COMPANY LAW

UNIT - I **Part -A** **2 Mark Questions**

1. **Define Company**.

   Section 3 of the companies Act of 1956 define word "company "as accompany formed & registered under the act or an existing company formed & registered under any of the previous company laws

2. **Company - meaning**.

   A company is a association of many person who contribute money or money's worth to a common stock &employees it in some trade or business &who share the profit loss arising there from

3. **Define Foreign companies:** According to Section 591(1) "A foreign company is the company which is or has been incorporated outside India but establish or has established a place of business within India." What is meant by Incorporation?

4. **What is incorporation of Company?**

   "Any seven or more persons or where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their name to a memorandum of associations and otherwise complying with the requirement of this Act in respect of registration, form an incorporated company, with or without limited liability." [Sec. 12]

5. **What is meant by certificate of incorporation?**

   The Registrar will scrutinize the documents and if satisfied will enter the name of the company in the register .and will issue the company its birth certificate called the Certificate of Incorporation.

6. **What is Register Company?** A corporate body registered under the Companies Act, 1956 would be called the registered company.

7. **What is Private Company?**

   It is a Company in which there can be maximum no .of share holders is 50 & minimum no. of share holders is 2 no invitation can be made to the public for subscription of share or debentures it can't accepts deposits from public & restriction of transfer of share.

8. **What do you mean by Separate legal entity**? The company is registered under law a company become a separate legal entity as compared to its members. It is different from its members it have its own name, seal & assets & liabilities are separate. Company have its capable of own property .

9. **Write the meaning of Formation of Company?** A private company can commence its business immediately after securing the certificate of incorporation from the Registrar of companies. But in the case of formation of a public company, having share capital, there is need for the promoters to secure from the Registrar

10. **Who is a promoter?**

A promoter is a person or group of persons who conceives an idea regarding the formation of a company for the first time. He also takes necessary steps for formation of a company and takes other essential steps for its incorporation, raising of capital and making it a going concern.

11. **What is a Government Company?**

According to Section617 "a Govt. company means any company in which not less than 51% of the paid up share capital is held by the following : i) **By the Central Govt;** (ii) **By any State Govt**. or **Governments**; or (iii) **Partly by Central Govt**. And partly by one or more State Governments.

A subsidiary of a Government Company is an also Government Company.

Part – B **5 mark Questions**

1. **State the Characteristics of a Joint Stock Company. or Features of Company.**

i. **Separate legal entity** :

The company is registered under law a company become a separate legal entity as compared to its members. It is different from its members it have its own name, seal & assets & liabilities are separate. Company have its capable of own property.

ii. **Limited liability**:

Liability of the company members is ltd to contribution to the assets of the company up to the face value of shares held by them. Even if liability of the company for exceeds its assets creditors can force the members to pay but members are not responsible to pay.

iii. **Perpetual succession** :

Membership of on company keep on changing from time to time but that does not affect the life of the company. Death or insolvency of members does not affect the existence of the company.

iv. **Separate property** :

A Company is a distinct legal entity. the company 's property is its own a members cannot claim to be owner of the company's property.

v. **Transferability of shares** : Share in a company is freely transferable, subject to certain condition.

vi. **Common seal**:

A company is a artificial person it does not have a physical presence there four its board of directors are use the common seal as the official signature of the company the name of the company should be there in the seal.

vii. **Separate management**:

A company is administered & managed by its board of directors the share holders are simply holders of the share in the company & not the managers of the company.

viii. **One share one vote**: Here one members one vote applies E.g.: if a person having 10 shares he does not have 10 votes in the company only he have one share

2. Write Distinction Between Public Company & Private Company

No.	Private company	Public company
1.	Minimum no of members is 2	Minimum no of members is 2
2.	Maximum no members is 200 (company act 2013)	No maximum limit
3.	Minimum paid up capital is Rs 1 lakh	Minimum paid up capital is 5 lakh
4.	Name must end with the word „Pvt Ltd"	Name must end with the word „Ltd"
5.	Can commence business immediately after incorporation	It shall have to wait until it receive the certificate for commencement of business.
6.	It cannot invite public to subscribe its shares and debentures	It can invite public to subscribe its shares and debentures
7.	Minimum subscription is not required for allotment of shares.	Minimum subscription is required for allotment of shares.
8.	Need not hold statutory meeting of the members.	It has to hold a statutory meeting and file a stat: report.
9.	There is restriction of transfer of shares	Shares can be freely transferred.
10.	Not required to issue prospectus.	Must issue prospectus.

3. Explain the functions of Promoter? or Role of a promoter.

1. **To originate the scheme for formation of the company**: Promoter conceives the idea of forming a company after a through study of the business world and identify the business fields which are unexplored or may be explored further.

2. **To secure the cooperation of the required number of persons willing to associate themselves with the project**: In fact, the minimum number of members required to join a private company is two and in case of a public company seven.

3. **Nomenclature:** The promoters have to verify from Registrar of Companies whether the proposed name is available. Promoters usually give three names in order of preference.

4. **To get the documents of the proposed company prepared:** No company can be incorporated unless the M.O.A. and A.O.A. and other documents are not field with the Registrar. Since the company takes birth from the date when certificate of incorporation is issued.

5. **To appoint bankers, legal advisors of the company**:

6. **Arrangement of capital:** If a company is to be incorporated as a private company, it has to make arrangement of its capital through private sources as a private cannot invite public to subscribe for its

shares. Consent of Directors: Since the first directors are to be appointed by the promoters so they must get the consent of such persons who are to be so appointed.

7. **To enter into preliminary Contracts with the Vendors**

4. **Legal Position of Promoters**

While the accurate description of a promoter may be difficult, his legal position is quite clear.

A Promoter is neither a trustee nor an agent:-

The reason is that a person cannot act as an agent or trustee for a person who is non-existent and the company is non-existent at the time when the promoters act for it.

Fiduciary relations with the company: -

It does not mean that the promoters do not have any legal relationship with the proposed company. The legal position of a promoter can be correctly described by saying that he stands in a fiduciary position (relationship of trust and confidence) in relation to the company be promoted.

5. **Remuneration to Promoters:-**

The promoters cannot claim as a matter right any remuneration from the company for the service rendered for a company that is yet in existence. Even where the articles of a company specifically provide that a specified sum may be paid to the promoters for their services,

(i)They may be paid a lump sum either in cash or in the form of shares or debentures of the company.

(ii)They may be given commission on the purchase price of the business taken over by the company.

(iii)They may be inducted into the Board of Directors.

(iv) He may be allowed to sell his own property to the company for cash at an inflated price, after he has made a full disclosure about the valuation and the profit earned to an independent Board of Directors.

(v)The company may give him an option to subscribe for a certain number of the company's unissued shares at par when their market price is higher.

6. **What are the Documents to be filed with the Registrar on incorporation?**

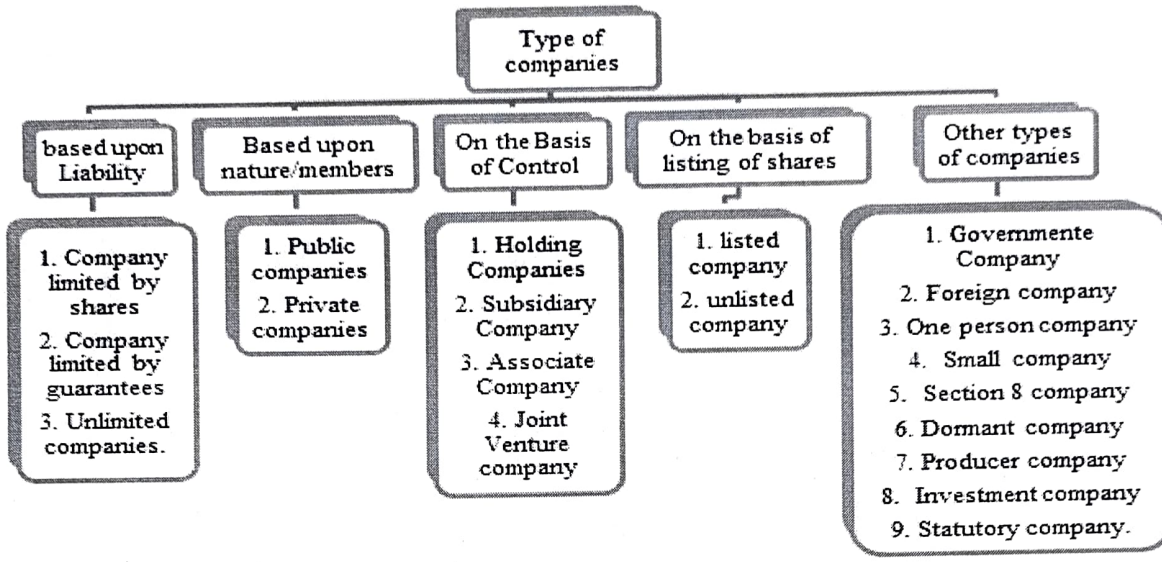
1. Memorandum of Association
2. Articles of Association
3. Copy of Proposed Agreement
4. Power of Attorney
5. Consent of the Directors
6. Particulars of Directors
7. Notice of Registered Address
8. Statutory Declaration
9. Filing of Document with the Registrar for Registration

On registration, the Registrar will issue a certificate of incorporation whereby he certifies that the company is incorporated and in the case of a limited company, that the company is limited. (Sec. 39)

Part - C

10 mark questions

1. Explain the various kinds of Company?



I. Based on Liability

1. Limited company
2. Company limited by guarantee
3. Unlimited company

1. Limited company or company limited by share

Majority of registered companies will be company limited by shares. In case of limited companies liability of members will be limited to the amount unpaid on the shares

2. Company limited by guarantee: Here liability of each member is limited by the memorandum to such amount as he may guarantee by the memorandum to contribute to the assets of the company in the event of its winding up. Such companies are formed for the promotion of art science, culture, sports etc.

3. Unlimited company

A company not having any limit on the liability of its members is termed as unlimited company. The members are liable for the debts of the company at the time of winding up

II. On The Basis Of Permitted Number Of Members

1.Private company Sec. 3 (iii) has defined a private company as follows: A private company means a company which has a minimum paid-up capital of one lakh rupees or such higher paid-up capital as may be prescribed, and by its articles. (a) restricts the right to transfer its shares, if any; (b)Limits the number of its members to 50 not including. (i)persons who are in the employment of the company; and (ii)persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased.

(c)Prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company; and (d)Prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives.

2.Public company Sec. 3 (1) (iv) has defined a public company as follows :

Public Company ; A public company means a company which -(a)is not a private company; (b) has a minimum paid-up capital of five lakh rupees or such higher paid-up capital, as may be prescribed; (c) is a private company which is a subsidiary of a company which is not a private company.

III. On The Basis Of Control Over Management

1.**Holding company.** A company would be a holding company in relation to another company if it possesses control over the other company. Sec 4(4) states that a company shall be deemed to be the holding company of another if, but only if, that other is its subsidiary.

2.**Subsidiary company**. Sec. 4(1) describes a subsidiary company as follows:

(a)that other controls the composition of its Board of directors; or (b)that other -(i)where the first mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of equity shares, exercises or controls more than half of the total voting power of such company;(ii)where the first mentioned company is any other company, holds more than half in nominal value of its equity share capital; or

(c)the first mentioned company is a subsidiary of any company which is that other's subsidiary.

IV. On The Basis Of Mode Of Formation

1.**Statutory Companies**: Corporations created under the special legislations of parliament or state legislatures may be called statutory companies; examples: Life Insurance Corporation of India, Food Corporation of India etc. The Acts creating such corporations would include in them all necessary rules and regulations for the corporate bodies so created.

2.**Registered Companies**: A corporate body registered under the Companies Act, 1956 would be called the registered company.

V. Other types of company

1. Government company

A company is said to be government company when 51% of the paid up capital is held by the central government or by any state government or partly by central govt or partly by one or more state govt.

2. Foreign company

A foreign company is a company incorporated outside India and having a place of business in India.

3. Holding and subsidiary company: À company which controls another company is known as the holding company and the so controlled company is known as subsidiary company.

4. One Man Company

This is a company in which one man holds practically the whole of the share capital of the company, and in order to meet the statutory requirement of minimum number of members some dummy members like his wife and son holds one or two shares each

2. Describe the Duties and liabilities of the Promoter?

I. Duties of Promoters

1.Duty not to make any secret profit:

A promoter cannot make either directly or indirectly any profits at the expenses of the company he promotes, without the knowledge and consent of the company and that if he does so, in disregard of this rule, the company can compel him to account for it. In case, a promoter makes a secret profit, the company has the following remedies against him:

(a)Rescission of the contract:-The Company may rescind the contract, in which the promoter has made secret profits. (b) Order for repayment of secret profits.

2.Duty to make full disclosure to the company of all relevant facts:

It is the duty of the promoter to disclose to the company all relevant facts including any profit made from the sale of his own property to the company and his personal interest in a transaction with the company. Erlanger vs. New Sombrero Phosphate Co. (1878) 3 A.C. 1218.

3.Duty towards future allotttees:

It is a study of the promoters to ensure that the real truth is disclosed to those who are induced by the promoters to join the company and the future allottees of the shares.

II. Liability of Promoters:-

(1)Selection 56 lays down matters to be stated and reports to be set out in the prospectus. Promoter may be held liable for the non-compliance of the provisions of this section.

(2)Under section 62, a promoter is liable for any untrue statement in the prospectus to a person who has subscribed for any shares or debentures on the faith of the prospectus.

(3)Section 63 specifies the criminal liabilities for issuing a prospectus which contains untrue statement. The punishment prescribed, is imprisonment for a term which may extend to two years or with fine which may extend to Rs. 50,000 or with both.

(4)A promoter can be held liable if he had mis-applied or retained any of the property of the company or is found guilty of breach of trust or misfeasance in relation to the company.

UNIT- II

Part – A 2 Mark Questions

1. **Define Memorandum of Association. Palmer,**..... It contains the objects for which the company is formed and therefore, identifies the possible scope of its operations beyond which its actions cannot go. It defines as well as confines the powers of the company.
2. **What is Memorandum of Association?**

   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.
3. **What is meant by Articles of Association?**

   The Articles of Association is the second important document to be prepared by the promoter and then submitted at the time of registration. The Articles contain the rules and regulations and the bye-laws of the company to govern its internal affairs and functioning.
4. **Define Articles of Association?**

   Articles means the articles of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act, including, so far as they apply t the company the regulations contained in Table A in Schedule I annexed to this Act.
5. **Meaning:- DOCTRINE OF ULTRA VIRES**

   The word ultra means beyond, and the word vires means powers. So, the doctrine of ultra vires means that it is beyond a company's powers to do those activities which have been kept outside the scope of the objects clause in the Memorandum.
6. **What is the meaning of Prospectus?**

   A document containing detailed information about the company and an invitation to the public for subscribing to the share capital and debentures issued is called prospectus.
7. **Definition:- Prospectus.**

   According to section 2(36) of the Companies Act, "Prospectus means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in or debentures of a body Corporate".
8. **What is Statement in lieu of prospectus?**

   If the promoters of a public company can secure capital without public subscription, he need not issue the prospectus, but instead can prepare a statement known as statement in lieu of prospectus it contains same contents of prospectus.

Part -B 5 Mark Questions

1. State the contents of Memorandum of Association.

1.Name clause : Every company has to adopt its corporate name carefully. This name has to be stated in the Memorandum. The name of the company as approved by the Registrar would need to be given sufficient display as per the rules, such as outside every office, on the letters, notices etc. In the case of a limited liability company, the word Limited Private limited must be there as the last words of the name.

2. Registered office clause : This clause requires the mention of the state in which the registered office of the company is to be situate. A company must have a registered office as a stable place for its location and as its domicile.

3. Object clause : The memorandum must state the objects for which the company is being formed. This clause defines the area of activities for which the company is being formed. Any activity outside the limits defined by this clause would be ultra vires (beyond the powers) for the company and the company can neither do it nor ratify it if it is done by any agent without its sanction.

4. Liability clause : The nature of liability of the members of the company being formed must be indicated by the memorandum. The memorandum of a company limited by shares or by guarantee shall also state that the liability of its members is limited [Sec. 13(2)]

5. Capital clause : The capital clause lays down the maximum limit of the capital beyond which the company cannot issue shares. This amount is described as registered capital or authorized capital or nominal capital.

6. Subscription or association clause: This clause contains the declaration by the signatories to the Memorandum about their desire to be formed into a company, about their commitment to acquire the qualification shares, if any, and the personal details about the subscribers with their signatures attested by a witness.

2. What are the difference between Memorandum of Association and Article of Association?

	Memorandum of Association	Articles of Association
Importance	It has primary importance in the formation of company.	It has a secondary importance in the formation of company.
Constitution	It is a constitution of the company	It contains rules which govern the administration of the company.
Object	It lays down the objects of the company.	It contains the procedure of achieving objectives. The provision can be changed by the special resolution easily.
Alternate	It is not alterable but it can be amended by special resolution and sanction of the court or central government.	Articles of Association can be amended by a special resolution.

Relation	Its nature is like contract between the company and outsiders like bankers and creditors.	It maintains relation between the company and the persons inside the company.
Regulation	It contains rules which governs the administration of the company.	The registration of Articles is optional for the company limited by shares.
Nature of Document	It does not allow the company to act against the company ordinance.	It is a subsidiary document to Memorandum of Association.
Limits	This document determines the limits of the company business.	Business limits are not mentioned in it.

3. What is Ultra vires act? and Explain the effects of it.

Doctrine of Ultra Vires The doctrine of ultra vires is one of the most important principles of company law. The word ultra means beyond, and the word vires means powers. So, the doctrine of ultra vires means that it is beyond a company's powers to do those activities which have been kept outside the scope of the objects clause in the Memorandum.

Effects of ultra vires Transactions

(i) **Contact are void ab initial**. A contract which is ultra vires the company is void ab initial. Under such a contract, the company cannot sue or be sued upon.

(ii) **Personal liability of directors to the company**. If the directors of the company utilize funds of the company in ultra vires transactions, they would be personally liable to compensate the company for any loss suffered by the company.

(iii) **Personal liability of directors to third parties**. As the agent of the company, the directors are expected to act within the authority available to them. If they act outside the scope of this authority by presenting themselves to the possessing the authority.

(iv) **Property acquired ultra vires**. The funds of the company may be spent in acquiring a property ultra vires. The company's right over the acquired property shall be secure and intact.

(v) Injection. In case a company has done is about to do an act ultra vires its Memorandum, any shareholder may seek an order of injunction from the court restraining the company from doing so.

4. Explain the types of ultra vires Act?

- **Ultra Vires the Memorandum by the Company** – Acts performed by the company that are beyond the powers granted to it in the Memorandum are ultra vires.
- **Ultra Vires the Articles, Intra Vires the Company** – These are acts performed beyond the powers granted to the company by its Articles of Incorporation, but that are still within the powers of its Memorandum. These acts are ultra vires the Articles, but intra vires the company.

- **Ultra Vires the Directors, but Intra Vires the Company** – These are acts performed by the company's directors that are ultra vires their authority, but intra vires the company as a whole.

Ultra vires acts cannot be ratified. This means that once someone commits an ultra vires act, that act cannot retroactively be made valid. It is permanently invalid and beyond the scope of that actor's powers, as granted to him by the company's Memorandum.

5. **What are the legal efforts of Articles of Association.**Section 36 provides that the memorandum and articles, when registered, bind the company and its members to the same extent as if they have been signed by the company and by each member and contain covenants on its and his part to observe all the provisions of the memorandum and of the articles. Thus the company is bound to its members, the members are bound to the company and the members are bound to other members by whatever is contained in these documents. But in relation to articles, neither a company nor its members are bound to outsiders.

   The articles of association merely govern the internal management, business or administration of a company. They may be binding between the members affected by them but do not have the force of statute- Irrigation Development Employees' Association vs Government of Andhra Pradesh .

Binding effect of Articles of association

Merely because in articles of association, the board of directors is empowered to refer any claim or demand to arbitration, provisions of section 36 cannot be interpreted to mean that the company or its directors shall be bound to incorporate a provision for arbitration in every agreement that a company executes- Skypark builders & distributors Vs Kerala Police housing & construction Corpn Ltd.

Part - C **10 Mark Questions**

1. Explain the contents of Prospectus

A) Part I of schedule –II

I General Information

1. Name & address of registered office of the co-

2. Consent of the central govt for the present issue & declaration of central govt about non responsibility for financial matters .

3. Date of opening of the issue closing of issue.

4. Name & address of auditors & managers.

5. Name & address of underwriters & the amount of underwritten by them.

6. Declaration by board of directors that the underwriters have sufficient resources to discharge their respective obligation.

II Capital structure of the co-

1. Authorized , issued , subscribed & paid up capital
2. Size of present issue giving separately reservation for preferential allotment to promoters.

III Terms of the present issue

1. Terms of payment & rights of the instrument holders
2. How to apply availability of forms ,prospectus & mode of payment

IV particulars of the issue

1.Object

2. Project cost
3. Means of financing

V Co- management & project

1. History & main objects & present conditions of the b'ss
2. Promoters & their back ground
3. Names, address & occupation of managers M.D & other directors
4. Location of the project
5. Plant & machinery ,technology, process etc
6. Infrastructure facilities, raw materials,& utilities like water ,electricity.

B) Part II of Schedule –II

I General information

1. Consent of directors, auditors, solicitors , advocates, managers , issue bankers to the co-
2. Expert opinion obtained if any
3. Change if any in directors & auditors during the last 3 years ,& reason for their of
4. Authority for the issue & details of resolution passed for the issue
5. Procedure & time Schedule for allotment & issue of certificates
6. Names & address of the co-. secretary, legal adviser , managers ,auditors, banker to the co-

II Financial information

1 .A report by the auditor of the co- with respect to

a) Profit & losses & assets & liabilities of the co

b) Rate of dividends if any paid by the co- in respect to each class of shares in the co-

III Statutory & other information

1. Minimum subscription

2. Underwriters commission or brokers
3. Expenses of the issue giving separately the fee payable to advisers, managers, registrar to the issue
4. Previous issue for cash
5. Commission or brokerage on previous issue
6. Issue of shares otherwise than for cash
7. Details of purchase of property
8. Material contracts & inspection of documents
9. Rights of members regarding voting, dividend, lien on shares ,forfeiture of share
10. Revaluation of assets , if any during last 5 years
11. Restrictions if any on transfer & transmission of shares

2. Explain the liabilities of Mis – statements in the prospects.

A prospectus is an invitation to the public to subscribe to the shares or debentures of a company. Every person authorizing the issue of prospectus has a primary responsibility to seed that the prospectus contains the true state of affairs of the company and does not give any fraudulent picture to the public. People invest in the company on the basis of the information published in the prospectus.

1. **Civil Liability** 2. **Criminal Liability**

1. **Civil Liability**

A person who has induced to subscribe for shares (or debentures) on the faith of am is leading prospects has remedies against the company, directors, promoters, and experts. Every person who is a director and promoter of the company, and who has authorized the issue of the prospectus [Section (2)].

a) **Compensation** : The above persons shall be liable to pay compensation to every person who subscribes for any shares or debentures for any loss or damage sustained by him by reason of any untrue statement included therein [Section 62(1)].

b) **Recession of the Contract for Misrepresentation:** Avoiding the contract is recession. Any person can apply to the court for recession of the contract if the statements on which he has taken the shares are false or caused by misrepresentation whether innocent or fraudulent.

The contract can be rescinded if the following conditions are satisfied:

1) The statement must be a material misrepresentation of fact.
2) It must have induced the shareholder to take the shares.
3) The deceived shareholder is an allottee and he must have relied on the statement in the prospectus.
4) The omission of material fact must be misleading before recession isgranted.

5) The proceedings for recession must be started as soon as the allottee comes to know of a misleading statement.

c) **Damages for Deceit as Fraud**: Any person induced to invest in the company by fraudulent statement in a prospectus can sue the company and person responsible for damages. The share should be first surrendered to company before the company is used for damages. Fraud occurs when any statement is made without belief in the truth or carelessly. A statement made with knowledge that it is false, will constitute fraud or deceit.

d) **Liability for non-compliance:** A director or other person responsible shall be liable for damage for noncompliance with or contravention of any of the matters to be stated and reports to be set out in the prospectus as provided [by Section 56(41)].

e) Damages for Fraud under General Law: Any person responsible for the issue of prospectus may be held liable under the general law or under the Act for misstatements or fraud.

f) **Penalty for Contravening Section 57 & 58:** If any prospectus is issued is contravention of Section 57, (experts to be unconnected with formation or management of company), or Section 58 (expert's consent to issue of prospectus containing statement by him) the company and every person who is knowingly party to the issue thereof, shall be punishable with fine which may extend to Rs. 5,000/-.

g) Penalty for issuing the Prospectus without Registration: If a prospectus is issued without a copy of thereof being delivered to the Registrar, the company and every person who is knowingly a party to the issue of the prospectus shall be punishable with fine which may extent to Rs 5,000 [Section60(5)].

DEFENCE AGAINST CIVIL LIABILITY

I. Having consented to become a director of the company, he withdrew his consent before the issue of the prospectus and that it was issued without his authority or consent.

II. The prospectus was issued without his knowledge or consent and that on becoming aware of its issue he forth with gave reasonable public notice that it was issued without his knowledge or consent.

III. After the issue of prospectus, and before allotment thereunder he, on becoming aware of any untrue statement therein withdrew his consent to the prospectus and gave reasonable public notice of the withdrawal.

IV. If a director, etc., has reasonable ground to believe that the statement was true and he, in fact, believed it to be true up to the time of allotment, he is not liable.

V. If statement is a correct and fair representation or extract or copy of the statement made by an expert who is competent to make it and had given his consent and had not withdrawn it, the director, etc., is not liable.

2. Criminal Liability

Every person who authorized the issue of prospectus shall be punishable for untrue statement with imprisonment for a term which may extend to 2 years or with fine which may extend to Rs. 5,000/-

Penalty for Fraudulently inducing Persons to Invest Money [Section 68]

Any person who either knowingly or recklessly makes any statement, promises or forecast which is false, deceptive or misleading or by any dishonest concealment of material facts, induces or attempts to induce another person to enter into;

- Any agreement with a view to acquiring, disposing of, subscribing for, or underwriting shares or debentures;
- An agreement to secure to any of the parties from the yield of shares or debentures; or by reference to fluctuation in the value of shares or debentures; shall be punishable for a term which may extend to 5 years of with fine which may extend to Rs. 10,000/-or with both.

Defence against Criminal Liability

Any person made criminally liable can escape the same as proving that

- The statement was true [Section 63(i)]. Statement was immaterial; or
- He had a reasonable ground to believe and did upto the time of the issue of prospectus that the statement was true [Section 63(i)].

3. State the contents of Articles of Association.

1. Procedure for issue of shares and their allotment.
2. Forfeiture of shares and the procedure for their re-issue.
3. Procedure for transfer and transmission of shares.
4. Calls on shares.
5. Conversion of shares into stock.
6. Borrowing powers of directors.
7. Alteration of shares capital.
8. Payment of dividends and creation of reserves.
9. General meetings, proxies and polls.
10. Voting rights of members.
11. Keeping of books of account and their audit.
12. Capitalization of profits.
13. Lien on shares
14. Board meeting and their proceedings
15. Rules as t resolutions
16. Winding up of the company

UNIT – III

Part – A 2 Mark Questions

1. **What is Share Capital?**

   The term 'share capital' refers to the amount of capital raised (or to be raised) by a company through the issue of shares. It generally means the money subscribed pursuit to memorandum of association of the company.

2. **What is share?**

   A share is the interest of a shareholder in the company, measured by a sum of money for the purpose of liability in the first place, and of interest in the second, but also consisting of other rights given by the articles.

3. **Define Share.** According to Section 2(46) of the Companies Act 1956, " A share is a share in the share capital of a company and includes stocks except where a distinction between stock and share is expressed or implied "

4. **What is meant by preference shares?**

   Preference shares are shares, which have preferential rights (i.e., first priority or preference over other kinds of shares) in respect of payment of dividend during the existence of the company, and also in respect of repayment or refund of share capital in the event of the winding up of the company.

5. **What do you mean by cumulative preference?**

   The holders of cumulative preference share a green titled to receive a fixed percentage of dividend before anything is given, tot other classes of shareholders. Apart from this right, in the case of these shares, if the company has no profits or inadequate profits in any year to declare dividend, the arrears of dividend would accumulate and become payable out of the future profits before anything is given to other classes of shareholders.

6. **Define Debentures?**

   A corporate debt secured by the revenues, reputation, and credit standing of the debtor, and that lacks a security interest in other property; an instrument that embodies this type of debt.

7. **What is Authorised capital?**

   Authorised capital is the sum stated in the capital clause of the memorandum of association as the capital of a company. It is the maximum amount of share capital, which the company is authorized by its memorandum of association to raise through the issue of shares. It is called authorized capital

8. What is meaning of secured Debentures?

This means a charge is created on such an asset in case of default in repayment of such debentures. So in case, the company does not have enough funds to repay such debentures, the said asset will be sold to pay such a loan. The charge may be fixed, i.e. against a specific assets/assets or floating, i.e. against all assets of the firm.

9. What do you meant by Debentures?

A debenture is a bond or promissory note that is issued by a business to a creditor in exchange for capital. The repayment and terms of the loan are completed based on the general creditworthiness of the business and not by a lien, mortgage, or any specific property.

10. What is Voting Rights?

A corporation's officers and board of directors manage its day-to-day operation. Shareholders have no right to vote on basic management issues. Shareholders usually have one vote per share. The corporation's charter or bylaws may limit or deny shareholder voting rights. In many corporations, owners of preferred shares have no right to vote.

Part -B **5 Mark Questions**

1. Explain the Voting rights of shareholders.

Investors who hold a privately held corporation's shares own a part of the company. Stock ownership gives them certain rights. Provisions in a private corporation's articles of incorporation, or charter, and its bylaws grant and govern shareholder rights, including the right to vote on corporate resolutions. These provisions, along with state corporation laws, can limit the voting rights of shareholders.

Basic Shareholder Rights

In general, a privately held corporation's shareholders have the right to inspect corporate records and file lawsuits against the corporation's officers or board of directors for wrongful acts. When a corporation's board of directors approves a dividend payout, shareholders have the right to receive their proportion of the dividend funds. Likewise, when a privately held corporation dissolves, shareholders have the right to their fair share of the proceeds from the liquidation of corporate assets. Certain shareholders also have voting rights.

Voting Rights A corporation's officers and board of directors manage its day-to-day operation. Shareholders have no right to vote on basic management issues. They exert their ownership by voting on key corporate issues. At shareholder meetings, the board presents resolutions involving **major** matters, such as changes to the charter or election of directors, for shareholder approval. Shareholders

usually have one vote per share. The corporation's charter or bylaws may limit or deny shareholder voting rights. In many corporations, owners of preferred shares have no right to vote.

Quorum

Most corporate bylaws require a quorum at a shareholder meeting to hold a vote. A quorum is usually reached when the shareholders present or represented at the meeting own more than half of the corporation's shares. The laws in some states allow the approval of a resolution without a quorum if all shareholders provide a written endorsement of a measure.

Voting Eligibility

In most cases, only a record owner is eligible to vote at a shareholder meeting. Corporate records list all owners of shares on a record date, which is a specified day preceding the shareholder meeting. Shareholders who are not listed in the record on the record date cannot vote.

Taking a Vote

Once a quorum has been established at a shareholder meeting, shareholder voting can proceed. Approval of a resolution usually requires only a simple majority of share votes. A higher percentage of votes may be required for some exceptional resolutions, such as one seeking a merger or the dissolution of the corporation. Shareholders may vote through a proxy, an agent authorized by a shareholder to cast the shareholder's votes.

Impact of Shareholder Voting Rights

In a large, publicly held corporation, shareholders exert their greatest influence through elections of the corporation's directors. In many small, privately held corporations, however, minority shareholders often cannot affect the election of directors. The officers and directors in these corporations typically own large blocs of shares. In some cases, one person owns a controlling share of the corporation's stock. Although shareholders in a privately held corporation cannot be denied their right to vote in elections or on resolutions, their votes may have little, if any, impact on major corporate issues.

2. What are the advantages of Debentures?

1. Preferred by Investors:

A company can raise large amount by issue of debentures because investors give weightage to safety of capital on fixed rate of return.

2. Maintenance of Control:

No voting rights are conferred on the debenture- holders and as a result they cannot weaken the control of existing shareholders.

3. Reliable Source:

The debentures can be issued for long periods as a result of which the company can take up the projects for further expansion.

4. Trading on Equity:

The company can adopt the policy of trading on equity and thereby increasing the return of equity shareholders.

5. Interest charged against Profits:

For the purpose of income-tax, company enjoys the benefit by issuing debentures as the interest paid on debentures is deductible from the profits of the company.

6. Less Costly:

Usually the rate of interest is lower than the rate of dividend payable on preference shares and equity shares. So raising of capital through debentures is less costly.

7. Remedy against over capitalisation:

Whenever the company is over capitalised, it can redeem debentures.

3. Explain the features of shares?

i. A share is not a sum of money. It is only an interest or right, measured in .a sum of money, to participate in the profits of the company during its life and in the assets of the company when it is wound up.

ii. A share is given a face or nominal value, and is paid for in money or money's worth.

iii. The person who holds the share or shares of a company is called a shareholder or member of the company.

iv. The title of a member to a sharp is evidenced by the share certificate issued by the company under its Common seal.

4. Types of Preference Shares:

1.CumulativePreference Shares:

The holders of cumulative preference share are entitled to receive a fixed percentage of dividend before anything is given, tot other classes of shareholders. Apart from this right, in the case of these shares, if the company has no profits or inadequate profits in any year to declare dividend, the arrears of dividend would accumulate and become payable out of the future profits before anything is given to other classes of shareholders.

2. **Non-Cumulative Preference Shares:**

Non-Cumulative preference shares are entitled to a fixed rate of dividend in the first instance (i,e., before anything is given to other types of shareholders). But they are entitled to receive the fixed percentage of dividend in the first instance only for the year or years when the company earns sufficient profits and dividend is declared.

3. **Participating Preference Share**: The holders of these shares, in addition to a fixed percentage of dividend, are also entitled to participate in the surplus profits of the company along with the equity shareholders. Only if there is a specific or special provision in the articles of association of the company giving the holders of these shares special rights to participate in the surplus profits. They are also entitled to participate in surplus assets of the company on its winding up.

4. **Non-Participating Preference Share**: The holders of non-participating preferences hares will get only a fixed rate of dividend, of course, in the first instance (i.e., before any dividend is paid to equity shareholders). But they are not entitled to participate in the surplus profits of the company.

5. Convertible Preference Shares:

The holders of convertible preference shares are given the rights to convert their shares into equity shares later on (i.e., after a certain period).

6. **Non-Convertible Preference Share**: The holders of non-convertible preference share are not given the right to convert their shares into equity shares later on.

7. **RedeemablePreference Shares**: Redeemable preference shares are those preference shares, which can be redeemed (i.e., returned or paid back) even during the existence of the company. These shares can be redeemed as per the terms of issue either at a definite date after the expiry of a stipulated (fixed) period or at the option of the company, i.e., whenever the company wants, after giving proper notice.

8. **Irredeemable Preference Shares:**

Irredeemable preference shares are those preference Share, which are not (i.e. refundable) until the company is wound up. By virtue of the Companies Amendment Act 1988 a company shall not issue irredeemable preference shares or preference shares redeemable after the expiry of a period of 20 years from the date of issue

5. Write about the difference between Preference shares and Equity shares.

Basis for Comparison	Shares	Debentures
Meaning	The shares are the owned funds of the company.	The debentures are the borrowed funds of the company.
What is it?	Shares represent the capital of the	Debentures represent the debt of the

Basis for Comparison	Shares	Debentures
	company.	company.
Holder	The holder of shares is known as shareholder.	The holder of debentures is known as debenture holder.
Status of Holders	Owners	Creditors
Form of Return	Shareholders get the dividend.	Debenture holders get the interest.
Payment of return	Dividend can be paid to shareholders only out of profits.	Interest can be paid to debenture holders even if there is no profit.
Allowable deduction	Dividend is an appropriation of profit and so it is not allowed as deduction.	Interest is a business expense and so it is allowed as deduction from profit.
Security for payment	No	Yes
Voting Rights	The holders of shares have voting rights.	The holders of debentures do not have any voting rights.
Conversion	Shares can never be converted into debentures.	Debentures can be converted into shares.
Repayment in the event of winding up	Shares are repaid after the payment of all the liabilities.	Debentures get priority over shares, and so they are repaid before shares.
Quantum	Dividend on shares is an appropriation of profit.	Interest on debentures is a charge against profit.
Trust Deed	No trust deed is executed in case of shares.	When the debentures are issued to the public, trust deed must be executed.

6. Explain the classification of share capital?

1. Authorised Capital

Authorised capital is the sum stated in the capital clause of the memorandum of association as the capital of a company. It is the maximum amount of share capital, which the company is authorized by its memorandum of association to raise through the issue of shares. It is called authorized capital, because it is the capital, which a company is authorized to raise from the public. It is called registered capital, because it is the capital with which a company is registered. It is also called nominal capital, because it is not the real or actual capital of a company. A company has this capital only in name. Further, it is the total nominal value of the shares, which a company can Issue.

2. Issued Capital:

A company, usually, does not need the whole of the authorized capital in the beginning. It needs only a part of the authorized capital. So, in the beginning, it, usually, issues only a part of the

authorized capital to the public for subscription. That part of the authorized capital to the public for subscription. The part of the authorized capital which is issued or offered, for the time being, to the public for subscription is, usually, called the issued capital.

3. **Subscribed Capital:**

There is no guarantee that the entire capital issued by a company to the public for subscription will be subscribed or taken up by the public. The public may subscribe in full or in part. That part of the issued capital, which is subscribed or taken up by the public, is called subscribed capital.

4. **Called-up Capital:**

Generally, a company does not need the entire face value of the shares subscribed by the public immediately. So, it calls or demands only a part of the nominal value of the shares subscribed or taken up by the public immediately and collects the balance later, as and when necessary, by making further calls. That part of the subscribed capital, which has been called up or demanded by the company is called called-up capital.

5. **Paid -up Capital:**

There is no guarantee that all the subscribers pay the full amount called up or demanded from them. In fact, in many cases, some of the subscribers do no pay the full amount called up from them. That means, often, only a part of the called-up capital may be paid by the subscribers or shareholders. That part of the called-up capital, which has been actually paid, by the subscribers or shareholders is called paid-up capital.

7. **Borrowing powers of companies?**

- **Powers of Board** – The board of directors is a body of people who supervise the management of affairs in a company and represent the shareholders of the company. The board of directors has been disposed of powers by the Act to exercise power to borrow money on behalf of the company. The same has to be done. They also have the power to issue debentures, securities in respect of loans. But when dealing with banks like RBI, SBI or any other established bank, the arrangement of loans is done based on overdraft or cash credit.
- **Restrictions On Power** – The board of directors under Section 180 have some restrictions where they have to pass a special resolution to borrow money. The money to be borrowed should be more than the paid-up share capital and free reserves apart from temporary loans obtained by the company's bankers. The the board is prohibited from borrowing money in terms of Temporary loans and for more than six months which include short-term, cash credit arrangements, the discounting of bills.

- **Special Resolution** – The special resolution has to be passed by all board members in General Meeting. The amount to be borrowed is specified on the resolution which has to be duly approved by all people in or required people in the company.
- **Limits on borrowing**– There is a limit on borrowings of the company which has to be complied with unless the lender proves that it was in good faith and without knowledge that the limit imposed in Section 180.

Part -C 10 Mark Questions

1. **What are the various kinds of shares? Explain.**

A company issue different types of shares in order to satisfy the requirements of different classes of investors and to collect more capital. A public company can issue only two types of shares, viz.,

(1) Preference Shares.

(2) Equity Shares.

1.**PREFERENCE SHARES.**

Meaning of Preference shares:

Preference shares are shares, which have preferential rights (i.e., first priority or preference over other kinds of shares) in respect of payment of dividend during the existence of the company, and also in respect of repayment or refund of share capital in the event of the winding up of the company. Infact, it is because of their preferential rights in respect oft he payment of dividend and repayment of capital that these shares are 1 mown as preference shares.

Types of Preference Shares:

1.CumulativePreference Shares:

The holders of cumulative preference share are entitled to receive a fixed percentage of dividend before anything is given, tot other classes of shareholders. Apart from this right, in the case of these shares, if the company has no profits or inadequate profits in any year to declare dividend, the arrears of dividend would accumulate and become payable out of the future profits before anything is given to other classes of shareholders.

2.**Non-Cumulative Preference Shares:**

Non-Cumulative preference shares are entitled to a fixed rate of dividend in the first instance (i,e., before anything is given to other types of shareholders). But they are entitled to receive the fixed percentage of dividend in the first instance only for the year or years when the company earns sufficient profits and dividend is declared. In case the company has no or inadequate profits in any

year to declare dividend, then, the arrears of dividend do not accumulate and become payable out of future profits in the case of these shares.

3.**Participating Preference Share**: The holders of these shares, in addition to a fixed percentage of dividend, are also entitled to participate in the surplus profits of the company along with the equity shareholders. Only if there is a specific or special provision in the articles of association of the company giving the holders of these shares special rights to participate in the surplus profits. They are also entitled to participate in surplus assets of the company on its winding up.

4.**Non-Participating Preference Share**: The holders of non-participating preferences hares will get only a fixed rate of dividend, of course, in the first instance (i.e., before any dividend is paid to equity shareholders). But they are not entitled to participate in the surplus profits of the company.

5. Convertible Preference Shares:

The holders of convertible preference shares are given the rights to convert their shares into equity shares later on (i.e., after a certain period).

6.**Non-Convertible Preference Share**: The holders of non-convertible preference share are not given the right to convert their shares into equity shares later on.

7.**RedeemablePreference Shares**: Redeemable preference shares are those preference shares, which can be redeemed (i.e., returned or paid back) even during the existence of the company. These shares can be redeemed as per the terms of issue either at a definite date after the expiry of a stipulated (fixed) period or at the option of the company, i.e., whenever the company wants, after giving proper notice.

8. **Irredeemable Preference Shares:**

Irredeemable preference shares are those preference Share, which are not (i.e. refundable) until the company is wound up. By virtue of the Companies Amendment Act 1988 a company shall not issue irredeemable preference shares or preference shares redeemable after the expiry of a period of 20 years from the date of issue

(2) EQUITY SHARES

Equity shares are those, which are not preference shares. In other words, these are shares, which do not enjoy any preferential right either in respect of payment of dividend or in respect of the repayment of capital at the time of the winding up of the company .These shares are knows as equity shares, as they are the 'ownership shares' conferring the ownership of the company on the holders of these shares, i.e., the holders of these shares are the real owners of the company.

3. Explain various types Debentures?

A company may issue the following types of debentures.

- **Secured Debentures:** These are debentures that are secured against an asset/assets of the company. This means a charge is created on such an asset in case of default in repayment of such debentures. So in case, the company does not have enough funds to repay such debentures, the said asset will be sold to pay such a loan. The charge may be fixed, i.e. against a specific assets/assets or floating, i.e. against all assets of the firm.
- **Unsecured Debentures:** These are not secured by any charge against the assets of the company, neither fixed nor floating. Normally such kinds of debentures are not issued by companies in India.
- **Redeemable Debentures**: These debentures are payable at the expiry of their term. Which means at the end of a specified period they are payable, either in the lump sum or in installments over a time period. Such debentures can be redeemable at par, premium or at a discount.
- **Irredeemable Debentures:** Such debentures are perpetual in nature. There is no fixed date at which they become payable. They are redeemable when the company goes into the liquidation process. Or they can be redeemable after an unspecified long time interval.
- **Fully Convertible Debentures:** These shares can be converted to equity shares at the option of the debenture holder. So if he wishes then after a specified time interval all his shares will be converted to equity shares and he will become a shareholder.
- **Partly Convertible Debentures**: Here the holders of such debentures are given the option to partially convert their debentures to shares. If he opts for the conversion, he will be both a creditor and a shareholder of the company.
- **Non-Convertible Debentures**: As the name suggests such debentures do not have an option to be converted to shares or any kind of equity. These debentures will remain so till their maturity, no conversion will take place. These are the most common type of debentures.

4. What are the merits and Demerits of Preference shares?

Merits of Preference shares

i) The payment of dividend to preference shares is not a legal obligation. So the company can postpone the dividend payment and it can enjoy financial flexibility

ii) Issue of preference shares does not create any charge against the assets of the company.

iii) The promoters of the company can retain control over the company by issuing preference shares, since the preference shareholders have only limited voting rights.

iv) In the case of redeemable preference shares, there is the advantage that the amount can be repaid as soon as the company is in possession of funds flowing out of profits.

v) Preference shares are entitled to a fixed rate of dividend and the company many declare higher rates of dividend for the equity shareholders by trading on equity and enhance market value.

vi) If the assets of the company are not of high value, debenture holders will not accept them as collateral securities. Hence the company prefers to tap market with preference shares.

vii) The public deposit of companies in excess of the maximum limit stipulated by the Reserve Bank can be liquidated by issuing preference shares.

viii) Preference shares are particularly useful for those investors who want higher rate of return with comparatively Lower risk.

ix) Preference shares add to the equity base of the company and they strengthen the financial position of it Additional equity base increases the ability of the company to borrow in future.

x) Preference shares have variety and diversity, unlike equity shares, Companies have thus flexibility in choice.

Demerits of Preference Shares

i) Usually preference shares carry higher rate of dividend than the rate of interest on debentures.

ii) Compared to debt capital, preference share capital is a very expensive source of financing because the dividend paid to preference shareholders is not, unlike debt interest, a tax-deductible expense.

iii) In the case of cumulative preference shares, arrears of dividend accumulate. It is a permanent burden on the profits of the company.

iv) From the investors point of view, preference shares may be disadvantageous because they do not carry voting rights. Their interest may be damaged by a equity shareholders in whose hands the control is vested.

v) Preference shares have to attraction. Not even 1% of total corporate capital is raised in this form.vi)Instead of combining the benefits of equity and debt, preference share capital, perhaps combines the banes of equity and debt

5. Explain the Disadvantages of debentures:

1. Permanent Burden:

The company is obliged to bear a fixed burden of interest, irrespective of the profits earned by the company.

2. Danger of Liquidation:

There is the danger of liquidation if the company fails to pay interest at the stipulated time.

3. Affecting the capacity to raise Loans:

If the capital structure is heavily loaded with debentures, much of the company's earnings will be absorbed in the payment of interest and as a result, the financial institutions may disfavour lending.

4. High Denomination: Debentures are usually issued in high denominations and as such common investors cannot purchase debentures.

5. Loss of Credit worthiness in Stock Market:

Due to one or more mortgage charges on the assets of the company (necessary to issues debentures), debentures cause the loss of credit in the stock market.

6. Costly: Debentures are expensive source of financing due to high stamp duty. A company has to fix Rs. 15 stamps for bearer debenture and Rs. 7.50 for registered debentures of Rs. 1,000 each.

6. Types of Borrowing powers of company?

- **Long Term Borrowings–** Liabilities that represent money borrowed from banks or other lenders to fund the on-going operations of a business and that will not come due within one year. Long term borrowings or debt are those which are borrowed for more than one year and generally extend up to 5 years.
- **Short Term borrowings–** Reflects the total carrying amount as of the balance sheet date of debt having initial terms less than one year or the normal operating cycle, if longer. These are borrowings that have to be paid off within a year. It is a temporary support for business and meeting the working capital needs is the main purpose.
- **Medium-term borrowings–** The borrowings which are undertaken between short term borrowings and long term borrowings which is up to 2-5 years.
- **Secured borrowing –** These are the borrowings against collateral which is security.
- **Unsecured borrowings-** Under this, the debt consists of financial obligation. There is no collateral issued against the unsecured borrowings.
- **Private borrowing–** The company takes a loan from banks and other private institutions.
- **Public borrowings–** It consists of all institutions which are for public exchange.

UNIT – IV

Part -A 2 Mark Questions

1. **What is meant by meeting of the company?**

A meeting is a gathering or assembly of two or more persons at a pre-decided date, time and place for transacting certain lawful business of the company concern.

2. **What is statutory meeting?**

Section 165(1) of the companies act lays down that every company limited by shares and by guarantee and having share capital must hold a general meeting of its shareholders within a period of six months but not earlier than one month from the date on which the company is entitled to commence is called the statutory meeting. It is held only once in the life time of the company. Private companies exempted from holding this meeting.

3. **What is meant by Ordinary Resolution?**

Ordinary resolution means which is passed by ordinary majority i.e. member of votes is in yes is more than no. On the other hand special resolution is passed by three fourth majority.

4. **Write a short note on Extra-ordinary general meeting'?**

All general meeting other than the statutory General Meeting and annual general meeting is called all extra-ordinary general meeting. It is to be held during the period between two general meetings.

5. **What do you meant by Statutory Report?**

The nature of business conducted at the statutory meeting involves consideration and adoption of the Statutory Report. The Statutory Report is drafted by Directors and certified as correct by at least two of them. A copy of the report must be sent to every member at least 21 days before the date of the meeting. A copy is also to be sent to the Registrar for registration.

6. **Write short note on Annual general meeting?** Every company is mandatory to held at least one meeting of its member during a calendar year is called AGM.

7. **What is Special Resolutions?**

Under the Companies Act 2006 various company decisions must be made via resolutions. Certain of these decisions, generally those that are most important or sensitive, must under company law be passed by a special resolution. A special resolution is a resolution of the company's shareholders which requires at least 75% of the votes cast by shareholders in favour of it in order to pass. Where no special resolution is required, an ordinary resolution may be passed by shareholders with a simple majority – more than 50% – of the votes cast.

Part -B 5 Mark Questions

1. What are the legal provisions regarding Extra ordinary general meeting?

a) By the Board of directors: EGM may be called by the board whenever it deems fit by depositing a valid requisition at the registered office. On receipt of a valid requisition, the board shall within 21 days proceed to call an EGM to be held not later than 45 days from the date of deposit of requisition. The notice shall be given to those members whose names appear in the register of members within 3 days of receipt of a valid requisition.

b) On the Requisition of shareholders: EGM may be called on requisition of members holding 1/10th or more of the paid up equity share capital if company have share capital. If company do not have share capital, on requisition of members holding 1/10th or more of total voting power. The requisition shall specify the matters for the consideration of which EGM is to be called and it is signed by all the requisitionists or a requisitions duly authorised.

c) By the requisitionists themselves: If the board fails to call an EGM, it may be called by the requisitionists themselves as follows:

- The EGM shall be held within 3 months from the date of deposit of the requisition.
- The EGM shall be called in the same manner in which a meeting is called by the board of directors.
- The requisition shall be entitled to receive a list of members from the company.
- The EGM should be convened on a working day at the registered office or in the same city or town in which the registered office is situated.
- The notice of EGM shall be given by speed post or registered post or electronic mode.
- The notice of EGM shall disclose the place, date, day, hours and business to be transacted at the meeting.

d) By the tribunal: If for any reason it is impracticable to call a meeting of a company, other than annual general meeting, in any manner in which meeting of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this act or the articles, the tribunal may, either of its own motion or on the application of any director of the company, or of any member of the company who would be entitled to vote at the meeting order a meeting of the company to be called, held and conducted in such manner as the tribunal thinks fit and give such ancillary directions as the tribunals thinks necessary.

2. Explain the circumstances in which an ordinary resolution is necessary?

1. Approval of statutory report
7. Issue of shares at discount.

2. Approval of directors report
3. Approval of final accounts
4. Declaration of dividend
5. Appointment of directors
6. Election of directors
8. Appointment of auditors and their remuneration.
9. Alteration of share capital.
10. Change in the rights of shareholders of any class.
11. Creation of reserve fund.
12. Conversion of fully paid-up shares into stock.
13. Sale of the whole or part of the company's undertaking or business

3. Who are authorized to convey the extra-ordinary general meeting?

The members/shareholders of a company can call for an extraordinary general meeting. However, only certain members with a significant stake in the company are allowed to call for an EGM. They are listed in the Companies Act,2013 as follows.

- In the case of a company having a share capital, members holding not less than one-tenth of such paid-up capital of the company that carry voting rights in regard to that matter as on the date of depositing the requisition;
- In the case of a company not having a share capital, members holding not less than one-tenth of the total voting power in regard to that matter as at the date of deposit of the requisition.
- EGM called by Board. Upon the receival of a valid requisition, the Board has a period of 21 days to call for an EGM. The EGM must be then held with 45 days from the day of the EGM being called.
- EGM called by the requisitionists – In case the Board fails to call for an EGM, it can be called for by the requisitionists themselves during a period of 3 months from the day the requisition was deposited. If the EGM is held within this specified period of 3 months, it can be adjourned to any day in the future after the 3 months.

4. What are the kinds of resolution? Explain?

A resolution is a formal decision of a meeting on any proposed presented for vote and passed by majority, it becomes resolution. There are three types of resolutions as follows:

- i) Ordinary resolution ii) Special resolution and iii) Resolution requiring special notice

ORDINARY RESOLUTION

At a general meeting of which notice has been given, if votes cast in favour of the resolution by members exceed the votes, if any, cast against the resolution by members, the resolution so passed is an ordinary resolution [Sec. 189(1)] Unless the Companies Act or the memorandum or the articles expressly require a special resolution or resolution requiring special notice, an ordinary resolution is sufficient to carry out any matter.

TRANSACTIONS WHERE ORDINARY RESOLUTION IS REQUIRED

Important matters for which an ordinary resolution is enough are as follows :

(i) Issue of shares at a discount (Sec. 79)

(ii) Alteration of the share capital (Sec. 94)

(iii) Approval of the statutory report (Sec.165)

(iv) Appointment of auditors and fixation of their remuneration [Sec. 224(1)].

(v) Appointment of the first directors who are to retire by rotation [Sec. 255(1)].

(vi) Adoption of the appointment of sole selling agents [Sec. 294].

(vii) Removal of a director and appointment of another director in his place [Sec. 284(1)].

(viii) Declaration of dividend [Sec. 205].

(ix) To rectify the name of company [Sec. 22].

(x) To cancel or redeem debentures [Sec. 21].

(xi) To cancel directors by rotation [Sec. 256].

(xii) To approve the remuneration of directors [Sec. 309].

(xiii) To fill the vacancy in the office of Liquidator [Sec. 492].

SPECIAL RESOLUTION

The resolution is a special resolution, if

(i) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting ;

(ii) the notice required has been duly given of the general meeting; and

(iii) the votes cast in favour of the resolution by members are three times the number of the votes, if any, cast against the resolution by the members [Sec. 189 (2)].

A copy of the special resolution must be filed with the Registrar within 30 days of its passing.

SPECIAL RESOLUTION MATTERS

In addition to the matters given in the articles of the company, the Companies Act specifies certain matters for which a special resolution must be passed ; for example,

(i) to alter the memorandum of the company [Sec. 17];

(ii) to alter the articles of the company [Sec. 31];

(iii) to issue further shares without pre-emptive rights [Sec. 81];

(iv) for creation of a reserve capital [Sec. 99];

(v) to reduce the share capital [Sec. 100];

Part -C 10 Mark Questions

1. **What are the essential of company meeting?**

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

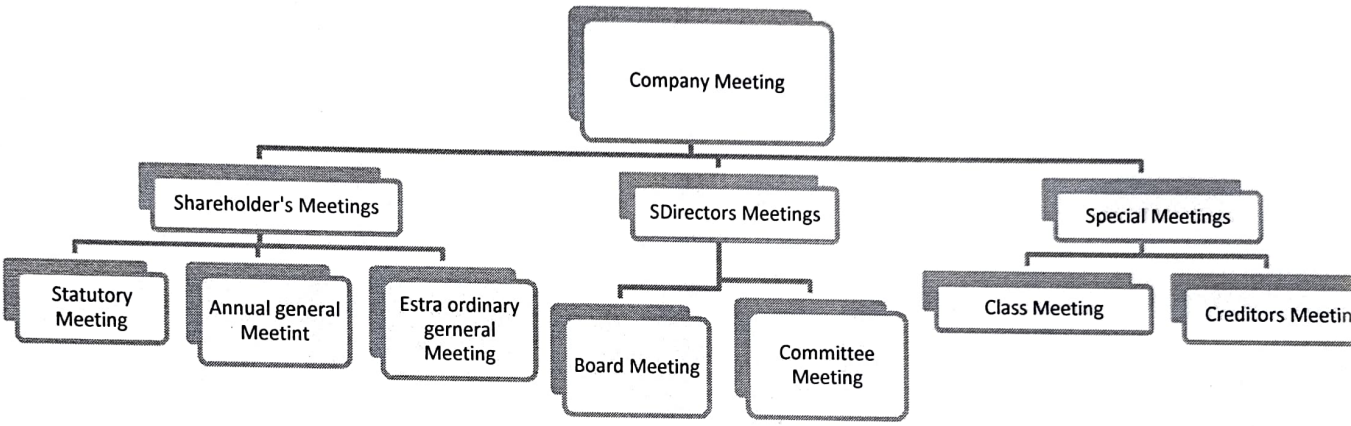
1. **Two or More Persons**: To constitute a valid meeting, there must be two or more persons. However the articles of association may provide for a larger number of persons to constitute a valid quorum.

2. **Lawful Assembly**: The gathering must be for conducting a lawful business. An unlawful assembly shall not be a meeting in the eye of law.

3. **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.

4. **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 no decision need be arrived in such meeting.

2.Enumerate the various types meetings.



1.Shareholders meeting:

When the meeting is held with the shareholders of the company it is called the shareholders meeting.

- **Statutory meeting:** According to company laws, after getting the letter of commencing, the compar arranges a meeting after one month of six months. This is the first general meeting of the company and during the life of the company this type of meeting held once. The company gives the circular before 21 days of the meeting. The decisions of the meeting are called statutory decision.
- **Annual general meeting:** After the registration of the company, the company is bound to invite the first general meeting within eighteen months. Then the general meeting will be held in every year. The differences between the two general meeting cannot be more than fifteen months. The decisior of the meeting are called general decision.
- **Extra-ordinary general meeting:** If necessary of the company this type of meeting can be held on anytime. The director or some shareholders can invite this meeting one-tenth of the shareholders may give the requisition to the Board of directors to arrange this type of meeting. After getting the

requisition of the Board of Directors fails to arrange a meeting within twenty-one days, the shareholder can invite the meeting within three months. .

2. Directors meeting:

- **Board meeting:** According to the article of association. The board of director meeting is called Board Meeting. If nothing about this type of meeting in the article of association, then by Table- A rules of the company law this type of meeting can be held on. According to rules of company law, the company is bound to arrange the meeting once in one month and at least four times within a car the Quorum: is filled up by 3/1 rd of the directors present or at least two directors present.
- **Committee meeting:** According to the article of association, the Board of Directors sometimes makes a special committee to complete in any special work among some directors of the company. This committee member sometimes meets together for coordinating the work properly. This type of seating is called committee meeting.

3. Special meeting: The types of the special meetings are as follows:

- **Class-meeting:** The Company has different kinds of shares. When the meeting is arranged by any one kind of shareholders it is called the class meeting.
- **Creditors meeting:** this type of meeting may be arranged by the order of the court. If necessary to reconstruct or to dissolve or to any amalgamate the company to preserve the rights of the creditor this type of meeting is invited by their proper authoritative person. The creditors who will be present in the meeting or the presence of three-fourth credit holders of the total credit can take the decision and the court will give the instruction on the basis of this decision and the creditors are bounded to abide by the decision.

3. Explain the legal provisions regarding it?

1. First Annual general meeting: A company may hold its first annual general meeting within a period of 9 months from the date of incorporation. However this should not be more than 9 months from close of financial years.

2. Subsequent meeting: There must be one meeting held in each year. The gap between two annual general meetings must not be more than 15 months. Meeting must be held not later than 6 months from close of financial year.

3. Extension of time: the registrar has the power to extend the time of 15 months by 3 more months in special cases.

4. Day, hour and place of meeting: The meeting can be held at any working place, on any working day and working hours. If the day scheduled for meeting is declared by the Central Government to be a public holiday after the issue of the notice, it shall not be deemed as a holiday.

5. Notice of the meeting: 21 clear days notice or any shorter notice if agreed by all shareholders must be given.

6. Business to be transected: At every AGM, the following matters must be discussed and decided. Since such matters are discussed at every AGM, they are known as ordinary business. All other matters and business to be discussed at the AGM are special business.

The following matters constitute ordinary business at an AGM :

i. Consideration of annual accounts, director's report and the auditor's report

ii. Declaration of dividend **iii.** Appointment of directors in the place of those retiring

iv. Appointment of and the fixing of the remuneration of the statutory auditors.

• Ordinary business is transacted by passing ordinary resolution.

Special Business: All matters other than ordinary business are treated as special business at an annual general meeting. For transacting special business at a meeting, there shall be annexed to the notice of meeting an explanatory statement setting out:

a) All material facts concerning each item of such business, and

(b) In particular, nature of the concern or interest, if any, of every director or manager in each item.

(c) Statement must also state time and place where document, if any, proposed for approval at the meeting can be inspected by members.

(d) The items constituting special business are transacted either by an ordinary resolution or by a special resolution depending on the requirements of the Companies Act 2013 or articles of the company in respect of each particular item.

7. Default in holding Annual general meeting: As mentioned earlier, every company is required to hold this meeting according to the provision of the Companies Act. If any company fails to hold the annual general meeting the consequences are as follows:

A. As mentioned above, the annual general meeting provides the opportunity to the members to express views on the management of the company. Any member can apply to the Central Government for the failure of the company to call the meeting.

B. The company as well as every officer will become liable if they fail to held the meeting and shall be punishable with fine upto Rs. 50,000, and if the default continues , with a further fine of Rs. 2,500 for every day after the first day of default during which the default continues.

UNIT – V

Part – A 2 Mark Questions

1. Define 'winding up of a company'?

"The process of dissolving a partnership or corporation by collecting all assets and outstanding income, satisfying all the creditors claims, and distributing whatever remains (the net assets)."

2. What do you meant by winding up of a company?

Winding up of a company is the process whereby its life is ended and its property administered for the benefits of its creditors and members. An administrator, called 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.

3. Who is a Liquidator?

It may be noted that only an Official Liquidator can act as Liquidator of the company. A Liquidator shall be described by the style of " The Official Liquidators" of the particulars company in respect of which he acts as a Liquidators and not by his individual name.

4. What is Creditors voluntary winding up?

If the declaration of solvency is not made and filed with the Registrar, it may be presumed that the company is insolvent. In that case, the company must call a meeting of its creditors (for the day or the day next following the day fixed for the company's general meeting) for passing the resolution for winding-up.

Part – B 5 Mark Questions

1. What are the duties of liquidator?

DUTIES OF LIQUIDATOR :

The Liquidator has to perform various duties. He must act in honest and impartial manner. A fiduciary relationship exists between the Liquidators, Creditors, and contributories. His important duties can be enumerated as follows :

A. To make an application for constitution of a winding up committee:

- Within three weeks from the date of passing of winding up order, the company liquidator shall make an application to the tribunal for the formation of a winding up committee.
- This committee will assist and monitor the progress of liquidation proceeding by the company liquidator.

B. To conduct the proceeding in winding up :

- It is the duty of the liquidator to conduct proceeding in winding up and perform such other functions in relation to winding up and perform such other functions in relation to winding up as may be imposed by the tribunal.

C. Custody of company property :

- The official Liquidator shall take into custody and control all the books, documents and the assets of the company.
- He is only a custodian of the company property and the does not vest in him.
- The corporate state and the power of the company continue until it is dissolved.

D. Control of powers :

- It is the duty of the Liquidators to give due regards to any directions which may be given by resolution of the creditors or contributions at any general meeting or by the committee of inspection.
- In case of conflict, any general meeting shall be deemed to override any directions given by the committee of inspection.

E. To summon meetings of creditors and contributories :

- The liquidator may summon a general meeting of creditors or contributories for ascertaining their wishes.
- But he must summon such meetings at such times as the creditors or contributories may, by resolution, direct or whenever requested in writing to do so by not less than one – tenth in value of the creditors or contributories.

F. To maintain proper books :

- It is the duty of the Liquidator to maintain proper books in the prescribed manner To record entries, minutes of proceeding at meetings and such other matters as may be prescribed.
- Any creditors or contributory may, subject to the control of the Tribunal, Inspect any such books, personally or by his agent.

G. Audit of his account :

- The liquidators shall at least twice a year, present to the Tribunal an account of his receipts and payments to the tribunal an account of his receipts and payments as liquidators.
- The account must be in the prescribed form and shall be made in duplicate and duty verified.
- The tribunal shall require the account to be audited.

H.To submit information as pending liquidation:

- If the winding up of the company is not concluded within one year of the winding up order, The liquidator shall file a statement in the prescribed form and containing the information relating to the proceeding in liquidation and position of the liquidation.
- This statement shall be duly certified by qualified auditors.

Thus, the official Liquidators is required to perform his varied duties most faithfully and honestly, keeping in view the directions of the court and requirements of the act.

2. Explain the legal provision regarding **Members voluntary winding up** and **Creditors voluntary winding** up?

1. **Holding of the General Meeting**

After filing the Declaration of Solvency, the Directors should arrange to convene a meeting of the company and a resolution should be passed to this effect.

2. **Appointment of Liquidators**

A resolution should also be passed in the same meeting appointing one or more Liquidators. The members should also fix the remuneration of the Liquidator.

3. **Notice to the 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 from the date of his appointment and should also publish the same in the Official Gazette.

4. **Powers of the Board etc.**

As soon as the Liquidator is appointed, all the powers of BOD or Managing Directors, or Whole Time Directors or Manager shall come to an end. However, the Liquidator or the members may allow them to continue for the beneficial winding up of the company.

5. **Reconstruction in Winding up**

Generally, the Liquidator shall take in charge of all the assets of the company, convert them into cash and pay the money first to the creditors and then to the members, if any surplus is left. But sometimes, instead of selling the property of the company for cash, he may sell the assets of the company for shares in another company.

6.Holding of the General Meeting at the end of the First Year Where the process of liquidation continues for more than one year, the Liquidator must call for a GM at the end of the first year and also

at the end of each subsequent years. He must submit before the meeting, an account of his acts and the progress of winding up during the year.

7. **Final Meeting of the Members**

As soon as the affairs of the company are fully wound up, the Liquidator should call for a meeting of the members by giving an advertisement in the Official Gazette and in some newspapers circulating in the district where the Registered Office is situated.

The notice must be given at least one month before the date of the meeting. It should specify the time, date and plan of the meeting. The Liquidator should submit before the meeting an account of the winding up showing

1. how the winding up has been conducted; and
2. how the company's property has been disposed of.

8. **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 along with a return of the meeting, to the Registrar of Companies and also to the Official Liquidator attached to the concerned High Court.

9. **Report of the Official Liquidator to the National Company Law Tribunal**

On receipt of the account and the return of the meeting, the Official Liquidator should make a scrutiny of the books and papers of the company; After scrutiny, the Official Liquidator should submit a report to the National Company Law Tribunal.

10. **Duty to Call for the Creditors' Meeting**

If, in the opinion of the Liquidator, the company will not be able to pay its debts in full, within the period specified in the Declaration of Solvency, the Liquidator should immediately call for a meeting of the creditors of the company. He should submit a

3. **What are the difference between Members and creditors voluntary winding up?**

Member's Voluntary Winding Up	**Creditor's Voluntary Winding Up**
Applies to solvent companies and declaration of solvency is necessary.	Applies to insolvent companies and no declaration of solvency necessary.
Control of winding up is in the hands of the company.	Control of winding up is in the hands of the creditors.
Only meeting of members are held.	There must be creditors meeting immediately after the members meeting.

Liquidator is appointed by the members.	Both the member and creditors may appoint a liquidator.
There is no committee of inspection.	There may be a committee of inspection.
Liquidator can exercise some of the powers with sanction of a special resolution of the company.	Liquidator can exercise some of the powers with the sanction of the court or the committee of inspection or of meeting or creditors.

4. What are the powers of the liquidator?

Powers of the Liquidators (Sec. 457):

(1) The liquidator, in a winding-up by the Court, has power to do the following with the sanction of the Court:

(a) To institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name and on behalf of company;

(b) To carry on the business of the company so far as may be necessary for the beneficial winding-up of the company;

(c) To sell the immovable property and actionable claims of the company by public auction or private contract, with power to transfer the whole thereof to any person or body corporate or to sell to the same in parcels;

(d) To raise on the security of the assets of the company any money requisites;

(e) To do all such other things as may be necessary for winding-up the affairs of the company and distributing its assets.

According to Sec. 546, the liquidator can pay any class of creditors in full, make any compromise or arrangement with creditors; and compromise any call or liability, with the sanction of the Court.

The liquidator can disclaim any onerous property or unprofitable contract.

(2) The liquidator in a winding-up by the court has power to do the following things, without taking special permission from the court:

(a) To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal;

(b) To inspect the records and returns of the company on the files of the Registrar without payment of any fee;

(c) To prove, rank and claim in the insolvency of any contributory for any balance against his estate, and to receive dividends in the insolvency;

(d) To draw, accept make and endorse any bill of exchange, hundi or promissory note in the name and on behalf of the company;

(e) To take out, in his official name, letters of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company;

(f) To appoint an agent to do any business which the liquidator is unable to do himself.

The Court can limit or modify the exercise of any of the powers of the liquidator enumerated under (2) above.

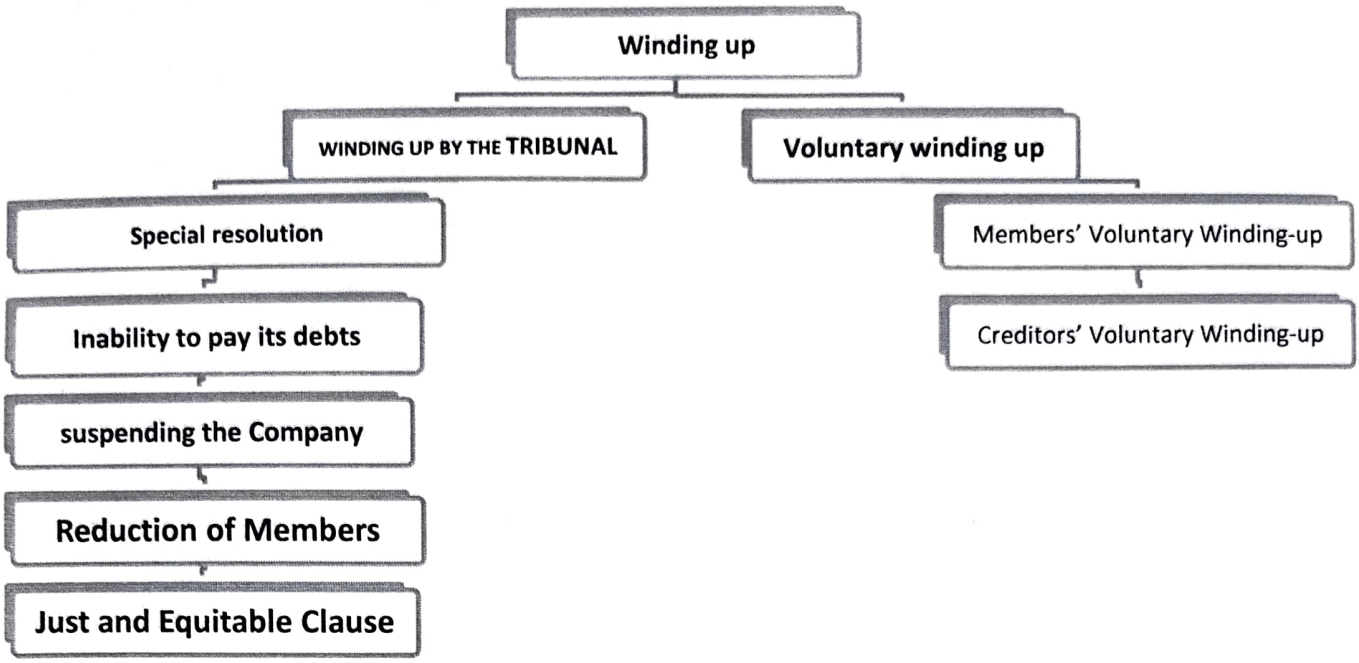
Part – C 10 **Mark Questions**

1. **Explain the legal provision regarding compulsory winding up?**
   - The first step is the filing of a petition for winding up of a company, and as already mentioned above, the petition can be filed by only selected categories of person.
   - The petition, so filed, has to be accompanied by the Statement of Affairs of the Company.
   - The petition should be advertised in the following manner;
     - The advertisement must be carried out under Form 6.
     - The advertisement should be in a daily journal at least for 14 days.
     - The language of the advertisement should be in the regional language of the respective area and in English.
   - The company needs to submit complete audited books of accounts. If the Tribunal finds that the accounts are in order and all the mandatory compliance has been complied with by the company, the Tribunal will pass an order for dissolving/winding up the company.
   - The registrar will issue a notice, after the order of the tribunal, to the official gazette mentioning that the company is dissolved.

2. **Discuss the various modes of winding up?**

MODES OF WINDING UP :

- Winding up by the Tribunal
- Voluntary winding up



I. WINDING UP BY THE TRIBUNAL : (sec 271)

Winding up of a company under the order of a Tribunal is also known as compulsory winding up. The following are the circumstances in which a company may be wound up by the tribunal.

a) Special resolution :

Special resolution for winding up by the Tribunal is passed by the members in a general meeting But winding up under this mode is not common because the members would refer to wind up the company voluntarily, being the cheaper and speedier mode than a winding up by the Tribunal.

b) **Inability to pay its debts** :

A company may be ordered to be wound up if it is unable to pay its debts or honor its monetary commitments. According to Section 271(2), a company is deemed unable to pay its debts in the following three cases:

(c) Not commencing or suspending the Company:

If the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;

(d) Reduction of Members:

If the number of members falls below seven in case of a public company or below two in case of a private company;

(vi) The Just and Equitable Clause:

If the Court is of opinion that it is just and equitable that the company should be wound-up.

II. Voluntary Winding-Up:

(1) By an Ordinary Resolution (passed in a general meeting in the following cases):

(a) Where the duration of the company was fixed by the articles and the period has expired; and

(b) Where the articles provided for winding-up on the occurrence of any event and the specified event has occurred.

(2) By a Special Resolution (passed by the members in all other cases):

When a resolution is passed for voluntary winding-up it must be notified to the public by an advertisement in the Official Gazette and in a local newspaper (Sec. 485).

Types of Voluntary Winding-Up:

Voluntary winding-up is of two types:

(a) Members' Voluntary Winding-up; and

(b) Creditors' Voluntary Winding-up.

(a) Members' Voluntary Winding-up:

If the company is, at the time of winding-up, a solvent company, i.e., able to pay its debts and the directors make a declaration to that effect; it is called a Members' Voluntary Winding-up. The declaration must be verified by an affidavit.

The declaration must be:

(a) Made within the five weeks immediately preceding the date of passing of the resolution of winding-up by the company and delivered to the Registrar for registration before that date; and

(b) Accompanied by a copy of the report of the auditors of the company on the Profit and Loss Account of the company from the date of the last Profit and Loss Account to the latest practicable date immediately before the declaration of solvency, the Balance Sheet of the company; and a statement of the company's assets and liabilities as on the last mentioned date.

The Members' Voluntary Winding up is done by the following successive steps:

(i) Declaration of solvency;

(ii) Statutory Declaration to the Registrar;

(iii) A resolution in general meeting of the company within 5 weeks of declaration of solvency;

(iv) Appointment of Liquidator;

(v) Collecting the company's assets, pay the liabilities of the company and pay the balance of the proceeds to the contributories.

(b) Creditors' Voluntary Winding Up:

If the declaration of solvency is not made and filed with the Registrar, it may be presumed that the company is insolvent. In that case, the company must call a meeting of its creditors (for the day or the day next following the day fixed for the company's general meeting) for passing the resolution for winding-up.

The Creditors' Voluntary Winding-up is done by the following successive steps:

(i) A resolution for the winding up of the company in a general meeting of the company.

(ii) On the same day or the following day there must be a meeting of the creditors and a list of creditors must be furnished by the Directors.

(iii) A liquidator or liquidators are appointed by the meeting of members and the meeting of the creditors. (iv) A committee of inspection. (v) The work of winding-up according to statute.

(c) Voluntary Winding-up under the Supervision of Court:

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 (Sec. 522). A supervision order is usually made for the protection of the creditors and contributories of the company. A petition for the continuance of a voluntary winding-up subject to the supervision of the Court is deemed to be a petition for winding-up by the Court (Sec. 523).

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

(a) 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 although he is, in this case, unknown 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.

(b) Consequences as to Creditors:

A company often goes into compulsory winding-up when it is unable to pay its debts. But it may be wound-up on other grounds as well even though it is solvent. Where a solvent company is wound-up, all claims of its creditors, when proved, are fully met. When a company is insolvent and is wound-up, the same rule prevails as in the case of Law of Insolvency (Sec. 529). Creditors are of two types, viz. Secured and Unsecured.