must either be a CA, cost accountant, or such other professional as the board decides. The internal auditor can even be the company employee.

Cost Auditor

The private limited companies that must conduct the cost audit as per the Companies (Cost Records and Audit) Rules, 2014 must appoint a cost auditor within 180 days of the commencement of the financial year. The company can appoint only a person who is a cost accountant in practice to conduct the cost audit. A cost accountant in practice means a person who fits the definition provided in Section 2(1)(b) of the Cost and Works Accountants Act, 1959 and includes a firm or LLP of cost accountants.

External auditors:

External auditors usually work in conjunction with government agencies. They are tasked with providing an objective, public opinion concerning the organization's financial statements and whether they fairly and accurately represent the organization's financial position.

Government auditors:

Government auditors maintain and examine records of government agencies and of private businesses or individuals performing activities subject to government regulations or taxation. Auditors employed through the government ensure revenues are received and spent according to laws and regulations. They detect embezzlement and fraud, analyze agency accounting controls, and evaluate risk management.

Forensic auditors:

Forensic auditors specialize in crime and are used by law enforcement organizations.

BENEFITS:

Company audits provide several benefits, including:

Improved financial reporting: They ensure that companies provide accurate and reliable financial information to stakeholders.

Increased investor confidence: Audited financial statements build trust and confidence among investors, lenders, and other stakeholders.

Enhanced operational efficiency: Internal audits can identify areas for improvement in internal controls and processes.

Reduced risk of fraud and errors: Audits help to detect and prevent fraud and errors in financial reporting.

QUALIFICATIONS OF AN AUDITOR [SECTION 141(1) & (2)]

Section 141(1)

A person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant within the meaning of the Chartered Accountants Act, 1949. [CA means a Chartered Accountant who holds valid Certificate of PRACTICE – Section 2(17)]

A firm whereof majority of partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company.

In case of a partnership firm – Company appoints the "Firm" not the partner in individual capacity.

Section 141 (2)

Where a firm including a limited liability partnership (LLP) is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorized to act and sign on behalf of the firm. [Section 141(2)]

Company auditor Qualification and Disqualification

The qualification and disqualification of a company auditor are regulated by the companies act, of 2013. These provisions are pertinent to all kinds of appointments.

Qualification

Chartered Accountant

According to section 141, (1) of the companies act, 2013 an individual that holds a practising certificate of a certified chartered accountant from the Indian Institute of Chartered Accountants (ICAI) is qualified as a company auditor.

CA firm where all partners are practising in India qualifies for being the company's auditors. The company auditor, however, can be any partner of the firm acting on behalf of the firm.

Confined State Auditor

The holder of the certificate authorised by law is in possession of the legal authority to act as a company auditor in India.

Firms as Auditors:

A firm can be appointed, but only qualified CA partners can act and sign on behalf of the firm.

Disqualification

The following individuals are ineligible to work as auditors for the company:

Working employees or officers of the company

Individuals holding securities of the company

A corporate body has limited liability.

A person barred from serving as a company auditor by any subsidiary company.

Officers who work for the company's partners.

If one of the partners in a partnership firm is ineligible for any of the aforementioned reasons, the firm will also be ineligible to serve as the company auditor.

Having certain business relationships with the company.

Being engaged in certain prohibited services as per Section 144.

APPOINTMENT OF AUDITOR:

1. Within 30 Days:

Every company must appoint its first auditor or an auditing firm within 30 days of registration of the company during the annual general meeting or within 90 days, in an Emergency General Body Meeting by the Board of Directors. The first auditor (or the auditing firm) appointed will hold office from the conclusion of the meeting (in which the appointment of auditor has been made) to the time when the sixth annual general meeting is held (five years). Therein, the auditor appointments are reviewed every sixth year.

2. Written Consent:

A written consent from the auditor, with sufficient proof to suggest that the person (or firm) qualifies the criteria provided in Section 141 of the Act, needs to be submitted before an appointment.

3. Appointment Notice:

The company should issue an appointment notice to the auditor, and a Form, ADT- 1 is required to be submitted with the registrar within 15 days of the meeting in which the auditor is appointed.

4. Section 139:

The companies listed in Section 139 (belonging to the class or classes of companies as mentioned in the section) and Rule 5 of the companies (audit and auditor) rules, 2014, will not:

1. Appoint an individual as auditor for more than one consecutive five-year tenure;

2. Appoint an auditing firm for more than two terms of five consecutive years Provided, the auditor who has finished his term will not be eligible for reappointment in the same company or the auditing firm who has completed a two-year tenure is not eligible for appointment in the same company for five years.

A three-year transition period is given to comply with this requirement. Although, according to the rules, the five years is calculated with the retrospective effect.

Sections 139 to 148 of the Companies Act, 2013 give a complete and detailed summary of the role of an auditor as well as the other requirements, such as their appointments or removal from the company payroll.

Reappointment of an Auditor:

Reappointment of auditors/renewal of auditors. An auditor or an auditing firm will be re-appointed at the AGM, unless:

1. The auditor has shown his unwillingness to continue

2. An auditor appointment resolution has been passed at the general meeting to appoint a new auditor or an auditing firm

3. If at the AGM, no auditor is appointed or reappointed, the existing auditor shall continue in the firm.

4. In case of death of the auditor (if it is an individual), the casual vacancy shall be filled within 30 days by the board. He will hold office till the next AGM.

5. In case of resignation of the auditor, the casual vacancy is again filled by the BOD within 30 days, and same approved at the meeting held within 3 months of the appointment.

6. The auditor who has resigned from the company needs to file a Form – ADT 3 stating the resignation and the reasons for the same. If not, the auditor will be deemed responsible for the same.

Appointment of an Auditor for Different Kinds of Companies

Particulars	Non-Government Company	Listed/Specified Company	Government Company
Application for 1st Auditor post Incorporation	Appointed by the Board Of Directors. This has to be done within 30 days from the date of Registration. Appointment can also be done by Members at Extraordinary General Meeting within 90 days of information.	Appointed by Board Of Directors. This has to be done within 30 days from the date of Registration. Appointment can also be done by Members at Extraordinary General Meeting within 90 days of the information.	Appointed by the Comptroller and Auditor General of India. This has to be done within 60 days from the date of Registration. Appointment can also be done by Board Of Directors within 30 days of incorporation. Members can also appoint at an Extraordinary General Meeting within 60 days of

			Information.
Auditor at First AGM with the written consent and a certificate of Auditor.	The appointment is done by the members He will hold office till the end of the 6th Annual General Meeting (AGM). The appointment shall be in accordance with the conditions laid down by the auditor.	The appointment is done by the members for a maximum term of 5/10 consecutive years. Cooling off period of 5 years before next appointment will be there.	The appointment is done by the Comptroller and Auditor General of India. He should be appointed within 180 days from the 1st of April.
Appointment of Subsequent Auditor	The appointment is done by the members and he will hold office till the conclusion of the 6th meeting.	The appointment is done by the members for a Maximum term of 5/10 consecutive years.	The appointment is done by the Comptroller and Auditor General of India within 180 days from the 1st of April.
Casual Vacancy due to resignation and other reasons	The appointment is by the members within 3 months of the recommendations of Board and he will hold office till the next AGM.	The appointment is by the members within 3 months of the recommendations of Board and he will hold office till the next AGM.	The appointment is done by the Comptroller and Auditor General within 30 days.

REMOVAL OF AUDITORS:

1. The Companies Act, 2013 lays the provision for the removal or change of auditor before the completion of his tenure. This happens in those cases where the organization is not satisfied with the services of the auditor. The procedure of the removal of the auditor has been given in the subsection (1) of Section 140 of the Act.

2. Before being removed by the firm, the auditor is given a fair and reasonable chance of laying down reasons for his inappropriate conduct.

3. If the auditor is being removed before the completion of his term, an approval from the central government is necessary before passing a special resolution by the company.

4. The application to the Central Government has to be done in the form ADT-2 as prescribed in Rule 7 of the Companies (Audit & Auditors) Rules, 2014. A prescribed fee provided under Section 12 of the Companies (Registration Offices and Fee) Rules, 2014 needs to be submitted along with this form.

5. The application has to be made within thirty days of the resolution passed by the board.

6. The company can hold a general meeting within sixty days of receipt of the approval of the Central Government for passing the auditor appointment resolution.

7. The members of a company may remove an auditor from office at any time during their term of office or decide not to re-appoint them for a further term.

8. They must give the company 28 days' notice of their intention to put a resolution to remove the auditor, or to appoint somebody else, to a general meeting. A copy of the notice of the intended resolution must be sent to the auditor, who then has the right to make a written response and require that it be sent to the company's shareholders.

9. If an auditor ceases for any reason to hold office, they must deposit a statement at the company's registered office. The statement should set out any circumstances connected with their ceasing to hold office that they consider should be brought to the attention of the members and creditors of the company.

10. If there are any such circumstances, the company must send a copy of the statement to all the shareholders unless a successful application is made to the court to stop this. If the auditor does not receive notification of an application to the court within 21 days of depositing the statement with the company, they must within a further 7 days send a copy of the statement to Companies House for the public record.

If there are no such circumstances, the auditor must deposit a statement with the company to that effect. This statement need not be circulated to the members.

UNIT - IV

MANAGEMENT & ADMINISTRATION:

Management and administration in a corporate context refer to the structures, processes, and practices that organizations use to operate effectively and efficiently. They encompass a wide range of activities, from strategic planning and decision making to the execution of daily operations and compliance with legal and regulatory requirements. In India, the Companies Act, 2013 provides a framework for the management and administration of companies, ensuring transparency, accountability, and good governance.

MANAGEMENT:

Management refers to the activities and processes involved in planning, organizing, leading, and controlling the resources of an organization to achieve its objectives. Management is typically the responsibility of the Board of Directors and executive management. They make key decisions about the company's direction, investment, and overall strategy. This includes matters like mergers and acquisitions, setting financial goals, and developing strategic plans.

ADMINISTRATION:

Administration refers to the broader process of managing the operations of a company, including compliance with legal requirements and the execution of policies and procedures. Administration encompasses the day-to-day operations of the company, including tasks like:

Regulatory Compliance:

Ensuring that the company adheres to laws, regulations, and industry standards.

Policy Implementation:

Putting into practice the strategies and plans developed by management.

Record Keeping:

Maintaining accurate and up-to-date records of corporate activities, decisions, financial transactions, Keeping track of shareholders, directors, and other relevant information.

Communication:

Facilitating effective communication among various stakeholders, including employees, management, and shareholders.

Enforcing regulations:

Ensuring the company follows the laws and regulations related to its industry and operations.

DIRECTOR:

Definition:

As per Section 2(34) of Companies Act 2013 Director means a director appointed to the Board of a Company.

Responsibility:

The board of directors of a company is primarily responsible for:

- determining the company's strategic objectives and policies;
- monitoring progress towards achieving the objectives and policies;
- appointing senior management;
- Accounting for the company's activities to relevant parties, e.g. shareholders.

Minimum Directors Required in Company:

One Person Company:- One Director.

Private Limited Company:- Two Directors.

Public Limited Company:-

Three Directors. Maximum 15 directors can be appointed in any format of Company (OPC, Public, and Private). Bypassing Special Resolution Company can increase the number of Directors beyond 15. Out of appointed directors one director should be resident in India for more than 182 days in previous calendar year.

LEGAL POSITION:

Directors in a company hold a multifaceted legal position. They act as agents, managing the company's affairs and binding it in contracts. They are also considered trustees of the company's assets and owe fiduciary duties to act in the company's best interests. Additionally, they can be seen as managing partners, responsible for the company's day-to-day operations.

Agent of the company:

Directors act on behalf of the company, entering into contracts and making decisions that bind the company.

Trustee of company assets:

Directors are entrusted with the company's property and funds, and they have a fiduciary duty to manage these assets responsibly.

Managing partner:

Directors are involved in the day-to-day management of the company, making decisions and implementing policies.

Officer of the company:

Directors are considered officers of the company and are responsible for its proper functioning.

Potential personal liability:

While not generally liable for company debts, directors can be held personally liable for actions like negligence, breach of duty, or illegal activities.

Accountability to shareholders:

Directors are accountable to the shareholders for their actions and decisions.

Compliance with company law:

Directors must adhere to the provisions of the Companies Act and other relevant legislation.

BOARD OF DIRECTORS:

A board of directors is a group of individuals elected to represent a company's shareholders and oversee its management and strategic direction. They are responsible for ensuring the organization operates in the best interests of its stakeholders. Their key duties include strategic planning, financial oversight, and monitoring the performance of the company's executives.

Responsibilities:

Strategic Oversight:

The board sets the overall direction and goals of the organization, making decisions about its long-term trajectory.

Financial Governance:

They oversee the company's financial health, including budgeting, financial reporting, and risk management.

Executive Management:

The board hires and evaluates the CEO and other top executives, holding them accountable for the company's performance.

Stakeholder Representation:

They represent the interests of all stakeholders, including shareholders, employees, customers, and the community.

Risk Management:

Boards identify and assess potential risks to the company and develop strategies to mitigate them.

Compliance and Ethics:

They ensure the company complies with all relevant laws and regulations and maintains high ethical standards.

Types of Boards:

Public Company Boards: These boards are responsible to the shareholders and must comply with strict regulations.

Private Company Boards: While not always required, private companies may choose to have a board of directors to help guide the company.

Nonprofit Boards: These boards focus on the organization's mission and fundraising efforts.

APPOINTMENT AND REMOVAL OF BOARD OF DIRECTORS:

The appointment and removal of board of directors is governed by company law and the company's articles of association. Directors can be appointed by shareholders through an ordinary resolution or by the board in certain circumstances, such as filling a casual vacancy or appointing additional directors. Removal can also be initiated by shareholders through a resolution or by the board in cases of misconduct or breach of duty, but the process must adhere to legal procedures and provide the director with an opportunity to be heard.

APPOINTMENT OF DIRECTORS:

Shareholder Appointment:

Shareholders typically appoint directors through an ordinary resolution passed at a general meeting.

Board Appointment:

The board of directors can appoint directors in specific situations, such as filling a casual vacancy or appointing additional directors.

Other Methods:

Some directors, like small shareholder directors, may be appointed through other mechanisms outlined in the Companies Act.

First Directors:

The first directors of a company are usually named in the company's articles of association or appointed by the subscribers to the memorandum.

Independent Directors:

Independent directors are appointed to ensure objectivity and good corporate governance.

REMOVAL OF DIRECTORS:

Shareholder Removal:

Shareholders can remove a director by passing an ordinary resolution at a general meeting.

Board Removal:

The board can remove a director in cases of misconduct, breach of duty, or if they are disqualified under the law.

Disqualification:

Directors can be disqualified under various circumstances outlined in the Companies Act, such as insolvency, conviction of an offense, or involvement in fraudulent activities.

Resignation:

A director can resign by giving notice to the board.

Vacation of Office:

A director's office can be vacated due to disqualification, resignation, or removal.

Filling Vacancies:

Vacancies created by removal, resignation, or vacation of office can be filled by the board or shareholders, depending on the circumstances and the company's articles.

DISQUALIFICATION:

A board member can be disqualified for various reasons under company law, including being declared of unsound mind, being an undercharged insolvent, or being convicted of certain offenses. Disqualification can also arise from failing to pay calls on shares, being convicted of related party transaction offenses, or failing to obtain a Director Identification Number (DIN). Additionally, a company's failure to file financial statements or annual returns for a continuous period of three years can lead to director disqualification.

Mental Incapacity:

If a director is declared of unsound mind by a court, they are disqualified.

Insolvency:

Being an undischarged insolvent or having an insolvency application pending disqualifies a director.

Criminal Convictions:

Conviction for an offense (including those involving moral turpitude) with a sentence of imprisonment for at least six months can lead to disqualification.

Failure to Pay Calls:

Directors who fail to pay calls on shares held by them, and where six months have passed since the last payment date, are disqualified.

Related Party Transaction Offenses:

Conviction for related party transaction offenses within the last five years also results in disqualification.

DIN Requirement:

Failure to obtain a Director Identification Number (DIN) is another ground for disqualification.

Non-Filing of Financial Statements/Annual Returns:

If a company fails to file financial statements or annual returns for three consecutive years, its directors may be disqualified.

Other Company Defaults:

Defaults in repaying deposits or interest, redeeming debentures, or paying declared dividends can also lead to disqualification.

Director Identification Number (DIN):

A Director Identification Number (DIN) is a unique eight-digit number assigned to individuals who are, or intend to be, directors of a company in India. It serves as a lifetime identifier, ensuring transparency and accountability in corporate governance. DINs are issued by the Ministry of Corporate Affairs (MCA) and are specific to the individual, not the company.

Unique Identification:

Each director has a unique DIN that remains the same even if they become a director in multiple companies or switch companies.

Lifetime Validity:

Once allotted, a DIN is valid for the director's lifetime.

Purpose:

DINs are used to track directors' involvement in various companies, preventing fraudulent activities and promoting transparency.

Application:

Individuals can apply for a DIN through the MCA portal by submitting necessary documents like identity proof, address proof, and a photograph.

Usage:

DINs are required to be mentioned under the director's signature when submitting any company-related documents, returns, or information.

Regulatory Compliance:

DINs are essential for compliance with Indian company law and are a part of corporate governance.

DIRECTORSHIP:

Directors of a company hold significant powers and duties, primarily focused on strategic decision-making, financial oversight, and ensuring the company's compliance with laws and regulations. They act as agents of the company, making decisions on its behalf and guiding its overall direction.

Powers of Directors:

Strategic Decision-Making:

Directors approve major business decisions like mergers, acquisitions, and investments, shaping the company's future direction.

Financial Oversight:

They oversee the company's finances, approving budgets, financial statements, and ensuring sound fiscal health.

Operational Control:

While not always involved in day-to-day operations, they set the overall operational framework and ensure policies are followed.

Appointment of Key Personnel:

Directors have the power to appoint and remove key executives like the CEO and CFO.

Issuing Securities:

They can authorize the issuance of shares, debentures, and other securities to raise capital.

Other Powers:

These include declaring dividends, diversifying the business, approving financial statements, and more.

Duties of Directors:

- Directors must act with reasonable care, skill, and diligence in their decision-making.
- They must act honestly and in the best interests of the company and its stakeholders.
- Directors must avoid situations where their personal interests conflict with the company's interests.
- They should not blindly follow instructions but exercise their own judgment in company matters.
- Directors must disclose any potential conflicts of interest related to company transactions.
- Directors cannot make any undue personal gain from their position.
- They must ensure the company complies with all applicable laws and regulations.

BOARD COMMITTEES:

The Companies Act, 2013 mandates the formation of several board committees to enhance corporate governance and ensure compliance. These committees include the Audit Committee, Nomination and Remuneration Committee, Corporate Social Responsibility Committee, and Stakeholders Relationship Committee. Additionally, some companies may also form other committees based on their specific needs, such as Investment Committees or Human Resource Committees.

1. Audit Committee:

This committee, required for listed companies and certain public companies meeting specific financial criteria, oversees financial reporting, monitors the audit process, and reviews related party transactions.

2. Nomination and Remuneration Committee (NRC):

This committee, also mandatory for listed and certain public companies, is responsible for identifying and recommending individuals for appointment to the board and key managerial positions, as well as determining their remuneration.

3. Corporate Social Responsibility (CSR) Committee:

This committee, required for companies with a net worth, turnover, or net profit exceeding certain thresholds, formulates the CSR policy, recommends expenditure, and monitors its implementation.

4. Stakeholders Relationship Committee:

This committee, required for companies with over 1,000 shareholders, debenture holders, deposit holders, or security holders, focuses on addressing and resolving grievances of security holders.

Non-Statutory Committees:

In addition to the mandatory committees, companies may also form other committees to address specific needs. These may include:

Investment Committee: To oversee and manage the company's investments.

Human Resource Committee: To oversee human resource policies and practices.

Executive Committee of Directors: To handle specific executive functions delegated by the board.

Capital Expenditure Committee: To oversee capital expenditure decisions.

RELATED PARTY TRANSACTIONS (RPTS):

Related party transactions (RPTs) are transactions between a company and its related parties, such as directors, key managerial personnel, or their relatives. These transactions are subject to specific regulations under company law to ensure transparency and prevent potential conflicts of interest.

Definition of Related Parties:

Company law defines related parties broadly, including directors, key managerial personnel (KMPs), their relatives, firms, and companies where directors or KMPs have significant influence or control.

Transactions Covered:

Section 188 of the Companies Act, 2013, outlines specific types of transactions that fall under the purview of RPTs. These include sale, purchase, supply of goods, leasing of property, rendering of services, and appointment to offices or places of profit.

Compliance Requirements:

RPTs require specific approvals and disclosures. Typically, board approval and, in some cases, shareholder approval (through a special resolution) are necessary.

Disclosure Requirements:

Companies must disclose RPTs in their board reports and financial statements.

Materiality:

The materiality of an RPT (its significance to the company's financial position) is a key factor in determining the level of scrutiny and disclosure required.

SEBI Regulations:

SEBI (Securities and Exchange Board of India) also has regulations for RPTs, particularly for listed companies, to ensure fair and transparent dealings.

Purpose of Regulations:

The regulations aim to prevent conflicts of interest, ensure fair dealing, and protect the interests of minority shareholders.

Arm's Length Transactions:

While related party transactions are allowed, they should ideally be conducted at arm's length, meaning as if the parties were unrelated, to avoid any appearance of bias or unfairness.

Example: A transaction where a company sells goods to a company owned by its director's spouse would be considered a related party transaction.

ONE PERSON COMPANY (OPC):

A One Person Company (OPC) in India, as per Section 193 of the Companies Act, 2013, must ensure that contracts entered into with its sole member (who is also the director) are either in writing or recorded in the minutes of the first Board meeting after the contract is made. Furthermore, the company must inform the Registrar about such contracts within 15 days of the Board's approval.

Formal Requirement:

Contracts between an OPC and its sole member (who is also the director) must be documented in writing or recorded in the minutes of the first Board meeting held after the contract.

Ordinary Course of Business Exception:

This requirement doesn't apply to contracts entered into by the company in the normal course of its business.

Notification to Registrar:

The OPC must notify the Registrar of Companies (ROC) about these contracts within 15 days of the Board's approval.

In essence, while an OPC is a separate legal entity from its sole member, the law mandates specific procedures to ensure transparency and clarity regarding transactions between the two. This is to avoid potential conflicts of interest and ensure proper record-keeping.

INSIDER TRADING:

Insider trading, in the context of company law, refers to the illegal practice of trading a company's securities (like stocks or bonds) based on non-public, material information about the company. This practice is considered unethical and is prohibited because it gives an unfair advantage to those with access to such information, potentially harming other investors and undermining the integrity of the market.

Definition of Insider:

An "insider" is generally defined as someone with access to non-public, material information about a company due to their position or relationship with the company. This could include company executives, directors, employees, or even individuals who receive information from these sources.

Material, Non-public Information:

This refers to information that is not generally available to the public and is likely to affect the price of the company's securities if it were known. Examples include upcoming mergers or acquisitions, significant financial results, or major product developments.

Prohibition of Insider Trading:

Company law and securities regulations prohibit insiders from trading in the company's securities while in possession of material, non-public information. This includes not only buying or selling securities but also communicating the information to others who might trade on it.

Consequences of Insider Trading:

Insider trading is a serious offense with severe consequences. Penalties can include substantial fines, imprisonment, and disgorgement of profits gained from the illegal trading. In India, for example, penalties can be up to INR 25 crore or three times the amount of profits made, whichever is higher.

Examples of Legal Insider Trading:

It's important to note that not all insider trading is illegal. For example, when an insider trades based on publicly available information after a corporate announcement, it may be considered legal.

Regulatory Framework:

In many countries, regulatory bodies like the Securities and Exchange Board of India (SEBI) in India, or the Securities and Exchange Commission (SEC) in the US, are responsible for enforcing insider trading laws and regulations.

In summary, insider trading is a serious breach of trust and a violation of securities laws that aims to protect the integrity of the market and ensure fair trading practices for all investors.

MANAGING DIRECTOR:

In company law, a Managing Director (MD) is a director who is entrusted with substantial powers of management of the company's affairs. This delegation of power can be formalized through the company's articles of association, an agreement with the company, a resolution passed in a general meeting, or by the Board of Directors. The MD essentially acts as the company's chief executive, responsible for the day-to-day operations and strategic direction, while remaining under the overall control of the Board of Directors.

Substantial Powers of Management:

The MD is not just a director but is specifically empowered to manage the company's affairs.

Delegation of Authority:

This power is formally delegated by the company's governing documents or resolutions.

Fiduciary Duty:

Like all directors, the MD owes a fiduciary duty to the company, acting in its best interests.

Reporting to the Board:

The MD is accountable to the Board of Directors, who can oversee and direct their actions.

Not an Automatic Principal Officer:

It's important to note that holding the position of MD doesn't automatically mean they are the "Principal Officer" for tax purposes.

Removal:

The MD can be removed from their position by the Board of Directors, following the procedures outlined in the company's articles and relevant laws.

MANAGER:

In Company Law, a manager is defined as an individual who, under the board of directors' direction, manages the whole or substantially the whole affairs of a company. This role includes directors or anyone else holding a managerial position, regardless of their title. A key aspect is that the manager's actions are subject to the oversight and control of the board.

Individual:

The manager must be an individual, not a firm or corporation.

Scope of Management:

The manager's role involves managing the company's overall operations, or a substantial portion thereof.

Board Oversight:

The manager's actions are always under the supervision and control of the company's board of directors.

Not a Managing Director:

A company cannot have both a managing director and a manager simultaneously.

Key Managerial Personnel:

The manager, along with other key roles like the CEO, company secretary, and CFO, are considered Key Managerial Personnel (KMP).

Appointment and Remuneration:

The appointment of a manager is governed by specific sections of the Companies Act, 2013, and related rules, including provisions for managerial remuneration and reporting requirements.

Resignation:

A manager can resign from their position by providing notice to the company. The board must then fill the vacancy within six months.

SECRETARIAL AUDIT:

Secretarial audit, as per company law, is a process where an independent professional, a Company Secretary in Practice, verifies a company's compliance with various laws and regulations. This audit ensures the company adheres to the Companies Act, 2013, and other applicable laws, rules, and regulations. The audit focuses on non-financial aspects and provides assurance to stakeholders regarding the company's compliance management systems.

Applicability:

Secretarial audit is mandatory for listed companies and other prescribed classes of companies, including those with significant paid-up share capital and turnover.

Scope:

The audit covers a review of various documents, records, and procedures to ensure compliance with applicable laws, rules, and regulations.

Objective:

The primary goal is to ensure that the company complies with all relevant legal and procedural requirements, including maintaining proper records and following due processes.

Independent Professional:

The audit must be conducted by a qualified Company Secretary in Practice (PCS) holding a certificate of practice.

Reporting:

The Secretarial Audit Report is included in the company's Board's Report as per Section 134(3) of the Companies Act, 2013.

Benefits:

Secretarial audit helps in identifying and rectifying non-compliance, improving corporate governance, and enhancing the company's overall compliance management.

Distinction from Financial Audit:

While a financial audit focuses on the accuracy of financial statements, a secretarial audit emphasizes legal and regulatory compliance.

Example:

A company might have to comply with multiple labor laws. The secretarial audit would verify if the company has proper documentation, registers, and procedures in place to adhere to these laws.

ADMINISTRATIVE ASPECTS AND WINDING UP:

Winding up a company involves the cessation of business operations, liquidation of assets, payment of debts, and distribution of remaining assets to shareholders. This process is governed by the Companies Act and can be initiated voluntarily by the company or compulsorily by a court order. The key steps include appointing a liquidator, selling company assets, settling debts, and finally dissolving the company.

Legal Framework:

The Companies Act provides the legal framework for winding up a company, outlining the procedures and requirements.

Winding Up vs. Dissolution:

Winding up is the process of settling a company's affairs, while dissolution is the formal end of the company's legal existence.

Voluntary Winding Up:

This is initiated by the company's members, often through a special resolution, and can be further classified into members' voluntary winding up (for solvent companies) and creditors' voluntary winding up (for insolvent companies).

Compulsory Winding Up:

This is initiated by a court order, often due to insolvency, fraud, or other specific circumstances.

Liquidator's Role:

A liquidator is appointed to manage the winding-up process, including selling assets, paying debts, and distributing remaining assets.

Asset Liquidation:

The company's assets are sold to generate funds for paying off creditors.

Debt Settlement:

Creditors' claims are assessed and paid off according to their ranking.

Distribution of Surplus:

Any remaining assets after paying off creditors are distributed to the company's shareholders.

Company's Legal Status:

The company retains its legal entity status during the winding-up process, allowing it to engage in legal proceedings.

Dissolution:

The final step is the formal dissolution of the company, after which it ceases to exist.

Documentation:

Various documents are required for voluntary winding up, including a special resolution, declaration of solvency, liquidator's consent, and notices of winding-up and liquidator appointment.

NATIONAL COMPANY LAW TRIBUNAL:

"The Central Government has constituted National Company Law Tribunal (NCLT) under section 408 of the Companies Act, 2013 (18 of 2013) w.e.f. 01st June 2016. In the first phase the Ministry of Corporate Affairs has set up eleven Benches, one Principal Bench at New Delhi and ten other Benches at New Delhi, Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai. These Benches are headed by the President Chief Justice (Retd.) Ramalingam Sudhakar and comprises of sixteen Judicial Members and nine Technical Members at different locations. Subsequently, more Benches at Cuttack, Jaipur, Kochi, Amravati, and Indore have been setup and new members have joined"

The National Company Law Tribunal (NCLT) is a quasi-judicial body in India with adjudicating authority relating to Indian companies including proceedings relating to arbitration, compromise, arrangements, reconstructions and the winding up of companies, insolvency resolution process of companies and limited liability partnerships under the Insolvency and Bankruptcy Code, 2016.

SPECIAL COURTS:

Special Courts, established under the Companies Act, 2013, are designed to expedite the trial of offenses under the Act, particularly those with a minimum imprisonment term of two years. These courts are a key component of the legal framework aimed at ensuring faster and more efficient resolution of company law matters.

1. Purpose and Establishment:

The primary objective of Special Courts is to provide a faster mechanism for prosecuting offenses under the Companies Act, thereby reducing delays in the legal process. These courts have jurisdiction over offenses under the Companies Act, especially those with significant penalties like imprisonment. The Central Government establishes or designates Special Courts through notifications. Each Special Court is presided over by a single judge, appointed by the Central Government in consultation with the Chief Justice of the relevant High Court.

2. Features:

Special Courts are not meant to handle all types of cases. They are designed to try offenses under the Companies Act, particularly those with a minimum imprisonment term of two years or more.

The Special Court may conduct summary trials for offenses punishable with imprisonment up to three years, potentially expediting the process further. Cases can be transferred to Special Courts from regular courts when they involve offenses under the Companies Act. Special Courts can take cognizance of offenses when a complaint is filed by the Central Government, the IBBI, or an authorized person, as outlined in the Act. The Special Court can also try offenses under other laws if they are related to the company law offense and can be charged at the same trial.

3. Role in the Legal System:

Special Courts work in conjunction with regular courts, handling the more serious company law offenses while magistrate courts handle less severe violations. By focusing on specific types of cases, Special Courts contribute to a more efficient and streamlined legal system for company-related matters. In essence, Special Courts are a specialized mechanism within the broader legal framework designed to address company law violations, particularly those requiring a more focused and expeditious approach.

UNIT – V

WINDING-UP OF COMPANY

MEANING OF WINDING UP OF A COMPANY

The process of ending the life of a company by administering its properties for the benefit of shareholders & creditors of the company is known as winding up of a company. A company is a corporate body which is an association of people for some common purpose of carrying on the business and earning profits. A company has to be incorporated and registered according to the Companies Act 2013. Chief Justice Marshall defines a company as "a corporation which is an artificial being, invisible, intangible and exists only in contemplation of law." A company, being a corporate body has the following characteristics:

- It has a separate legal entity.
- It is an artificial person.
- It has limited liability.
- It can own separate properties and assets.
- It has a common seal.
- It has perpetual succession.
- It can sue and be sued in its own name.
- In a public company, shares can be transferred freely.

From the above definition, it is clear that a company has to be incorporated according to the provisions of the Act. Similarly, when a company is to be closed, a proper procedure has to be followed. This process of realisation of assets, payment to creditors and distribution of surplus among the shareholders in order to finally dissolve the company is called winding up. Thus, it can be said that winding up is the last stage after which a company ceases to exist and is finally dissolved.

Winding Up of Company:

Cessation of Business Activities: The Company stops conducting its usual business operations.

Appointment of Liquidator: A liquidator is appointed to oversee the process.

Asset Liquidation: The company's assets are collected and sold.

Debt Settlement: The proceeds from the asset liquidation are used to pay off creditors.

Distribution of Remaining Assets: Any surplus is distributed among the shareholders.

Legal Entity Status: The Company retains its legal entity status during the winding-up process and can engage in legal proceedings.

Dissolution: The final step is when the company is officially dissolved and ceases to exist.

The primary goal of winding up is to ensure that the closure of the company is conducted in an orderly manner, with due regard to the interests of all stakeholders, including creditors, employees, and shareholders.

MODES OF WINDING UP OF A COMPANY

Under Section 293 of the Companies Act 2013, there are three primary ways to wind up a company:

Compulsory Winding Up (By the Court)

Voluntary Winding Up

Winding Up Subject to the Supervision of the Court

COMPULSORY WINDING UP OF COMPANY

Compulsory winding up is one of the modes of winding up a company; it is initiated by a court order, usually upon the petition of a creditor, the company itself, or the Registrar of Companies. The conditions under which a court can order the winding up of a company include:

Inability to Pay Debts: If a company is unable to pay its debts and a creditor has demanded payment and not received it within three weeks, the creditor can petition for winding up.

Special Resolution: If the company has resolved by a special resolution that it should be wound up by the court.

Default in Holding Statutory Meeting: If the company has not held its statutory meeting or filed its statutory report.

Acts Against Sovereignty and Integrity: If the company is found to be acting against the sovereignty and integrity of India or public order.

Fraudulent Conduct: If the business of the company is being conducted fraudulently or for an unlawful purpose.

Once a winding-up order is made, an official liquidator is appointed by the court to take control of the company's assets and liabilities.

VOLUNTARY WINDING UP OF COMPANY

Voluntary winding up can be initiated by the members of the company without court intervention. There are two types of voluntary winding up:

Members' Voluntary Winding Up: This occurs when the company is solvent and able to pay its debts in full within a specified period. The directors must make a declaration of solvency, followed by a resolution passed by the members in a general meeting. An official liquidator is then appointed to wind up the company's affairs.

Creditors' Voluntary Winding Up: This occurs when the company is insolvent and unable to pay its debts. The process begins with a resolution by the members, followed by a meeting of the creditors. The creditors have a significant role in appointing the liquidator and overseeing the winding-up process.

In both types of voluntary winding up, the liquidator is responsible for collecting the company's assets, paying off its liabilities, and distributing any remaining assets to the members.

CONSEQUENCES OF WINDING UP ORDER

According to Section 278 of the Act, the order of winding up will operate in favour of all creditors and contributories as if it has been made on their joint petition. Section 279 further provides that no suit or any other legal proceeding can be initiated against a company against whom an order of winding up has been passed without any permission from the tribunal, against whom the order of winding up has been passed. An application in this regard will be decided within 60 days.

POWERS OF TRIBUNAL

According to Section 273, the tribunal can pass the following orders with respect to a petition filed for winding of a company:

Dismiss the petition with or without costs;

Any interim order;

Appointment of provisional liquidator till the order of winding up is made;

Order of winding up of a company either with or without costs;

Any other order.

Any such order must be passed within ninety days from the date the petition is presented in the tribunal. The Section also provides that before appointing a provisional liquidator, the tribunal will give a notice and reasonable opportunity to the company to make the representations. It further provides that if a petition is presented on the ground that it is just and equitable for the company to wind up, the tribunal can refuse to order for winding up if any other remedy for the same is available and the petitioners are not acting reasonably.

According to Section 274, when a petition for winding up is made, the tribunal is satisfied if the case can order the company to file its objections along with its statement of affairs within 30 days. The tribunal can also direct the petitioner to deposit security for costs as a precondition to the issuance of directions to the company.

According to Section 285, after the order of winding up of a company has been passed by the tribunal, it will also settle a list of contributories, rectify the register of members required and apply for the discharge of assets of the company. It will also differentiate between contributories in their own rights and those who are representatives of or liable for the debts of others. While settling the list, the tribunal must include every person who is or has been a member, a person liable to contribute an amount sufficient for payment of debts and liabilities to the assets of the company upon satisfying the following conditions:

A person will not be liable to contribute if he ceases to be a member for preceding one year before the process of winding up commenced.

A person will not be liable for any debt or liability of the company which is contracted after he ceases to be a member.

A person will not be liable unless the present members are not able to satisfy the required contributions.

If a company is limited by shares, a person will not be liable for an amount exceeding the amount unpaid of the shares for which he is liable.

If a company is limited by guarantee, no contribution will be taken from the member exceeding the amount to be contributed by him to the assets of the company if it was being wound up. But if the company has a share capital, the member has to contribute to the extent of such sum unpaid on shares held by him if the company was limited by shares.

PETITION FOR THE WINDING UP OF A COMPANY

According to Section 272(1)(a), a petition for winding up can be presented by a company itself. However, before presenting a petition, the company must pass a special resolution in this regard. In the case of BOC India Ltd. Zinc Products & Co. (P) Ltd. (1996), a petition for winding up was presented by a person not authorised to do so by the board of directors and hence, the petition was declared as incompetent.

Any contributory

According to Section 2(26) of the Act, a contributory is a person who is liable to contribute towards assets of the company in case it is wound up. However, according to Section 272(2), a contributory will be allowed to present a petition for winding in spite of him being the holder of fully paid up shares or the company has no surplus assets left for distribution among its shareholders after satisfying all the liabilities. One important requirement is that the shares in respect of which a person is a contributory were allotted or registered under him for at least 6 months during the period of 18 months before the commencement of winding up or such shares devolved on him by the death of the former holder.

All or any persons mentioned above

The petition for winding up can also be presented by the company and the contributories together or separately.

Registrar

The registrar can file a petition for the winding up of a company under the following circumstances:

Actions of the Company were against the interests of sovereignty and integrity of the country, Security of States, friendly relations, morality etc.

If the tribunal is of the opinion that the company was formed with a fraudulent aim and unlawful purpose or its affairs have been conducted in a fraudulent manner or the persons who formed the company are guilty of fraud or misconduct.

There was a default in filing the financial statements or annual returns of the company with the Registrar.

It is just and equitable for the tribunal to wound up the company.

Person authorised by central government

Section 272(1)(e) provides that a petition for winding up can also be filed by any person who is authorised by the Central Government to do so.

Central or State government

The Central or State government can also present a petition for winding up of a company if its actions are against the sovereignty and integrity of the country, public order, morality, decency, foreign relations etc.

COMPANY LIQUIDATOR (APPOINTMENT OF OFFICIAL LIQUIDATOR)

The official liquidator is an officer who is appointed to proceed with the winding up of a company and its affairs. Section 275 provides that in order to wind up a company, the tribunal will appoint an official liquidator from a panel maintained by the Central Government which consists of names of advocates, Chartered Accountants, Company Secretaries, Cost Accountants etc. having at least ten years of experience in the matters related to the company. However, if a provisional liquidator is appointed, his powers will be restricted by an order of appointment by the tribunal. A provisional liquidator is a person appointed by the court or tribunal to carry on the process of winding up of a company.

The central government also has the power to remove the name of any person from the panel on the grounds of misconduct, fraud, breach of duties, professional incompetence etc, but before doing so an opportunity to be heard must be given to him. The liquidator so appointed must within seven days of appointment make a declaration regarding conflict of interest or lack of independence with respect to his appointment with the tribunal.

According to Section 276, a provisional liquidator or a company liquidator appointed by the tribunal can be removed by the tribunal on the following grounds:

Misconduct;

Fraud or misfeasance;

Professional incompetence or failure to exercise due care and diligence;

Inability to act as a liquidator;

Conflict of interest or lack of independence during the term of appointment

Powers of liquidator

According to Section 277(5), a company liquidator will be the convener of meetings of the winding up committee which will assist in the liquidation proceedings and related functions like:

Take over the assets.

Examination of statement of affairs.

Recovery of property and other assets of the company.

Review of audit reports and accounts.

Sale of assets.

Finalizing the list of creditors and contributories.

Compromise and settlement of claims.

Payment of dividends.

Any other function.

According to Section 290, the Company liquidator will have the power to:

Manage the business of the company for the process of winding up.

Execute deeds, receipts and other documents on behalf of the company and use its seal if necessary.

Sell the immovable and movable property and actionable claims of the company, either by public auction or private contract.

Sell the undertaking of the company.

Raise money required for the security of assets of the company.

Institute or defend suits or other legal proceedings, whether civil or criminal, on behalf of the company.

Settle claims of creditors, employees or any other claimant and distribute the sale proceeds.

Inspect the records and returns of the company.

Draw, accept, make and endorse any negotiable instrument which includes a cheque, bill of exchange, hundi or promissory note on behalf of the company.

Obtain any professional assistance from any person or appoint any professional for the protection of assets of the company.

Take actions and steps and sign, execute and verify papers, deeds, documents, and applications etc. for winding up of the company, distribution of assets and discharge of duties and obligations of liquidator.