

# COMPANY LAW ASSIGNMENT

2 marks

### **1) Define joint stock company?**

A company or association consisting of individuals organized to conduct a business for gain and having a joint stock of capital represented by shares owned individually by the members and transferrable without the consent of the group.

### **2) What is memorandum of association?**

The memorandum of association or MOA of a company defines the constitution and the scope of powers of the company. In simple words, the MOA is the foundation on which the company is built. In this article, we will look at the laws and regulations that govern the MOA. Also, we will understand the contents of the memorandum of association of a company.

### **3) What is meant by certificate of incorporation?**

A certificate of incorporation is a legal document relating to the formation of a company or corporation. In U.S., the certificate of incorporation forms a major constituent part of the constitutional documents of incorporation. It is a document produced by a newly organized corporate entity and submitted to a state office for registration purposes and this document officially indicates the corporation's existence. Since the requirements for certificate of incorporation are created by state laws, it can vary from state to state.

### **4) What is statement in lieu of prospectus?**

A statement in lieu of prospectus is defined as a public document prepared in the second schedule of companies ordinance by every such public company which does not issue a prospectus on its formation by filing with the registrar before allotment or shares of debentures, and signed by every person who is named therein.

### **5) What do you mean by cumulative preference shares?**

A type of share that gives its owner the right to receive a set amount of money as a dividend. If this money cannot be paid in time, it must be paid later, and before any money is paid to owners of ordinary shares. The holders of cumulative preference shares are entitled to recover the arrears of preference dividend before any dividend is paid on equity shares.

## **6) Define debentures?**

A debenture is one of the most typical forms of long term loans that a company can take. It is normally a loan that should be repaid on a specific date, but some debentures are irredeemable securities. The majority of debentures come with a fixed interest rate. This interest must be paid before dividends are paid to shareholders.

## **7) What is statutory meeting?**

It is the first meeting of the shareholders of a public company having share capital and is held once in the lifetime of a company. A private limited company and a company limited guarantee not having share capital need not hold a statutory meeting.

## **8) What is meant by ordinary resolution?**

In business or commercial law in certain common law jurisdictions, an ordinary resolution is a resolution passed by the shareholders of a company by a simple or bare majority either at a convened meeting of shareholders or by circulating a resolution for signature.

## **9) What do you mean by winding up of a company?**

Winding up is the process of dissolving a company. While winding up, a company ceases to do business as usual. Its sole purpose is to sell off stock, pay off creditors, and distribute any remaining assets to partners or shareholders.

## **10) What is creditors voluntary winding up?**

Voluntary winding up by creditors takes place when a company becomes insolvent and is unable to discharge its liabilities. To carry out voluntary winding up of private limited company procedure, a meeting needs to be called where a resolution is passed to carry out winding up procedure of the company.

## **11) Define promoters?**

A promoter is an individual or organization that helps raise money for some type of investment activity. Promoters may raise money for a company by offering investment vehicles other than traditional stocks and bonds, such as limited partnerships and direct investments activities. Often, promoters are paid in company stock or as a percentage of the capital raised.

**12) What is private company?**

A private company is a firm held under private ownership. Private companies may issue stock and have shareholders, but their shares do not trade on public exchanges and are not issued through an initial public offering (IPO). In general, the shares of these businesses are less liquid and their valuations are more difficult to determine.

**13) What is meant by articles of association?**

The document that specifies the regulations for a company's operations and defines the company's purpose. The document lays out how tasks are to be accomplished within the organization, including the process for appointing directors and the handling of financial records.

**14) Define prospectus?**

A prospectus is a formal document that is required by and filled with the Securities and Exchange Commission (SEC) that provides details about an investment offering for sale to the public. A prospectus is filled for stock, bond and mutual fund offerings. A prospectus is used to help investors make more informed investment decision.

**15) What is meant by redeemable preference shares?**

Redeemable preference shares are type of preference share. A company issues them to shareholders and later redeems them. This means the company can buy back the shares at a later date. Non-redeemable preference shares do exist, although companies cannot redeem them.

**16. What is fixed charges?**

A charge is fixed when it is made specifically to over definite an ascertained assets of permanent nature such as land, building, or heavy machinery. A fixed charge passes legal title to certain specific assets and the company retains loses the right to dispose of the property unencumbered, though the company retains possession of the property.

**17. What is meant by extra ordinary general meeting?**

All general meetings of a company other than annual general meetings and statutory meetings are called extra ordinary general meeting. These meetings are called in emergencies or on special occasions. They are convened when it is found necessary to transact certain business which cannot be postponed until the conduct of next annual general meeting. All businesses transacted at an extraordinary general meeting are deemed to be special business, of which notice has been duly given beforehand. Alteration of the memorandum and articles of the company, increase, or decrease of the share capital or reorganization of capital are certain situations where an extraordinary general meeting called for.

### **18. What is special resolution?**

A resolution shall be a special resolution when the votes cast in favor of the resolution by the members present in person or, where proxies are allowed, by proxy, are not less than three times the number of votes, if any, cast against the resolution and the intention to propose the resolution as a special resolution has been duly specified in the notice calling the meeting. In other words, this is a resolution passed by a majority of at least 75 percent of the votes of members present in person or by a proxy and a mention of the fact that the resolution shall be passed as a special resolution must have already been made in the notice of the meeting and the notice should have been duly given at least twenty-one days before the date of the meeting.

### **19. What is meant by member's voluntary winding up?**

This is most common mode of winding up, where a company is wound up by the members or creditors, without any interference of the tribunal. In voluntary winding up, the members and creditors are left free to settle their affairs without going to the tribunal, they may also apply to the tribunal for directions or orders, if and when necessary.

### **20. Define unlimited company.**

Unlimited company means, a company not having any limit on the liability of its members. An unlimited company may or may not have a share capital. If it has a share capital, it may be a public company or a private company. If the company has a share capital, the articles shall state the amount of share capital with which the company is to be registered. The articles of an unlimited company shall state the number of members with which the company is to be registered.

## **21. Define share.**

The capital of a company is divided into small units and each unit is known as a share. Section 2(84) of the Companies Act defines share "as a share in the share capital of a company, and includes stock, except when distinction between stock and share is expressed or implied".

## **22. What is meant by convertible debentures?**

These debentures can be converted into shares of the company on the expiry of pre-decided period. The terms and conditions of conversion are generally announced at the time of issue of debentures.

## **23. Define meeting.**

A company meeting may be generally defined as a gathering or assembly or getting together of a number of persons for transacting any lawful business. However, every gathering or assembly does not constitute a meeting. A company meeting may also be defined as an assembly of people for a lawful purpose or the coming together of at least a quorum of members in order to transact either the ordinary or special business of the company. A company meeting must be convened and held in perfect compliance with the various provisions of the act and the rules framed thereunder.

## **24. What is doctrine of ultra vires?**

The object clause of the Memorandum of the company contains the object for which the company is formed. The company is authorized to do all such activities which are essential for attainment of such objects. An act of the company must not be beyond the objects clause, and the authority envisaged in the companies act, otherwise it will be ultra vires. Ultra means 'beyond' and vires means 'powers'. The term ultra vires a company means that doing of the act which is beyond the legal power and authority of the company. An ultra vires act is void and cannot be ratified even if the directors wish to ratify it

## **25. What is proxy?**

A proxy is an agent legally authorized to act on behalf of another person or a format that allows an investor to vote without being physically present at the meeting. Shareholders not attending the meeting may vote their shares by proxy by allowing someone else to cast votes on their behalf, or they may vote by mail. A proxy should report at company's office before 48 hours of the commencement of the meeting.

## **26. What is meant by share capital?**

Capital means the money being invested to start a new business or to buy the existing business for others. In case of a joint stock company, the term 'share capital' refers to the amount of capital raised, or to be raised, by the way of issue of shares by the company. The various terms pertaining to capital of a company denote to the following:

- Authorized capital
- Issued capital
- Subscribed capital
- Called up capital
- Paid up capital
- Reserve capital.

## **27. What is meant by doctrine of constructive notice?**

Section 399 of the Companies Act, 2013, provides the inspection, production, and evidence of documents kept by Registrar. It provides that the memorandum and articles when registered with Registrar of Companies become public document and then they can be inspected by anyone on payment of a nominal fee. Therefore, any person who contemplates entering into a contract with the company has the means of ascertaining and is thus presumed to know the powers of the company and the extent to which they have been delegated to the directors. In other words, every person dealing with the company is presumed to have read these documents and understood them in their true perspective. This is known as doctrine of constructive ultra vires.

### **28. Who is a company secretary?**

A company secretary means a person who is a member of the Institute of Company Secretaries of India. Secretary means any individual possessing the prescribed qualifications, appointed to perform the duties which may be performed by a secretary under this Act and any other ministerial or administrative duties.

### **29. What is meant by a share warrant?**

A share warrant is the right to purchase the shares of a stock at a certain price and within a stipulated time period. It expires after a certain point of time if the investor does not exercise them. However, the holder of has the right to deny the purchase that is he is not locked in to purchase the stock.

### **30. What is meant by forged transfer?**

An instrument in which the signature of the transferor is forged is called forged transfer. It is a null transfer and does not confer any title. It is so because in case of forgery there is not merely an absence of free consent but there is no consent at all.

## **5 Marks**

### **1. What is one person company?**

Ans: OPC is a one share holder corporate entity. One-person company in the legal system is a move that would encourage corporatization of business and entrepreneurship. Several companies of today are wholly owned subsidiaries of parent companies. The reason for having such company is for insulating the resources, liabilities, incomes and expenses from a segment of the business into a corporate shell.

As per section 2(62), "One person company" means a company which has only one person as a member. The memorandum of a company shall state the last letters and word OPC Limited in the case of a One person limited company. The memorandum of a One person Company shall indicate the name of the person who shall, in the event of the subscriber's death, disability or otherwise, become the member of the company.



The provision pertaining to meetings, including annual general meetings are exempted by law itself. This type of company can have only one director, in which case directors' meetings also become non-mandatory.

## 2. Explain company limited by guarantee.

Ans: "Company limited by guarantee" means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of being wound up. These types of companies may or may not have a share capital. Each member promises to pay a fixed sum of money specified in the Memorandum, in the event of liquidation of the company. The amount promised by each member is called 'Guarantee'.

The Article of Association of the company state the number of members with which the company is to be company state the number of members with which the company is to be registered. Such a company is called a company limited by guarantee.

The amount lot guarantee of each member is in the nature of reserve capital. This amount cannot be called upon, except in the event of winding up of a company. Non-trading or non-profit companies formed to promote culture are generally formed as companies limited by guarantee.

## 3. Difference between Memorandum and Articles of Associations

MEMORANDUM OF ASSOCIATION	ARTICLES OF ASSOCIATION
Memorandum of association is the charter of the company and defines the scope of its activities.	An Articles of association of the company is a document which regulates the internal management of the company.
It defines the relation of the company with the rights of the members of the company and establishes the relation of the company with the members.	These are the rules made by the company for carrying out the objects of the company as set out in the memorandum.

It cannot be altered except in the manner and to the extent.  It is a supreme document of the company.	The articles being only the bye-laws of the company can be altered by a special resolution.  Articles are subordinate to the memorandum. They cannot alter or control the memorandum.
A company cannot depart from the provisions contained in its memorandum, and if it does, it would be ultra-vires the company.	Anything done against the provisions of articles, but which is intra-vires the memorandum can be ratified.
It states for what it is formed.	It states what should be done.

#### 4. What are the advantages of the companies?

Ans: 1. Limited Liability:

The major advantage of company form of organization is that, the liability of the members of the limited company is limited to the par value of the shares held by them. That is, the shareholders of a company have a limited or capped liability for the debts of the business.

2. It is easy to start a company:

It is now very easy to start a limited company and it can all be done online. Gone are the days of waiting for days together for Registrar of companies to process the paperwork. But now you can start a limited company in just a few hours. The cost of incorporating is an allowable expense against corporation tax.

3. It has separate legal entity:

A limited company has separate legal identity. So, third parties contract with the company and not with the individual directors and shareholders, which means, companies survive the death of the owners and it is possible for the directors

and shareholders involved with the company to change over time.

#### 4. Project cost and Risk Factors:

For entrepreneurs going for hi-tech or high capital outlay projects, it is always advantageous to go in for a company form of organization. Where the financial stage involved is high, it is found that banks and financial institutions while sanctioning financial assistance, insist on having a private limited company.

#### 5. Easy transferability:

Shares in a company are easily transferable, subject to the restrictions mentioned in the Articles of Association. No consent of the other members is required for such transfers. This helps the shareholders to realize their investments at any moment.

#### 6. Exit from business:

Where it is proposed to sell the business as going concern all that is required is to transfer the entire shareholding to the purchaser and thus facilitate easy change in management and ownership. This will save like and money of the Promoters. Huge amount of stamp duty is saved.

### 5. Explain characteristics of a company?

Ans: 1. A Voluntary Association:

A company is a voluntary association of a person. A group of persons, who have common object, join and form an association in order to direct their efforts towards achievement of their common goal. The initiative is being taken by persons who are willing to contribute to the common fund in order to achieve their common end.

#### 2. Incorporated Association:

A company must be incorporated under the prevalent companies act. The law relating to companies in India is contained in the companies act 1956 as amended from time to time. An association of persons registered under the companies act is called as joint stock companies.

#### 3. Artificial legal person:

A company is an artificial person created by law. It has no physical body or soul like human being, but enjoys certain legal rights conferred on it by law. It is invisible and exists in the eye of laws. It is invisible and exists in the eyes of law. It is

because of these disabilities that a company is called an artificial person.

4. Transferability of shares:

No restriction is being levied upon the transferability of shares held in a public company, except in certain cases. The members of public company can freely transfer their shares, without seeking permission from the company. But this provision is not applicable to the private companies.

5. Separate property:

As a company is treated as an individual in the eyes of law, it is capable of owning, enjoying, and disposing of property in its own name.

6. Capacity to sue:

A company can file a suit against others and it can be sued by others in its corporate name.

**6. What is explanatory statement?**

Ans: The notice convening an extraordinary general meeting must be accompanied by an Explanatory Statement. The object of such a statement is to explain to the members the reasons of passing a resolution to ensure its smooth adoption. Explanatory statement is necessary for each item of special business.

In the case of annual general meetings, all business other than the ordinary business shall be considered as special business. In case of extraordinary general meetings, all business to be transacted there shall be treated as special business.

There must be annexed to the notice of the meeting a statement mentioning all material facts concerning the items of business including, the nature and extent of the interest of every director, and the manager if any. The statement is to be approved by the chairman of the company before it is actually.

**7. What are the difference between SHARES and STOCK?**

SHARES	STOCK
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A company can issue direct to the shareholders in its originality.	A company cannot make an original issue of stock;  Only shares fully paid up can be converted into stock.
The shares may be fully paid up or partly paid up.	The stock must always be fully paid up.
The shares are always of a fixed denomination.	The stock has no such fixed denomination.
A share has a definite number by which it is distinguished from other shares.	The stock has no such numbers.
Registration of share capital with the Registrar is compulsory before issuing shares.	Stock can be issued only after passing ordinary resolution if Articles permit and after passing a resolution in case the Articles so do not permit and filing a notice of conversion with the Registrar.
A share can be transferred in its entirety or in its multiple only.	Stock is divisible into any amount required and as such may be transferred even in fractional amount.

### 8. Explain Powers of Tribunal to call annual general meeting?

Ans: If the company defaults in holding an annual general meeting in accordance with section 96, any member of the company can make an application to the tribunal. On receiving such application, the Tribunal may call, or direct the calling of a general meeting of the company. It may also give such ancillary or consequential directions as it thinks fit in relation to the calling, holding, and conducting of the meeting. A general meeting so held shall, subject to any directions of the Tribunal, be deemed an annual general meeting of the company.

## 9. What are the powers of the chairman?

Ans: The chairman has the power to:

- \* Decide points of order.
- \* Maintain his ruling on points of order.
- \* Decide the priority of speakers,.
- \* Expel any unruly member.
- \* Adjourn the meeting if it becomes impossible to conduct and complete the business.
- \* Demand poll.
- \* Regulate the taking of poll.
- \* Appoint two scrutinizers to scrutinize the poll
- \* Sign and date the proceedings of the meeting.
- \* In addition to a deliberative vote as a member the chairman may have a casting vote if the Articles so provide the casting vote is to be exercised if there is an equality of affirmative and negative votes.

## 10. What are the requisites of agenda?

Ans: The requisites of agenda are:

- \* It should be clear and explicit
- \* It should be in a summary form.
- \* The routine item should be put first and the debatable matters later.
- \* All matters of similar or allied characters are should be placed bear each other on the agenda.
- \* All item included in agenda of a meeting should be within the scope the meeting.
- \* The business required being transacted at a statutory meeting or annual general meeting as per the requirements of the Act are included in the agenda of such meeting.

### **11. Explain issue of bonus shares.**

Ans: The companies Act, 2013 has introduced provisions enabling issue of bonus shares to the members, in any manner out of:

- \* Its free reserves
- \* The security premium Account; or
- \* The capital redemption reserve account.

The following conditions are to be complied with for the issue of bonus shares:

- \* The issue of bonus shares must be authorized by the Articles of the company.
- \* It must be recommended by a Board resolution and then approved by the shareholders in general meeting.
- \* It must be in accordance with the guidelines issued by SEBI.

### **12. What is the content of winding up petition?**

Ans: The petition of winding up shall contain the following information:

- \* Name of the company with the date of its incorporation.
- \* Address of the registered office.
- \* Amount of paid up share capital.
- \* Statement of facts to justify a winding up order.
- \* A prayer to the Tribunal to issue an order of winding up.
- \* A statement of the petitioner, in the form of an affidavit, that the facts stated in the petition are correct and true.

### **13. What are the consequences of a winding up order?**

Ans: a) The petitioner and the company are required to file with the Registrar a certified copy of winding up order within one month from the date of order.

b) The registrar will then notify in the official Gazette that such an order has been made.

c) The order of winding up shall be deemed as notice of discharge to the officers and employees of the company.

d) The power of the Board will be terminated and the same will be entrusted to the official liquidator.

e) The winding up order shall operate in favor of all the creditors and all the contributories of the company as if such an order has been made on their joint petition.

f) The official liquidator becomes the liquidator of the company.

g) Any debt payable at a future date becomes immediately payable on the winding up order.

h) Any suit or proceeding by or against the company which is pending in any other court may be transferred to and disposed of by the Tribunal which is winding up the company.

#### **14. What are the consequences of voluntary winding up?**

Ans: A) The company ceases carry on its business from the commencement of voluntary winding up.

B) The business so far as may be required for the beneficial winding up will be permitted to be carried on by the company.

C) The company in its general meeting shall appoint a Company Liquidator from the panel prepared by the Central Government.

D) The possession of the assets of the company vests in the Liquidator.

E) The liquidator shall arrange for realization of such assets and can distribute the realized amount to the creditors of the company.

F) The corporate state and corporate powers of the company shall continue until it is dissolved.

G) A resolution to wind up voluntarily operates as notice of discharge to the employees of the company, except when the business is continued by the Liquidator for the beneficial winding up of the company.



## 15. Explain the stages of formation.

Ans: There are four stages:

### \* Promotion:

This is the first stage of the company. Promotion may be defined as, the discovery of business opportunities and the subsequent organization of funds, property and managerial ability into a business concern for the purpose of making profits therefrom.

### \* Incorporation:

At this stage, the members of the company should select the name for the company and ascertaining its availability of Registrar of companies.

Then, drafting and printing and Memorandum and Articles of Association,

Stamping and Signing of Memorandum and Articles should be done,

Dating of memorandum and Articles of Association should be done,

Filing of documents and forms for Registration should be done.

### \*Capital Subscription:

After the incorporation capital subscription must be done. Private companies and public companies not having the share capital can start its business but those who have share capitals have to pass two more stage.

### \* Commencement of business:

As per Section 11 of the Act, a company having share capital shall not commence business, or exercise any borrowing powers, unless a declaration is filed with Registrar, by a director, verified in the manner as may be prescribed.