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CLASS: II B.Com

Sub - Code: 16CAACM1D

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①

## Company Law

part A (2 mark)

1. Define the term Company.

According to Lindlay defines the Company " as an association of many persons who contribute money or money's worth to a Common stock and employ it in some trade or business and who share the profit arising therefrom".

2. what do you mean by private Company?

A Company which has a minimum paid-up Capital of ₹ 1,00,000 / such higher paidup capital as may be prescribed and by its Articles. The minimum number of Members required is 2. Maximum is 50. excluding employees. It should restrict the right of the member to transfer its Shares.

3. what do you mean by public Company?

A Company which is not a private Company. The Company has a minimum paidup capital of ₹ 5,00,000 / such higher paid up capital as may be prescribed. A public Company does not restrict the right of the members to transfer their shares.

4. Define Statutory Companies.

The Companies established by Special Acts of parliament or State legislatures are called Statutory Companies. The special Act under which they are established regulate their functioning.  
Example: RBI, LIC etc.



5. What do you mean by certificate of Incorporation?

After verifying all the documents, the Registrar should give a certificate of Incorporation with his sign and office seal. The date given by the Registrar in the certificate, is called certificate of Incorporation.

6. State any five characteristics of a Company.

- i) It is an artificial entity endowed with legal personality.
- ii) It has perpetual existence.
- iii) It has a common seal.
- iv) Its shares belonging to members are freely transferable.
- v) It has capacity to sue.

7. Who can be a promoter?

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. A promoter may be an individual, a firm, an association of persons or even a company.

8. Define Memorandum.

According to sec 2 [28] "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".

9. Define Articles of Association.

This document contains the rules and regulations regarding the internal management of the Company.

"The Articles of Association of a Company as originally framed or as altered from time to time in pursuance of any previous company Law or of this Act. Regulations contained in Table 'A' in schedule I to the Act.

10. What is meant by prospectus?

Any document issued by a Company inviting the public to buy shares or debentures comes under the definition of prospectus. It includes any notice, circular, advertisement etc.

11. ~~What~~ do you mean by Doctrine of Indoor Management?

The observance by the employees of the Company, certain rules and regulations contained in the Articles and which are exclusively meant for them for compliance. The third parties need not know these rules and regulations.

12. What is meant by Doctrine of Constructive Notice?

Doctrine of Constructive notice is a protection to the Company from the Suits filed by third parties against it for damages on account of third parties' own negligence.

13. Define the term share.

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 shares. The share capital may be preference and Equity capital.

14. Define allotment.

Allotment is generally neither more nor less than the acceptance by the Company of the offer to take shares. An allotment of shares, therefore, is an act of a Company by which the applicant for shares becomes the holder of unappropriated shares.



15. What do you mean by forfeiture of shares? (4)

If a shareholder, who is called upon to pay any call fails to pay the amount, even after sending several reminders, the Company may forfeit his shares. It will create a permanent reduction of the share capital.

16. Write a note on calls in Advance:

A shareholder can pay the whole or part of the amount remaining unpaid on his shares even before the call is made. This is only a voluntary payment and is known as calls in advance.

17. What is debenture?

Debenture is a document which either creates or acknowledges a debt. It is a written document and provides for a fixed rate of interest to the debenture holders. A debenture holder cannot vote in the company meetings.

18. What is meant by share certificate?

Every person whom shares are allotted must be provided with a certificate stating his/her name, address and occupation together with the number of shares and their distinctive numbers and the amount paid up. It is known as share certificate.

19. What is meant by share warrant?

A share warrant is a document issued by the Company under its common seal, stating that its bearer is entitled to the shares/stock specified therein. It is a negotiable instrument and also transferable one.

20. Who may be a secretary?

The secretary includes any other individual possessing the prescribed qualifications and appointed to perform the duties which may be performed by a secretary under this Act. He may be a member of Institute of Company Secretaries.

21. What is meeting?

A meeting as "an assembly of number of people for entertainment, discussion or the like". It may be lawful assembly of two or more persons by previous notice for transacting some business.

22. What is meant by Agenda?

The term Agenda means the 'things to be done' or business to be transacted at a meeting'. It should be circulated amongst the members along with the notice of the meeting. The preparation of the agenda is the work of the company secretary.

23. What is Annual General Meeting?

AGM is one of the important meetings of a company. It is usually held once in a year. It should be conducted by public or private company limited by shares/guarantee, having or not having a share capital.

24. Define the term quorum.

It means a certain number of members whose presence is necessary for the meeting of a company to commence its deliberations. It is decided by the articles. Without minimum quorum is invalid.



25. Write a note on Minutes. (6)

The written record of the business done at a meeting i.e. resolution and decisions of the meeting. But speeches and arguments are not recorded in the minutes. It is a record of what was done.

26. Define proxies.

A proxy is an agent or representative of a shareholder. A member who is entitled to attend and vote at a meeting can vote either in person or through some other person. The person so appointed is known as the proxy.

27. What is Ballot?

The members record their opinion on the ballot papers by a suitable mark. These papers are either deposited by the members in the boxes kept for this purpose or collected by the tellers. This paper is called Ballot paper.

28. What is notice?

The notice should be given to all those who are concerned with the business ~~etc.~~ of the meeting and are entitled to attend it. The director send a notice atleast 21 days before the date of the meeting.

29. What is meant by Resolution?

The resolutions can be passed in all kinds of meetings. The resolution may be passed even at an adjourned meeting of the company.

30. What is poll?

A poll can be taken if the chairman or a prescribed number of members are dissatisfied with the result of the voting by show of hands.

(5 Marks)

Part - B

Unit I & II

Characteristics of a Company.

(i) Legal personality; -

The Law divides person into two kinds. like, Natural person and legal person.

Natural person are human persons. i.e, men women, children etc. They created by nature. Legal person created by a legal process and not through natural birth. A company is a distinct legal person.

(ii) Limited liability; -

The shareholders 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.

(iii) perpetual succession.

A Company, never dies, nor its life depends on the life of its members.

(iv) Right to property; -

A Company, being a legal person, so, it has a right to acquire, possess and dispose of property in its own name.

(v) Common seal;.

A Company being an artificial person. It cannot sign in the documents and issue certificates.

(vi) transferability of shares.

In a joint stock company can be easily transferred. The share of a Company is movable property. The shareholders can transfer his title over his share to some other persons.



(vii) capacity to sue and be sued:-

A Company being a legal person, can sue ~~the~~ other person in its corporate name. Similarly others can ~~also~~ sue the company in their own name.

2. Difference between private Company and public Company.

private company

public company.

i) use of ~~the~~ word:

A private limited Co, must add the word 'private' at the end of its name.

It may add simply the word 'limited'

ii) Minimum 2 members  
maximum 50 members.

minimum not less than 7  
members. maximum  
unlimited.

iii) It commences his business after gets the certificate of incorporation.

Commence business only  
getting two certificates.  
1) certificate of incorporation.  
2) certificate of Commencement  
of business.

iv) Transferability of shares,  
is restricted by its Articles  
of Association.

The shares are freely  
transferable.

v) cannot issue share  
warrant.

It can issue share  
warrants in case of fully  
paid up shares.

vi) only two directors.

Not less than 3 directors.

## private Company

vii) The directors need retire every year.

viii) Quorum: The minimum no. of members participated in the meeting. Mini - 2 members.

ix) Annual return: It has to file a declaration with the registrar.

(x) Statutory meeting: not compulsory.

## public Company

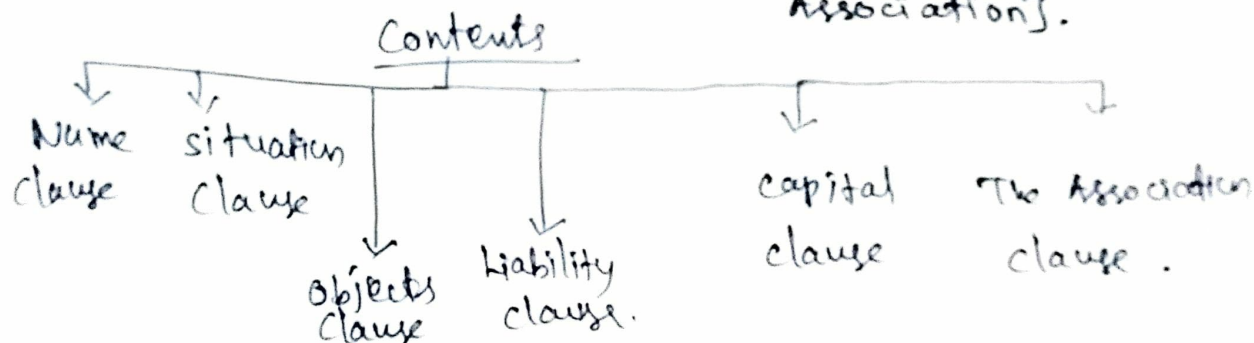
- one third of the directors are compelled to retire by rotation every year.

- Five members personally present for conducting the meeting.

- It has to file only the Annual return.

- It must hold a statutory meeting.

5. What are the contents of MOA? [Memorandum of Association].



### I. Name clause:

- It contains the name of the Company.
- The name must be a identical name, should not be closely resembles the name of another company.
- Undesirable name, objectional names, last word of the name [Ltd and Pvt Ltd].

### II. Situation clause:

- The name of the state in which the company's Registered office is to be situated.
- It determines the domicile and nationality of the company.



III Object clause:-

- must state the objects for which the proposed Company is to be established. The objects may be divided into 2 i.e. Main objects and other objects.

IV Liability clause:-

It states the nature of the liability that the members incur. It may be limited liability or unlimited liability.

V Capital clause:-

this type of clause specifies the nominal [Registered / Authorized] share capital, with which the Company is to be registered and its divisions [i.e preference / equity].

- the Company cannot issue share capital more than what is mentioned in this clause.

VI Association clause:-

The person subscribing their signature to the memorandum are desirous of forming themselves into a company in pursuance of the memorandum and agree to take the number of shares in the capital of the Company set opposite to their names.

4) Explain the merits and demerits of Companies. (11)

Advantages :-

1) Limited Liability :- The shareholders cannot be called upon to pay off the debts of the Company out of their private funds.

2) Easy Mobilization of Resources :- The total capital is also divided into a number of small parts known as shares. Even people with limited resources can afford to subscribe for the shares of the Company. This results in mobilisation of funds easily and economically.

3) Long Life :- Company is artificial person, so it has a long life. Its life is not affected by the death, insanity and insolvency of all its members. The company continues to be in existence irrespective of the changes in its membership.

4) Easy transferability of shares :- The shares of a company can be transferred from one person to another in the manner provided in the Articles of Association. The consent of other members is unnecessary for a transfer.

5) Demographic Management :- The shareholders are the real owners of the company. but is not suitable for practical affairs of the company. Therefore the shareholders elect a few persons amongst them as directors to manage the affairs of the company.

6) Capital formation :- people with limited resources can afford to invest their savings in the corporate securities since their face value in general is small. It will create and mobilisation of resources in the country.



## Disadvantages: -

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### i) Long Drawn process: -

A number of formalities are to be complied with before incorporating a company. Several documents and certificates are to be prepared with the assistance of legal experts. So this is a long process.

(ii) Expensive: - The company has to follow several formalities in every year. Incorporation of a company itself is an expensive affair.

### iii) Separation of Ownership from Control: -

Many companies are run by the directors only for their own benefits and their activities are focused only towards their interest ignoring the interest of the shareholders.

### iv) Rigid Government Control: .

Due to the maladministration of a number of companies by fraudulent directors, the Govt. has introduced many rigid provisions in the Companies Act. to exercise rigid control over the affairs of the companies. Quick decisions have become impossible.

### v) Erosion of limited liability

The courts are empowered to lift the corporate veil and impose unlimited liability on the directors and shareholders.

### vi) Administrative Delay:

The Board of Directors are collectively responsible for the administration of the company. This leads to delay in administration. Number of matters decided only <sup>in</sup> the Annual general meetings. So this will lead to delay in decision-making.

5) Discuss Doctrine of Ultra vires and its types. <sup>13</sup>

Meaning:-

The term 'Ultra' means beyond and 'Vires' means powers. The object of the Doctrine of Ultra Vires is to ensure the shareholders and the creditors that the fund and assets of the company will not be used for any purpose other than those specified in the Memorandum.

Objectives:-

\* To ensure the shareholders and the creditors that the fund and assets of the company will not be used for any purpose other than those specified in the Memorandum.

\* The creditors while dealing with the company can make themselves aware of the fact whether his transaction with the company.

\* If it is found it, he can avoid such transaction and there by safeguard his interest.

Types:-

(i) Ultra Vires the Memorandum or 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 act done or contract, made



beyond the powers given by the Articles but are within the powers of the Memorandum are called ultra vires the Articles but intra vires the Company. <sup>(14)</sup>

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 intra vires the Company. These acts can be ratified by the Company and can make it binding. Eg:- The directors borrowed money for the Company beyond their powers.

6) Explain the Doctrine of Indoor Management and its exception.

Doctrine is also popularly known as the Turquand rule.

Exceptions to the Doctrine of Indoor Management:-

1. Knowledge of irregularity:-

The first and the most obvious restriction is that the rule has no application where the party affected by an irregularity had actual notice of it. It may arise from the fact that the person contracting was himself a party to the inside procedure.

2. Forgery:-

Doctrine of Indoor Management does not apply to forgery because forgery is void ab-initio.

3) Negligence; - If the persons dealing with the Company secured their own indebtedness / would have discovered the irregularity if he had made proper enquiries, he cannot claim the benefit under this doctrine.

4) 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.

5) Not-applicable to the officers etc; - 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.

6) 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.

7) What is meant by statement in lieu of prospectus.

A public company has 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 (his own friends and of his friends and relatives), the Company need not issue a prospectus. The company has to file with the Registrar, a statement called a statement in Lieu of prospectus.



- 1) It must be filed at least 3 days before the first allotment of shares.
  - 2) It must be signed by every director or proposed director or by his.
  - 3) It should contain informations. (like the prospectus)
  - 4) If a public company allots shares even without filing statement in lieu of prospectus, the company and every director responsible for it shall be fined upto ₹ 10,000.
  - 5) If it contains any untrue statement, every person who authorised the statement is punishable with imprisonment upto 2 years or with fine upto ₹ 50,000 or with both.
-

8) What are the functions of promoter?

a) Promotion of an idea:

The promoter who has to conceive the idea of forming a company. He is a first person who undertakes to form a company with reference to a given object and to set it going necessary steps to accomplish that purpose.

b) Detailed investigation:-

After forming idea should analyse the nature of demand, supply of resources, competition etc.

c) Verification:

He should also verify the reports or comments or advises etc made by the experts are free from bias.

d) Assembling:-

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

e) Financing the proposition:-

He should arrange for finance to meet the preliminary expenses. To prepare a plan setting out the mode of getting the necessary finance.



9) presentation of the proposition; -

After making necessary arrangements and modes of raising finance, he gets the necessary documents. Also take the aid of legal experts in preparing the documents.

9) What are the objectives of issuing a prospectus?

- To attract the investors
- To make enough disclosure to the investors to enable them to decide whether or not to purchase shares or debentures of the Company.
- To secure that the directors of the Company accepted responsibility for the statement in the prospectus.
- It is only a window through which a prospective investors can look into the soundness of a Company's venture.

10) Explain the contents of Articles of Association.

1. Adoption of preliminary contracts
2. Number and value of shares.
3. Allotment of shares.
4. calls on shares.
5. share certificates and right of different types of shareholders.
6. Transfer and transmission of shares.
7. Forfeiture of shares.
8. Lien on shares
9. Alteration of capital

(10). Conversion of Shares into stock.

- 11) Borrowing powers, Alteration of the Memorandum.
- 12) General meetings, voting rights of the members and proxies.
- 13) No. of Directors, their qualifications and remuneration.
- 14) Dividend, issue of Bonus shares.
- 15) Accounts and Audit, appropriations to various reserves.
- 16) Winding up.

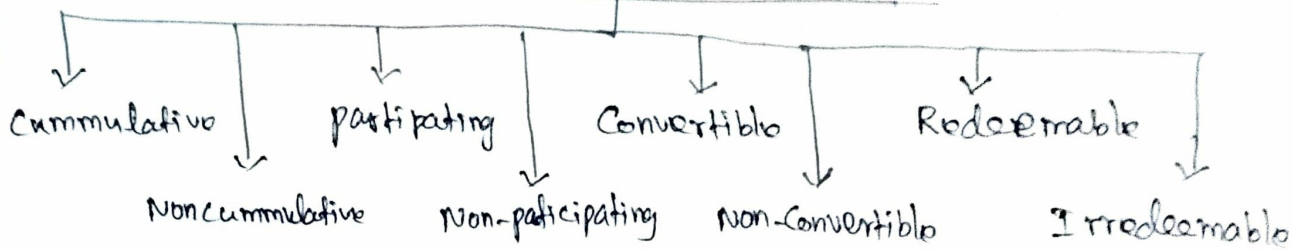
17) Distinction between the Memorandum and the Articles.

Memorandum	Articles.
i) It is the principal document	- Secondary document.
ii) subordinate to the Companies Act.	- subordinate to the Memorandum.
iii) Specifies the scope of authority and the objectives.	- specifies the procedures to be followed to carry out the objectives stated in the Memorandum.
iv) Relationship between Company and outsiders.	- Relationship between the Company and its Members.
v) Alteration is difficult	- Alteration is comparatively easy.
vi) It's compulsory for all companies.	- The company need not have its own articles, Instead it can adopt 'Table A' as its Articles.
vii) Act ultra vires to Memorandum cannot be ratified and outsiders have no remedy against the company.	- Acts ultra vires to articles can be ratified by suitable legal formalities.



12) Explain the various kinds of preference shares.

### Types of preference shares.



### Preference shares:

→ 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 of the company they get back their capital before any other classes of share holders can get back their money.

### Cummulative:

If any year the company does not earn adequate profit. Dividend on preference shares may not be paid for that year. Unpaid dividend is treated as arrears.

The arrears will accumulate and they will be payable out of the profits of the subsequent years.

### Non-cummulative:

\* Dividend on these shares are payable only out of profits of the current year.

\* If the company does not earn adequate profit, the holders get no dividend/partial dividend.

\* Unpaid dividend will not be carried forward to subsequent years.

### participating pref. share:

this kind of shareholders have a right to participate in the surplus of profits which remains after-

Payment to the equity shareholders. At the time of winding up also. The surplus profit will be distributed in an agreed ratio.

Non-participating :-

This kind of shareholders have no right either to participate in the surplus profit.

convertible :

the holders of this kind of shares have a right to convert their shares into equity shares within a specified period.

non-convertible :

this types of shareholders have no right to convert their shares into equity shares.

Redeemable :

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

Guaranteed Pref. shares :

Conversion of a private concern into limited company or in case of amalgamation and absorption, the seller guarantees a particular rate of dividend on preference shares for certain years. These shares are called guaranteed preference shares.



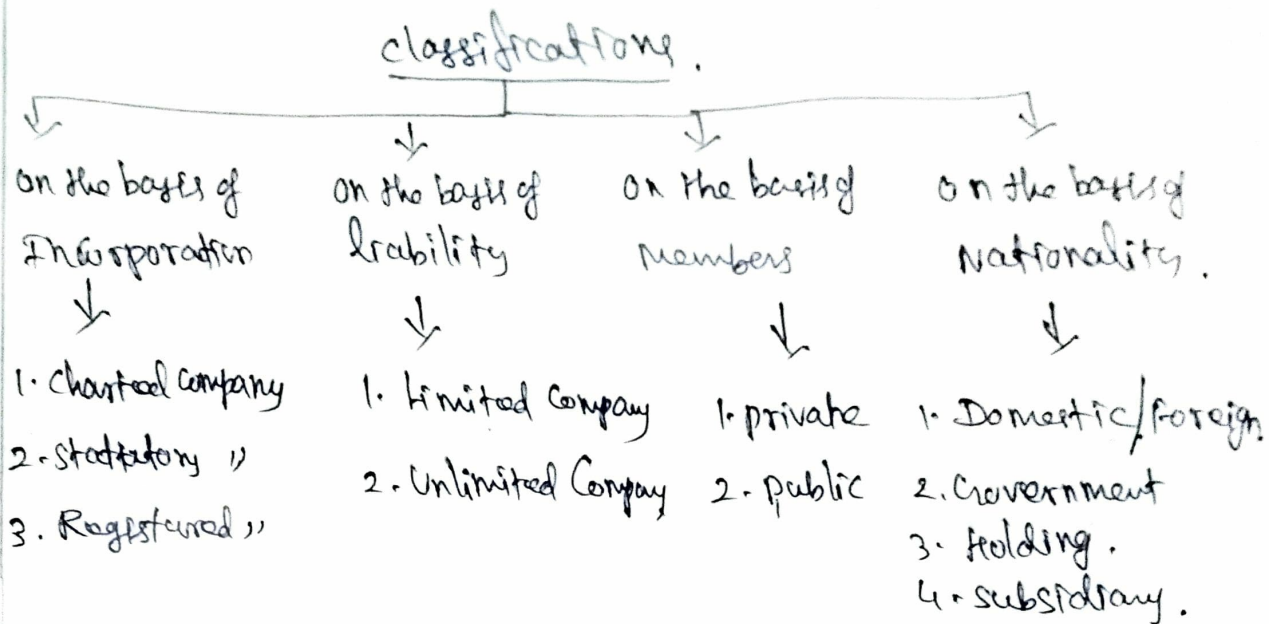
13] ) What are the procedures for making calls on shares?

### Meaning of calls:

A call may be defined as a demand made by the Company on its shareholders to pay a part or the whole of the unpaid balance within a specified time.

1. → Calls Regulations specified in 'Table A'.
2. → The power is vested in the hands of Board of directors
3. → By passing a resolution at the meeting of the Board.
4. → The call money should not exceed 50% of the face value of the shares at one time.
5. → At least 30 days interval between two successive calls.
6. → call is made a letter known as "call letter" should be sent to all the shareholders of the same class.
7. → Notice specified by the amount of call, place of payment etc.
8. → Board of directors has the power to revoke/postpone a call.
9. → Joint shareholders are jointly and several liable for payment of calls.
10. → If any number desires to pay the call money in advance, acceptance received from the directors.
11. → If defaulting member will not have any voting right till call money is paid by him.

14) Explain the various classifications of Companies.



### Chartered Company :-

Companies established as a result of a charter granted by the king or queen of a country are known as chartered companies.

### Statutory Companies :-

The companies established by special Acts of parliament or state legislatures are called statutory companies -

### Registered Companies :-

The companies which are registered under the Companies Act 1956, are called registered company.

### Limited company :-

The maximum liability of a shareholder is limited to the amount unpaid on the shares held. Once he pays the full value of shares, he has no further liability.



## Unlimited liability company.

The liability of the members of unlimited companies is unlimited. The liability extends to their private properties also in the event of winding up.

## public company.

A company which is not a private company.

The company has a minimum paid up capital of  $\geq 5,00,000$ .  
A public company does not restrict the right of the members to transfer their shares.

## private company.

A company which has a minimum paid up capital of  $\geq 1,00,000$ . It should have a minimum two members maximum 50 members.  
Some restrict the right to transfer the shares to its members.

## Holding Company:

A company becomes a holding company of another. If it can appoint/removed all/majority of the directors of the latter company (or) if it holds more than 50% of the equity shares capital of the latter (or) if it can exercise more than 50% of the total voting power of the latter.

Subsidiary Company:

A Company which is controlled by another Company is called subsidiary company. If another company holds majority (more than 50%) of the nominal value of the equity share capital of the company.

Government Company:-

A company in which not less than 51% of the paid share capital is held by the central Govt, / by state Govt or Govt or partly by the central Govt.

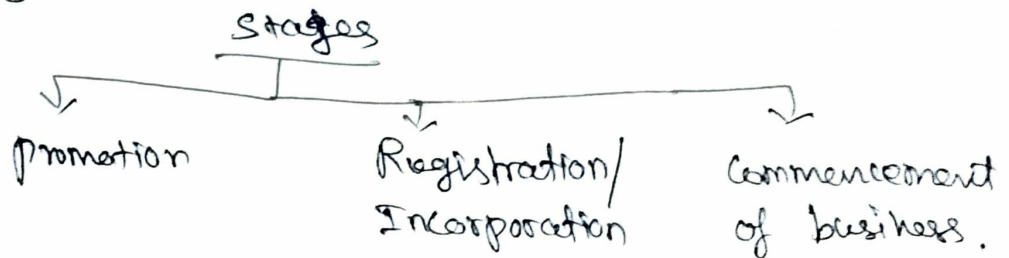
Foreign Company:-

A Company incorporated outside India but which established a place of business in India. It has to furnish to the authorities the full address of the registered or principal office of the company.



(5) ) What are the various processes/stages/steps to formation of a Company? Explain. (26)

There are 3 stages to formation of a Company.



I - Promotion :-

Promotion is the first stage in which an idea is conceived by an individual or by a few persons and is worked up with the help of his or their own resources, influence and skill. The sum total of all the activities connected with the formation of a company.

The person who undertakes all these activities is known as the promoter. The promoter need not be an individual.

Functions of promoter :-

- Promotion of an idea.
- Detailed investigation.
- Verification.
- Assembling.
- Financing the proposition.
- Presentation of the proposition.

The promoter has no right to claim any remuneration. But in practice, he is allowed to take reasonable remuneration for his services, paid on the basis of Lumpsum in cash, fully paid up shares in the company / partly in cash and shares.

## II Registration / Incorporation:

The second stage of a company is the Registration / Incorporation. The Registrar scrutinise the documents filed for Registration and if they are found in order.

After verifying all the documents, the Registrar should give a certificate of Incorporation with his sign and office seal. The date given by the Registrar in the certificate.

### Approval of the proposed Name:-

- (i) Memorandum of Association.
- ii) Articles of Association.
- iii) List of Directors.
- iv) Consent of the director.
- v) Statutory declaration.
- vi) Letter of authority for making necessary corrections in memorandum and Articles.
- vii) Notices of the Address of the Registered office.
- viii) Payment of necessary fees.



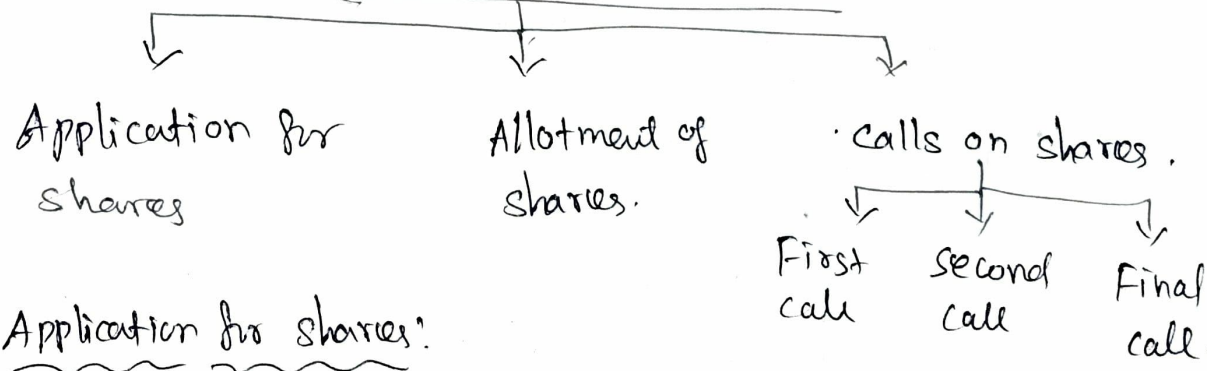
III Commencement of Business

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

Unit - 11

16) Briefly explain the procedure for issue of shares.

stages / procedure for issue of shares.



Application for shares:

The intending investor may fill in the application and send it along with the application money, within the specified time.

The prospectus is only an invitation to offer while the application is an offer made by a prospective investor to subscribe for a certain number of shares.

II. Allotment of shares:

Allotment is generally neither more or less than the acceptance by the Company of the offer to ~~take~~ shares. An allotment of shares is an act of a Company by which the applicant for shares becomes the holder of unappropriated shares.

The legal requirements of an allotment:-

- \* Allotment is Acceptance.
- \* shares come into existence.
- \* No further Allotment
- \* Time limit
- \* proper authority
- \* Communication to the applicant.

III. calls on shares:

A call may be defined as a demand made by the Company on its shareholders to pay a part or the whole of the unpaid balance within a specified time.

Legal provision relating to the calls:-

- \* call should Bonafide.
- \* Uniformity.
- \* provisions of the Articles

Secretarial duties relating to make a call.

- passing of a Resolution in Board meeting.



- Closing of Transfer Books
- preparing the call list.
- preparation and despatch of call letters.
- making entry in the call list.

### calls in Advance!

A shareholder can pay the whole or part of the amount remaining unpaid on his shares even before the call is made. This is only a voluntary payment and is known as calls in advance.

### Forfeiture of shares!

If a shareholder, who is called upon to pay any call fails to pay the amount, even after sending several reminders, the company may forfeit his shares.

Forfeiture of shares results in a permanent reduction of the share capital.

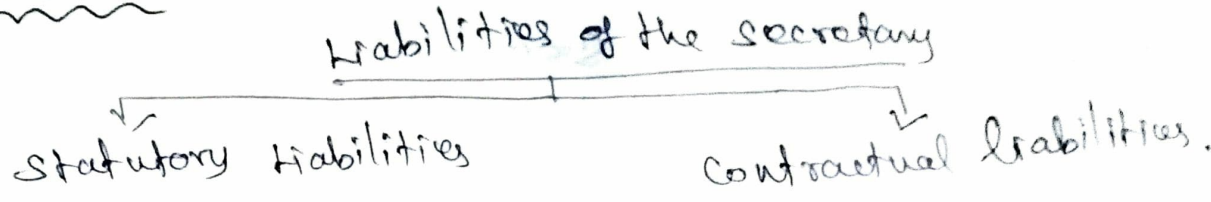
### Conditions for forfeiture.

- Authority to forfeit.
- Default in payment of calls
- In accordance with the Articles.
- Bone fide and for the benefit of the Company.
- Board resolution
- Notice to defaulting shareholder.

### Re-issue of the forfeited shares!

Forfeited shares, becomes the property of the Company and the directors can deal with them in any way they think best in the interest of the Company.

17) Explain the Liabilities of the Company Secretary.



I. Statutory Liabilities:

The company Act lays down several instances in which the Secretary can be held liable. The Act specifies liabilities for his failure to perform the duties entrusted to him by the Act. The liabilities are both civil and criminal.

He will be held liable for damages for any loss caused to the company due to negligence, fraud, breach of terms of the contract.

Where the Secretary has acted beyond the powers given to him, he will be liable to compensate for the loss caused to a third party or to the company.

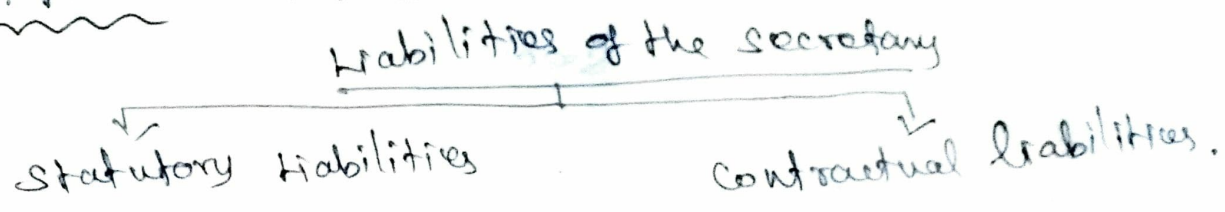
If any default in filing a return of allotment fine upto ₹ 5000 for every day during which the default continues. Also holding statutory meeting / filing the statutory report with the Registrar fine upto ₹ 5000.

Failure to record the minutes of the Board and General meetings fine upto ₹ 500.

- default in laying down profit and loss account and Balance sheet at the Annual general meeting fine upto ₹ 10,000. or imprisonment upto 6 months/both.



17) Explain the Liabilities of the Company Secretary.



I. Statutory Liabilities:

The company Act lays down several instances in which the Secretary can be held liable. The Act specifies liabilities for his failure to perform the duties entrusted to him by the Act. The liabilities are both civil and criminal.

He will be held liable for damages for any loss caused to the company due to negligence, fraud, breach of terms of the contract.

where the secretary has acted beyond the powers given to him, he will be liable to compensate for the loss caused to a third party or to the company.

If any default in filing a return of allotment fine upto ₹ 5000 for every day during which the default continues. Also holding statutory meeting / filing the statutory report with the Registrar fine upto ₹ 5000.

Failure to record the minutes of the Board and General meetings fine upto ₹ 500.

- default in laying down profit and loss account and Balance sheet at the Annual general meeting fine upto ₹ 10,000. or imprisonment upto 6 months / both.

## II Contractual liabilities:-

The Secretary of a company has certain liabilities to the company arising out of the contract of service between him and the Company.

### \* No secret profit:-

The secretary is in a fiduciary relationship with the company. So, he should not make any secret profit and should account for any ~~for~~ such profit he makes.

### \* Disclosure of secrets:-

He should not disclose any confidential information and trade secrets.

### \* proper Discharge of duties:-

He is responsible to the directors for the proper discharge of the duties of his office. He must carry out the orders given to him.

### \* willful misconduct and negligences:-

He should be responsible for damages caused to the company by his willful misconduct and negligence in the discharge of his duties.

### \* Scope of Authority:-

The secretary should not do any thing beyond the limits of his authority or in violation of the rules and regulations of the Company.

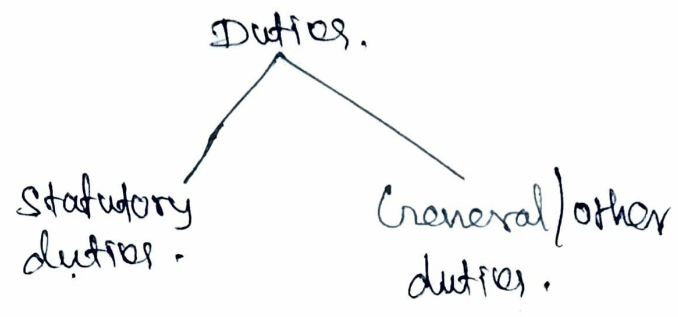
If he exceeds his limit, he should be held personally liable for the loss suffered on account of his action.



deal with them in any way they think best in the interest of the company. such shares can be reissued to some other perso.

18) State the duties of a company secretary. explain.

The duties of company secretary could be classified into two parts.



Statutory Duties.

- Duties towards the company.
- Duties towards the directors.
- Duties towards the management staff.
- Duties towards the shareholders and the public.
- Duties in respect of maintenance of records and other statutory registers.

Under the Companies Act:-

- 1) Signing any document or proceedings requiring authentication by the company.
- 2) Delivering for registration return of allotment.
- 3) To give notice of the increase in the share capital to the Registrar.
- 4) Delivering the share certificate within 3 months of allotment.

- 5) Making entries in the register of members on issue of share warrants.
- 6) Making available trust deed for inspection to every member.
- 7) Delivering for registration particulars of Mortgage and charges to the Registrar.
- 8) signing the Annual Return.
- 9) preparing minutes of every general meeting and of every meeting of Board of directors.
- 10) preparing the statement of affairs in a winding up for the purpose of submitting it to the Liquidator.
- 11) Maintaining the required statutory books.

II General Duties :-

Duties towards the Directors:

- To deal with all correspondence in which the directors themselves are interested.
- To issue notice and agenda for the Board and general meetings.
- To act as a liaison between the Board and the share holders, staff etc.
- To ensure submission of statutory returns in time.
- To keep calendar of due dates or checklist of meeting so that returns etc, can be filed on the due dates.



## Duties to the share holders:

i) To do all necessary things connected with the issue of shares such as issue of prospectus, share application form, allotment, etc.

ii) To maintain several non-statutory books such as Share Transfer books.

iii) To arrange for funds and pay interest on loan received.

iv) To arrange for funds and issue dividend warrants within the specified time.

v) To issue notices and agenda for the general meeting.

vi) To attend and maintain minutes books of such meeting.

## Duties to Managerial staff:

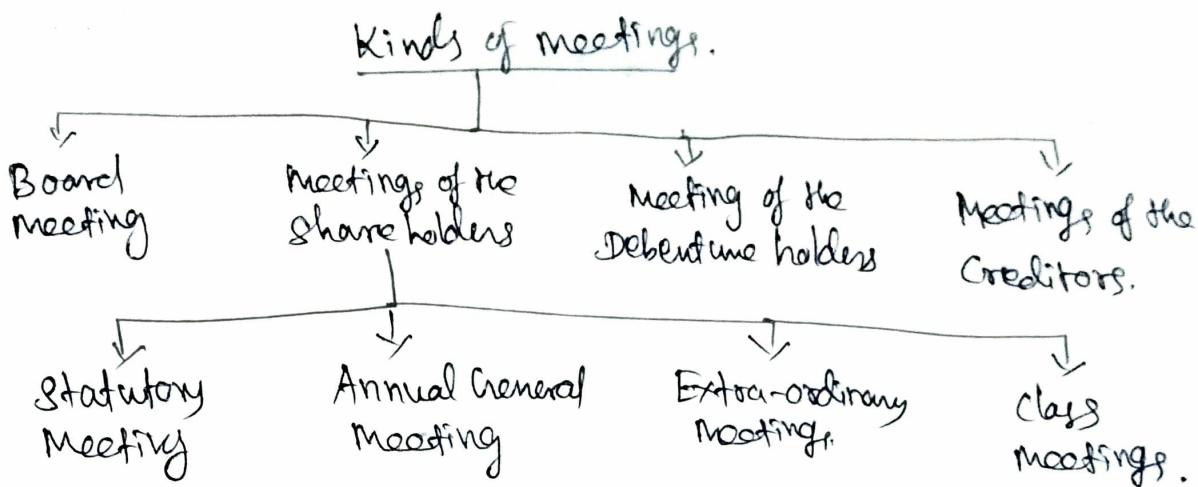
- To organise the structure and control of the Company efficiently and effectiveness.

- To act as a liaison officer between the board of directors and the shareholders and third party creditors.

- To maintain cordial relationship with the Registrar of Companies, directors, banks etc.

- To keep the title deeds of the company's properties and investments in safe custody.

19) Describe the different types of Company meetings.



Board Meeting:-

Meeting of directors are called Board meeting. The administration of the company lies in the hands of the Board, they should meet frequently held and for the proper conduct of the business of the company.

The meeting conducted once in every 3 calendar months. Notice of the meeting should be sent in writing to every director for the time being in India.

Statutory Meetings:-

It is the first meeting of the shareholders. It conducted after the commencement of the business of a public company. The meeting should hold within 6 months but not earlier than 1 month from the date of commencement of business.

A private company / public company having no share capital need not conduct a statutory meeting.

The main object of this meeting to give the members a general idea about the progress made by the Company.

Annual General Meeting:-

One of the important meeting of a Company. It is usually held once in a year. It should be conducted by public / private Company limited by shares / by guarantee, having or not having a share capital.

This meeting is to be held annually to transact the ordinary business of the Company.

Extra-ordinary General Meeting:-

All general meetings other than statutory and Annual general meetings are called Extra-ordinary meetings.

The person authorised to conduct the extra-ordinary meeting is,

- \* Board of Directors.
- \* The Requisitionist.
- \* The National Company Law Tribunal.
- \* Any Director or any two members.



Class Meetings; -

class meetings are those meetings which are held by the shareholders of a particular class of shares i.e preference shares or Equity shareholders or debenture holders.

class meetings are generally conducted when it is proposed to alter, vary or affect the rights of a particular class of shareholders.

Meetings of Debenture holders; -

These meetings are conducted by the debenture holders of a particular class. When the Company wants to vary the terms of security or to modify their rights or to vary the rate of interest payable etc. the holders are entered in the Trust deed or endorsed on the debenture Bond.

Meetings of the Creditors; -

These are not meeting of a Company. They are held when the Company proposes to make a scheme of arrangements with its creditors. Companies like individuals may sometimes find it necessary to compromise or make some arrangements with their creditors. In these circumstances, a meeting of the creditors is necessary.



29) Explain the legal provisions regarding the AGM:

Meaning of AGM:-

One of the important meeting of a company. Its usually held once in a year. It should be conducted by public or private company limited by shares or guarantee, having or not having a share capital. The meeting is to be held annually to transact the ordinary business of the company.

Legal provisions regarding AGM:-

a) Time Gap between Two meeting.

Every company must hold in each calendar year an annual general meeting. The interval between two of such meeting should not exceed 15 months. The permission granted by the Registrar but the time not exceeding 13 months.

b) Special provisions relating to the first AGM:-

The first AGM can be held within 18 months from the date of incorporation of the company. The company need not hold any AGM in the year of its incorporation or in the next year.

c) Place, Day and Time of the Meeting:-

A company is to hold ~~at~~ its AGM either at its Registered Office or at a place within the same city, town or village etc.

Day:

The meeting conducted only on a day, which is not a public holiday.

Time:

Time of the meeting held during business hours. but there is no bar if it continue even after business hours.

d) Notice of the Meeting.

21 clear days is necessary to hold an AGM. A shorter notice is sufficient if all the members give their consent.

e) Annual Accounts:

The Balance sheet and the profit and loss a/c's and Reports of the directors must accompany the notice of the AGM. The annual accounts should be made for a period upto a date not more than 6 months before the date of the meeting and they should be laid before the meeting.

f) To whom the notice should be sent?

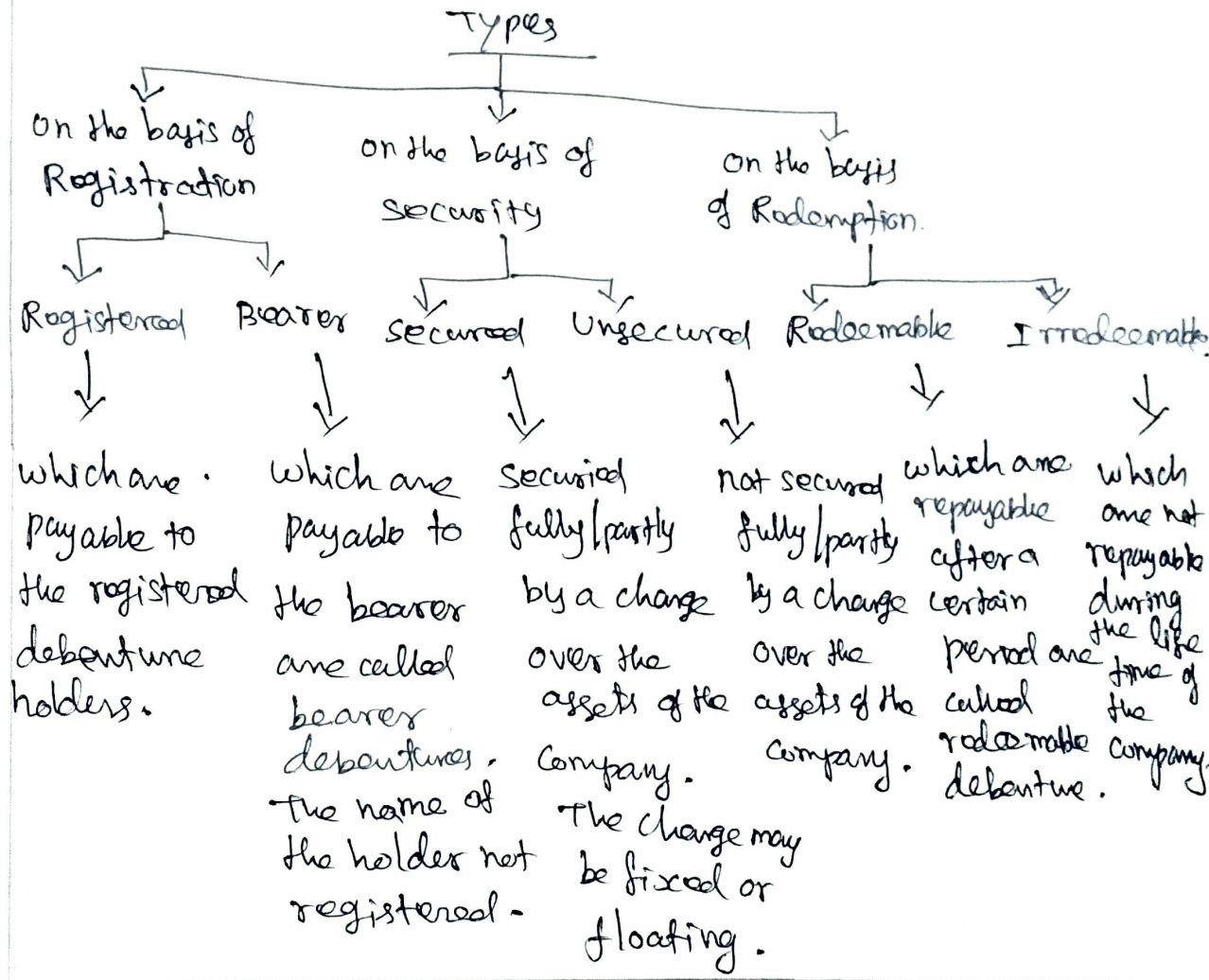
The direct should sent every members of the Company. Every person entitled to shares due to transmission. Auditor or Auditors of the Company.



21) State Briefly explain the types of debentures.

Debenture:

It means a document which either creates or acknowledges a debt. It is a written documents. Provide for a fixed rate of interest to the debenture holders.



22) Explain the various types of Resolution.

Types of Resolution

- Ordinary resolution
- special resolution and
- Resolution requiring special Notice.

## I - Ordinary Resolution:

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An ordinary resolution is one which is passed by a simple majority of the members entitled to vote and voting in person or by proxy.

### Business transacted with Ordinary Resolution:

- 1) Adoption of the statutory report.
- 2) Adoption of the Balance sheet and profit and loss Accounts at the AGM.
- 3) Election of Directors.
- 4) Appointment of auditors and fixing their remuneration.
- 5) Issue of shares at a discount.
- 6) Declaration of dividends and sanction of the sums to be transferred to the reserves.
- 7) Alteration of share capital.
- 8) Re-issue of redeemed debentures.
- 9) Appointment of managing/whole-time director.
- 10) Nomination of a liquidator in a creditors voluntary winding up.

## II Special Resolution:

The special resolution, the votes that are cast in favour of the resolution are 3 times more than the votes that are cast against it.

- 1) For altering the Articles of association.
- 2) " " " Memorandum of association.
- 3) " creation of reserve capital.
- 4) " reduction of share capital.
- 5) " payment of interest out of capital to members.
- 6) Making loans to other companies under the same management.



### III Resolution requiring special notice.

- \* To appoint an auditor other than the retiring auditor.
- \* To provide that the retiring auditor should not be reappointed.
- \* to remove a director.
- \* to appoint a director in the place of one who is removed. etc .

unit-III  
23) Distinction between a share certificate and a share warrant.

#### Share certificate

- i) Issued both by public and private companies.
- ii) ~~Both~~ Fully paid up shares and partly paid up shares.
- iii) ~~certificate~~ issued without the prior approval of the central Govt.
- iv) The holder of a share certificate is a registered member of the company.
- v) It is not a negotiable instrument.
- vi) Nominal stamp duty is required for issuing.
- vii) No dividend coupons are attached.

#### Share warrant

- Issued only by public company.
- Issued only in respect of fully paid up shares.
- Can issued only with the previous approval of the central Govt.
- cannot be a member of the company.
- It is a negotiable instrument.
- Heavy stamp duty is required for the issue.
- Dividend coupons are attached.



## 45) Distinction between Transfer and Transmission of Shares. (Unit - IV)

Share Transfer	Share Transmission.
<p>i) Share pass from one person to another by a voluntary act.</p> <p>ii) Transfer share is the generally method of transferring shares.</p> <p>iii) Against consideration.</p> <p>iv) An instrument of transfer is necessary.</p> <p>v) Transfer is complete, the liability of the transferor ceases.</p> <p>vi) The transferor should be a member to effect a valid transfer.</p>	<p>Share pass from one person to another by the operation of law.</p> <p>Transmission of shares takes place under special circumstances - [Death, Lunacy, etc.]</p> <p>No need for a consideration.</p> <p>No such instrument is necessary for transmission.</p> <p>The transferor continues to be liable for the original liabilities.</p> <p>The person to whom shares are transmitted is not a member.</p>

46) Explain the Legal provisions regarding the statutory meeting.

I) Notice of the Meeting :-

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

II Sending of the Statutory Report :-

Along with the notice, a report known as statutory report should also be sent to all the members to whom the notice is sent.

III Contents of the Statutory Report :-

uls 165(3) of the Act laid down the contents.

- a) Total shares which are allotted.
- b) Cash Received.
- c) Abstract of receipts and payments.
- d) Directors and Auditors reports.
- e) particulars of contracts.
- f) Underwriting contracts.
- g) Arrears on calls.
- h) commission and Brokerage, etc.

IV certification of the Report :-

Statutory report must be certified all the matters given above by two directors. The Managing director, he must be signed the report. After the statutory report has been certified by him, it must also be certified by the auditors.

V Matters that can be Discussed :-

- \* Any matter relating to the formation of the Company whether previous notice is given or not.
- \* Any matter arising out of the statutory report.
- \* Any other matter for which proper notice has been given.

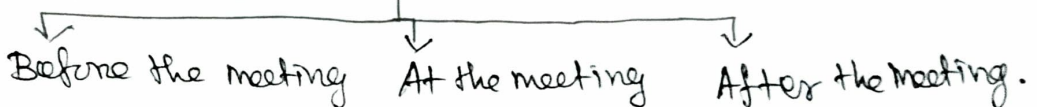


## VI Consequences of Default: -

Fine to the Directors! - Every director or other officer of the Company who is in default in complying with the provisions of the Act, he shall be punishable with a fine amount upto ₹ 5000.

47) Secretary's Duties in connection with the holding of an Annual General Meeting. Discuss.

### Secretary Duties



#### I. Before the meeting: -

- \* 1) To approve the accounts.
- 2) To secure Auditors report on the accounts.
- 3) To fix time, date and place for the meeting.
- 4) To consider the closure of the Register of members and arrange publication in a newspaper.
- 5) Immediately conducting board meeting.
- 6) To issue notice to the shareholders.
- 7) To check proxies with the Register of Members.

#### II At the meeting: -

- 1) To arrange for collection of admission slips.
- 2) To help the chairman in ascertaining quorum.
- 3) To read notice of the meeting.
- 4) To read the Auditors report.
- 5) To produce copy of MOA and AOA of the Company.
- 6) To give advance information to the members who are to propose.

#### III After the meeting: -

- 1) To prepare Minutes of the proceedings.
- 2) To send information of appointment of directors.
- 3) Appointment of Auditors.
- 4) To take action on other decision of the shareholders.



48) State briefly Agenda for the Meeting:-

### Agenda for the meeting :-

\* The Agenda should be circulated amongst the members along with the notice of the meeting. The preparation of agenda is the work of the Company secretary.

\* He should do this job in consultation with the chairman of the Company. The secretaries take more care for preparation of agenda. The matters should be presented clearly and in a summary form.

\* The agenda should be so drafted as to help the quick disposal of the business. The usual practice is to put the routine items first and complicated matters later.

Methods \* There are generally prepared in two ways;

I - By referring to the business very briefly by writing just one line about each items. i.e

- a) To read the minutes
- b) to pass the transfers.
- c) To produce financial statement.

II - By giving more details about each item and even sometimes including suggested drafts of the resolution for the consideration of the meeting.

a) To read and sign minutes of the meeting held on --- (date).

b) To pass transfer of shares from and to numbers.

the second method is more suitable and helps the secretary or his assistant to write the minutes easily.

48/48  
(a) What are the legal provisions regarding Minutes? 48

### Legal provisions:-

#### I. Numbering of pages and signing:-

- The number must be consecutively written.
- Each page should be initialed or signed.
- The last page of record of proceedings of each meeting should be dated and signed.

II - In writing :- It should be written in the books itself and in no case be attached to a book either by pasting or otherwise.

III - Contents of Minutes :- It should contain a fair and correct summary of the proceeding. Appointment of officers, the exact words of the resolution, date, numbers, directors etc.

Irrelevant / immaterial to the proceedings are excluded.

IV - Minutes books contain the location and inspection of the general meeting.

V - Minutes of meeting kept in accordance with the provisions are prima facie evidence of the proceedings recorded in it.

VI - publication of Reports:-

No document purporting to be a report of the proceedings of a general meeting of a Company can be circulated. Unless it includes the matters the minutes of the proceedings of such meeting.

Two kinds of minutes are prepared.

1) Minutes of Resolution 2) Minutes of Narration.



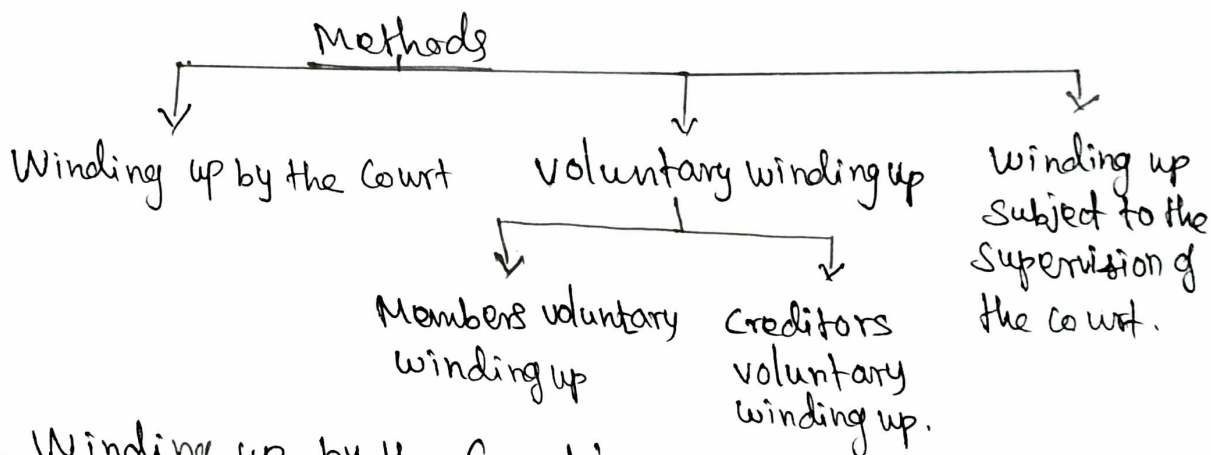
Unit - V

## Winding up of Companies

### 49) Meaning of winding up:

winding up or liquidation of a Company represents the last stage in its life. It means a proceeding by which a Company is dissolved. To assets of the Company are disposed of debts are paid off out of the realized assets and the surplus.

There are two methods of winding up.



### 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 Compulsory winding up (s 433):

A Company may be wound up by the Court.

- a) If the Company has, by special resolution, resolved that it be wound up by the Court.
- b) If default is made in delivering the statutory report to the Registrar or in the holding statutory meeting.



- c) If the Company does not Commence its business within a year from its incorporation or suspends its business for a whole year.
- d) If the number of members is reduced in the case of a public company below 7 and in case of a private company below 2.
- e) If the Company is unable to pay its debts.
- f) If the Court is of opinion that it is just and equitable that the Company should be wound up.

### Consequences of winding up order:-

Once the Court makes an order for the winding up of a Company, its consequences date back to the commencement of winding up. The other consequences of winding up by the Court are as follows:

- i) Intimation of official liquidator and Registrar.
- ii) Copy of winding up order to be filed with the Registrar within 30 days a certified copy of the order.
- iii) The order for winding up shall be deemed to be notice of discharge to the officers and employees of the Company except when the business of the Company is continued.

### II - Voluntary winding up:-

Voluntary winding up means winding up by the members or creditors of a company without interference by the Court. The object of a voluntary winding up is that the company, that is the members as well as the creditors, are left free to settle their affairs without going to the Court.

A Company may be wound up voluntarily,

- (i) By passing an ordinary resolution. (or)
- (ii) By passing a special resolution.

Commencement of voluntary winding up shall be deemed to commence at the time when the resolution for its voluntary winding up is passed.

within 14 days of the passing of the resolution for voluntary winding up of the company.

Two types of voluntary winding up:

- i) Members (or)
- ii) Creditors.

a) Members voluntary winding up:-

In a voluntary winding up of a Company if a declaration of its solvency is made in accordance with the provision of sec 488, it is a members voluntary winding up.

The declaration made by a majority of the directors at a meeting of the board that the company has no debts or that it will be able to pay its debts in full within 3 years from the commencement of winding up. The declaration shall be verified by an affidavit.

b) Creditors voluntary winding up:-

A voluntary winding up of a Company in which a declaration of its solvency is not made is referred to as a creditors voluntary winding up.



Notice of any resolution passed at the Creditors meeting shall be given by the Company to the Registrar within 10 days of passing thereof.

### 111 winding up subject to supervision of Court:-

winding up subject to the supervision of the Court presupposes a voluntary winding up of a Company. At any time after a Company has passed a resolution for voluntary winding up, the Court may make an order that the voluntary winding up shall continue, but subject to the supervision of the Court.

The Court may give such liberty to creditors, contributories or others to apply to it as it thinks just.

### 50) what is Company liquidation? duties of liquidators?

Liquidation in finance and economics is the process of bringing a business to an end and distributing its assets to claimants.

Liquidator is a person officially appointed to 'liquidate' a company or firm. Their duty is to ascertain and settle the liabilities of a company or a firm. If there are any surplus assets, they are distributed to the contributories.

#### Duties of Liquidators:-

(i) The liquidator shall conduct the proceedings in winding up the Company and perform duties imposed by the Court.



ii) The official liquidator shall as soon as practicable after receipt of the statement of affairs of the Company and not later than 6 months from the date of the order of winding up submit a preliminary report to the Court.

iii) where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator or provisional liquidator shall take into his custody all the property, effect and actionable claims to which the Company is entitled.

There is no liquidator, all the property and effects of the Company shall be deemed to be in the custody of the Court.

iv) The liquidator shall keep proper books for making entries or recording minutes of the proceedings at meetings and such other matters as may be prescribed.

The central Government may also appoint one or more Deputy or Assistant official liquidators to assist the official liquidator in the discharge of his functions.

51)

Members voluntary winding up

Creditors voluntary winding up

i) Declaration of solvency:-

There is declaration of solvency.

There is no such declaration.

ii) Control of winding up:-

The members control the winding up of the Company and the creditors do not participate directly as the Company makes a declaration of solvency.

The creditors control the winding up of the Company as the Company is deemed to be insolvent.

iii) Meetings:-

There is no meeting of creditors.

Whenever there is a meeting of contributories, there is a corresponding meeting of creditors.

iv) Appointment of liquidator.

The liquidator is appointed by the company and his remuneration is fixed by the Company.

Appointed by the creditors and his remuneration is fixed by the Committee of inspection or, if there is no such Committee, by the creditors.

v) Committee of Inspection:-

There is no Committee of inspection in a members voluntary winding up.

The creditors may appoint a Committee of inspection.

vi) Powers of liquidator:-

The liquidator can exercise certain powers with the sanction of a special resolution of the Company.

He can do so with the sanction of the Court or the Committee of inspection or of a meeting of the creditors.

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