COMPANY LAW

UNIT-I

COMPANY
INTRODUCTION:

Prior to the industrial revolution of the 18th century, any one who wanted to start a business could establish the desired business very easily. Even people with little resources and less managerial skill could start a new venture on small scale and run the show profitably. But the industrial revolution brought revolutionary changes in all the spheres of economic life. The traditional forms of organizations such as sole trading concerns and partnership firms were found unsuitable with the changing situation. Therefore the company form of organization is what they found out to do away with the many defects found in other forms of organizations.

Companies incorporated under the companies act, 1956 are mostly business companies but they may also be formed for promoting art, charity, research, religion, commerce, or any other useful purpose.

BRING OUT THE DERIVATION OF THE WORD (OR) ORIGIN OF THE TERM:

The term **"company"** is derived from the Latin word **"companies"** ***"com"*** means **together** and ***"panis"*** means **bread.** Originally, it refers to an association of persons who took their meals together. In olden days, the merchants took advantage of the festive gatherings to discuss business affairs leisurely. But now, the term refers to an association of persons formed to attain a common purpose.

WHAT DO YOU MEAN BY COMPANY (OR) GIVE THE MEANING OF COMPANY:

"Company" in the common usage refers to a voluntary association of individuals formed for the purpose of attaining a common social (or) economic end. Strictly speaking the term ***"company"*** has no technical (or) legal meaning. In the common law, a company is a juristic personality (or) legal person separate from its members. Thus, it exists only in the contemplation of law. The company, just like a natural person possesses similar rights and owes similar obligations, but has neither a mind nor a body of its own.

DEFINE COMPANY:

Lindley's defines company as "an association of many persons who contribute money (or) money's worth to a common stock, and employ it in some common trade (or) business, and who share the profit (or) loss arising therefrom. The common stock so contributed is denoted in money and is the capital of the company. The persons who contribute it, or to whom it belongs, are members. The proportion of capital to which each member is entitled is his share. Shares are always transferable although the right to transfer them is often more (or) less restricted.

Definition under the Indian Companies Act:

According to sec 3(1)(i) of the Indian Companies Act, a company is one **"formed and registered under this act (or) an existing company".**

BRIEFLY EXPLAIN THE CHARACTERISTICS OF A COMPANY (OR) NARRATE THE FEATURES OF A COMPANY:

The two most important characteristics of a company are separate legal entity of the company and limited liability of its members. These are the other characteristics of a company.

(i) Legal Personality:

The law divides person into two kinds, viz., (i) **Natural Persons** (ii) **Legal Persons.** Natural persons are human persons such as men, women, children etc. The natural persons are the creations of nature. Legal persons (or) artificial persons, on the other hand created by a legal process and not through natural birth. An artificial person, though abstract, invisible and intangible, can do everything like a natural person can do. A company is a distinct legal person, existing independent of its members. The independent corporate existence is the outstanding feature of a company.

(ii) Limited Liability:

The principle of limited liability is a feature as well as a privilege of the corporate form of enterprise. It is also one of the principal advantages of doing business under the corporate form of organization. The company being a separate person, is the owner of its assets and bound by its liabilities. In other words the liability of the members is limited. It means that the shareholders enjoy immunity form liability beyond a certain limit. A shareholder cannot be called upon to pay anything more than the unpaid value of the share that he has undertaken to pay under a contract between himself and the company. The position is different in case of a partnership. The liability of the partners is unlimited and hence a creditor to the partnership firm can attach the private property of a partner for a debit due from the firm.

(iii) Perpetual Succession:

As a juristic person, a company enjoys perpetual succession. A company never dies, not its life depends on the life of its members. As observed by Gower **"Members may come and go but the company can go on forever".** Even if all the members die, it shall not affect the privileges, immunities, estates and possessions of the company.

(iv) Separate Property:

As a company is a legal person distinct from its members, it is capable of owning, enjoying and disposing of property in its own name. Although its capital and assets are contributed by its shareholders, they are not the private and joint owners of its property. The company is the real person in which all its property is vested and by which it's controlled, managed and disposed of. No member can claim himself to be owner of the company's property during its existence (or) on its winding up. A shareholder does not have even an insurable interest in the property of the company.

(v) Common Seal:

A company is an artificial person. It cannot act on its own. It acts through natural persons who are known as director. All contracts entered into by the directors must be under the common seal of the company. The common seal, with the name of the company engraved on it, is used as a substitute for its signature. No document issued by the company shall be binding on it unless it bears the common seal which is duly witnessed by at least two directors of the company.

(vi) Transferability of Shares:

The capital of a company is divided into parts, called shares. These shares are, subject to certain conditions, freely transferable, so that no shareholder is permanently (or) necessarily wedded to a company. When the joint stock companies were established the great object was that the shares should be capable of being easily transferred.

(vii) Capacity to sue and be sued:

A company being a legal person, can sue other persons in its corporate name similarly, others can also sue the company in their own name. It can also be fixed for contravening any law but it cannot be imprisoned for a criminal offence.

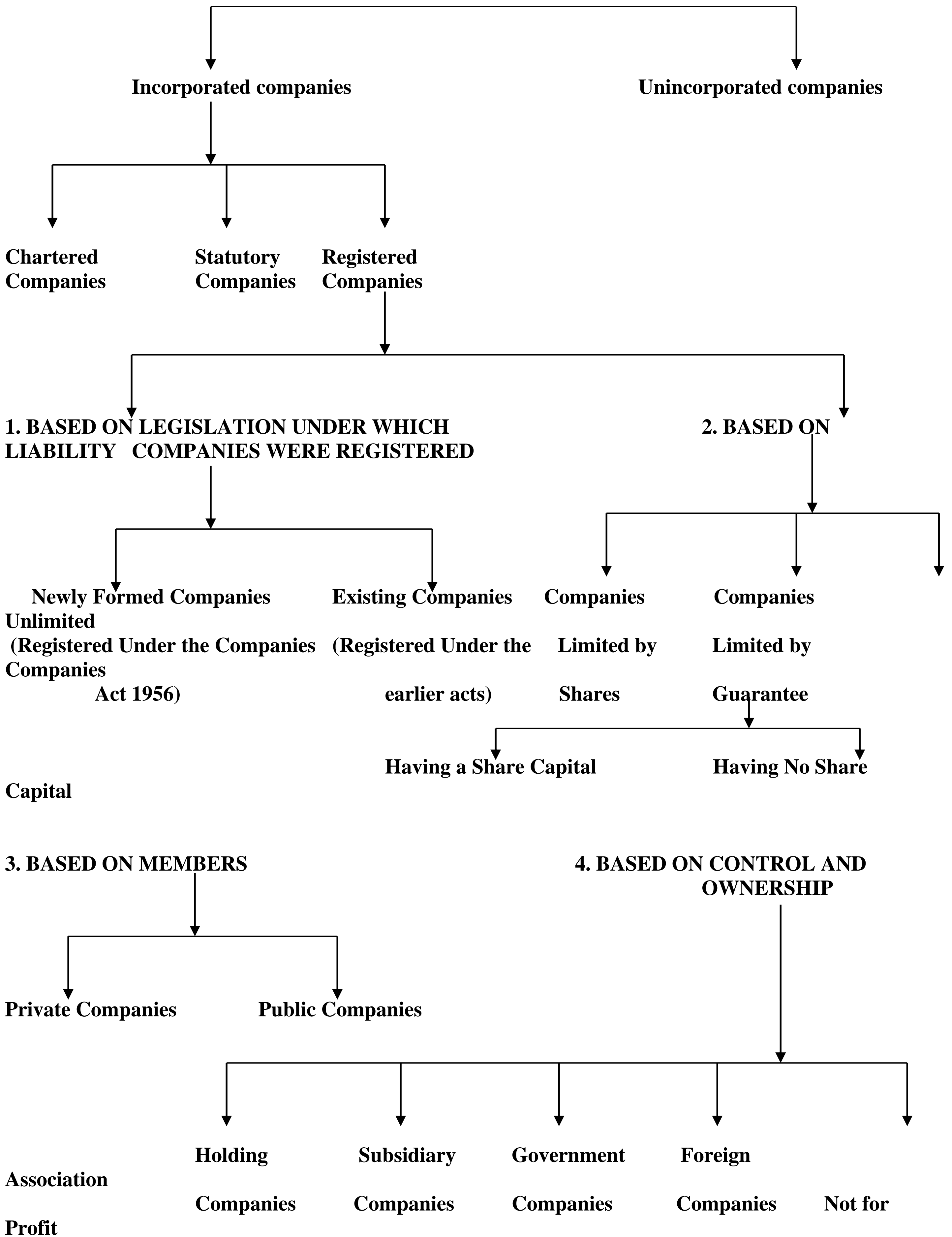
(vii) Not a Citizen:

Although a company is a legal person, it is not a citizen under the Indian Constitution. It can act only through natural persons. Nevertheless, it is to be noted that certain fundamental rights enshrined in the constitution for protection of **"person"** e.g*. **Right to equality*** are availed to company. Further a company has a nationality, domicile and residence. The **Nationality** of a company is the country in which the company is incorporated. Its **domicile** refers to the place where the control and management of its business is exercised. The **residential** status has particular importance in matters connected with taxation.

STATE THE DIFFERENT TYPES OF COMPANIES (OR) DESCRIBE THE DIFFERENT KINDS OF COMPANIES (OR) WHAT ARE THE VARIOUS KINDS OF COMPANIES?

Companies may be classified into various kinds as shown by the following chart:

TYPES OF COMPANIES



I. Unincorporated Companies:

The companies which are not incorporated under the companies act (or) special act (or) charter are called **"Unincorporated Companies".** According to sec.11 of the companies Act, 1956, if the number of members exceeds 10 in the case of banking companies and 20 in the case of other business companies. Such companies cannot be legally formed without registration under the companies act and so they will be treated as illegal associations.

II. Incorporated Companies:

Companies which are established by means of incorporation under the companies act (or) under a special act (or) a charter are called Incorporated Companies.

CLASSIFICATION ON THE BASIS OF INCORPORATION:

The incorporated companies can be classified into three kinds namely,

- Chartered Companies
- Statutory Companies and
- Registered Companies

(i) Chartered Companies:

Companies which are established by special royal charters are called Chartered Companies. The charters are granted by kings (or) queens. The queen of England incorporated several companies like East India Company. The Bank of England etc, by means of charters. The chartered companies are regulated by their charters and the companies act does not apply to it. At present, we have no such company in our country.

(ii) Statutory Companies:

Companies which are established by a special act of the central legislature (or) any state legislature are called statutory companies. These types of companies are established not for people but for providing service to the public. E.g. SBI, LIC. The statutory companies are regulated and governed by the provisions of their respective acts. The annual report of a statutory company is to be placed before both houses of the parliament.

(iii) Registered Companies:

These are the companies which are formed and registered under the companies act, 1956, (or) some earlier companies act. These companies are regulated by the provisions of the companies act and the provisions of Memorandum of Association and Articles of Association.

Registered companies may be either

- Newly formed companies
- Existing Companies

Companies established under the companies act 1956 are called newly formed companies. By existing companies, the companies are established before the commencement of the Companies Amendment Act 1956.

CLASSIFICATION ON THE BASIS OF LIABILITY:

Registered companies may be further classified into three kinds viz.

- Companies limited by shares
- Companies limited by guarantee
  - (i) Companies limited by guarantee having a share capital
  - (ii) Companies limited by guarantee having no share capital
- Unlimited companies

(i) Companies Limited by Shares:

Companies in which the liability of members is limited by the memorandum to the unpaid amount of the shares held by them, are called companies limited by shares [sec12 (2) (a)].

(ii) Companies Limited by Guarantee:

Companies in which the liability of members is limited by the memorandum to such an amount as the members undertake to pay are called companies limited by guarantee.

(a) Companies limited by guarantee having a share capital:
Companies in which , in addition to the share capital the members give a guarantee that they will contribute to meet the deficiency of the assets of the company in the event of winding up, are called companies limited by guarantee having a share capital.
(b) Companies limited by guarantee having no share capital:
Companies in which there is no share capital and the members given merely a guarantee that they will contribute a predetermined amount to meet the deficiency in the assets of the company in case of winding up, are called companies limited by guarantee having no share capital.

(iii) Unlimited Companies:
Where the liability of the members of a company is unlimited, it is known as an unlimited company. [Sec 12 (2) (c)]. In this type of companies, if the company is unable to pay its debts, its members have to pay the debts out of their private resources.

CLASSIFICATION ON THE BASIS OF MEMBERS:
(i) Private Company:
According to sec 3(1) (iii) a "Private Company" means a company which has a minimum paid-up capital of Rs. 1,00,000 (or) such higher paid-up capital as may be prescribed, and by its Articles (a) restricts the right to transfer its hares, if any (b) limits the number of its members (c) prohibits any invitation to the public to subscribe for any shares in (or) debentures of the company.
Where two (or) more persons hold one (or) more shares in a company jointly, they are treated as a single member. According to sec.12 of the companies act, a private company should have a minimum of 2 members. It can have a maximum of 50 members (excluding employees).

(ii) Public Companies:
A public company means a company which
- ★ Is not a private company
- ★ Has a minimum paid-up capital of Rs.5,00,000 (or) such higher paid-up capital, as may be prescribed.
- ★ Is a private company, which is a subsidiary of a company, which is not a private company.

A public company requires a minimum of 7 members, it can have any number of members and so there is no maximum limit.

CLASSIFICATION ON THE BASIS OF CONTROL AND OWNERSHIP:
A registered company may be either:
- Holding Company
- Subsidiary Company
- Government Company
- Foreign Company
- An Association not for profit

(i) Holding Company:
A company is deemed to be a holding company to another if, but only if, that other is its subsidiary (sec4 (4). When one company has control over another, it is called Holding Company.

(ii) Subsidiary Company:
The company which is controlled by another company is subsidiary company. A company is deemed to be called controlled by another company in the following three cases:
(i) If another company controls the composition of the board of the company.
(ii) If another company holds majority (more than 50%) of the nominal value of the equity share capital of the company.
(iii) If another company is a holding company of the holding company.
Both holding and subsidiary companies are incorporated companies and each is a separate legal entity.
(iii) Government Company:

A government company means any company in which not less than 51 percent of the paid-up share capital is held by the central government, and or by any state government (or) Governments, (or) partly by the central government and partly by one (or) more state governments. The subsidiary of a government company is also a government company (sec.671).

Rules applicable to government companies:

(i) Under sec 619 the auditor of a government company is appointed by the central government.

(ii) Under section 619-A audit report to be placed before parliment.

(iv) Foreign Company:

It means any company incorporated outside India which (i) after 1st April, 1956 established a place of business within India, (or) (ii) Before 1st April 1956, established a place, of business within India and continued to have it within India on 1st April 1956[sec.591(1)].

According to sec 591(2) of the companies amendment act, 1974, where not less than 50% of the paid-up share capital of a foreign company is held by citizens of India (or) Indian companies (or) by both, such company shall be treated as if it was an Indian company.

(v) Association Not For Profit:

According to sec 13(1) (a) the name of a limited company must end with the word **"Limited"** in the case of a public company, and with the words **"private limited"** in the case of a private company. Sec.25 of the Act, permits the registration, under a licence granted by the central government, of associations not for profit with limited liability without using the word **'Limited'** or the words **'private limited'** to their names.

The Central government shall grant a license only when it is satisfied that-

(i) The association is about to be formed as a limited company to promoted commerce, art, science, religion, charity (or) other useful object.

(ii) It intends to apply its profits, if any, (or) other income to promote its objects and to prohibit the payment of any dividend to its members.

DISTINGUISH BETWEEN PRIVATE COMPANY AND PUBLIC COMPANY (OR) WRITE THE DIFFERENCE BETWEEN PRIVATE COMPANY AND PUBLIC COMPANY?

Following are the important points of distinguish between a private company and a public company.

(i) Minimum Number:

The minimum number of persons required to form a public company and a private company is seven and two, respectively.

(ii) Maximum Number:

There is no restriction on the maximum number of members in a public company whereas the maximum number in a private company is fifty.

(iii) Number of Directors:

A public company must have atleast three directors whereas a private company must have atleast two.

(iv) Restrictions on Appointment of Directors:

In the case of public company, the directors must file with the registrar consent to act as directors (or) sign the memorandum of association for their qualification shares. The directors of a private company need not do so.

(v)Restriction on invitation to subscribe for shares:

A public company invites the general public to subscribe for the shares in, and the debentures of the company. A private company by its articles prohibits any invitation to the public to subscribe for any shares (or) debentures of the company.

(vi) Transferability of Shares:

In a public company, the shares are freely transferable. In a private company, right to transfer shares is restricted by its articles.

(vii) Special Privileges:

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

(viii) Quorum:

For the general meetings of a public company quorum required is five members personally present whereas it is two incase of a private company.

(ix)Managerial Remuneration:

The managerial remuneration in a public company cannot exceed 11% of the net profits, but in case of inadequacy of profits, amount upto Rs.50,000 can be paid. No such restriction applies to a private company.

DISCUSS THE SPECIAL PRIVILEGES OF A PRIVATE LIMITED COMPANY (OR) WHAT ARE THE PRIVILEGES ENJOYED BY THE PRIVATE LIMITED COMPANY?

The law bestows some benedictions on a private company by granting certain privileges are as follows:

(i) Number of Members:

A private company may have only two numbers. {sec12(1)}.

(ii) Allotment Before Minimum Subscription:

It can commence allotment before the minimum subscription is subscribed for (or) paid (sec.69).

(iii) Prospectus:

It need not issue (or) file with the registrar a prospectus (or) a statement in lieu of prospectus [sec 70(3)].

(iv) Issue of New Shares:

When a public company issues new shares, it has first to offer these shares to the existing equity shareholders. Unless, the members in a general meeting decide otherwise. There is no such requirement in case of private companies. [sec 81(3)].

(v) Founder's Shares:

A public company can issue only two types of shares viz., equity shares and preference shares. But private company can issue three kinds of shares viz., equity shares, preference shares and founder's shares (sec.85&89).

(vi) Commencement of Business:

It can commence business immediately on incorporation [sec.149(7)].

(vii) Minimum Number of Directors:

A public company should have not less than three directors. But a private company is required to have a minimum of only tow directors [sec 252(2)].

(viii) Index of Members:

It need not keep an index of members [sec 151(1)].

(xi) Statutory Meeting and Statutory Report:

It need not hold statutory meeting (or) file with the registrar statutory report [sec.165(10)].

(x) Managerial Remuneration:

The rule of overall maximum managerial remuneration does not apply to a private company which is not a subsidiary of a public company.

(xi) Rules Regarding Directors:

In the case of private companies, the rules regarding directors are less stringent. For example, a private company need not file with the registrar the consent of a director to act as such, a director is not required to hold qualification shares. Its director can vote on a contract in which he is interested.

(xii) Multiple Directorship:

A director of a public company cannot be a director of more than 15 companies at a time. But a director of a private company can be a director of more than 15 companies at the same time (sec.275).

(xiii) Compulsory Retirement:

One third of the directors of a public company are compelled to retire by rotation every year. But in the case of private company, the directors need not retire every year.

(xiv) Quorum:

Five members personally present in the quorum for a meeting of public company. But two members personally present are enough for a private company.

(xv) Minimum Paid-Up Capital:

A private company must have a minimum paid-up capital of Rs.1,00,000 whereas a public limited company must have a minimum paid-up capital of Rs.5,00,000.

WHAT ARE THE CIRCUMSTANCES UNDER WHICH A PRIVATE COMPANY IS CONVERTED INTO A PUBLIC COMPANY? (OR) UNDER WHAT CIRCUMSTANCES DOES A PRIVATE COMPANY BECOME A "DEEMED PUBLIC COMPANY"?

Since several companies in which public is indirectly interested were found abusing the privileges of private companies, the companies act, introduced a special type of company known as **"companies deemed to be Public".** A private company is deemed to be a public company in any of the following cases:

(i)Conversion By Defaults (Sec.43):

Where a default is made by a private company is complying with the essential requirements of a private company (viz. restriction on transfer of shares, limitation of the number of members to fifty, and prohibition of invitation to the public to buy shares (Or) debentures) the company ceases to enjoy some of the privileges of a private company (sec.43). The company in such a case is treated a public company and the provisions of the companies act apply to it as if it were not a private company.

(ii) Conversion By Operation of Law:

Sec.43A of the companies act, 1956 provides company shall become a public company.

- Where 25% or more of the paid-up share capital of the private company is held by one (or) more bodies corporate.
- Where 25% or more of the paid-up share capital of a public company is held by the private company.
- Where the average annual turnover of the private company, during the last three consecutive financial years is not less than Rs.10 crores, than the private company on and from the expiry of 3months from the last day of the relevant period, would become a public company.
- Where a private company accepts (or) renews deposits from the public after an invitation is made by means of an advertisement, it shall become a public company on and from the date of such acceptable/renewal.

(iii) Conversion By Choice (sec.44):

If a private company alters its articles so that they do not contain the provisions which make it a private company, it ceases to be a private company as on the date of the alteration. When this is done, the company becomes a public company. The company must also:

- File a copy of the resolution altering the articles within thirty days of passing thereof, with the registrar.

- F Take steps to raise its membership to atleast seven if it is below that number on the date of conversion, and also increase the number of directors of three if it is below number; and
- F Alter the regulations contained in the articles which are inconsistent with those of a public company.

DISTINGUISH BETWEEN COMPANY AND PARTNERSHIP (OR) WRITE THE DIFFERENCE BETWEEN COMPANY AND PARTNERSHIP?

The principal differences between a company and partnership are as follows:

(i) Definition:

Any voluntary association of persons registered as a company and formed for the purpose of any common object is called a company. But a partnership is the relation between two (or) more persons who have agreed to share the profits of a business carried on by all (or) any of them acting for all. The partners are collectively called as a firm.

(ii) Law:

A company is regulated and controlled by the companies act. But a partnership firm is regulated by the partnership act, 1932.

(iii) Mode of Creation:

A company comes into existence after registration under the companies act, 1956. Registration is not compulsory in the case of a partnership firm.

(iv) Legal Status:

A company has a legal personality distinct from that of its members. A firm is not a distinct person, it is made up of the several persons who compose it.

(v) Limited of Members:

The liability of members of a company (except an unlimited one) to contribute toward satisfaction of the company's debts and liabilities is limited, whereas the liability of partners to contribute toward payment of the partnership's debts and liabilities is unlimited.

(vi) Management:

The affairs of a company are managed by its directors, (or) Managing director (or) manager and its members have no right to take part in the management. On the other hand, every member of a partnership may take part in its management unless the partnership agreement provides otherwise.

(vii) Transferability of Shares:

Share in a company are freely transferable, unless its articles otherwise provide. A partner cannot transfer his share without the consent of the other partners.

(viii) Contract:

A member of a company can enter into a contract with the same company. But a partner of a firm cannot enter into contract with the same partnership firm.

(ix) Authority of Members:

Each partner is an agent of the firm to make contracts, whereas a shareholder is not an agent of the company.

(x) Number of Members:

The maximum number of partners in a firm carrying on banking business can be ten and in any other business twenty. In a private company should have a minimum of 2 members and can have a minimum of 50 members. A public company should have a minimum of 7 members an there is no maximum limit.

(xi) Powers:

A firm can do anything which the partners agree to do and there is no limit to its activities, a company's powers are limited to those allowed by the objects clause in the memorandum of association.

(xii) Insolvency of Firm and Winding up of Company:

The insolvency of a firm means insolvency of all the partners whereas the winding up of an insolvent company does not make the members insolvent.

(xiii) Debts:

If a company owes a debt to any of its members he can claim payment out of its assets when its wound up.

Whereas a partner who is owed money by his firm cannot usually prove against the firm's assets in competition with its other creditors.

(xiv) Decision-Making:

In case of companies, taking decisions on important issues requires a fairly long time. But in case of partnership firm, quick, decisions are possible.

(xv) Dissolution:

A company being a creature of law, can only be dissolved as laid down by law. A partnership firm, on the other hand, is the result of an agreement and can be dissolved at any time by agreement.

WHAT DO YOU MEAN BY ONE MAN COMPANY (OR) EXPLAIN THE MEANING OF ONE MAN COMPANY?

One man companies are those companies in which one man holds virtually the whole of the share capital with a few extra members holding the remainder, who may be his relations (or) nominees. Being the largest holder such a person is generally the managing director and enjoys complete control over the company.

This is done with a view to satisfy the statutory requirements of atleast seven members in the case of the public limited company and atleast two members in the case of private company. Such types of companies are perfectly valid and not illegal. One man company like any other company is a legal entity distinct from its members.

UNIT – I COMPLETED

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UNIT – II

FORMATION OF A COMPANY

INTRODUCTION:

Before a company is formed, certain preliminary steps are necessary (e.g.) whether it should be a private company (or) a public company, what its capital should be and whether it is worthwhile forming a new company etc. There are three stages in the process of formation of a company are-

- **Promotion**
- **Registration**
- **Commencement of Business**

WHAT DO YOU MEAN BY PROMOTER (OR) EXPLAIN THE TERM PROMOTER?

A promoter is a person who does the necessary preliminary work incidental to the formation of a company. It is a compendious term used for a person who undertakes, does and goes through all the necessary and incidental preliminaries, keeping in view the object, to bring into existence an incorporated company. The term generally refers to the sum total of all the activities connected with the formation of a company.

DEFINE THE TERM PROMOTER (OR) DEFINITION OF A PROMOTER?

According to **coekburn** "A promoter is a person who undertakes to form a company with reference to a given object and to set it going and who takes necessary steps to accomplish that purpose.

According to **Haney** "Promoter is a person who conceives the idea, studies the prospects of the business critically, chalks out an attentative scheme of organization, brings together the requisite men, materials, machinery, money and managerial ability and float the enterprise".

BRIEFLY EXPLAIN THE MODE OF FORMING INCORPORATED COMPANY?

Any seven (or) more persons (two (or) more in case of a private company) associated for any lawful purpose may form an incorporated company, with (or) without limited liability. They must subscribe their names to a memorandum of association and otherwise comply with other formalities in respect of registration (sec.12). A company so formed may be:

- A company limited by shares, or
- A company limited by guarantee, or

* An unlimited company.

WHAT ARE THE DOCUMENTS TO BE FILLED BY THE PROMOTER WHILE REGISTRATION OF A COMPANY? (OR) BRIEFLY EXPLAIN THE DOCUMENTS TO BE FILLED BY THE PROMOTER?

The promoter should prepare and file the following documents with the registrar of joint stock companies. He should also pay the necessary filing and registration fees.

(i) Memorandum of Association:

The memorandum should be printed and atleast seven persons each agreeing to take atleast one share must subscribe their names to memorandum.

(ii) The Articles of Association:

The articles must also be signed by atleast seven members. If a public company does not prepare and file articles, then its is deemed to have adopted Table A in schedule I of the Indian Companies Act.

(iii) List of Directors:

A complete list of directors, their addresses and occupations and age. If not separate list is filed, the subscribers to the memorandum are deemed to be the first directors.

(iv) Consent of the Directors:

If the directors are appointed by the articles (or) named in the prospectus, their written consent to act as directors and also a written undertaking to take up and pay for the qualification shares (if any).

(v) Statutory Declaration:

A statutory declaration by any one of the following persons stating that all the requirements of the act regarding registration have been duly compiled with:
(a) An advocate of the Supreme Court (or) High Court.
(b) An attorney (or) pleader entitled to appear before a High Court.

A chartered accountant practicing in India and also engaged in the formation of the company. Any person who is named in the articles as a director, manger (or) secretary of the company.

(vi) Notices of the Address of the Registered Office:

The address of the registered office of the company may also be given within 30 days after its incorporation (or) on the date from which the company commences in business whichever is earlier.

EXPLAIN THE ROLE OF PROMOTER (OR) BRIEFLY EXPLAIN THE FUNCTIONS OF THE PROMOTER (OR) WHAT ARE THE FUNCTION OF THE PROMOTER?

The following are the functions of the promoter:

(i) Promotion of an Idea:

It is the promoter who has to conceive the idea of forming a company. This is the first step towards the formation of a company.

(ii) Detailed Investigation:

The promoter, after forming an idea should make a thorough and detailed investigation of the prospects of the business. It should be done with reference to the sources of supply, nature of demand, capital requirements of the present and future etc.

(iii) Verification:

The promoter should also verify whether the advises (Or) comments (or) reports made by the experts are free from bias. He should also consult with other impartial and disinterested experts and should see whether the idea is commercially viable.

(iv) Assembling:

After verification of the idea, the promoter should go ahead with the promotion of the projected company. He should find out the first directors and the subscribers to the memorandum.

(v) Financing the Proposition:

The Promoter at this stage has to prepare a plan setting out the mode of getting the necessary finance. He should arrange for finance to meet the preliminary expenses. He should also arrange for underwriting contracts.

(vi) Presentation of the Preposition:

Finally, after making necessary arrangements and modes of raising finance, he gets the necessary documents such as memorandum etc. printed, filed with the registrar arranges for their publication.

WHAT ARE THE DUTIES OF PROMOTER (OR) BRIEFLY EXPLAIN THE DUTIES AND LIABILITIES OF THE PROMOTER?

The promoter enjoys extensive powers in the formation of a company. He stands in a fiduciary relationship with the company. The following are the important duties and liabilities of a promoter.

(i) Duty to Disclose:

The promoter is under a duty to disclose fully all the material facts relating to the formation of a company.

(ii) Not to make any Secret Profit:

The promoter, as a rule, should not make any secret profit at the expense of the company which is being promoted by him. Profit is said to be secret unless and until it is disclosed to an independent board. If he makes any secret profit, the company can claim damages from him.

(iii) Duty to Give Benefits of Negotiations to the Company:

The promoter, as soon as he starts to act for the formation of the proposed company should give to the company the benefit of all negotiations (or) contracts entered into out which he incurs in respect of the company.

(iv) Not to make unfair use his position:

The promoter enjoys extensive powers. Therefore, he should not make unfair use of his position (Or) the powers vested in him. Any unfair exercise of power shall render him liable to the company.

BRIEFLY EXPLAIN THE REMUNERATION OF PROMOTERS (OR) WRITE SHORT NOTES ON THE REMUNERATION OF THE PROMOTER?

A promoter has no light to get compensation from the company for his services in promoting the company, unless there is a contract to that effect. If there is no such contract, he is not entitled to get any compensation in respect of any payment made by him in connection with the formation of the company.

In practice, a promoter takes remuneration for his services in one of the following ways:

- He may be paid a lump sum in cash
- He may be given fully paid up shares in the company (or) partly in cash and partly in shares (or) debentures.
- He may be paid a commission on the shares sold.
- If he sells his won business he may be paid on the basis of the profit disclosed by him.

DESCRIBE CERTIFICATE OF INCORPORATION? (OR) WRITE SHORT NOTES ON CERTIFICATE OF INCORPORATION?

After the documents are filed with the registrar and the prescribed fees are paid and the registrar is satisfied that all the requirements of the act regarding the registration have been complied with, he will register the document and retain them. He will then issue a certificate known a **"Certificate of Incorporation"** and enter the name of the company in the register kept in his office. This certificate brings the company into existence as a legal person.

Conclusiveness of the certificate of Incorporation:

According to sec.35 of the companies act, the certificate is conclusive evidence that all the requirements of the act in regard to the formation and registration of the company have been compiled with the effects of the certificate of incorporation can be summed up as follows:

- Neither the court nor the registrar can cancel the certificate even if the company is formed for an illegal purpose.
- The validity of the certificate cannot be disputed on any grounds what so ever. It prevents the re-opening of the matter prior to the registration. The reason underlying sec.35 is that once a company registered and has begun business, entered into contracts it would be disastrous if any person could allege that the company was not duly registered.
- When a certificate is issue, the new company is born (ie) a legal person has come into existence through a legal process. It could not be extinguished by canceling the certificate. An end can be brought to it only through a legal process,
- The date mentioned in the certificate is the date of incorporation of the company, from the date the company assumes a separate corporate personality with perpetual succession.

When the registrar registers a company with the knowledge of defects in a document, no subsequent plea can be put up that the certificate is not conclusive evidence.

SPECIMEN OF CERTIFICATE OF INCORPORATION

I hereby certify that the leather loft India ltd. Is this day incorporated under the companies act, 1956 and that the company is limited.

Given under my hand at Madras this fifthday of May,2002.

Signature

SEAL **The Registrar of Companies**	**Registrar of Companies**

BRIEFLY DESCRIBE THE PROCEDURES REGARDING THE COMMENCEMENT OF BUSINESS (OR) WRITE A SHORE NOTES ON COMMENCEMENT OF BUSINESS?

A public company cannot commence business immediately upon incorporation. A further certificate known as certificate of commencement of business is necessary before it commences its business (or) exercises its borrowing powers. But a private company can commence business right from the date of the certificate of incorporation.

The specimen certificate of commencement of business given below:

SPECIMEN OF CERTIFICATE OF COMMENCEMENT OF BUSINESS

I hereby certify that --------------- Ltd. Of ---------- which was incorporate under the Indian companies Act, 1956 on the ----------- day of ----------- 20 ----------- and which has this day filed statutory declaration in the prescribed form that the conditions of sec.149 have been complied with, is entitled to commence business.

Given under my hand at Chennai this ------------ day of ----------- two thousand.

SD/-
Registrar of companies

SEAL
The Registrar of Companies

In order to get this certificate, the company must comply with the provisions of sec.149 of the companies act.

1. When the company issued a prospectus {sec.149 (1)}.

When the company has issued prospects to the promoters should file the following documents with the registrar.

- A declaration stating that shares upto the amount of minimum subscription have been applied for and the amount is received in cash and the shares have been allotted as such.
- A declaration stating that every director has paid the amount due from them for their qualification shares.
- A statement that no money is liable to be refunded to any applicant because of the failure of the company to apply for (or) to obtain permission for the shares to be dealt with in the stock exchange.
- A statutory declaration by the secretary (or) anyone of the directors (or) where the company has not appointed a secretary, a secretary in whole time practice that the legal requirements have been complied with.

(ii) When the company has not issued a prospects {sec.149 (2)}.

If the company has not issued a prospectus, the following documents are to be filed with the registrar.

A statement in lieu of prospectus.
A declaration stating that each director has paid the amount on the shares taken by him.
A statutory declaration by the secretary (or) any one of the directors (or) where the company has not appointed a secretary, a secretary in whole time practice, that all the legal requirements have been strictly complied with.

On filing these documents with the necessary fees, the registrar grants a certificate known as **"Certificate of Commencement of Business".** This certificate is conclusive evidence that the public company can commence business and exercise its borrowing powers.

CONSEQUENCES BY DEFAULT:

If there is a failure on the part of a public company in obtaining the certificate, the following consequences shall follow:

(i) Criminal Liability:

If any default is made in complying with the formalities and the company commences business (or) exercises its borrowing powers, every person who is responsible for the default shall be liable to a fine upto Rs.5,000 for every day during which default continues.

(ii) Period of Limitation:

The certificate should be obtained and the company should commence business within one year from the date of incorporation. If the company does not obtain this certificate within the period, the court may

order for its winding up (sec.433(c)). The registrar may remove its name form the registrar of companies as a “defunct companies” under sec.560 of the act.

(iii) Fate of the Contracts:

A company however, before the issue of the certificate of commencement of business can make contracts are only provisional and do not bind the company until it becomes entitled to commence business [sec 149(4)]. Therefore, if a company never obtains a certificate such contracts will never become binding up the company and become void for all purposes.

Commencement of a New Business:

The amendment act, 1965 has introduced certain new conditions for the commencement of a new business by the company. The following are the requirements of the amendment act.

- The object clause of a company incorporated after 13th October 1965 should be divided into two clauses.

(i) Main objects
(ii) Other objects

- If a company, formed after the date, wants to carry on any object stated in the clause of other objects, the prior approval of the shareholders through a special resolution is essential.
- If an existing company wants to commence a new business which is already included in the object clause but is not connected with the existing business of the company, it should also obtain the prior approval of the shareholders through a special resolution.

MEMORANDUM OF ASSOCIATION

WHAT DO YOU MEAN BY MEMORANDUM OF ASSOCIATION (OR) GIVE THE MEANING OF MEMORANDUM OF ASSOCIATION?

The memorandum of association of a company is the fundamental document of the company. It is the charter of the company and defines its powers. It lays down the area of operation of the company as also the fundamental conditions on which the company is incorporated. It also regulates the relationship of the company with the outside world.

DEFINE MEMORANDUM OF ASSOCIATION (OR) BRING OUT THE DEFINITION OF MEMORANDUM OF ASSOCIATION?

According to sec 2(28) of the companies act, “the memorandum means the memorandum of association of a company as originally framed (or) as altered from time to time in pursuance of any previous companies law (or) of this act”.

WHAT ARE THE MAIN PURPOSE OF MEMORANDUM (OR) WRITE A SHORT NOTE ON PURPOSE OF MEMORANDUM?

The purpose of memorandum of association is to-

- Inform the prospective shareholders about the field in, (or) the purpose for, which their money is going to be used by the company and what risk they are undertaking in making the investment.
- Let the outsiders who deal with the company to know with certainty as to.
  (i) What the objects of the company are, and
  (ii) Whether the contractual relation into whom they intend to enter with the company is within the corporate objects of the company.

WHAT ARE THE THINGS HAVE TO BE COMPLIED WITH MEMORANDUM (OR) LIST OUT THE IMPORTANT CLAUSES CONTAINED BY MEMORANDUM (OR) BRING OUT THE CONTENTS OF MEMORANDUM?

The Memorandum of Association of every company should contain the following six clauses:

- Name Clause
- Situation (or) Registered Office Clause
- Objects Clause
- Liability Clause
- Capital Clause
- The Association Clause

(i) Name Clause:

The name clause contains the name of the company. A company, being a legal person, must have a name to establish its corporate existence. It provides the company, the defacto monopoly of corporate trading under a particular name.

Principles for selecting the Name:

Generally, the promoters are free to adopt any name for the company they have proposed to register. But, the promoters, which naming the company should bear the following principles in their mind.

(a) Identical Clause:

The name selected should not be identical with (or) too closely resembles the name of another company. If the company gets registered with a name identical with another company, the other company may apply to the court and get injunction to restrain the new company from adopting the name.

(b) Undesirable Names:

The company should not also adopt a name which in the opinion of the central government is undesirable. The name shall be considered as undesirable if (i) It is too similar the name of another company (or) (ii) misleading.

(c) Objectionable Names:

The name must not be objectionable under the emblems and names act, 1950. The following names are objected by this act:

(i) The names and emblems of the W.H.O and U.N.O
(ii) The official seal and emblems of the central and state governments, and
(iii) The name of Mahatma Gandhi and the Prime Minister of India.

(d) Last word of the Name:

The last word of the name must be **"limited"** in case of public companies and in case of private companies it should be **"Private Limited".**

2. Situation (or) Registered Clause:

Situation clause (or) domicile clause contains the name of the state in which the company's registered office is to be situated. This determines the domicile and nationality of the company. It is also important for determining the jurisdiction of the court.

3. Object Clause:

In the objects clause, the memorandum must state the objects for which the proposed company is to be established. In case of companies is to be established. In case of companies formed before the companies amendment act, 1965 the objects clause has simply to state the objects of the company [sec.13(1)(c)]. But in case of companies formed after the amendment, act the objects clause must be divided into sub-clauses namely.

(i) Main Objects of the company to be pursued by the company and objects incidental (or) ancillary to the attainment of the main object.

(ii) Other objects of the company not included in the above clause.
(iii) Incidental Objects.s

The purpose of requiring a company to state its objects is two fold, viz.,

(i) To inform the members in what kind of business (principal and subsidiary) their capital may be used; and
(ii) To inform persons dealing with the company what its powers are.

4. Liability Clause:

The memorandum of a company limited by shares (or) by guarantee must also state that the liability of its members is limited (sec.12(2)). This means that the members can only be called upon to pay to the company at any time the uncalled (or) unpaid amount on the shares held by them (RO0 upto the maximum fo the amount which they have guaranteed. For ex, suppose A holds 100 shares of Rs.10 each in a company. If he has already paid Rs.7 per share, his liability will be limited to only Rs.3 per share. It shall come to an end when he pays this amount to the company.

5. Capital Clause:

This clause specifies the nominal share capital with which the company is to be registered and its divisions (preference (or) equity (or) any other share, their number, total value). Companies are having no share capital and companies limited by guarantee having no share capital need not include this clause in their memorandum. A company cannot issue share capital more than what is mentioned in this clause.

6. Association Clause:

The association clause states: "we the several persons whose names and addresses are subscribed are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names". This is followed by the names, addresses and descriptions of the subscribers and the number of shares taken by each of them. Each subscription has to take atleast one witness share.

The memorandum has to be signed by atleast 7 subscribers in the case of a public company, and by atleast 2 subscribers in the case of a private company. The signature of each subscriber must be attested by atleast one witness who cannot be any of the other subscribers.

WHAT ARE THE ESSENTIAL REQUISITES OF THE MEMORANDUM (OR) BRIEFLY EXPLAIN THE ESSENTIAL CONDITIONS OF MEMORANDUM?

Printed and signing of Memorandum (sec.15):

The memorandum of association of a company shall be-

(a) Printed
(b) Divided into paragraphs numbered consecutively, and
(c) Signed by 7 subscribers. If it is private company there must be 2.

Each subscriber shall sign and mention his address, description and occupation, in the presence of atleast one witness who shall attest the signature and shall likewise add his address, description and occupation, if any.

EXPLAIN THE PURPOSE OF ALTERATION OF MEMORANDUM (OR) MENTION THE PROCEDURE FOR ALTERATION OF MEMORANDUM?

(i). Change of Name:

A company may by a special resolution and with the approved of the central government signified in writing, change its name. But a change of name which merely involves the deletion (or) addition of the word **"private"** on the conversion of a private company into a public company (or) vice versa does not require the approval of the central government (sec.21).

If through inadvertence (or) otherwise, a company is registered by a name which, in the opinion of the central government, is identical with (Or) too nearly resembles the name of an existing company, the company may, but ordinary resolution and with the previous approval of the central government, change its name (sec.22(1)).

Where a company changes its name the registrar must enter the new name and issue to the company a fresh certificate of incorporation with the necessary alterations embodied therein.

(ii). Change of situation and objects:

This may involve:

(a) Change of registered office in the same town
(b) Change of registered office from one town to another town in the same state.
(c) Change of registered office from one state to another state.
(d) Change of objects.

In case of (a) a notice is to be given to the registrar within thirty days of the change.
In case of (b) a special resolution is to be passed at the general meeting of the shareholders and a copy of it is to be filed with the registrar within thirty days. Then within thirty days of the removal of the office, a notice to registrar is to be given of the new location of the office.

Change of Registered office from one state to another and objects: (sec.17)

1. A company may by special resolution, alter the provisions of it memorandum so as to change the place of its registered office from one state to another, so far as may be required to enable it:
(i) To carry on its business more economically and more efficiently.
(ii) To attain its main purpose by new (or) improved means;
(iii) To enlarge (or) change the local area of its operation.
(iv)To carry on some business which under existing circumstances may conveniently (or) advantageously be combined with the objects specified in the memorandum
(v) To restrict (or) abandon any of the objects specified in the memorandum;
(vi) To sell (or) dispose of the whole, (or) any part of the undertaking, of the company; or
(vii) To amalgamate with any other company (or) body of persons (sec.17(1)).
2. The alteration must be confirmed by the company law board on petition (sec.17(2)).
3. Before confirming the alteration, the company law board must be satisfied that sufficient notice has been given to every person whose interest will be accepted by the alteration and that the consent of the creditors of the company has been obtained (or) their debts (or) claims have been discharged (or) secured. (sec.17(3)).
4. The company law board must cause notice of the petition for a confirmation of the alteration to be served on the registration to be served on the registrar who must also be given a reasonable opportunity to appear before the company law board and state his objections an d suggestions, if any, with respect to the confirmation of the alteration (sec.17 (4)).
5. The company law board may make an order confirming the alteration, either wholly (or) in part, and on such terms and conditions, if any, as it thinks fit and may make such order as to costs as it thinks proper. (sec 17(5)).
6. The company law board must have regard to the rights and interests of every class of the members and the creditors of the company (sec.17(6)).
7. A certified copy of the order of the company law board confirming the alteration, together with a printed copy of the memorandum as altered, must within three months from the date of the order, be filed by the company with the registrar. The registrar must register the same and certify the registration within one month from the date of the filing of such documents. (sec.18 (1)).

If the documents to be filed with the registrar are not filed within three months, such alteration and all proceedings connected therewith shall become void and inoperative (sec.19).

Where the alteration involves a transfer of the registered office form one state to another, a certified copy of the order confirming the alteration must be filed by the company with the registrar of each of states and the registrar of each state must register the same. All the records of the company are then transferred to the registrar of the state in which the registered office of the company is transferred (sec.18(3)).

(iii) Change in Liability Clause:

A company limited by shares (or) guarantees cannot change its memorandum so as to impose any additional liability on the members (or) to compel them to buy additional shares of the company unless all the members agree in writing to such change either before (or) after the change (sec.38).

(Iv) Change In Capital Clause:

The capital clause of a company can be altered for one of the following purposes:

(a) Alteration Proper:

If the article of association permits, a company can make an alteration under this head by passing an ordinary resolution. By this alteration the company can.

(i) Increase its share capital by new issues.
(ii) Consolidate (or) Subdivide all (or) any of its share capital.
(iii) Convert the fully paid-up shares into stock (or) reconvert stock into shares.
(iv) Cancel the unissued shares and to that extent diminish the amount of its share capital.

(b) Reduction of capital:

For purpose of a reduction of the share capital the following conditions are to be fulfilled.

(i) Authorization of the articles of association
(ii) The company should pass a special resolution.
(iii)The company has to get confirmation from the nation company law tribunal.
(iv)A copy of the resolution and the order of the national company law tribunal should be file with the registrar.

The capital of a company can be reduced by-
Reducing (or) extinguishing the liability of members on unpaid capital.
Writing of the paid-up capital which is not represented by the assets.
Returning of the surplus of the paid-up capital.

(c) In crease in share capital:

A limited company having a share capital can increase its share capital by such amount as it thinks subject to the satisfaction of the following conditions.

(i) The articles of the company should contain powers authorizing the company to increase its capital.
(ii) A resolution must be passed by the company in a general meeting.
(iii) A notice of increase in capital is required to be filed by the company with the registrar within 30days after the passing of the resolution.
(iv) The notice to be given to the registrar should include particulars of the class of shares affected and the conditions, if any subject to which the new shares have been (or) are to be issued.

(d) Variation of shareholder's rights:

The rights of a class of shareholders mentioned in the memorandum may be altered by means of a resolution passed by 3/4th of the shareholders of that class (or) by a special resolution at their class meeting. However, such variation can be made only if provision with respect to such variation is contained in the memorandum (or) articles of the company.

WRITE A SHORT NOTES ON DOCTRINE OF ULTRA VIRES, EXPLAIN THE DIFFERENT TYPES OF ULTRA VIRES? BRIEFLY EXPLAIN THE EXCEPTIONS TO THE DOCTRINE OF ULTRAVIRES? WHAT ARE THE EFFECTS OF ULTRA VIRES?

A company has the power to do all such things as are (i) authorized to be done by the companies act, (ii) essential to the attainment of its objects specified in the memorandum, and (iii) reasonably and fairly incidental to its objects.

Everything else is ultra vires the company **'ultra'** means **'beyond'** and **'vires'** means **'powers'**. The term ultravires means that the doing of the act is beyond the legal power of the company. If an act is ultra vires the company (ie) outside the scope of the company's powers, it is void and inoperative and will not be binding on the company. Not even the whole body of shareholders can ratify it and make it binding on the company.

If an act is ultravires the powers of the directors, as defined by the articles, the shareholders can ratify it. If it is ultra vires the articles of the company can ratify it by altering the articles by passing a special resolution at the general meeting. Again if it is done irregularly, it can be validated by the consent of all the shareholders provided it is within the powers of the company.

Effects of an Ultravires act:

- ♣ Any member of the company can bring injunction against the company to prevent it from ding any ultra vires act.
- ♣ The directors of the company will be personally liable to make the funds used for the ultra vires act.

- Ultravires borrowing does not create the relationship of creditor and debtors and the only possible remedy in such case is in rem and not in personam.
- Where a company's money has been used ultravires to acquire some property, the company's right over such property is held secure.

Types of Ultra Vires Act:
There are three types of ultra vires acts. They are:

(i) Ultra vires the Memorandum of the Company:
If the act done (or) contract made by the company is beyond the powers given in the objects clause of the memorandum, it is called an act which is ultra vires the memorandum. Where the company exceeds its authority, the act is good to the extent of the authority and bad as to the excess.

(ii) Ultra vires the articles but Intra vires the company:
The acts done (or) contracts made beyond the powers given by the article but are within the powers of the memorandum are called ultra vires the articles but intra vires the company. These acts can be ratified by the shareholders by making an alteration in the articles to that effect.

(iii) Ultra vires the directors but Intra vires the company:
These are acts done (or) contracts made by the directors which are ultra vires the directors but intravires the company. These acts can be ratified by the company and can make it binding.

Exceptions to the doctrine of ultra vires:

- If an act is ultra vires the directors of a company but is intra vires the company, the company may ratify it.
- If an act is ultra vires the articles of a company, the articles may be altered to include the act within the powers of the company.
- If a person borrows money form a company under a contract which is ultra vires the company, the company can sue him for the recovery of the money.
- If an act is ultra vires the company, the rights arising independently of the act are not affected.
- If an act is intra vires (i.e. Within the powers of) a company, but is irregularly done, the shareholders may ratify it.
- If a company has purchased some property from a third party under an ultra vires contract (or) has taken an ultra vires loan, the third party has the right to follow his property (or) money if it exists in specie.
- If a company takes an ultra vires loan and uses it to pay off intra vires debts, the lender who has lent money under the ultra vires contract is substituted in place of the creditor who has been paid off and as such he can recover the money.
- If a company has taken an ultra vires loan through some misrepresentation of fact by the directors, the lender has the right to make the directors personally liable on the ground of breach of implied warranty of authority.
- If a director of a company makes payment ultra vires the company, the company can compel him to refund the amount.

ARTICLES OF ASSOCIATION:

WHAT DO YOU MEAN BY ARTICLES OF ASSOCIATION (OR) GIVE THE MEANING THE ARTICLES OF ASSOCIATION?

The articles of association are the rules and regulations for the internal management of the affairs of a company. They are framed with the object of carrying out the aims and objects of the memorandum of association.

The articles must be (a) printed, (b) divided into paragraphs, and (c) signed by each subscriber of the memorandum in the presence of atleast one witness who will attest the signature and his address, description and occupation, if any (sec.30).

DEFINE ARTICLES OF ASSOCIATION?

According to sec.2(2) "Articles means the articles of association of a company originally framed or as altered from time to time in pursuance of any previous companies law (or) of this act. They also include, so far as they apply to the company, those in Table A in schedule I annexed to the act (or) corresponding provisions in the earlier acts".

WRITE A SHORT NOTE ON THE CONTENTS OF ARTICLES OF ASSOCIATION (OR) WHAT ARE THE CONTENTS OF THE ARTICLES OF ASSOCIATION?

The articles contain rules and regulations regarding:

- Adoption of preliminary contracts
- Number and value of shares
- Allotment of shares
- Calls on shares
- Share certificates and rights of different types of shareholders.
- Transfer and transmission of shares
- Forfeiture of shares.
- Lien of shares
- Alteration of capital
- Conversion of shares into stock
- Borrowing powers.
- Alteration of the memorandum
- General meetings, voting rights of the members and proxies.
- Number of directors, their qualifications and remuneration.
- Dividend
- Accounts and audit
- Issue of bonus shares.
- Appropriation of various reserves.
- Winding up.

According to sec.26 of the act, a public company is not required to file its own articles. If so, all the provisions in Table A of the schedule I shall apply to them. In case of companies and private companies limited by shares, the act makes the preparation and registration of the articles obligatory.

Statutory Requirements:

The articles must be printed, divided into paragraphs, numbered consecutively, stamped adequately signed by each subscriber to the memorandum and duly witnessed and filed along with the memorandum. The articles must not contain anything illegal (or) ultra vires the memorandum, nor should it be contrary to the provisions of the companies act, 1956.

MENTION THE PROCEDURE AND LIMITATIONS TO ALTER THE ASSOCIATION (OR) WHAT ARE THE PROCEDURES AND LIMITATIONS TO ALTER THE ASSOCIATION?

Companies have been given very wide powers to alter their articles. A company may be passing a special resolution, alter regulations contained in its articles any time. Again any new regulation in the articles may be adopted which could have been lawful included in the original articles. A copy of every special resolution altering the articles shall be filed with the registrar within 30 days of its passing and attached issued therefore. Any alteration so made in the articles shall be as valid as if originally contained in the articles.

Limitations to alteration:

- The alteration of the articles must not be inconsistent with, or go beyond, the provisions of the companies act.
- It must not conflict with the provisions of the memorandum. If it does, it will be ultra vires and wholly void and inoperative.
- It must not purpose to sanction anything which is illegal.
- It must be bonafide for the benefit of the company as a whole.
- It must not constitute oppression (or) a fraud on the minority shareholders. But if it is bonafide for the benefit of the company as a whole, it is immaterial that is inflicts hardship on a minority.

- It must not in an anyway increase the liability of the existing members to contribute to the share capital of, or otherwise pay money to the company unless they agree in writing before (or) after the alteration is made.
- It can only be made by a special resolution.
- If it has the effect of converting a public company into a private company, it can be made only it is approved by the central government.
- It must not cause a breach of contract.

DISTINCTION BETWEEN ARTICLES AND THE MEMORANDUM (OR) BRING OUT THE DIFFERENCE BETWEEN ARTICLES OF ASSOCIATION AND MEMORANDUM OF ASSOCIATION?

Memorandum	**Articles**
1. Charter of the company and defines and also confines the fundamental conditions and objects for which company is granted incorporation.	Bye law (or) internal regulation of the company.
3. Principal document	Secondary document
4. Specifies the scope of authority and the objectives.	Specifies the procedures to be followed to carry out the objectives stated in the memorandum.
2. Subordinate to the companies act. 5. Defines the relationship between the company and outsiders.	Subordinate to the memorandum. Defines the relationship between the company and its members and between the members **interse.**
6. Alteration is difficult	Alteration is comparatively easy.
7. Memorandum is compulsory for all companies.	The company need not have its won articles. Instead, it can adopt Table-B as its articles.
8. Act ultra vires to memorandum cannot be ratified and outsiders have no remedy against the company.	Acts ultra vires to articles can be ratifies by suitable legal formalities. Outsider have a remedy even if the act is ultra vires the company.
9. It is not easy to alter the memorandum. In some cases, the alteration requires a special resolution and confirmation by the company law board.	The articles can be altered easily by a special resolution provided the changes are lawful and within the limits of the company.

STATE THE RELATIONSHIP BETWEEN MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION (OR) EXPLAIN THE RELATIONSHIP BETWEEN MEMORANDUM AND ARTICLES?

- Both these documents are subordinate to the companies act.
- Both these documents are public documents. Members of the company and outsiders can inspect them and can purchase a copy of them by paying the prescribed fee in the office of the registrar.
- The terms of the memorandum cannot be modified by the articles.
- The memorandum must always be read together with the articles while clarifying certain things.

WRITE A SHORT NOTE ON LEGAL EFFECT OF THE MEMORANDUM AND ARTICLES (OR) BRIEFLY EXPLAIN THE LEGAL EFFECT OF THE MEMORANDUM AND ARTICLES?

` According to sec 36, "Subject to the provisions of this act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained convenants on its and his part to observe all the provisions of the memorandum and of the articles".

The effect of the memorandum and the articles when registered is that:

- They bind each member to the company
- They bind the company to the members
- They bind members inter se (ie) bind each member to other members.
- But they do not bind either the company (or) the members to the outsiders.

(i) Bind each member to the company:

It is presumed that each member has signed both the memorandum and the articles of the company. These documents are treated as contracts entered into between the company and outsiders.

(ii) Bind the company to each member:

Articles of the company bind the company and the members. Under the terms of the articles, a company is bound to comply with the provisions thereof. A member is entitled to enforce compliance by the company with a clause in the articles conferring on him a right to a share certificate.

(iii) Bind each member to other members (Members inter se):

As between the members inter se, the memorandum and the articles constitute a contract between them and are also binding on each member as against the other (or) others. Such a contract can, however, be enforced through the medium of the company.

(iv) Company to the outsiders (they do not bind either the company (or) the members to the outsiders):

Outsiders cannot take advantages of the articles to found a claim thereon against the company. This is based on the general rule of law that a stranger to a contract cannot acquire any rights and liabilities under that contract. If the articles provide that the company on incorporation shall purchase certain property and appoint the vendor as one of the directors, the vendor, on becoming a shareholder, cannot sue the company on the basis of the articles.

DESCRIBE THE DOCTRINE OF CONSTRUCTIVE NOTICE (OR) WHAT DO YOU MEAN BY DOCTRINE OF CONSTRUCTIVE NOTICE OF MEMORANDUM AND ARTICLES?

Every outsider dealing with the company is deemed to have a constructive notice of the contents of the memorandum and articles of association, which on registration with the registrar assume the character of public documents. The office of registrar is a public office. The memorandum and the articles are, therefore, open and accessible to all.

It is the duty of every person dealing with a company to inspect these documents and see that it is within the powers of the company to enter into such a contract. Thus anyone dealing with a company is presumed not only to have read the provisions of the memorandum and the articles but to have understood them properly.

WHAT DO YOU MEAN BY DOCTRINE OF INDOOR MANAGEMENT (OR) EXPLAIN THE DOCTRINE OF INDOOR MANAGEMENT AND ITS EXCEPTIONS?

Doctrine of indoor management is basically an exception to the doctrine of constructive notice. Its purpose is to safeguard the ignorant stranger who deals with the company is good faith. According to this doctrine, the outsider who deals with the company has a right to assume that so far as the internal proceedings are concerned, everything has been done regularly and in accordance with the memorandum and articles.

Exceptions to the Doctrine of Indoor Management:

The doctrine of indoor management is not also free from exceptions. There are certain circumstances in which the stranger cannot claim protection under the shelter of the doctrine.

(i) Knowledge of irregularity:

Where a person dealing with a company has actual (or) constructive notice of the irregularity as regards internal management, he cannot claim.

(ii) Negligence:

If the persons dealing with the company would have discovered the irregularity if he had made proper enquires, he cannot claim the benefit under this doctrine.

(iii) Act void "Ab initio" and Forgery:

If the acts done in the name of the company are void "Ab initio", this doctrine does not apply. This doctrine shall not also be applicable to a forgery committed by the officers of the company.

(iv) Non consultation of the documents:

The rule cannot be invoked in favour of a person who did not in fact consult the company's memorandum and articles and consequently did not act in reliance of those documents

(v) Not-Applicable to the officers act:

The rule does not bind the company either to its officers (or) other persons who should know whether the regulations in the articles have been observed.

(vi) Failure to Enquire:

The rule cannot be invoked by a person who is put to enquiry by suspicious circumstances, under which he would have discovered the irregularity if he had taken care e.g Acts outside apparent authority of the officer acting on behalf of the company.

WHAT DO YOU UNDERSTAND BY PRE-INCORPORATION (OR) PRELIMINARY CONTRACT (OR) WRITE A SHORT NOTE ON PRE-INCORPORATION CONTRACT?

The promoters of a company usually enter into contracts to acquire some property (or) right for the company which is yet to be incorporated. Such contracts are called preliminary (or) Pre-incorporation contracts. The promoters generally enter into such contracts as agents for the company about to be formed. The legal position is that "two consenting parties are necessary to a contract whereas the company, before incorporation is a non-entity". The promoters cannot therefore act as agents for a company which has not yet come existence. As such the company is not liable for the acts of the promoters done before its incorporation.

Position of promoters as regards preliminary contracts:

(i) The company when it comes into existence is not bound by the preliminary contracts even where it takes the benefit of work done on its behalf.

(ii) The company cannot, after incorporation, enforce the contract made before its incorporation. This means a company, when it comes into existence, cannot sue the other party to the contract if that other party fails to carry out the contract. The promoters remain personally liable on the contract.

Ratification of a preliminary contract:

A company cannot ratify a contract entered into by the promoters on its behalf before its incorporation.

Sec. 15 and 19 of the specific relief act, 1963 deal with the specific performance of preliminary contracts.

WHAT DO YOU MEAN BY PROVISIONAL CONTRACTS?

Provisional contracts refer to contracts entered into by a company after its incorporation but before it is issued the certificate to commence business.

According to sec 149(4), any contract made by accompany before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date and on that date it shall become binding. If the company is unable to obtain the certificate to commence business, the provisional contract automatically lapses; if it gets the certificate the provisional contract becomes binding on the company.

UNIT – II COMPLETED

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UNIT III

PROSPECTUS

INTRODUCTION:

After obtaining the certificate of incorporation, the promoters of a public company have to issue a prospectus to arouse public interest in the proposed company. The issue of prospectus, therefore is regarded as the most practical step connected with the formation of a company. A private ltd. Company cannot issue a prospectus because it is prohibited from offering shares (or) debentures to the public by its articles.

GIVE THE MEANING OF PROSPECTUS (OR) WHAT DO YOU MEAN BY PROSPECTUS?

Any document inviting deposits from the public (or) inviting offers from the public for the subscription of shares (or) debentures of a company is a prospectus.

Definition:

Sec 2(36) defines a prospectus as "any document described (or) issued as a prospectus and includes any notice, circular, advertisement (or) inviting offers from the public for the subscription (or) purchase of any shares in, (or) debentures of, a body corporate".

BRIEFLY EXPLAIN THE CONDITIONS FOR ISSUING A PROSPECTUS (OR) WRITE A SHORT NOTE ON NECESSARY CONDITIONS FOR ISSUING A PROSPECTUS?

(i) Invitation to the public:

The prospectus is an invitation to offer to the public to subscribe for the shares and debentures of the company. If the invitation is not made to the public at large but made only to a small section of it, it is not a prospectus.

(ii) Issued to the public:

The prospectus should be considered as such only when it is issued to the public. Therefore, a document which is for private circulation (or) confidential shall not be considered as a prospectus even though it contains the particulars to be set out in the prospectus.

(iv)Issued as a prospectus:

The prospectus should be issued (or) described as a prospectus. Otherwise it is not a prospectus within the meaning of this act.

MENTION THE OBJECTS OF ISSUING A PROSPECTUS (OR) NARRATES THE MAIN OBJECTS OF ISSUING A PROSPECTUS?

The prospectus is issued for the following purposes:

(i)To attract the investors:

(ii)To make enough disclosure to the investors to enable them to decide whether (or) not to purchase shares (or) debentures of the company.

(iii) To secure that the directors of the company accepted responsibility for the statement in the prospectus. A prospectus is thus only a window through which a prospective investor can look into the soundness of a company's venture.

BRING OUT THE CONTENTS OF PROSPECTUS (OR) WHAT ARE THE CONTENTS ARE COMPLIED WITH PROSPECTUS?

Sec.56 requires every prospectus to disclose the matter as specified in schedule II to the companies act. The central government has vide note No.666 (e) dated 3.10.1991 amended schedule II. Prospectus under the revised schedule II. Prospects under the revised schedule II are divided into three parts which are as under:

PART-I OF SCHEDULE II- MATTERS TO BE SPECIFIED.

(i) Objects of the company and particulars of signatories:

The main objects of the company with particulars of signatories to the memorandum and the number of shares subscribed for by them.

(ii) Number and classes of shares:

The number and classes of shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.

(iii)Numbers of redeemable preference shares:

The number of redeemable preference shares intended to be issued, with the date of redemption.

(iv)Qualification Shares:

The number of shares, if any, fixed by the articles as the qualification of a director and the remuneration of the directors.

(v) Particulars about managerial Personnel:

The names, addresses, description and occupations of directors, managing director, manager, if any, and the remuneration payable to him (or) them.

(vi)Minimum subscription:

Where shares are offered to the public the amount for the purpose for which minimum subscription, and if the amount for the purpose for which minimum subscription is to be raised through sources other than those of issue of shares such sources must be specified.

(vii) The time of opening of the subscription lists and the amount payable on application and allotment on each share.

(viii) Particulars of option to subscribe for shares:

The substance of nay contract (or) proposed contract whereby any option has been, (or) is proposed to be given to any person to subscribe for shares (or) debentures.

(ix) Shares issued for consideration other than cash:

The number, description and amount of shares and debentures issued within the preceding two years as fully (or) partly paid up for consideration other than cash.

(x) Premium on shares:

The amount paid (or) payable by way of premium on each share issued with in two years preceding the date of the prospectus.

(xi) Underwriters:

The names of underwriters, and the opinion of the directors that the resources of the underwriters are sufficient to discharge their obligations.

(xii) Particulars of vendors of property:

The names, addresses, description and occupations of the vendors of any property purchases (or) proposed to be purchased by the company, the amount paid (or) payable in cash, shares (or) debentures respectively and the amount paid (or) payable for goodwill.

(xiii) Underwriting Commission:

The amount paid within the two preceding years (or) payable as commission to any person for subscribing (or) procuring subscription for any shares (or) debentures of the company.

(xiv) Preliminary Expenses:

The amount (or) estimated amount of preliminary expenses and the expenses of the issue of shares.

(xv) Amount of benefit given to promoter:

The amount of benefit given within the two preceding years (or) intended to be given to any promoter (or) officer and the consideration for the giving of the benefit.

(xvi) Auditors:

The names and addresses of the auditors, if any of the company.

(xvii) Nature of interest of every director (or) Promoter:

Particulars of the nature and extent of the interest, if any, of every director (or) promoter in the promotion of the company (or) any property acquired by the company within two years of the date of the prospectus.

(xviii) Voting and dividend rights of holders of different classes of shares.

(xix) Length of time of business:

In the case of a company which has been carrying on business, the length of the time during which business of the company has been carried on.

(xx) Capitalization of profits and surplus from revaluation of assets:

If any reserves (or) profits of the company (or) any of its subsidiaries have been capitalized, particulars of the capitalization, and particulars of the surplus arising from any revaluation of the assets of the company during the two years preceding the date of prospectus.

(xxi) Time and place of inspection of balance sheets and profit and loss accounts:

A reasonable time and place at which copies of all balance sheets and profit and loss accounts may be inspected.

Part II of schedule II – Reports to be set out

1. A report by the auditors of the company with respect to (a) its profits and losses and assets and liabilities; (b) the dividends paid by the company during the five financial years immediately preceding the issue of prospectus.

If however, no accounts have been made up in respect of any part of the period of five years ending on a date three months before the issue of the prospectus the report must contain, a statement of the fact. If the company has subsidiaries, the above report must in addition deal with either the combined profits and losses and assets and liabilities of its subsidiaries (or) each of the subsidiary so far as they concern the members of the company.

2. A report by the accountants of the profits (or) losses of the business for the preceding five financial years and on the assets and liabilities of the business on a date which must not be more than (or) hundred and twenty days before the date of the issue of the prospectus. This is to be done if the proceeds, (or) any parts of proceeds of the issue of the shares (or) debentures are (or) is to be applied directly (or) indirectly in the purchase of an business.

3. A similar reports on the accountants of a body corporate by an accountant if the proceeds of the issue are to be applied in the purchase of shares of a body corporate becomes a subsidiary of the acquiring company.

Part III of Schedule II

1. In the cases of a prospectus issue more than two years after the date at which the company is entitled to commence business, particulars, of the signatories of the memorandum and the shares subscribed for by them and the details of the preliminary expenses need not to given. Also where any prospectus is prospectus is published as a newspaper advertisement, it is not necessary to specify the contents of the memorandum and signatories thereto, (or) the number of shares subscribed for by them.

2. In case of a company which has been carrying on business for less than five financial years, reference to five financial years means reference to the number of financial years for which business has been carried on.

Statement By experts:

1. Experts to be unconnected with formation (or) Management of company (sec.57):

Where a prospectus includes a statement made by an expert, he should not be engaged (or) interested in the formation, promotion (or) management of the company.

2. Experts consent to issue of prospectus containing statement by him (sec.58):

The prospectus including a statement made by an expert must not be issued. Unless (a) he has given his written consent to the issue of the prospectus with the statement, and (b) a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

WHEN PROSPECTUS IS NOT REQUIRED TO BE ISSUED?

Sec.56(3) states that no application form can be issued for shares (or) debentures unless it is accompanied by a memorandum containing such silent features of prospectus as may be prescribed. There are, however four exceptions to this rule:

1. Where the offer is made in connection with the bonafide invitation to a person to enter into an underwriting agreement with respect to the shares (or) debentures.
2. Where the shares (or) debentures are not offered to the public.
3. Where the offer is made only to the existing members (or) debenture holders of the company with (or) without a right to renounce.
4. Where the shares (or) debentures offered are in all respect uniform with shares (or) debentures already issued and quoted in a recognized stock exchange.

BRIEFLY EXPLAIN THE REMEDIES AVAILABLE FOR MISSTATEMENT MADE IN THE PROSPECTUS (OR) WHAT ATE THE REMEDIES AVAILABLE FOR THE WRONG STATEMENT IN PROSPECTUS?

If the prospectus contains a misleading statement, the liability of the company, the directors, promoters and others who authorized the issue can be classified into three kinds viz.,

- Civil Liability
- Criminal Liability
- Liability under the law of contract

I. Civil Liability:

An aggrieved shareholder who purchased shares by placing reliance on the misleading prospectus has

(i) Remedies against the company and

(ii) Remedies against the directors, promoters and experts.

1. Remedies against the company:

The aggrieved shareholder has two remedies against the company. They are:

(i) Rescission of the Contract:

The person who purchased shares on the basis of the prospectus containing mis-statements can rescind the contract. He is eligible for rescission whether the mis-statement is made intentionally (or) unintentionally. He has to surrender his shares to the company. The money paid by him will be refunded by the company. The following are some of the conditions to be satisfied for claiming recission.

There must be an untrue statement

The mis-statement must be material to the contract of issuing shares.

The shareholder should not have affirmed the contract for purchase of shares.

(ii) Damages for Fraud:

After rescinding the contract, the aggrieved shareholder can claim damages from the company by filing a suit in the court. He has to prove that the mis-statement was made fraudulently.

2. Remedies against the promoters, Directors, Experts and Persons authorized the issue of the prospectus:

(a) Damages for Mis-Statement (sec.62)

The directors, promoters, experts and others who have authorized the issue of the prospectus are liable to compensate the aggrieved shareholder for the loss (or) damages he may have to incur because of the untrue statement.

(b) Damages for Non-disclosure of Material Facts (sec.56):

If a material fact has been omitted from the prospectus (a) the person responsible for the issue shall be fixed upto Rs.50,000 and (b) the aggrieved can recover damages from the persons responsible for the issue.

II. Criminal Liability:

If a prospectus contains any untrue statement, every person who authorized the issue are punishable with fine upto Rs.50,000/- (or) with imprisonment upto 2 yrs (or) with both (sec.63).

Anyone who fraudulently makes any misstatement in the prospectus to induce person to invest money in the company is punishable with imprisonment upto 5yrs (or) with fine upto Rs.10,000 (or) with both (sec.68)

III. Liability under general law of contract:

Under the general law, the aggrieved shareholder can recover damages from all (or) any of the persons responsible for the issue of the prospectus. The necessary thing is to prove that there is a fraudulent mis-statement (or) non-disclosure.

WHAT DO YOU UNDERSTAND BY STATEMENT IN LIEU OF PROSPECTUS (OR) BRIEFLY EXPLAIN THE STATEMENT IN LIEU OF PROSPECTUS?

A public company ahs to issue a prospectus for inviting offers from the public for selling its shares and debentures. If the promoters are sure of raising the capital privately, the company need not issue a prospectus. In this case, the company has to file with the registrar, a statement called a statement in Lieu of Prospectus. The following are the provisions of the act (sec.70 (1)).

It must be filed atleast 3 days before the first allotment of shares.

It must be signed by every director (or) proposed director (or) by his agent authorized in writing.

It should contain information like the prospectus. It should be in the form given in schedule II of the act.

If a public company allots shares even without filing statement in lieu prospects, the company and every director responsible for it shall be fixed upto Rs.10,000.

If the statement in lieu of prospectus contains any untrue statement, every person who authorized the statement is punishable with imprisonment upto 2yrs (or) with fine upto Rs.50, 000 (or) with both.

GIVE THE MEANING OF (A) SHELF PROSPECTUS (B) RED HERRING PROSPECTUS (C) ABRIDGED PROSPECTUS (D) OFFER DOCUMENT?

(i) Shelf Prospectus:

Shelf prospectus means a prospectus issued by any financial institution (or) bank for one (or) more issues of the securities specified in that prospectus. A company filing a shelf prospectus with the registrar shall not be required to file prospectus afresh at every stage of offer of securities by it within a period of validity of such shelf prospectus.

(ii) Red Herring Prospectus:

Red herring prospectus is a prospectus which does not have details of either price (or) number of shares being offered (or) the amount of issue. This means that incase price is not disclosed, the number of shares and the upper and lower price bands are disclosed.

(c) Abridged Prospectus:

Abridged prospectus means the memorandum as prescribed in general rules and forms under sec 56(3) of the companies act, 1956. The companies act 1956 defines "abridged prospectus to mean a memorandum containing such salient features of a prospectus as may be prescribed. It accompanies the application form of public issues.

WHAT DO YOU MEAN BY SHARES (OR) GIVE THE MEANING OF SHARES AND DEFINE SHARES?

The capital of a company is generally divided into several units called shares. Each share has a definite value which is known as the face value of the share.

Definition:

According to sec.2(46) of the companies act, "Share means share in the capital of the company and includes stock except where a distinction between stock and share is expressed (or) implied.

"A share is an interest having a money value and make up of diverse rights specified under the articles of association"- **Commissioner of Income tax V.Standard Vaccum oil co.**

EXPLAIN THE FEATURES (OR) CHARACTERISTICS OF SHARES?

- The capital of the company is divided into several numbers of shares.
- Each share has a definite face value.
- The person who holds the share of the company is known as shareholder.
- The shareholder has a right to share the profit of the company.
- The shareholder has the right to share the liabilities of the company at the time of winding up.
- The assets and liabilities of a company is governed by the provisions of the articles and companies act.
- Share is a movable property. It can be transferred easily form one person to another in the manner specified in the articles.

LIST OUT THE DIFFERENT KINDS OF SHARES (OR) WHAT ARE THE DIFFERENT TYPES OF SHARES MAY BE ISSUED BY A COMPANY?

According to the Indian Companies Act, the share capital of a company limited by shares shall be of two kinds only namely,

1. Equity Shares
   - With voting rights, (or)
   - With differential rights as to dividend, voting (or) otherwise in accordance with such rules and subject to such conditions as may be prescribed.
2. Preference Shares (sec.86)

Other Types are:

1. Deferred shares (or) Foundation shares
2. No par share (or) stock

(i) Preference shares:

According to sec.85 of the act "Preference shares are those shares on which there is preference right (a) To claim dividend during the life time of the company and (b) To claim repayment of capital on the winding up".

Features:

- The percentage of dividend is fixed.

- ✦ The holders of preference shares get the fixed dividend before any dividend is paid to other classes of shareholders.
- ✦ At the time of winding up, the preference shareholders can get back their capital before any other classes of shareholders get back their money.

Kinds of Preference Shares:

- ◎ Cumulative Preference Shares
- ◎ Non-Cumulative Preference Shares
- ◎ Participating Preference Shares
- ◎ Non-Participating Preference Shares
- ◎ Convertible Preference Shares
- ◎ Non-Convertible Preference Shares
- ◎ Redeemable Preference Shares
- ◎ Guaranteed Preference Shares

1. Cumulative Preference Shares:

If any year the company does not earn adequate profit, dividends on preference shares may not be paid for that year. In case of cumulative preference share, such unpaid dividend is treated as arrears. The arrears will accumulate and they will be payable out of the profits of the subsequent years.

2. Non-Cumulative Preference Shares:

The dividend on these shares are payable only out of the profits of the current year. If in ay year the company does not earn adequate profit, the holders get no dividend or partial dividend. The unpaid dividend will not be carried forward subsequent years.

3. Participating Preference Shares:

In addition to the fixed dividend, the shareholders of this kind of share have a right to participate in the surplus of profits which remains after payment to the equity shareholders.

4. Non- Participating Preference Shares:

These shares are entitled to only a fixed rate of dividend. The holders of these shares do not share in the surplus profits which go to the equity shareholders.

5. Convertible Preference Shares:

These are the shares which entitled their holder to convert them into equity shares within a certain period.

6. Non- Convertible Preference shares:

These are the shares which do not confer on their holder a right of conversion into equity shares.

7. Redeemable Preference Shares:

The preference shares which can be redeemed after a specified period or at the discretion of the company are called redeemable preference shares.

8. Guaranteed Preference Shares:

In case of conversion of private into public or amalgamation or absorption, the sale guarantees a particular rate of dividend for preference shares for certain years.

II. Equity Shares:

According to sec 85(2), "Equity shares are those which are not preference shares". Equity shares are also called **ordinary shares.**

The financial risk is more with equity share capital. So equity shares are also called "Risk Capital".

Features:

- ✡ The rate of dividend for equity share is not fixed.
- ✡ The equity shareholders can get the dividend after the payment of dividend to preference shares.
- ✡ The face value of the equity share is small.
- ✡ They are the real owners.
- ✡ They have full voting rights as they elect directors to manage the company.

Sweat Equity Shares:

Sweat equity shares means equity shares issued at a discount or for consideration other than cash for providing (or) making available rights in the nature of intellectual property rights or value additions by whatever name called.

III. Foundation Shares:

The shares issued to the founders or promoters of the company are called as founder's shares, also known as deferred shares. These types of shares issued only by the private companies. These shareholders can get dividend only after the equity and preference shareholders. These shares have extraordinary voting rights though their face value is very low.

WHAT DO YOU MEAN BY STOCK AND WRITE A SHORT NOTE ON CONVERSION OF SHARES INTO STOCK?

Stock is the aggregate of fully paid-up shares, consolidated and divided, for the purpose of convenient holding into different parts. It may be transferred or split up into fractions of any amount, without regard to he original face value of the shares. Only fully paid up shares can be converted into stock.

A limited company having a share capital may, if authorized by its articles, by a resolution passed in the general meeting, convert all or any of its fully paid-up shares into stock and reconvert the stock into fully paid-up shares of any denomination. When shares are converted into stock , notice must be given to the registrar within 30days.

Conversion of shares into stock:

Articles 36 to 38 of Table A deal with the conversion of shares into stock. These articles are too reproduced below:

Article 36:

A company may, by ordinary resolution

a) Convert any paid-up shares into stock and

(b) Reconvert any stock into paid up shares of any denomination.

Article 37:

The holders of stock may transfer the stock or any part thereof in the same manner as the shares from which the stock arose. The board of directors may, from time to time, fix the minimum amount of stock transferable.

Article 38:

The holders of stock have, according to the amount of stock held by them, the same rights, privileges as regards dividends, voting at meetings of the company and other matters as if, they held the shares from which the stock arose.

DIFFERENCE BETWEEN SHARES AND STOCK (OR) DISTINGUISH BETWEEN SHARES AND STOCK?

The holders of the stock also have similar privileges and rights as that of the shareholders. However the important points of distinction between the shares and stock can be summed up as follows:

1. A share has a nominal value, whereas stock has no nominal value.
2. Stock is always fully paid up, while shares may not be so.
3. Stock is transferable in small fractions while shares can only be transferred in round numbers.
4. All shares are of equal denomination. Stock may be of unequal amounts.
5. The fractions or parts of stock do not bear any distinctive numbers while shares always bear distinctive numbers.
6. Shares can be directly issued to the public whereas stock cannot be issued directly. Only fully paid-up shares can be converted into stock.

BRING OUT THE ADVANTAGES AND DISADVANTAGES OF SHARES (OR) WHAT ARE THE ADVANTAGES AND DISADVANTAGES OF SHARES?

Advantages:

- ❖ The shareholders are the real owners of the company; they have full voting rights.
- ❖ The company get capital without creating of any charge on the assets of the company.
- ❖ The shares are of small face value, even poor people can become members of big companies.

- The shares are not a burden on the resources of the company; If the company has sufficient profits and the recommendation of the directors the dividend may be declared.
- During the life time of the company, the question of refunding the equity capital does not arise.
- If the shares are issued by an existing company, they are first offered to the existing shareholders it is known as right issue.

Disadvantages:

- The shares are not refundable they are treated as illiquid.
- The uncertainty of the return on the equity shares, conservative investors hesitate to purchase them.
- Higher dividends during prosperous periods and low dividends during depression periods shall lead to speculation.
- The rate of dividend is recommended by the board.
- Rights issue may lead to concentration of control of the company in the hands of a few persons.

WRITE A SHORT NOTE ON SHARE CERTIFICATE AND SHARE WARRANT (OR) EXPLAIN THE TERM SHARE CERTIFICATE AND SHARE WARRANT?

Share certificate:

Every person whose name is entered as a member in the register of members has a right to receive a certificate of his shares (Regulation 7 of Table A, Schedule 1). The company must complete and have ready for delivery such certificate within three months of the allotment of shares, (or) within two months after the application for registration of the transfer of any such shares.

A valid share certificate must satisfy the following requirements:

- It must have the common seal of the company affixed on it.
- It must specify the member of share. The nominal value of shares and the amounts actually paid should also be stated in it.
- It must also state the name, address and occupation of the shareholder.
- It must be signed by two directors of the company (or) their attorney and the secretary of the company.
- It must state the name of the company and date of issue.

Lost (or) defaced certificates:

A certificate may be renewed (or) a duplicate of a certificate may be issued if such certificate (a) is proved to have been lost (or) destroyed, (or) (b) having been defaced, mutilated (or) torn, is surrendered to the company (sec.84(2)).

If a company with intent to defraud renews a certificate (or) issues a duplicate certificate, the company is punishable with fine which may extend to Rs.10,000 and every defaulting officer is punishable with imprisonment upto six months (or) fine upto Rs.10,000 (or) with both (sec.84(3)).

Share Warrant:

A **'share warrant'** is a document specifying certain shares, and stating that the bearer of the document is entitled to the shares specified in it. It is issued by the company under its common seal. It may be noted that a share warrant is the substitute for a share certificate. It is a bearer document and is transferable by mere delivery. Share warrant is a negotiable instrument.

Conditions for issue of share warrants:

- The shares shall be fully paid up.
- The articles shall authorize the issue of share warrants.
- Prior approval of the central government shall be obtained.
- The share warrants shall be issued under the common seal of the company.

DIFFERENCE BETWEEN SHARE CERTIFICATE AND SHARE WARRANT (OR) DISTINCTION BETWEEN SHARE CERTIFICATE AND SHARE WARRANT?

Share Certificate	Share Warrant

1. It is to be issued both by public and private companies.	It can be issued only by public companies.
2. It can be issued both for fully paid up and partly paid up shares.	It can be issued only in respect of fully paid up shares.
3. It can be issued without the prior approval of the central government.	It can be issued only with the previous approval of the central government.
4. The holder of a share certificate is a registered member of the company.	The holder cannot be a member of the company (unless the articles permit)
5. It is not a negotiable instrument.	It is a negotiable instrument.
6. Normal stamp duty is required.	Heavy stamp duty is required
7. It can be transferred by a transfer deed.	It can be transferred by mere delivery.
8. Number of shares mentioned in the share certificate constitute the share qualification for directorship.	It does not constitute the share qualification for directorship.
9. The holders of share certificates can apply to the National Law Tribunal for the winding up of the company.	Share warrant holders cannot file a petition to the national company law tribunal for the winding up of the company.
10. No dividend coupons are attached with these certificates.	Dividend coupons are attached and the bearer of the coupons can get the dividend.

WHAT DO YOU MEAN BY DEBENTURE AND DEFINE DEBENTURE?

The word debenture is derived from the Latin word **'debere'** means **'to owe'**. A debenture means a document which either creates a debt (or) acknowledges it.

Debentures are commonly issued in a manner similar to the issue of shares through a prospectus. But it is payable in one lump sum.

Definition:

As per sec.2(12), "Debenture includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company (or) not".

NARRATE THE FEATURES (OR) CHARACTERISTICS OF DEBENTURE?

- It is issued by a company and its usually in the form certificate which is an acknowledgement of indebtness.
- It is issued under the company's seal.
- It is one of a series. But a single debentures is also not uncommon.
- It usually specifies a particular period (or) date of repayment.
- It generally creates a charge on the undertaking of the company (or) some part of its property, but there may be debentures without any such charge.
- A debenture holder does not have any right to vote in the company meetings (sec.117).

WHAT ARE THE DIFFERENT KINDS OF DEBENTURES (OR) GIVE THE DETAILS OF DIFFERENT TYPES OF DEBENTURES?

There are several types of the debentures on the basis of the terms and conditions of the issue of debentures.

I. ON THE BASIS OF REGISTRATION:

(a) Registered Debentures:

The debentures which are payable to the registered debenture holders are called Registered Debentures. The names of the holders of these debentures with details of the number, value and type of debenture held are recorded in the register of debentures holders. Registered debentures are not negotiable instruments.

(b) Bearer Debentures:

The debentures which are payable to the bearer are called Bearer Debentures. The names of he debenture holders are not recorded in the register of debentures holders. They are negotiable instruments. So they are transferable by mere delivery. Bearer documents are also called as Unregistered Debentures.

II. ON THE BASIS OF SECURITY:

1. Secured Debentures:

The debentures which are secured fully (or) partly by a charge over the assets of the company are called secured debentures. The charge may be either fixed charge (or) a floating charge. The charge, when created should be registered with the registrar within 30days of its creation.

2. Unsecured Debentures:

The debentures which are not secured fully (or) partly by a charge over the assets of the company are called unsecured debentures (or) Naked Debentures. The holders of these debentures like unsecured creditors may sue the company on debentures for the recovery of the debt.

III. ON THE BASIS OF REDEMPTION:

1. Redeemed Debentures:

Debentures are usually issued on that condition that they shall be redeemed after a certain period. Such debentures are known as redeemable debentures. They may be re-issued after redemption in accordance with the provision of sed.121.

2. Irredeemable Debentures:

The debentures which are not repayable during the life time of the company are called Irredeemable (or) Perpetual Debentures. The company may repay the money at the time of liquidation (Or) on the happening of a contingency (or) on the expiration of a longer period (or) when the company breaches the terms of issue of the debentures. (sec.120).

IV. ON THE BASIS OF CONVERSION:

1. Convertible Debentures:

The debentures which are convertible into equity shares (or) preference shares at the option of the holders, after a certain period are called convertible debentures.

2. Non-Convertible Debentures:

The debentures which are not convertible into equity shares are called Non-Convertible debentures.

V. ON THE BASIS OF PRIORITY:

1. Preferred Debentures:

The debentures which are paid first at the time of winding up are called preferred Debentures (or) First Debentures.

2. Ordinary Debentures:

The debentures which are paid after the preferred debentures at the time of winding up are called ordinary debentures.

VI. ON THE BASIS OF STATUS:

1.Equitable Debentures:

The debentures which are secured by deposit of title deeds of the property with a memorandum creating a charge called Equitable Debentures.

2. Legal Debentures:

The debentures which are secured by actual transfer of the legal ownership of the property from the company to the holder are called Legal Debentures.

VII. DEBENTURES WITH PARI PASU CLAUSE:

The secured debentures which are discharged rateably though issued at different dates, are called debentures with pari pasu clause.

BRING OUT THE ADVANTAGES AND DISADVANTAGES (OR) WHAT ARE THE ADVANTAGES AND DISADVANTAGES OF DEBENTURES?

Advantages:

- The debentures are attracted by cautions investors because they offer definite security and safety of investment.
- The date and rate of payment on debentures are certain.
- Whenever the company feels that it is over capitalized, it can be redeemable debentures.
- The company can easily dispose of the debentures are having a satisfactory market response.
- The rate of interest is lower than the rate of dividend payable on shares.
- The company may convert different loans into debentures carrying lower rate of interest.

Disadvantages:

- The debenture holders have no voting rights. This may discourage some investors.
- Debentures are not suitable for companies with fluctuation income.
- The company has to pay interest whether it makes a profit (or) incur loss, it becomes a permanent burden.
- During depression, the company will find it difficult to repay the principle and fixed amount.
- Most of the debentures are secured so companies with less fixed assets cannot raise money through debentures.

DIFFERENCE BETWEEN SHAREHOLDERS AND DEBENTURE HOLDERS (OR) DISTINGUISH BETWEEN SHARES AND DEBENTURES?

(i) Status:

Shareholders contribute to the capital and are the real owners of the company. But, debenture holders contribute to the loans floated by the company and are only creditors of the company.

(ii) Income:

Dividend is the income of the shareholders. Interest is the income of Debenture holders. Dividend payable whether the company makes a profit (or) not. Incase of insufficient profit, the interest is payable out of capital.

(iii) Certainty:

Rate of dividend (except of preference shares) depends on the quantum of profit and on the recommendations of the board. Hence it is uncertain, but the rate of interest on debenture is predetermined and hence certain.

(iv) Security:

Shareholders have no charge over the assets of the company. But, generally debenture holders are having a charge either on all of the assets (or) specific assets of the company.

(v) Voice in the Management:

Share holders are having a right to vote and right to attend meetings. But as per Sec.117 of the act, a debenture holder has no right to vote and attend general meetings.

(vi) Repayment:

Shareholders (except redeemable preference holders) cannot get back their money except at the time of liquidation, whereas debenture holders can get back their money at the time of redemption.

(vii) Time of Receipt of Income:

Shareholders receive dividend after paying all expense, taxes and after providing for reserves. But debenture holders receive interest before arriving at the profit (Because interest is a charge against profit).

(viii) Treatment as the time of Liquidation:

Shareholders get repayment of their investment after distribution to all debenture holders, creditors etc. during liquidation. But debenture holders get priority over the shareholders while distributing the proceeds of the assets at the time of winding up.

WHAT DO YOU MEAN BY SHARE CAPITAL AND WHAT ARE THE DIFFERENT KINDS OF CLASSIFICATIONS?

The term **'capital'** includes owned capital and borrowed capital, fixed capital and working capital. The capital raised by way of issuing shares is termed as share capital. The companies act uses the term capital in several senses. They are:

(i) Authorized Capital:

This is the amount of capital stated in the capital clause of memorandum of association. It is also

known of nominal capital (or) Registered capital. The company is entitled to raise finance by the issue of shares only upto the amount of authorized capital.

(ii) Issued Capital:

It is that part of nominal capital which is issued to the public. Companies generally do not raise all its capital at once.

(iii) Subscribed Capital:

Sometimes, all the shares which are offered to the public for subscription are not taken up. In such a case that part of the issued capital which is taken up by the public is called **'Subscribed Capital'.**

(iv) Called-Up Capital:

It is that part of the subscribed capital which has been actually paid by the shareholders.

(v) Paid-Up Capital:

It is that part of the subscribed capital which has been actually paid up by the shareholders. The amount not paid by the shareholders on the calls made is known as **'calls-in-arrears'.**

(vi) Uncalled Capital:

It is that part of the subscribed capital which is not called up on the shares already issued. The shareholders continue to be liable to pay as and when the calls are made.

(vii) Reserve Capital:

It is that part of the capital which the company has decided not to be called up except in the event of winding up of the company.

WHAT DO YOU MEAN BY MINORITY INTEREST?

A holding company acquires majority equity shares in a subsidiary, representing the controlling interest. The remaining shares may in the hands of the general public. Such holding of the general public in the subsidiary company is called **"Minority Interest".** The provisions of the companies act also are made to protect the interest of the minority.

WHAT DO YOU MEAN BY MAJORITY RULE?

The management of the company is based on the majority rule. The majority has its way in a company though due provision must also be made for the protection of minority interest. This principle that the will of the majority should prevail and bind the minority is known as the principle of majority rule.

WRITE A SHORT NOTE ON PROTECTION OF MINORITY (OR) HOW THE MINORITIES ARE PROTECTED UNDER COMPANY LAW?

Majority rule and its counter balance minority protection. It admits in principle the rule of majority and the minority shareholders. It admits the principle the rule of majority but limits it at the same time by a number of well-defined minority rights, thus protecting the minority shareholders.

The various rights granted to the minority members under the act relate to the following:

- The variation of class rights (sec.106-107)
- Schemes of reconstruction and Amalgamation (sec.391 to 395)
- The right to remedy under sec.397.
- The right to remedy under sec.397 as an alternative to winding up of the company.

(i) Variation of Class Rights:

If the share capital is divided into different classes of shares, the rights attached to the shares of any class can be varied by suitably altering the memorandum and articles. This alteration can be done only with the consent of ¾th majority of the shareholder of that particular class. The act provides that if the class rights are altered even with the require majority holders of not less than 10% of that particular class of the shares, who are opposed the alteration can apply to the court for cancellation of the variation made in the rights.

(ii) Scheme of Reconstruction and Amalgamation:

Sec.391 provides for schemes of reconstruction and gives protection of minority. When a scheme of reconstruction is proposed, the shareholders who oppose the move can apply to the court to prevent the compulsory acquisition of their shares.

(iii) Alternative Remedy to Winding Up:

A member, who complains that the affairs of the company are being conducted in the manner oppressive to some of the members including himself he, may apply to the Company Law Board(CLB) by presenting petition under sec.397 of the act.

(iv) Investigation by the Central Government:

If the shareholders holding atleast one-tenth of the issued shares of a company (or) shareholders irrespective of their shareholding think that the affairs of the company require investigation, they may apply to the central government, under sec.235 of the act, to appoint inspectors for this purpose.

There are also a number of other sections in the companies act, 1956, which protect the minority interest, they are as follows:

- Sec.17- Under this sec. consent of the company law board is necessary before changing registered office of a company from one state to another.
- Sec.101- Under this section, consent of the court is necessary for the reduction of share capital.
- Sec.111- Under this section, an aggrieved shareholder can appeal to the company law board against arbitrary action of the board of directors in refusing to register a transfer of shares.
- Sec.394- U/S 394, a specified number of members can apply to central government for the appointment of directors of the company to look after the interests of oppressed minority.
- Sec.408-U/S 408, a specified number of members can apply to central government for the appointment of directors of the company to look after the interest of oppressed minority.
- Sec.439- Here even a single contributory of a company is entitled to present a petition to court for its winding up.
- Sec 517-U/S 517 an arrangement between a company and its creditors may be confirmed (or) set aside by the court on the application of any creditor (or) contributory.

UNIT-III COMPLETED
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UNIT-IV
COMPANY MANAGEMENT

INTRODUCTION:

A company in the eyes of the law is an artificial person. It has no physical existence. It has neither soul nor a body of its own. As such, it cannot act in its own person. It can do so only through some human agency (i.e.) directors.

WHAT DO YOU MEAN BY COMPANY MANAGEMENT?

The company is an artificial person run through the human beings. The shareholders of the company are the real owners of the company. They are more in number and are scattered over a wide areas. Therefore, the shareholders as a whole cannot take part in day to day administration of company. To avoid such difficulties, they elect certain persons from among themselves to look after the general administration.

WHO IS DIRECTOR (OR) WHO ARE CALLED DIRECTORS AND DEFINE DIRECTORS?

The persons who are in charge of the management of the affairs of a company are termed as directors. They are collectively known as Board of Directors (or) the Board.

Definition:

According to sec.2(13) of the companies act, "a director means any person occupying the position of a director by whatever name called".

It means that a director is one who is performing the functions of a director like controlling the affairs of the company.

Board of Directors:

The directors of a company collectively are referred to as the Board of Directors (or) Board. The minimum number of members of the board for a public company must be at least three.

In case of private company must have atleast 2 directors. A company may increase the number of its directors. A company may increase the number of its directors by passing ordinary resolution that also

within the limit prescribed by Articles of Association. But if the number exceeds 12, then the previous approval of the central government will become necessary.

WHAT ARE THE QUALIFICATIONS AND DISQUALIFICATION OF DIRECTORS (OR) WRITE A SHORT NOTE ON DIRECTORS ELIGIBILITY AND INELIGIBILITY?

The person who becomes a director of a company must posses the following qualifications under sec 271:

- A director must be an individual
- He must be a competent person to enter into a contract
- He must hold qualification shares mentioned in the Articles of Association.
- A director must not suffer from any of disqualification U/S 274 of the companies act.

Disqualifications of Directors (Sec.274):

- A person who is unsound mind
- A person who is an insolvent
- A person is applied for insolvency
- A person who has sentence to atleast 6 months imprisonment of an offence involving moral tributes and 5 years have not closed from the date of expiry of the sentence.
- A person who has not paid the calls on his shares.
- A person who has been disqualified by the court
- A person who already hold the director in 20 companies at the same time.

IN WHAT ARE THE WAYS THE DIRECTORS ARE TO BE APPOINTED (OR) HOW TO APPOINT THE DIRECTORS?

I. First Directors (sec 254):

The first directors are named by the subscribers to the memorandum or mentioned in the articles. If no-one is appointed either by the subscribers or by the articles, then all the subscribers will became the first directors. They will hold the office till the conclusion of the first Annual General Meeting.

II. Subsequent Directors:

1. Appointment of Directors by Company:

According to sec.255 directors must be appointed by the company in a general meeting. In the case of a public company and a private company, which is a subsidiary of a public company, unless the articles otherwise provide, two-thirds of the total number of directors must be appointed by the company in a general meeting. These directors are liable to retire by rotation one-third directors in the case of any such company and the directors generally in the case of a private company not being a subsidiary of any public company are, subject to any regulations in the articles also to be appointed in a general meeting.
Provisions for appointment of directors:

- The directors to retire by rotation at every annual general meeting must be those who have been longest in the office since their last appointment.
- At the annual general meeting at which a director retires by rotation, the company may fill up the vacancy by appointing the retiring director or some other person.
- If the place of the retiring director is not filled up the meeting stands adjourned till the same day in the next week.
- If a new director is to be appointed, a notice in writing should be given to the company at least fourteen days before the meeting.
- Every person proposed as a candidate for the office of a director must sign and file with the company his consent in writing to act as a director if appointed (sec.264).
- Appointment of directors of a public company must be done individually by separate ordinary resolutions (sec.263).

2. Appointment of directors by directors:

Directors may appoint directors-

(a) Additional Directors (sec.260):

Such additional directors hold office only up to the date of the next general meeting of the company. The number of directors and additional directors must not exceed the maximum strength fixed for the board by the articles.

(b) Casual Vacancy (sec 262):

A casual vacancy occurs when the office of a director is vacated before the expiry of his term of office. It may be caused by death, insanity, insolvency etc.

The casual vacancy may be filled according to the regulations and procedure prescribed by the articles. If there is no such provision in the articles, the casual vacancy may be filled by the Board of Directors at the board meeting.

(c) Alternative Director (sec 313):

As alternate director is appointed to act in the place of a director who is absent for a period of more than 3 months continuously for board meetings. The Board of Directors may appoint such directors but it must be authorized by the articles or by passing resolution in the general meeting.

3. Appointment of Directors by third Parties:

The articles under certain circumstances give power to the debenture-holders or other creditors. The number of directors so appointed must not exceed one-third of the total number of directors, and they are not liable to retire by rotation (sec.255)

4. Appointment of Directors by Proportional representation (sec.265):

The articles of a company may provide for the appointment of not less than two-thirds of the total number of directors of a public company, or of a private company which is a subsidiary of a public company according to the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise. The appointment must be made once in three years and interim casual vacancies must be filled in the manner as provided in the articles (sec.265).

5. Appointment by the Central Government (sec 408):

The central government may appoint the directors of a company where the company law board decided that it is necessary to effectively safeguard the interest of the company or its shareholders or the public.

It may appoint not more than two directors they need not have the qualification shares and they may or may not be the members of the company. They are not subject to retire by rotation. They may be removed only by the central government.

BRIEFLY EXPLAIN THE POWERS OF A DIRECTOR (OR) EXPLAIN THE RIGHTS OF DIRECTORS?

The board of directors of a company is entitled to exercise all such powers and to do all such acts and things as the company is authorized to exercise and do. The board must not, however, do any act which is to be done by the company in a general meeting. Further, the board must exercise its powers subject to the provisions contained in that behalf to the companies act, or in the Memorandum or Articles of the company (sec.291)

Powers to be exercised only at meeting (sec.292):

The board must exercise the following powers on behalf of the company by means of resolutions passed at meeting of the board.

- Power to make calls
- Power to issue debentures
- Power to borrow money by other means
- Power to invest the fund of the company
- Power to make loan
- Power to fill up casual vacancies
- Power to make donations
- Power to disclose interest
- Power to receive notice of disclosure of directors interest

- Power to appoint to selling agent
- Power to enter into a contract
- Power to convene general meeting
- Power to appoint first auditor
- Power to appoint alternate directors as additional directors
- Power to appoint managers or managing directors.

Restrictions on Powers (sec.293):

The board of directors of a public company or of a private company which is a subsidiary of a public company must not exercise the following powers except with consent to the company in general meeting.

- To sell, lease or otherwise dispose of the whole, or substantially the whole of the undertaking of the company.
- To remit or give time for repayment of any debt due to the company by director.
- To invest, otherwise that in trust securities the amount of compensation received by the company in respect of the compulsory acquisition of any undertaking or property of the company.
- To borrow money where the moneys to be borrowed, together with the moneys already borrowed by the company will exceed the aggregate of the paid-up capital of the company and its free reserves.
- To contribute to charitable and other funds not directly relating to the business of the company or the welfare of its employees, amounts exceeding in nay financial year Rs.50,000 or five cent of the average net profits of three preceding financial years, which ever is greater.
- Sec.293-A places a restriction on the powers of the board of directors to contribute any amounts to any political party or for any political purpose to any individual or body.

WRITE A SHORT NOTE ON DUTIES OF DIRECTORS (OR) WHAT ARE THE DUTIES OF DIRECTORS?

The powers conferred upon the directors are coupled with corresponding duties to exercise such powers. The duties of the directors can be broadly classified as (i) Statutory Duties (ii) Non-Statutory Duties.

Statutory Duties:

- The board has to supervise, control and direct the managing director and manager.
- The board has to see that in the case of fresh issue all moneys received from applicants for shares are deposited in a scheduled bank till the minimum subscription is received or till the certificate of commencement of business is obtained.
- The board has to see that no misleading statement is given in the prospectus.
- Every director should pay the application and allotment money before the commencement of business.
- The board has to prepare the statutory report and arrange for the statutory meeting within the time limit.
- The board must convene extra-ordinary general meeting as and when required.
- The board has to approve the annual accounts. Profit and loss account and the balance sheet. They should also be authenticate by them.
- The board has to recommend dividends. But the right to declare a dividend lies with the shareholders.
- Every director must obtain the qualification shares, if so required.
- Every director who is interested in any contract must disclose his interest to other directors.
- Every director must disclose his shareholding in the company (sec.308).
- The board has to make a declaration of solvency of the company at the time of member's voluntary winding up.

Non-Statutory Duties:

1. Duty to keep the Fiduciary Relationship:

The director is having a fiduciary relationship with the company as such he should act honestly. Whatever he does it should be for the benefit of the company. He should not make any secret profit in his dealings on behalf of the company.

2. Duty to Take Care and Skill:

Since the director is in a responsible position, the shareholders expect him to perform his functions with reasonable care. The functions to be performed by him should be with reasonable care.

BRIEFLY EXPLAIN THE LIABILITIES OF DIRECTORS:

The directors are liable to the company as well as to the outsiders dealing with the company, for any fault on their part. Their liability is of both criminal and civil.

Scope and Extent of Liability:

Sec.322 permits that the Memorandum of the company may make the liability of any one or all the directors unlimited. The company may also, if so authorized by its articles, by a special resolution alter its memorandum and make the liability of any one director or all directors unlimited.

I. Civil Liabilities:

1. Contracts in their own name:

If the directors enter into a contract in their own name without disclosing the fact that they are acting for the company, the third party can sue either the company or the director or both.

2. Ultra Vires Act:

If an act of the directors is ultra vires the company, the company is not liable. But the directors will be liable for breach of an implied warranty of authority.

3. Misleading Prospectus:

If third parties have subscribed for shares or debentures on the basis of false statement in the prospectus, the directors are personally liable.

4. Failure to repay application money:

If the minimum subscription has not been received within 120 days of the issue of the prospectus, the directors are jointly and severally liable to repay the application money with interest at 6% p.a.

5. Irregular Allotment:

If the allotment is made against the provisions of sec 69 to 70, the directors are personally liable to compensate the incurred by the allotees.

6. Fraudulent (or) Tortious Act:

If the directors are partners to a fraud or to the commission of any other tort, causing injury to any other person, they will be personally liable.

7. Stock Exchange Placing:

If the application for the securities to be dealt in on a recognized stock exchange is not made by the company or is refused by the stock exchange, and if the application amount is not returned to the applicants within the prescribed time limit, the directors will be personally liable to repay the money with an interest at 12%

2. Liability to the Company:

1. Negligence:

If the directors do not make of so much skill, diligence and care and also negligent in his duties, they will be held liable for negligence.

2. Breach of Trust:

Directors are considered as the trustees of the company's money and property entrusted to them. If they commit a breach of trust, resulting in a loss to the company, they are bound to make the loss good.

3. Misfeasance:

A director who is willfully negligent in his duties, it is called as misconduct or misfeasance. The director who is responsible of any misfeasance will be liable to the company as he can use in the court of law.

Criminal Liabilities:
If the director do not perform the duties mentioned in the companies act, they may be held liable for imprisonment and penalties. Such penal provisions are more in number. For ex, if the directors file a prospectus containing an untrue statement, they will be held liable for imprisonment up to 2yrs or fine up Rs.50,000 or both.

MENTION THE DISABILITIES OF DIRECTORS (OR) BRIEFLY EXPLAIN SOME OF THE SITUATIONS WHICH ARE NOT FAVOURABLE TO THE DIRECTORS?

The disabilities have been done to protect the interests of the company and the shareholders.

1. Avoidance of Provisions relieving of Liability (sec.201):

Any provisions in the articles or an agreement which exempts a director from any liability on account of any negligence, default, and misfeasance, breach of duty or breach of trust by him shall be wholly void.

2. Undischarged insolvent disqualified from being appointed director (sec.274)
3. No person to be a director of more than 20 companies (sec.275)
4. Restrictions on Powers of Board (sec.293)
5. Prohibition of political contributions

6. Loans to directors (sec.295):

A company shall not, without obtaining the previous approval of the central government in that behalf, directly or indirectly, make any loan to-

- Any director of the lending company or of a company which is its holding company or any partner or relative is a partner.
- Any firm in which any such director or relative is a partner.
- Any private company of which any such director is a director, or member
- Any body corporate at a general meeting of which not less than 25 percent of the total voting power may be exercised or controlled by any such director.

7. Prohibition of assignment of office by director (sec.312)

UNDER WHAT ARE THE CIRCUMSTANCES THE DIRECTORS CAN BE REMOVED FROM THE COMPANY (OR) EXPLAIN THE PROCEDURES REGARDING THE REMOVAL OF DIRECTORS?

A director may be removed by the shareholders or by the central government or by the court.

1. Removal by Shareholders:

According to sec.284, the company in a general meeting may remove a director at any time by passing an ordinary resolution. But the following exceptions to the section are net worthy:

- The section does not apply to a director appointed by the central government in pursuance of sec.408.
- In the case of a private company, the section does not authorize the removal of a director holding office for life on April 1. 1952.
- It does not apply to a company which has adopted the system of appointing two-thirds of its directors by the principle of proportional representation.
- Directors appointed by financial institutions pursuant to stipulations under their loan agreements viz., IDBI, IFCI etc., under their respective acts.
- Directors appointed by board for industrial and financial reconstruction.

The removal of a director or appointment of a director in the place of a removed director needs a resolution requiring special notice. Hence, the proposer has to send a notice to the company not less than 14 days before the meeting and the company has to send the proposed resolution to the concerned director and the members.

2. Removal by the Central Government:

The central government has power to remove managerial personnel on the recommendations of the High court. As per sec.388 B to 388 E, the central government has power to remove managerial personnel on the recommendations of the Company Law Board. The central government may refer the case to the Central Law Board if it is of the opinion that:

- The director is or are guilty of fraud, misfeasance, negligence or default in carrying out his/their functions, of
- The business is carried on against sound business principles or commercial practices, or
- The company is carried on in a manner likely to cause injury to the interest of the trade, industry or business to which its belongs, or
- The concerned director manages the company for defrauding the creditors or members or for a fraudulent or unlawful purpose.
-

3. Removal by the Central Law Board (Sec402):

As per this section, if on hearing an application for prevention of oppression or mismanagement, the central law board feels that a relief ought to be granted, it may set aside, terminate or modify any agreement of the company with a director. Such a terminated director cannot get compensation for the loss of office.

UNDER WHAT ARE CIRCUMSTANCES THE DIRECTORS WILL VACATE THE OFFICE AUTOMATICALLY?

The office of a director becomes vacant if-

- He fails to obtain within two months of his appointment or at any time thereafter ceases to hold the share qualification.
- He is adjudged to be of unsound mind.
- He is adjudged an insolvent.
- He is convicted by a court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months.
- He fails to pay any call in respect of shares of the company held by him within six months from the last dare fixed for the payment.
- He absents himself from three consecutive meetings of the board of directors.
- He fails to make disclosures to the board of directors with regard to any contracts with the company in which he is directly or indirectly interested.
- He becomes disqualified by an order of the court from being a director on the ground of having been convicted of an offence in connection with the promotion, formation etc.
- He is removed before the expiry of his period of office by ordinary resolution.

BRIEFLY EXPLAIN THE POSITION OF DIRECTORS (OR) WHAT ARE ROLES ARE PLAYED BY THE DIRECTORS?

It is not easy to explain the exact position of director of a company. As Bowen L.J said, “Directors are described sometimes as agents, trustees and managing partners”. Sometimes, under special circumstances, the director is treated as an employee of the company. The director is also an officer of the company under certain circumstances.

Director as Agents:

A company is an artificial person and it can act only through persons known as directors. IN this capacity, the directors are the agents of the company, The directors are the agents of the company when they make contract on behalf of the company and incur no personal liability. But if they enter into contracts in their personal names, they will be personally liable.

Directors as Trustees:

The directors are also considered as the trustees for the company. They are trustees as regards to the company’s money and property. They stand in a fiduciary capacity with regard to the money and assets in their control. They are also considered as trustees in the performance of their duties like approving the transfer of shares, making of calls, receiving payment of calls in advance etc.,

Directors as Employees:

The directors, generally are not the employees of the company because they act according ot the provisions of the companies act and no shareholder can instruct them to act according to his will and pleasure. Even them a director may be an employee of the company if there exist a special contract to that effect between the company and the director.

Directors as Officers:

As per sec 2(30) of the act, directors are considered as officers of the company under certain specified circumstances.

MANAGING DIRECTOR:

WHO IS MANAGING DIRECTOR?

A managing director means a director who is entrusted with substantial powers of management which could not otherwise be exercisable by him. These powers may be conferred upon him by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its board of directors includes a director occupying the position of a managing director.

WHAT ARE THE DISQUALIFICATIONS OF MANAGING DIRECTOR?

- If he is an undischarged insolvent.
- If he suspends or has at any time suspended payment to his creditors.
- If he makes or has at any time made a composition with his creditors.
- If he is or has at any time been convicted by a court for an offence involving moral turpitude.

Every public company or a private company which is a subsidiary of a public company having a paid-up share capital of Rs.5 crores or more shall have a managing or whole-time director or a manager.

EXPLAIN THE POWERS OF MANAGING DIRECTOR?

The managing director has the power to do administrative with the authorization of the board. Some of the powers are:

- Powers of affixes the common seal of the company to any document
- Power to draw and endorse any cheque on the account of the company in any bank
- Power to draw and endorse other negotiable instruments such as bills, promissory notes, etc.,
- Power to sign any certificate issued by the company.

MANAGER:

WHO IS A MANAGER?

Manager means an individual who has the management of the whole or substantially the whole of the affairs of a company. He is subject to the superintendence, control and direction of the board of directors. “Manager” includes a director or any person occupying the position of a manager, by whatever, name called, and whether under a contract of service of not.

Definition:

According to Gibson V.Bartian, “The term manager was defined as a person who has the management of the work of the affairs of the company and not an agent who is to do a particular thing or a servant who is to obey orders. But a person who is entrusted with power to transact the whole of the affairs of the company”.

EXPLAIN THE STATUS AND POSITION OF A MANAGER:

- He is the paid executive of the company.
- He is subject to the control of the board of directors.
- He has the management of the whole or substantially the whole of the affairs of the company.
- A director may be appointed as a manager under a special contract of service.
- He is not a mere head or foreman of a section or office.

HOW THE MANAGER IS APPOINTED:

- ✦ It may be approved by a resolution passed at the meeting.
- ✦ Specific notice of such appointment must be given to every director.
- ✦ It is approved by the central government.

DISTINCTION BETWEEN A MANAGER AND A MANAGING DIRECTOR (OR) WHAT ARE DIFFERENCE BETWEEN MANAGER AND A MANAGING DIRECTOR?

Manager	**Managing Director**
1. The manager may or may not be a director of the company.	Managing director must be a director of the company.
2. He need not hold any qualification shares.	He as a director should acquire the required number of shares within the prescribed time.
3. He is entitled to the management of the whole or substantially the whole of the affairs of the company. His powers are wider.	His powers need not necessarily be extended to the whole or substantially the whole of the company's affairs. His powers are not wider than a manager.
4. The manger need not be under a formal contract of service.	He always serves under a formal contract of service with the company or resolution passed by the company in general meeting or by the board or articles or memorandum of the company.
5. There can be only one manger in a company.	There can be more than one managing director.
6. The maximum remuneration payable to a manager can not exceed 5% of the annual net profits (sec.387)	In case of managing directors the maximum limit is fixed at 10 per cent of the annual net profits (sec309 (3)).
7. He is a paid executive of the company as such employer and employee relationship exists between him and the company.	Thought a salary is paid to the managing director, he is not an employee of the company.

SECRETARY:
WHO IS CALLED SECRETARY?

According to sec.2(45) of the companies act as amended in 1988 **'secretary'** means a company secretary within the meaning of sec 2(1) (c) of the company secretaries act, 1980 and includes any individual possessing the prescribed qualifications appointed to perform the duties which may be performed by a secretary under this act any other ministerial or administrative duties.
A company secretary means "a person who is a member of the Institute of Company Secretaries of India".

HOW DO SECRETARY IS APPOINTED?

- ✷ A company secretary is generally appointed by the directors at the board meeting.
- ✷ He may also be appointed by the articles and it shall be confirmed by a resolution passed at the board meeting after the appointment.
- ✷ A copy of the resolution regarding the appointment shall be forwarded to the registrar of companies.

WHAT ARE THE ESSENTIAL QUALIFICATIONS OF DIRECTORS (OR) WRITE A SHORT NOTE ON QUALIFICATIONS OF DIRECTORS?

The qualifications of a person to be eligible for appointment as secretary are as follows:

- Every company having a paid-up share capital of not less than Rs.50 lakhs shall have a whole-time secretary.
- No person shall be appointed as a whole-time secretary unless he is a member of the Institute of company secretaries of India.
- A company having a paid-up share capital of less than Rs.50 lakhs may appoint any individual as its whole-time secretary to perform the duties of a secretary under the companies act,1956 and any other ministerial administrative duties. But no individual shall be eligible to be so appointed unless he possesses one or more of the following qualifications, namely:
  - Membership of the institute of company secretaries of India
  - Pass in the intermediate examination conducted by the institute of company secretaries of India.
  - Post-graduate degree in commerce or corporate secretaryship granted by any university in India.
  - Degree in law granted by any university.
  - Membership of the institute of chartered accountants of India.
  - Membership of the institute of cost and works accountants of India.
  - Post-Graduate diploma in company in management sciences, granted by any university.
  - Post-Graduate diploma in company secretary ship granted by the institute of commercial practice under the Delhi Administration.
  - Membership of the association of secretaries and mangers Calcutta.

BRIEFLY EXPLAIN THE DUTIES OF A SECRETARY (OR) EXPLAIN THE DUTIES OF A SECRETARY?

Secretary is only a subordinate officer and has no managerial function. The duties of the secretary may be discussed under the following two heads.

- General Duties
- Statutory Duties

(A) General Duties:

- To carry out the order of board of directors
- To perform all statutory requirements on behalf of directors, managing directors etc.
- To advice the chairman to convene general meeting as to make necessary arrangements
- To attend meetings of the directors on behalf of the shareholders.
- To supervise issue of shares and debentures.
- To have some correspondence with shareholders.
- To act as a bridge between the company and shareholders.
- To organize and control the staff of the company.
- To look after the interval or office management of the company
- Not to make any secret profit on account of his position as secretary.
- He should not disclose any confidential information relating to the affairs of the company.

(B) Statutory Duties:

- To maintain various registers such as:

(i) Register of investment
(ii) Register of charges
(iii) Register of members
(iv) Register of debentures holders
(v) Register of contract
(vi) Register of directors, managing directors etc.
(vii) Register of shares held by directors.

- To file the documents and returns with the registrar of companies
- To give notice to the registrar for increase of share capital
- To issue certificate of shares, stock and debentures
- To make statutory declaration for obtaining certificate of commencement of business
- To maintain the minutes book of general meeting

- To sign the annual accounts and sent out their copies to the shareholders
- To send notices to the shareholders for the general meeting
- To arrange for issue of shares, sent letters of allotment, call etc.
- To assist in preparing the statement of affairs at the time of winding up for the purpose of submitting it to the liquidator.

WHAT DO YOU MEANT BY SOLE SELLING AGENT?

It means an individual, firm or companies who or which is given exclusive rights to sell in a particular area the goods of the company concerned. The board of directors may appoint sole selling agent.

UNIT-IV COMPLETED
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UNIT-V
COMPANY MEETING

INTRODUCTION:

It is essential for the board of directors, to meet from time to time to conduct the affairs of the company. It is also essential for a proper understanding of the company administration to know how the company meetings are summoned and conducted.

Every company is at liberty to make its own rules and regulations for the conduct of its meetings as it may consider necessary. But in practice, there is a considerable measure of uniformity since the companies act, 1956 has laid down as increasing number of rules and regulations which should be complied with.

WHAT DO YOU MEAN BY MEETING?

The word meeting means coming together meeting is an lawful association, or assembly of two (or) more persons by previous notice for transacting some business. The meeting must be validly summoned and convened. Such gatherings of the members of companies are known as company meetings.

Definition:

The oxford dictionary defines a meeting as "an assembly of number of people for entertainment, discussion or the like".

BRING OUT THE ESSENTIAL CONDITIONS OF A COMPANY MEETING (OR) WRITE A SHORT NOTE ON ESSENTIAL REQUIREMENTS OF COMPANY MEETING?

The essential requirements of a company meeting can be summed up as follows:

(i) Two (or) More persons:

To constitute a valid meeting, there must be two (or) more persons. However, the articles may provide for a larger number to constitute a valid quorum.

(ii) Lawful Assembly:

The gathering must be for conducting a lawful business. An lawful assembly shall not be a meeting in the eye of law.

(iii) Previous Notice:

Previous notice is a condition precedent for a valid meeting. A meeting which is purely accidental and not summoned after a due notice is not at all a valid meeting in the eye of law.

(iv)To transact a business:

The purpose of the meeting is to transact a business. If the meeting has no definite object (or) summoned without any predetermined object, it is not a valid meeting. Some business should be transacted in the meeting but not decision need be arrived in such meeting.

BRIEFLY EXPLAIN THE DIFFERENT KINDS OF MEETINGS AND ITS LEGAL PROVISIONS?

The meeting of a company can be broadly classified into the following categories:

(i) Meeting of the shareholders

(a) General Meeting

- **Statutory Meeting**

- **Annual General Meeting**
- **Extra Ordinary Meeting**

(b) Class Meeting
(ii) Meeting of the directors
(iii) Meeting of the debenture holders
(iv) Meeting of the creditors

MEETING OF THE SHAREHOLDERS:

❖ **General Meeting:**

a) Statutory Meeting:

It is the first general meeting of the company. It is conducted only once in the life time of a company. Every public and private company having share capital should hold a meeting of the shareholders within 6 months but not less than one month from the date of commencement of the company. Under the provisions of the companies act, this meeting in known as statutory meeting.

Objects of Holding the Statutory Meeting:

- To give the members, a general idea about the progress of the company.
- It gives opportunity to the members to discuss the various matters of the company.
- To approve (or) to effect any modification to contracts mentioned in the prospectus.

Legal Provisions regarding statutory Meeting (sec.165):

(i) Notice:

The director should send a notice of the meeting atleast of 21 days before the date of the meeting to all the members eligible to and vote at the meeting.

(ii) Statutory Report:

Along with the notice, a report known as statutory report should be send to all the members to whom the notice is sent. The statutory report contains the full details regarding the affairs of the company before the meeting.

(iii) Certification of Report:

The statutory report must be singed by two directors. If there is a M.D, he must also sign in this report. It must be singed by the auditor too.

(iv) Filing of the Report:

A copy of the statutory report certified by the directors should be delivered to the registrar for registration.

(v) Procedure:

The list showing the particulars regarding the members such as name, address, occupation and the share held by them must be kept open for inspiration of the members.

(vi) Matter for Discussion:

The members of the company attending this meeting are at liberty to discuss any matter relating to formation of company. Statutory report as other matters mentioned in the notice.

(vii) Adjournment:

A statutory meeting can be adjourned from time to time under the provisions of the companies act.

(viii) Default:

Every director (or) other officer of the company who is in default in complying with the provisions of the act for convening the meeting shall be liable under the act.

B) Annual General Meeting:

The annual general meeting is one of the important meeting of the company. It is usually held once in the year. This meeting is to be conducted by every company.

The annual general meeting is to be held annually to transact the ordinary course of business of the company.

Legal Provisions:

(i) Internal:

Every company must hold an annual general meeting in each calendar year and interval between two such meeting should not exceed 15 months.

(ii) First Meeting:

The first annual general meeting is to be held within 18 months from the date of incorporation of the company.

(iii) Place:

The annual general meeting is to be held either at its registered (or) at the place within the same town, village (or) city.

(iv) Day:

The meeting should be conducted only on the day which is not a public holiday.

(v) Time:

Regarding the time for the meeting it must be held during business hours that is must start during the business hours but it can be continued even after business hours.

(vi) Notice of Meeting:

A 21 days notice is necessary to hold an annual general meeting. The notice should contain the place, date, time, statement of business to be transacted and also the special business to be transacted.

(c) Extra Ordinary General Meeting:

Statutory meeting and annual general meeting are called ordinary meeting. All other meetings of the company except these two are called extra ordinary general meeting. These meeting are generally called for transacting. Some urgent (or) special business which cannot be postponed till the next annual general meeting.

Every business transacted as these meetings is called special business. The following are the persons authorized to convene an extra ordinary general meeting.

Board of Directors
Requisition of Members
Company Law Board
Any Director (or) any two members.

Class Meetings:

Class meetings are those which are held by a particular class of shareholders. For ex, preference shareholders. Class meeting is generally conducted when it is proposed to alter or affect the rights of a particular class of shareholders. Thus for effecting such changes, it is necessary to hold separate meeting of the holder of those shares as the matters is to be approved by passing a special resolution of the meeting.

II. Meeting of the Directors:

Meeting of the directors are called board meeting. They are most important and most frequently held meeting of the company. In these, meeting only all the important matters relating to the company and its policies are discussed and decided upon.

The companies act also gives wide discretion to the directors to frame rules and regulations regarding the holding and conducting the board meeting. These rules are known as standing orders.

Legal Provisions:

(i) Conduct of Meeting:

The board meeting should be need at least once in every 3 calendar months. Atleast four board meetings should be held in every year.

(ii) Notice:

The notice of the meeting should be sent to every director in India.

(iii) Agenda:

It is the usual practice that the secretary has to forward a copy of the agenda along with the notice of the meeting for atleast a week before the date of the meeting.

(iv) Quorum:

The quorum for a board meeting should be 1/3 of the total strength of the directors (or) 2 directors which ever is higher. If the quorum is not present , the meeting should be adjourned to some other date.

(v) Business Transacted:

The board of directors has the power to transact some businesses but it should be based on powers issued to the directors under the provisions of the articles of association of the company (or) the companies act.

(vi) Meeting of the Debenture Holders:

These meeting are conducted by the debenture holders of the company. They are conducted only when the company wants to change the terms of security (or) to modify their rights (or) vary the rate of interest payable, etc.

The rules and regulations regarding the holding of the meeting of debenture holders are either entered in the trust deed or endorsed on the debentures.

(v) Meeting of the creditors:

Creditors' meeting is not a meeting of the company because the creditors are the outsiders of the company. The meeting of the creditor is to be held whom the company proposes to make a scheme of arrangement with the creditors. This meeting is also necessary that the company wants to compromise the creditors of the company.

BRIEFLY EXPLAIN THE ESSENTIAL REQUISITES OF A VALID MEETING (OR) WHAT ARE THE NECESSARY REQUISITES OF A VALID MEETING?

(i) Proper Authority:

The proper authority to convene a general meeting (whether statutory, annual general or extraordinary and all these meeting are called general meetings) of a company is the board of directors who should pass a resolution to call a meeting, at a duly convened board meeting. If the directors do not call the meeting, the members or the company law board or the central government may call the meeting.

(ii) Notice of Meeting (sec.171):

The second requirement of a valid meeting is that a proper notice of the meeting should be given to the members. The period of twenty-one days excludes the day of service of the notice and the day on which meeting is to be held. It may be called by a notice of less than twenty-one days if it is so agreed-

- In the case of an annual general meeting by all the members entitled to vote thereat.
- In the case of nay other meeting of a company having a share capital, by members holding not less than ninety-five per cent of the paid-up share capital, giving a right to vote.

Contents of Notice (sec.172 (1)):

Every notice of a meeting of a company must specify the place, day and hour of the meeting. It must also contain a statement of the business to be transacted at the meeting.

(iii) Quorum for Meeting (sec.174):

Quorum means the minimum number of members who must be present in order to constitute a meeting and transact business thereat. If the quorum is not present, there is not meeting and the proceedings held thereat are invalid. The quorum is generally fixed by the articles. The following rules are applicable to the quorum:

- Five members personally present in the case of a public company and two in the case of nay other company are the quorum for a meeting of the company.
- If within half an hour a quorum is not present, the meeting, if called upon the requisition of members, stands dissolved.
- If any other case, it stands adjourned to the same day in the next week at the same time and place.
- If at the adjourned meeting also, a quorum is not present within half an hour, the members present are the quorum.

(iv) Chairman Of Meeting (sec.175):

A chairman is necessary to conduct a meeting. Unless the articles of a company otherwise provide, the members personally present at the meeting should elect one of themselves to be chairman of the meeting on a show of hands. If a poll is demanded on the election of the chairman, it has to be taken forthwith.

(v) Minutes of the Meeting (sec.193 to 196):

Every company must keep a record of all proceedings of every general meeting and of proceedings of every meeting of its board of directors or of every committee of the board. This is done by making within thirty days of the conclusion of every such meeting concerned, entries of the proceedings in the books kept for that purpose. These records are known as **minutes** and the book in which the record is kept is known as the **minute book.**

WHEN QUORUM IS IMMATERIAL?

Quorum is immaterial if all the members are present it is immaterial that the quorum required is more than the total number of members. If, for examples, the articles of a private company provide company that four members personally present shall be a quorum, and the number of members is reduced to three then the question of quorum will not arise when all the three members attend a meeting.

WHAT DO YOU MEAN BY PROXY?

A member entitled to attend and vote at a meeting may vote either in person or by proxy. A proxy is an authority to represent and vote for another person at a meeting. It is also an instrument appointing a person as a proxy. The person so appointed is also called a proxy. A proxy has no right to speak at the meeting.

GIVE THE MEANING OF RESOLUTION (OR) WHAT DO YOU UNDERSTAND BY RESOLUTION?

The term 'resolution' may be defined as the proposal which is voted at the meeting and accepted by the members. In other words, it is the decision taken at the meeting. A major part of the company's administration and policy decisions are done by passing resolutions in the meeting. The resolutions can be passed in all kinds of meetings. The resolutions may be passed even at an adjourned meeting of the company. However, the most frequent resolutions are passed in the general meeting and the directors meeting.

BRIEFLY EXPLAIN THE DIFFERENT KINDS OF RESOLUTIONS (OR) WHAT ARE THE DIFFERENT KINDS OF RESOLUTIONS ARE AVAILABLE?

There are three kinds of resolutions under the companies act 1956. These are as follows:

- Ordinary Resolutions
- Special Resolutions
- Resolutions requiring special notice:

(i) Ordinary Resolutions:

An ordinary resolution in one which is passed at a general meeting of a company by a simple majority of votes including the casting vote of the chairman, if any. The votes may be cast by members in person or by proxy, where the proxies are allowed. The required notice of the meeting should have been duly given.

For ex: If 100 members are present at the meeting and 51 members vote in favour or a resolution, the resolution is said to have passed. An ordinary resolution is sufficient in all the cases where an special resolution is not required to be passed either by the articles of the company or by the companies act.

Some of the business transacted with the ordinary resolution is:

- Adopting of statutory report
- Appointment of first directors, auditors.
- Alteration of share capital
- Removal of directors
- Declaration of dividend.

(ii) Special Resolutions:

A resolution is a special resolution which is passed by a majority of three-fourths of the members voting by a show of hands or on a poll either in person or by proxy. If the votes cast in favour of the resolution are three times the votes case against, then the resolutions is said to be passed.

The object of requiring a majority of three-fourths of the vote for a special resolution is to be protecting the minority interest in important matters relating to the company's affairs.

Special resolutions are necessary of the following among other purposes:

- To alter the memorandum of association.
- To alter the articles of association.
- To issue further shares to the outsiders without offering to existing shareholders.
- To create reserve capital
- To authorize the payment of interest out of capital.

(iii) Resolutions requiring special notice (sec.190):

It was introduced by the companies act of 1956. Under sec.190, what is required in case of such a resolution is that a special notice of the intention to move the resolution has to be given to the company. The notice must be given not less than fourteen days before the meeting by at which the resolution is to be moved, exclusive of the day on which the notice is served or deemed to be served and the day of the meeting.

If the notice given is not practicable to the company, it must give notice to the members by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles.

Cases requiring special notice:

- To appoint auditor other than the retiring auditor.
- To avoid the reappointment of the retired auditor.
- To remove a director before expiry of his terms.
- Appointment of director in the place of the director removed before the expiry of his terms.

WINDING UP

INTRODUCTION:

Winding up (or) Liquidation of a company represents the last state in its life. The assets of the company are disposed of the debts are paid off out of the realized assets, and the surplus, if any, is then distributed among the members in proportion to their holdings in the company. The two terms **'winding up'** and **'liquidation'** are used interchangeably.

WHAT DO YOU MEAN BY WINDING UP?

It means a proceeding by which a company is dissolved.

Definition:

According to Professor Gower, winding up of a company is the process whereby its life is ended and its property administered for the benefit of its creditors and members. An administrator, called a liquidator, is appointed and he takes control of the company, collects its assets, pays its debts and finally distributes any surplus among the members in accordance with their rights.

BRING OUT THE PROCESS INVOLVED IN WINDING UP (OR) WHAT ARE THE STAGES IN WINDING UP?

1. Appointment of Liquidator:

The first step in the process of winding up is appointment of liquidator. Liquidator is a person who administers all the activities of liquidation.

2. Ascertainment:

The second stage (or) the first duty of the liquidator is to ascertain the assets and liabilities of the company. It is useful to trace an idea about the settlements.

3. Realizing the Assets:

After the ascertainment of the assets and liabilities of the company, it is the duty of the liquidator to realize all the assets of the company that is the assets are sold and converted into cash.

4. Make Payments:

An important step in the process of winding up is payment of debts and liabilities. In this stage, the money gained by the conversion of the assets is applied to pay off the debts and liabilities of the company.

5. Distributing Surplus:

After satisfying the claims of the creditors, if any surplus is left, it is distributed among the members in the proportion of their rights of interest of the company.

6. Removal of Name:

When all these are done and the company has complied with certain formalities to dissolve its. After this, the registrar shall strike off the name of the company in the register of companies.

BRIEFLY EXPLAIN THE DIFFERENT MODES OF WINDING UP (OR) WHAT ARE THE METHODS OF WINDING UP?

There are three modes of winding up of a company, viz.

- Winding up by the court; or
- Voluntary winding up
- Winding up subject to the supervision of the court.

I. Winding up by the court:

Winding up of a company under the order of a court is also known as compulsory winding up.
Grounds for winding up by the court (sec.433):

(i) Special resolution for the winding up of the company by the court (sec.433 (a)):

Winding up order under this head is not common because the members should prefer to wind up the company voluntarily for in such as case they shall have a voice in its winding up.

(ii) Default in holding statutory meeting or in delivering statutory report to the registrar (sec.433 (b)):

If a default is made in delivering the statutory report of a public company to the register of companies or in holding the statutory meeting of the company, the court may make a winding up order. A petition on this ground can be made either by the registrar or by a contributory.

(iii) Failure to commence business within a year from the date of corporation (sec.433(c)):

A company is wound up on this ground if it does not commence its business within a year from its incorporation or suspends its business for a whole year, unless-

- There are reasonable prospects of the company starting business within a reasonable time and
- There are good reasons for the delay.

(iv) Reduction in membership below the statutory minimum (sec.433 (d)):

The minimum number of members of a private company is two, as in public company is seven. IF the number of members is reduced below the statutory minimum, the court may order for winding up.

(v) Inability to pay debts:

If the company is unable to pay the debts or fails to meets its liabilities, the court may order for winding up. This is the usual ground for a petition for winding up.

(vi) Just and Equitable:

The word 'just and equitable' are of the widest significance and do not limit the jurisdiction of the court to any case. What is 'just and equitable' cause depends upon the facts of each particular case. Some of the following reasons:

- Majority is oppressing the minority.
- Interest to the public is likely to be affected.
- Main object is impracticable.
- Business of the company is illegal.
- Whole object of the company is fraudulent.

Petition:

An application to the court for winding up of a company is made by petition. Under sec.439, a petition for the winding up of a company may be presented by any of the following:

- By the company
- By any creditor
- BY any contributory
- By Register
- By any person authorized by the central government

Procedure for Winding up:

If an order of winding up is passed by the court, winding up procedures under the provisions of the company.

(i) Appointment of Liquidator:

The winding up proceedings are conducted by an official called official liquidator. The liquidator helps the court in conducting and completing the winding up proceedings. He may be appointed by the central government.

(ii) Filing of order:

The petitioner and the company must file a certified copy of the winding up order of the court with registrar, within 30 days from the date of the order.

(iii) Notification by the Registrar:

The registrar should make a minute of the order in his books relating to the company. He should also make a notification in the official gazette that such an order has been passed.

(iv) Statement of Affairs:

A statement of affairs of the company should be submitted to the official liquidator, within 21 days from the date of the court order. The statement should be verified by a director, manager, secretary or any other officer specified by the liquidator. The statement of affairs should contain the information regarding the assets, liabilities, creditors, debtors and any other required information.

(v) Report by liquidator:

As soon as practicable after the receipt of the statement of affairs of the company but not later than 6months from the date of order should submit a report. The report should contain the information regarding the issued, paid up capital, estimated amount of assets and liabilities, reason for failure of the company and also the opinion of the liquidator.

(vi) List of contributories settlement:

A contributor is nothing but a shareholder. A shareholder is liable to pay the full amount on the shares held by him at the time of winding up, he is termed as contributory. The official liquidator should prepare the list of contributories, as the court shall settle the contributories.

(vii) Discharge of liabilities:

The official liquidator should realize the assets of the company and satisfy the debts of other liabilities of the company.

(viii) Order of dissolution:

When the affairs of the company are completely wound up, the court shall pass an order of dissolution. The company stands dissolved from the date of the order of dissolution. The copy of the order of dissolution must be filed with the registrar within 30 days of the order; the registrar should make a minute in his books.

II. Voluntary Winding Up:

Voluntary winding up means the winding up by the members or creditors themselves without any intervention of the court. The members and creditors are left free to settle their affairs without going to the court of law. However they may apply to the court for any directions when necessary under section 484 of the companies act.

Voluntary winding up can be made by:

(a) Passing an ordinary resolution:

When the life period of the company expires (mentioned in the articles of Association, the company may pass an ordinary resolution in its general meeting for its winding up.

(b) Passing a special Resolution:

When the members or creditors decided to wound up the company, they pass a special resolution at the general meeting and liquidate the company.

What are the different kinds of voluntary winding up and explain its legal provisions?

The voluntary winding up of the company is of two types:

Members' voluntary winding up

Creditors' voluntary winding up

1. Members voluntary winding Up:

A member voluntary winding up is possible only when the company is solvent and is able to pay its debts in full. For this kind of winding up, a declaration of solvency should be made by the directors. In this case, it is not necessary for the members to consult the creditors or to call their meeting.

Legal Provisions regarding Members Voluntary Winding Up:

(i) Declaration of Solvency:

The declaration of solvency is the declaration made by the directors stating that the company has no debts or that it will be in a position to pay its debts in full. It should be drawn by the directors in members' voluntary winding up.

(ii) Holding of general Meeting:

After filing the declaration of solvency, the directors should arrange to convene a meeting and resolution should be passed to this effect.

(iii) Appointment of Liquidator:

The liquidator is appointed by the company in its general meeting, to conduct the proceedings of the members voluntary winding up. The company may appoint one or more liquidators as may be necessary and fix the remuneration of the liquidator.

(iv) Notice to Registrar:

The company should give a notice of appointment of the liquidator to the registrar within 10 days from the date of appointment. The liquidator should also inform the registrar about his appointment within 30 days of his appointment.

(v) Powers of the Board:

As soon as the liquidator is appointed, all the powers of the board of directors or managing director or manager shall come to an end.

(vi) Settlement:

The liquidator shall take in charge of all the assets of the company, convert them into cash and pay the money first of the creditors and them other based as their preference. If there is any mount of surplus, it should be distributed to its members.

(vii) General Meeting:

Where the process of liquidation continues for more than one year, the liquidator must call for general meeting at the end of the first year and submit the accounts as the programme of winding up.

(viii) Final Meeting:

As soon as the affairs of the company are fully wound up, the liquidator must call for a general meeting by giving one-month notice to the members. The liquidator should submit an account showing the disposal of assets, settlement of the liabilities and the procedure have been followed for winding up

(ix) Notice to the Registrar and Official Liquidator:

The liquidator within one week after the date of the meeting should send a copy of the account to the registrar and the official liquidator

(x) Report to the court:

After the receipt of the account and return from the liquidator, the official liquidator should submit a report to the court.

2. Creditors Voluntary Winding Up:

Creditors voluntary winding up takes place only when the company is an insolvent conditions and so, it is unable to discharge its liabilities in full. IN this case, a declaration of solvency has not been made and delivered to the registrar.

Legal Provisions:

(i) Creditors Meeting:

A meeting of creditors should be held and a special resolution for winding up should be passed in the meeting. The creditors meeting should be conducted either on the same date of general meeting or on the next day of the general meeting.

(ii) Provisions Regarding the creditors Meeting:

The notice of the meeting should be sent to each creditor. A statement of affairs and the list of creditors and the amount due to items should be place at the meeting. A copy of resolution passed in the creditors meeting should be filed with the registrar within 10 days from the date of passing the resolution.

(iii) Appointment of Liquidator:

The liquidator may be appointed by the creditors at their meeting. If no liquidator is appointed by the creditors in their meeting, he may be appointed by the members at their meeting.

The remuneration of the liquidator can be fixed by the committee of inspection. If no such committee is appointed, the creditors can fix the remuneration of the liquidator.

(iv) Committee of Inspection:

The creditors may appoint a committee of inspection at their meeting. The committee may consist of a maximum of five or more members.

(v) Winding Up Proceedings:

The liquidator conducts the winding up proceedings. The liquidator shall take in care of all assets, convert them into cash and made settlement to creditors first and then other based as their preference.

(vii) Final Meeting:

As soon as the affairs of the company is fully wound up, the liquidator must make an account of winding up, showing how the winding up was conducted as how the property has been dispose off. Thereafter, he must call for a creditors meeting and also the general meeting the liquidator should send the copy of the statement of the affairs to the registrar and also to the official liquidator.

The official liquidator should submit a report to the court. After receiving the report, the court may order for dissolution.

III. Winding up subject to the supervision of the court:

Winding up subject to the supervision of the court is not a separate category of winding up. IT is actually, voluntary winding up, and the process of winding up is carried on subject to the terms and conditions of the court.

Under this method, a resolution has been passed at the general meeting to wind up the company voluntarily. After passing a resolution, an application should be made to the court for winding up by the creditors or members or any other contributory, the court may pass an order after getting the approval is known as the supervision order.

Where a company is being wound up voluntarily or subject to the supervision of the court, a petition for its winding up by the court may be presented by (a) Any person authorized to do so under sec.439 (which deals with provisions as to applications for winding up) or (b) The official liquidator (sec.440(1)).

WRITE A SHORT NOTE ON DUTIES OF LIQUIDATOR?

- Proceedings in Winding Up
- Report
- Additional Report
- Custody of company's Property
- Control of Powers
- Meetings of creditors and Contributories
- Direction from the court
- Proper Books
- Audit of accounts
- Appointment of committee of inspection
- Pending liquidation

WHAT ARE THE DIFFERENCE BETWEEN MEMBERS VOLUNTARY WINDING UP AND CREDITORS VOLUNTARY WINDING UP?

Basis of Difference	Member's Voluntary Winding Up	Creditors Voluntary Winding Up
1. Declaration of Solvency	In members voluntary winding up, the director should make a declaration of solvency in the prescribed form.	No such declaration is necessary in case of creditors voluntary winding up.

2. Meeting of Creditors	In members' voluntary winding up, no meeting of creditors in conducted.	In creditors voluntary winding up, meeting of creditors should be conducted.
3. Appointment of Liquidator	In members' voluntary winding up, liquidator is appointed only by the members in their meeting.	In creditors voluntary winding up, liquidator is appointed by the creditors or the members in their meeting.
4. Committee of Inspection	In members voluntary winding up, no committee of inspection is appointed.	In creditors voluntary winding up, a committee of inspection may be appointed by the creditors.
5. Remuneration of Liquidator	In member's voluntary winding up, the remuneration of the liquidator is fixed by the members.	In creditors voluntary winding up, the remuneration for the liquidator is fixed by the committee of inspection or by creditors.
6. Powers of Liquidator	In member's voluntary winding up, the liquidator can exercise his powers with the sanction of the members'.	In creditors voluntary winding up, the liquidator can exercise his powers with the sanction of the committee of inspection or creditors or court.
7. Payment to creditors	In a members voluntary winding up, the company is solvent, the creditors are paid in full.	In creditors voluntary winding up, the company is not solvent, the payment to creditors are made on the basis of preference.

BRIEFLY EXPLAIN THE CONSEQUENCES OF WINDING UP?

The consequences of winding up may be discussed under the following heads:

(i) Consequences as to shareholders:

A shareholder is liable to pay the full amount up to the face value of the shares held by him. The liability of the shareholder on this account continues even after the company goes into liquidation, but he is then described as a contributory. The liability of a present contributory is the amount remaining unpaid on the shares held by him. A past contributory can only be called upon to pay if the present contributory is unable to pay.

(ii) Consequences as to Creditor:

When a company goes in to liquidation the creditors have some consequences, such consequences may be different, based on the solvency of the company. The consequences of the creditors are discussed as under:

(a) Winding up of solvent company:

Solvent company means that the company's assets are more than the liability. That is the company is able to pay the debts of the company. When a solvent company is wound up, all claims of its creditors are paid in full when it is proved.

(b) Winding up of insolvent company:

When an insolvent company is wound up, the liquidator has to follow some rules and regulations for the settlement to creditors. For this purpose, the creditors may be classified into secured and unsecured creditors.

The order of priority in paying off debts in a winding up is:

* Unsecured creditors
* Secured Creditors
* Cost and charges of winding up
* Floating charges
* Preferential debts.

Preferential payment:

Some unsecured debts are paid in priority to all other debts. These payments are:

* Accured holiday remuneration to employees.
* Taxes and rates to government.
* Amount of compensation to employees.
* Wages and salaries to the employees.
* Expenses of investigation etc.,

(iii) Consequences as to servants and officers:

A winding up order is deemed to be notice of discharge to the officer and employees of the company, except when the business of the company is continued (sec.455(3)). Such a discharge relieves them from all obligations under their contract of service.

(iv) Consequences as to proceedings against the company:

When a winding up order has been made or the official liquidator has been appointed as provisionsal liquidator, no suit or other legal proceeding against the company can be commenced except by the leave of the court. Similarly, if a suit is pending against the company at the date of the winding-up order, it cannot be proceeded with against the company, except by of the court(sec.446(1).

(v) Consequences as to costs:

If assets are insufficient to satisfy liabilities, the court may order for payment for the costs, charges and expenses of the winding up out of assets. The payment must be made in such order of priority inter se as the court thinks just (sec.467). Similarly all costs, charges and expenses properly incurred in a voluntary winding-up including the remuneration of the liquidator, are paid our of the assets of the company in priority to all other claims. The payment is, however, subject to the rights of secured creditors (sec.520).

UNIT-V COMPLETED

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