

**GOVERNMENT ARTS COLLEGE (AUTONOMOUS), KARUR-05**

**PG AND RESEARCH DEPARTMENT OF COMMERCE**

**STUDY MATERIAL**

**SUBJECT : COMPANY LAW AND SECRETARIAL PRACTICE**

**CLASS : III.B.COM**

**SEMESTER : V**

# UNIT – I

## COMPANY

### Meaning:

The term company is an amalgamation of two Latin words “COM” and “panis”. It is originally referred to an association of persons who took their meals together.

In legal sense a company is an association of both natural and artificial persons incorporated under the existing law of a country. In simple words, it is an artificial person created by law.

### Definition:

“A Company is an association of many persons who contribute money or money’s worth to a common stock and employ it in some trade or business and who share the profit and loss as the case may be arising there from. The common stock so contributed is denoted in money and is the capital of the company. The persons who contribute it, or to whom it belongs, are members. The proportion of capital to which each member is entitled is his share”.

*-Lord Lindley*

### CHARACTERISTICS OF A COMPANY:

- Separate legal entity
- Capacity to sue
- Common seal
- Perpetual succession
- Transferability of shares
- Separate property
- Limited liability

### *Separate legal entity:*

The outstanding features of a company are in separate legal existence. On registration under the Companies Act, it gets a separate personality of its own.

- In the eyes of law it is a legal person distinct from its members.
- It can own and transfer property.
- It can enter into contracts.
- It can sue and be sued in its own name.

### ***Capacity to sue***

A company can sue and be sued in its name any legal proceedings against the company are to be instituted in its own name. A company may bring an action against anyone in its own name.

### ***Common seal***

A company being an artificial person cannot sign any document for itself. Hence every company has its own common seal with its name engraved thereon. This seal when affixed on any document is taken to be the signature of the company. A common seal is the official signature of the company. A common seal is required to be affixed on the following documents.

- Power of Attorney empowering any person as the company's attorney to execute deeds in or outside India.
- Share Certificate.
- Share Warrant.

### ***Perpetual succession***

A company is independent of the lives of its members. Hence the death, insolvency or retirement of its members leaves the company unaffected. As Lord Gower said "Members may come and go out the company can go on forever". A company is created by a process of law and it can come to an end only by process of law.

### ***Transferability of Share***

The shares of private company are easily transferable. The shares are transferable in the manner provided by the Articles of Association. A member can sell his shares in the stock exchange and realise the money invested by him. The Shares can also be transferred through electronic mode.

### ***Separate property***

The property of the company is not the property of shareholders. It is the property of the company. A change in membership does not affect in any way the property of the company.

### ***Limited liability***

The outstanding feature of a company is that the liability of its members is limited. The members are liable for the debts and liabilities of the company only up to the nominal value of the shares they hold. Once the members pay their full value.

## DISTINCTION BETWEEN PARTNERSHIP AND COMPANY:

Features	Partnership	Company
Minimum number of members	Two persons is required to start a partnership business	A private company requires a minimum 2 persons and public company requires minimum 7.
Legal entity	Partnership firm does not have legal entity	A company once incorporated, has a separate legal entity
Liability	Partners Liabilities are limited.	The liability of the members is limited
Property	The property of the partnership firm belongs to the partners and they are collectively entitled it.	The property of the company belongs to the company and not property of its members.
Transfer of share	Partner cannot transfer his shares without consent of all the partners.	Shares of public company are easily transferable
Maximum number of members	The number of members must not exceed 20 in case of banking business and 10 in other business	The private company cannot have more than 200 persons and in case of public company is unlimited
Termination	The firm stands disclosures in the event of death, insolvency, retirement and lunatic of a partner.	The death of the shareholder will not affect the life of the company
Contract	A partner cannot enter into contract with the firm. a company	A member can enter into a contract with the company
Agents	Partners are agents of the firm.	Members of the company are not its agents.
Audit of Accounts	The accounts of a partnership firm are audited at the discretion of the partners.	The accounts of a company are statutorily to be audited by the auditors of the company.

## DISTINCTION BETWEEN PRIVATE COMPANY AND PUBLIC COMPANY

Features	Private Company	Public Company
Minimum number of members	Incorporation of a private company requires a minimum number of two members. In case of one person company a minimum of one person is required.	Incorporation of a Public company requires a minimum number of seven members
Maximum number of members	Maximum number of members in a private company is restricted to two hundred.	For public company is unlimited
Transferability of shares	Shares cannot be transferable	Shares can be easily transferable
Issue of prospectus	A private company cannot issue prospectus.	A Public Company can issue of prospectus for inviting deposits or for subscription of shares from public.
Minimum number of Directors	A Private Company must have a minimum of two directors.	A Public Company must have a minimum of three directors.
Qualification of Shares	The directors of private limited company need not subscribe for the qualification of shares	Directors must subscribe for the qualification of shares.
Share warrants	A Private Company cannot issue share warrant	A public Company can issue share warrant
Quorum	Unless the articles specify, the quorum for a general meeting of a private company is two members personally present	Unless the articles specify, the quorum for a general meeting of a public company is as follows:  if the numbers of members is less than 1000 – 5 members  if the numbers of members is more than 1000 but less than 5000 – 15 members  if the numbers of members is more than 5000–30 members
Retire by rotation	The director of a private company need not be liable to retire by rotation	The director of a public company are liable to retire by rotation

## **KINDS /TYPES OF COMPANIES**

### **1. Chartered Company:**

Before the enactment of the Companies Act, a company would be formed by means of Royal Charter or Proclamation. That is, the promoters had to apply to the King through the parliament for necessary sanction and approval of the company. As such, these companies were called Chartered Companies and they were to use the word 'Chartered', e.g., the East India Company, the Bank of England etc.

### **2. Registered Company:**

The companies which are registered and formed under the Companies Act, 1956, or were registered under any of the earlier Companies Act are called Registered Company. These are commonly found companies.

#### **They were of three types:**

- (i) Company Limited by Shares [Sec. 12(2)(a)]
- (ii) Company Limited by Guarantee [Sec. 12(2)(b)]; and
- (iii) Unlimited Company [Sec. 12(2)(c)].

### **3. Statutory Company:**

These companies are created by the Special Act of the legislature, e.g., the State Bank of India, the Life Insurance Corporation of India, the Reserve Bank of India, etc. These are actually concerned with public utility services, e.g., railways, gas and electric companies, etc. which require special powers to function.

### **4. Private Company:**

According to Sec. 3(1)(iii) of the Indian Companies Act, 1956, a private company is one which, by its Articles:

- (i) Restricts the rights to transfer its shares, if any;
- (ii) Limits the number of the members to fifty not including
  - (a) Persons who are in the employment of the company, and
  - (b) 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 ceases; and

(iii) Prohibits any invitation to the public to subscribe for any shares in or debentures of, the company.

### **5. Public Company:**

Sec. 3(1)(iv) of the Indian Companies Act, 1956, states that public companies are “all companies other than private companies.” It is a company of seven or more persons which offers its shares to the public for subscription. Since its shares are offered to the public, scope for investment by a large number of people is possible.

Its Articles do not contain provisions restricting the number of its members or excluding generally the offer or transfer of shares or debentures to the public. Accordingly, any public who is interested to purchase shares or debentures may acquire the same. In this company, there is no maximum limit of members like private company.

### **6. Foreign Company:**

The companies which are incorporated outside India but which had a place of business in India prior to commencement of the new Companies Act, 1956, and continue to have the same or which establishes a place of business in India after the commencement of the Companies Act, 1956, is called a foreign company. These companies are registered in a country outside India and under the law of that country.

### **7. Government Company:**

According to Sec. 617, a Government company is a company in which not less than 51% of the paid-up share capital is held by the Central Government and/or any State Government or partly by Central and partly by State Governments. The subsidiary of a Government company is also a Government company.

### **8. Holding and Subsidiary Company:**

A holding company is one which controls one or more other companies—either by means of holding shares in that company or companies or by having powers to appoint directly or indirectly the whole or majority of the Board of Directors of those companies.

A company controlled by a holding company is known as a subsidiary company. Actually, it is a part and parcel of the combination movement in business.

# UNIT II

## FORMATION OF A COMPANY

### INTRODUCTION

A company generally comes into existence when a number of persons come together with a view to forming an association to exploit the business opportunities to by bringing together men, material, money and managerial formation of a company involves as follows.

- Promotion
- Incorporation
- Floatation (or) raising of capital

In case of public limited company securing a certificated for commencement of business.

#### **Promotion:**

Promotion is the process of organizing and planning the finance of a business enterprise under corporation form in other words promotion means the dating of such steps as could persuade a number of persons come together for the achievement a common objectives through the company firm of organization. The person who under take the task of promotion are called promoters.

#### **Who is a promoter?**

According to see 62 of the companies act, “the term promoter is a term not of law but the business, usually summing up in a single word a number of business operations familiar to the commercial world by which a company is generally brought into existence”.

A corporate promoter is a firm or person who does the preliminary work. Incidental to the formation of a company, including its promotion, incorporation and flotation and solicits peoples to invest money in the company usually when it is being formed.

### **FUNCTIONS OF PROMOTER:**

#### **Discovery of ideas:**

Its promotion stage behind with the discovery of idea too setup a business, promoter also analyses the amount of capital required and the degree of risk involved.



**Detailed investigation:**

After analyzing all the concepts related to the idea discovered, the promoter start doing the detailed investigation regarding cost, profitability, production process, demand of the product, etc.

**Assembling of resources:**

The promoter starts collecting all the resources necessary to form a company promoter make contract for purchase of material, land, machinery, requirement of staffs.

**Preparing preliminary document:**

- ✓ Memorandum of association
- ✓ Articles of association
- ✓ Prospectus

**Entering into preliminary contracts:**

The promoter sings a contract with different parties before the incorporation of the company.

**Name of the company:**

The promoter has to select a name of the company.

**Appointment of bankers, broker's solicitors and underwriters:**

The promoter appoint the broker and underwriter to ensure the availability of capital by sale of company securities, solicits are appointed to deal with the legal matters of the company and bankers are appointment to being.

**INCORPORATION OF A COMPANY**

Under sec 12, any 7 (or) more persons, two or more persons in case of a private company may firm an incorporated company for a lawful purpose by subscribing their names to the memorandum of association and complying with the other requirements in respect of registration such an incorporated company may be company.

- ❖ Limited by shares
- ❖ Limited by guarantee
- ❖ An unlimited company.

To purpose for which company was going to be incorporated must be lawful. It means a purpose not forbidden by law (or) contrary to public policy.

### **Steps before proceeding with the procedure of filing documents**

- DIN (Directors Identification Number) has to be obtained.
- Digital signature of the promoters.
- Both DIN and digital signatures will be registered with the Ministry of Corporate Affairs portal.

### **DOCUMENTS TO BE FILED BY THE REGISTRAR:**

#### **1. Memorandum of association:**

The memorandum of association is the charter of the company. This includes its objectives, its name and the address of its registered office, the capital with which the company is authorized to raise, the nature of liability of members as well as the names, addresses and agreement of people who agree to form a company.

#### **2. Articles of association:**

The other important document is the articles of association which contain the rules and regulations relating to the internal management of the company.

#### **3. Vetting of memorandum and articles, printing, stamping and signing of the same:**

Before proceeding with the printing of the memorandum and articles of association of a company, it is usual for the promoters to approach the Registrar of Companies concerned for vetting the draft memorandum and articles.

#### **4. Printing of memorandum and articles:**

It is to be stamped in accordance with the provision of sec.15.

#### **5. Stamping of memorandum and articles:**

It is to be stamped in accordance with the stamp law prevalent in the state where the registered office of the company is to be situated.

#### **6. Signing of MOA & AOA: sec 15:**

To be signed by each subscriber (7 in the case of public company or 2 in the case of private company as the case may be or his duly appointed power of attorney indicating such capacity) and add his address, description and occupation if any.

## **7. Dating of memorandum and articles:**

The memorandum and articles are then dated, but the date must be a date of stamping or later than the date of their stamping and not in any event a date prior to the date of their stamping.

## **8. Copy of proposed agreement:**

If a company purpose to enter into an agreement with any incorporation individual for appointment as a managing director, or a whole-time director or manager, a copy of such an agreement should also be filed with the register of companies along with the other document.

## **9. Power of attorney:**

With a view to fulfilling various formalities that are required for incorporation of a company, the promoters may execute a power of attorney in favour of one of them or an advocate or some other professional like the chartered accountant or a company secretary.

## **10. Consent of the directors:**

According to section 266, in the case of a public limited company having share capital, person cannot be appointed as a director by the articles of association unless, he as before the registration of the articles, either himself or through his agent, signed and filed, with the registrar, his consent in writing to act as director.

## **11. Particulars of Directors along with DIN:**

Were a company by its articles of association appoint any person or persons as a directors, manager or secretary it may also file their particulars in e form 32, duplicate, with the registrar at the time of incorporation. It may be noted that o form 32 can be filed within 30 days of incorporation.

## **12. Filling of agreement. The agreement if any, which the company proposes to, enter into with any individual for appointment as it's:**

Managing director

Whole-time director

Manager

## **13. Notice of registered address:**

According to section 196 of the companies act, a company shall as from the day on which it begins to carry on business or within 30 days of its incorporation, whichever in earlier should have registered office.

#### **14. Statutory declaration of compliance:**

Section 33(2) requires a declaration to be filed with the register of companies. This is known as 'statutory declaration of compliance'.

#### **15. Filing of documents for registration:**

It is pertinent to mention that the documents are required to be filed with the register of companies of the state in which the company is proposed to be incorporated.

#### **CERTIFICATE OF INCORPORATION:**

On registration the registrar will issue certificate of incorporation where by he certifies that the company is incorporated and in the case of a limited company that is section 34(1).

#### **Legal effect of incorporation is as under:**

- A company becomes a body corporate distinct from its members.
- A company has a perpetual succession and common seal.
- A company can sue and be sued in its own name.
- A company has right to hold its own property.

#### **Conclusiveness of the certificate of incorporation:**

- ✓ All the requirements of the act have been complied with respect of registration.
- ✓ The company is duly registered.
- ✓ That the company comes into existence on the date mentioned in the certificate.

#### **Duties of the secretary at the incorporation stage:**

- ❖ To take necessary steps for deregistration
- ❖ To see that all the legal formalities
- ❖ To send the notice to the registered office within 30 days after the date of
- ❖ To take steps to file a copy of the prospectus with the register.
- ❖ To arrange for the opening of a bank account.
- ❖ To have the common seal of the company prepared according to the design.
- ❖ To make necessary arrangements for receiving applications for shares.
- ❖ To take steps for making proper application to the stock exchange for listing of the shares.

## **COMMENCEMENT OF BUSINESS**

A private company or a company having no share capital can start business cordite from the date of its incorporation.

But public company having share capital has to obtain to certificate of commencement before it can start business registration.

## **CAPITAL SUBSCRIPTION:**

When a company has been registered and has received certificated of incorporation, it ready for recurring capital necessary to commands business and to carry on its operations sates factory.

It may be noted a private company is prohibited form inviting public to subscribe to its share capital. It has to raise the necessary capital from friends and relatives by private agreement.

### **Duties of secretary at the subscription stage:**

- To prepare draft copy of prospectus.
- To arrange for convincing and holding the first meeting of the board of the directors. To arrange for the printing of the application firm of shares.
- To take necessary steps to approve.
- To take necessary steps to approve the appointment of secretary, auditors, bankers at the board meeting.

## UNIT - III

### MEMORANDUM OF ASSOCIATION

#### Meaning:

The first step in the formation of a company in the preparation of a document called “Memorandum of Association”. Preparation of memorandum of association is mandatory and essential for every company.

#### Definition:

According to section 2 (56) of the companies Act, 2013 Memorandum means “the memorandum of association of a company as originally framed or as amended from time to time in pursuance of any previous company law or of this Act”.

#### PURPOSE OF MEMORANDUM OF ASSOCIATION

- The Act requires that the memorandum of association shall be drawn in accordance with the Tables A, B ,C,D&E in schedules 1<sup>st</sup> of the Act.
- The purpose of memorandum of association is to facilitate the shareholders, creditors and those dealing with the company about the allowable range of activities of the company.
- It specifies the purpose for which the investment is going to be utilised. it also informs the risk factors involved in it.
- Memorandum of Association must be signed but at least seven persons in case of a public company and two persons in case of private company. In case of one Person Company it has to be signed by one person.
- One witness has to attest the signature of the subscribers to the Memorandum. Subscriber has to specify the number of shares he under takes to subscribe.

*The following particulars of the subscribers and witnessed to be furnished:*

- Name
- Designation
- Address
- Occupation, etc...

In case the subscriber is illiterate, he has to affix his thumb impression.

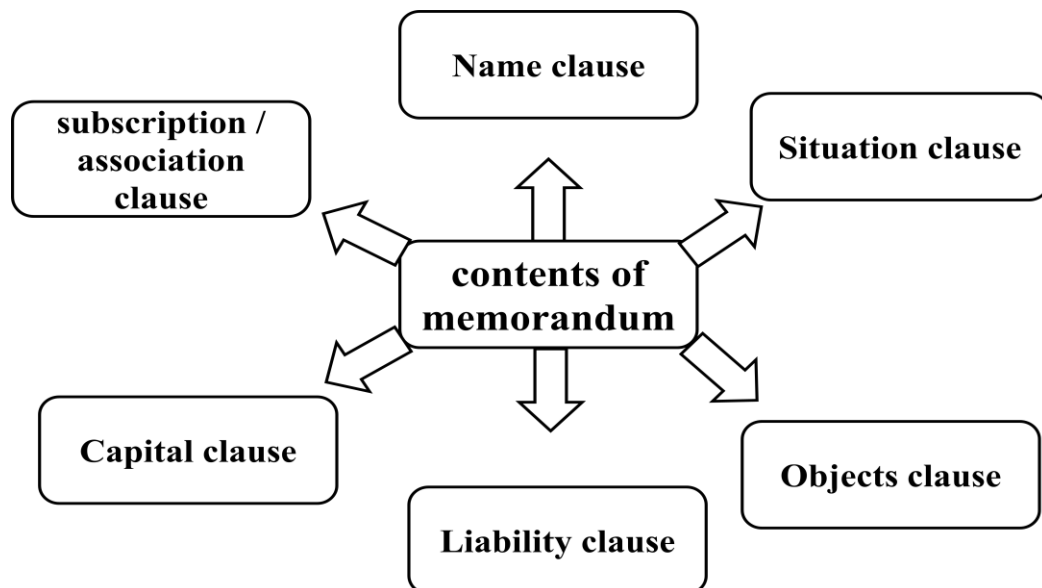
## CONTENTS OF MEMORANDUM OF ASSOCIATION

Section 4(6) of the companies Act, 2013 provides that the Memorandum of Association should be in any one of the forms specified in tables A, B, C, D (or) E of schedule 1 of the Act

<b>FORMS</b>	<b>APPLICABILITY</b>
Table-A	Company limited by shares
Table-B	Limited by guarantee not having a share capital
Table-C	Limited by guarantee having a share capital
Table-D	companies not having a share capital
Table-E	Unlimited companies having a share capital.

Section A of the companies Act, 2013 states that the memorandum of association must contain the following,

- Name clause
- Situation clause
- Objects clause
- Liability clause
- Capital clause
- Subscription / Association clause



**Name clause:**

Name clause is the first clause of the memorandum of association and this clause states the name of the company. A company being a separate legal entity can have a name of its own in order to distinguish it from other companies. A company can adopt any name of its choice. Proper care has to be taken while deciding the name of the company, while selecting the name of the company, the name which is already in existence or the name another should be avoided.

The name of the company must end with the word “Limited” in the case of a public limited company and “Private limited” in the case of a private limited company. In case of one Person Company it has to specify in brackets (one Person Company).

**Situation clause:**

Situation clause is the second clause of the Memorandum and it specifies the state in which the registered office of the company is situated. The address of Registered office is not required to be mentioned in the Memorandum of Association. It has to mention only the state in which the registered office of the company is situating company should decide upon the address of the registered office within 15 days of its incorporation.

**Objects clause:**

Objects clause is the third and most important clause as determines the purpose and competence of the company. The purpose for which the company is formed must be clearly mentioned in the clause. The clause must state the objects for which the company is proposed to be incorporated. A company can have any object, but the only condition is that it should not go against the law.

**Liability clause:**

Liability clause is the fourth clause and it states the liability of its members.

*Company limited by shares:*

The company must state the liability of its members is limited to the amount unpaid, if any, on shares held by them.

*Company limited by guarantee:*

The company must mention the amount up to which each member undertakes to contribute to the assets of the company in the event of its being wound up.



### *Company having share capital*

The company has to mention the amount of share capital with which the company is to register.

#### **Capital clause:**

Capital clause is the fifth clause which must state the amount of capital with which the company is registered. The amount of authorized nominal capital is mentioned under this clause.

#### **Subscription / Association clause:**

Association / subscription clause is the last and final clause of the Memorandum of Association. The statutory requirements regarding subscription of Memorandum are that. Each subscriber must take at least one share.

Each subscriber must write his name, the number of shares which he agrees to take, (section 4 (1) (e) ) the Memorandum of Association shall be signed by at least 7 subscribers in the case of a public company and by at least 2 subscribers in the case of a private company.

### **IMPORTANCE OF MEMORANDUM OF ASSOCIATION**

- ❖ The memorandum of association is an extremely important document in relation to the affairs of the company.
- ❖ It is a document which sets out the constitution of the company and is really the foundation on which the structure of the company is based.
- ❖ It contains the fundamental conditions upon which alone the company is allowed to be incorporated.
- ❖ Its five clauses provide the basic feature of the company's constitution.
- ❖ After registration of the company the memorandum becomes a public document. While the memorandum must apply with the provisions of the companies Act, all other documents of the company must comply with the memorandum.

### **ALTERATION OF MEMORANDUM OF ASSOCIATION**

Section 13(1) of the companies Act, 2013 provides that a company may alter the provisions of its memorandum by passing a special resolution. A company may alter its Memorandum of Association in the following cases:

- Change of name.
- Change of state in which the registered office is to be situated.
- Alteration of its objects.
- Alteration of its share capitals.
- Re-organisation of its share capital.
- Reducing its capital.

### **Alteration of Name clause:**

*Change of name:* A company can change its name by passing a special resolution and with the approval of central government in writing.

*Rectification of name:* Rectification of the name of the company is required to be carried out if through inadvertence or otherwise a company is registered by a name which is identical with or too nearly resembles the name of the company already in existence.

*Provision relating to change of name for limited companies:* Listed companies which desire to change their name shall comply with the following conditions:

- ✓ At least one year should have been elapsed from the last name change.
- ✓ At least 50 % of its total revenue in the preceding one year should have been accounted for by the new activity suggested by the new name.
- ✓ The new name along with the old name shall be displayed through the websites of the respective stock exchange where the company's securities are listed.

*Effect of change of name:* The change of name shall not:

- Affect any rights (or) obligations of the company.
- Render defective any legal proceedings by or against the company.
- Affect any legal proceedings by or against the company and pending in the old name.

As per rule 29 of the company's incorporation rules, 2014.

Change of name shall not be allowed to a company which has default in:

- a) Filing its annual returns (or)
- b) Financial statements (or)
- c) Any documents due for filing with the registrar.
- d) Default in repayments of matured deposits or debentures
- e) Default in repayment of interest on deposits or debentures.

**Alteration of situation clause:**

Alteration of situation clause may be of the following types:

*Change within the local limits of same town:*

- A company can change its registered office from one place to another within the local limits of the city, town or village. Where it is located by passing a board resolution.
- Within 15 days of such changes, a notice in form No. INC 22 has to be filed with the registrar of companies.

*Change from one city to another city within the state:*

- A company can change its registered office from one city, town or village to another city, town or village within the same state by passing a special resolution in the general meeting.
- Within 15 days of such change, a notice of the change is required to be given to the registrar in form No. INC 22.

*Change of registered office from one state to another state:*

- A company can change its registered office from one state to another by passing a special resolution in the general meeting which must be confirmed by the central Government on an application made to it.
- On receiving the application, the central Government shall dispose the application within a period of 60 days.
- Alteration of the Memorandum of Association is mandatory.

- The confirmation order of the central Government approving the alteration shall be filed with the Registrar of each states within the prescribed time.
- The registrar of the state where the registered office is being shifted to shall issue a fresh certificate of incorporation.

**Alteration of object clause:**

- a. Section 13(1) of the companies Act, 2013 empowers the company to alter its objects clause by passing a special resolution. A copy of the special resolution must be filed with the registrars of companies within 30 days of passing the resolution.
- b. In case of a listed company, the special resolution for a alteration in the objects clause of the Memorandum of Association needs to be passed through postal ballot in terms of section 110.
- c. The registration shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of 30 days from the date of filing of the special resolution.

Rules 32 of companies incorporation rules states that:

- When a company has raised money from public through prospectus and has any unutilised amount of the money so raised, it shall not change the objects for which the money so raised.
- The advertisement giving details of each resolution to be passed for change in objects which shall be published simultaneously with the dispatch of postal ballot notices to shareholders.
- The registrar shall register the alteration of the Memorandum with respect to the objects of the company and certify the restriction within a period of 30 days from the date of filing the special resolution.

**Alteration of liability clause:**

The companies Act, 2013 does not contain any provisions relating to alteration of liability clause.

The liability clause of an unlimited company can be altered as a limited company subject to the following conditions:

- The registrar shall close the past registration of the company.
- New registration shall take effect as if it were the first registration.
- The alteration will not affect any debts, liabilities, obligations or contracts entered into before the conversion.

**Alteration of capital clause:**

A limited company having a share capital may if so authorized by its articles, alter its share capital. The company has to pass an ordinary resolution and a copy of the resolution specifying the shares consolidated, sub-dividend, converted, reconverted, redeemed or cancelled shall record the same in the memorandum of the company.

**Alteration of subscription clause:**

The subscription clause of the memorandum of association cannot be altered.

**DOCTRINE OF ULTRA VIRES:**

The term “ultra” means “beyond”, “vires” means “power”. A company is bound to act within the limits specified in the Memorandum and Articles of Association. An Act which is ultra vires the company is incapable of rectification. It is void and does not bind the company cannot sue or be sued upon. Therefore the term ultra vires means that the doing of the Act is beyond the scope and powers of the company.

This doctrine of ultra vires rule is meant to protect the shareholders and creditors of the company.

***Purpose:***

- ❖ The doctrine serves two purposes. It protects the shareholders. By it they are assured that investments are not spent on activities which they did not have in mind when they invested in the company.
- ❖ It safeguards the interests of the creditors as the property of the company cannot be diverted to unauthorised objects.

- ❖ The purpose of the ultra vires rule is to ensure, that an investors in a gold mining company did not find himself holding shares in friend fish shop and to give those who allowed credit to a limited company some assurance that its assets would not be dissipated in unauthorised enterprises.
- ❖ The doctrine of ultra vires in intended to protect the shareholders who invest money in the capital of the company and the creditors who deal with it on the basis of range of company’s permitted activities as set out in the Memorandum of Association.

## **ARTICLES OF ASSOCIATION**

### **Meaning:**

Articles of association sets the manner in which the business of the company is to be conducted. They are its by-laws governing the internal management. Articles of Association establish a contract between the company and the members and also between the members inter 80.

### **Definition:**

According to section 2(5) of the companies Act, 2013 “Articles” mean the Articles of a company as originally framed or as altered from time to time in pursuance of any precious company law or of this Act.

## **DISTINCTION BETWEEN MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION**

<b>S.No.</b>	<b>Memorandum of association</b>	<b>Articles of association</b>
<b>01.</b>	Memorandum of association is the constitution of charter of the company defining its objects.	Articles of association consist of rules and regulations framed to govern the internal management of the company.

<b>02.</b>	A company cannot carry out carry out its activities beyond the scope of its memorandum.	Articles provide for regulations within the parameters of memorandum.
<b>03.</b>	Memorandum of association defines the relationship of the company with outsiders.	Articles of association regulates the relationship between the company and a member and also between the members inter section.
<b>04.</b>	Acts done by the company beyond the scope of memorandum are void and ultra vires. It cannot be rectified.	Acts of the directors beyond the articles can be rectified by the shareholders.
<b>05.</b>	Memorandum of association cannot include any class contrary to the provisions of companies Act.	Articles of association are subsidiary both to the companies Act and Memorandum of Association.
<b>06.</b>	Clause of the memorandum are not easily alterable, which in some cases requires approval of central Government/ Tribunal / shareholders.	Articles may be altered by passing a special resolution. There is there is no need to obtain any permission for Alteration of articles of Association.

## **CONTENTS OF ARTICLES OF ASSOCIATION**

A company has to take utmost care while preparing the articles of association. It must contain all those matters which are essential for the working of the company.

*The articles of association generally contain the following matters:*

- Adoption of preliminary contracts.
- Exclusion wholly or in part of table “F”.
- Number and value of shares.

- Issue of preference shares.
- Allotment of share.
- Calls on money.
- Lien on shares.
- Share capital, right of shareholders, variation of rights, payment of commission, share certificates.
- Transfer of shares.
- Transmission of shares.
- Forfeiture of shares.
- Issue of debenture and stock.
- Conversion of shares into stock.
- Share warrants.
- Alteration of capital.
- Buy back of shares.
- General meetings.
- Directors meetings.
- Borrowing powers.
- Common seal.
- Voting rights of members, voting and poll, proxies.
- Directors their appointments and delegation of powers.
- Managing directors, whole time directors, manager, secretary their appointment, remuneration, qualifications, powers.
- Nominee directors.
- Additional directors.
- Audit committee.
- Dividends and reserves.
- Accounts and audit.
- Borrowing power.
- Capitalisation of reserves.
- Winding up.



## **ALTERATION OF ARTICLES OF ASSOCIATION:**

A company can alter its articles by passing a special resolution. Alteration of Articles of Association is subject to the following:

- The alteration of Articles of Association must not exceed the powers given by the memorandum.
- The alteration must not contain any provisions contrary to the Memorandum of Association and companies Act.
- Alteration must be a bonafide for the benefit of the company.
- Alteration must not constitute a fraud on the minority by a majority.
- Articles cannot be altered. So as to compel on existing member to take as subscribe more shares.
- No alteration made in the article which has the effect of converting a public company into a private company shall have effect unless such alteration has been approved by the central Government.
- Articles cannot be altered. So as to have retrospective effect.
- Alteration must not be inconsistent with an order of the court

## UNIT-IV

### PROSPECTUS

#### **Meaning:**

A prospectus means any invitation issued to the public inviting it to deposit money with the company or to take shares or debentures of the company. Such invitation may be in the form of a document or a notice, circular, advertisement etc.

**Definition:** Sec. 2(36) of the Companies Act describes a prospectus as “Any document 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 share in, or debentures of a body corporate.”

#### **The features and characteristics of the prospectus**

- (i) It is a document issued as a prospectus;
- (ii) It is an invitation to the member of the public;
- (iii) The public is invited to subscribe to the shares or debentures of the company;
- (iv) It includes any notice, circular, advertisement inviting deposits from the public;
- (v) It is a document by which the company procures its share capital needed to carry on its activities.

#### **LEGAL REQUIREMENTS FOR THE ISSUE OF A VALID PROSPECTUS**

Issue of prospectus, in order to be valid, must satisfy the following legal requirements:

##### **1. *Obligations of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009:***

These regulations inter-alia deal with appointment of Lead Merchant Banker, Bankers to the issue, Registrar to the issue, filing of various documents along with a draft prospectus, pricing of the securities, promoter’s contribution, minimum public offer, and disclosure in the offer document. The company is required to file a draft offer document through the lead merchant banker to the SEBI, at least 30 days prior to registering the prospectus with the Registrar of Companies.

##### **2. *It must be dated:***

Every prospectus must be dated. The date given in the prospectus shall be taken to be the date of its publication unless proved to the contrary. (Sec. 55) Date of filing of the

prospectus with the Registrar is taken to be the date of its issue. Date of issue of the prospectus may, however, be different from the date of its publication.

**3. *It must be registered:***

A copy of every prospectus must be signed by every director or proposed director and filed with the Registrar for registration before it is issued to the public. Subsequent issues of copies of the prospectus must state on their face that a copy has been so filed. The copy sent for registration must be accompanied with the following documents:

- (a) If the report of an expert is to be published, his written consent to such publication;
- (b) Written consent of all those persons whose names are mentioned in the prospectus as auditors, legal advisors, solicitors, bankers, etc.

**4. *Expert's consent to be obtained:***

If the prospectus includes a statement purporting to be made by an expert, it must not be issued, unless the expert was an independent person competent to make such reports and had given his written consent to the issue thereof and has not withdrawn such consent before the delivery of a copy of the prospectus for registration and a statement to that effect appears in the prospectus. (Sec. 58).

**5. *Terms of the contract not to be varied:***

The terms of any contract stated in the prospectus or statement in lieu of prospectus cannot be varied after registration of the prospectus except with the approval of the members in general meeting. (Sec. 61)

**6. *Every application form to be accompanied with a copy of prospectus or abridged prospectus:***

Every form of application for subscribing the shares or debentures of a company shall not be issued unless it is accompanied by a prospectus or an abridged prospectus, unless the offer or invitation has not been made to the public.

**7. *Disclosure Requirement and Contents as per Schedule II:***

Every prospectus issued by a company must state the matters specified in Part I of the Second Schedule to the Act and contain reports specified in Part II of the Schedule, and that the said Parts I and II shall have effect subject to the provisions contained in Part III of the Schedule.

## **FORMS AND CONTENTS OF THE PROSPECTUS**

Sec. 56 states that every prospectus must

- i. State the matters specified in Part I of Schedule II, and
- ii. Set out the reports specified in Part II of Schedule II.

### **Part I of Schedule II—Matters to be Specified:**

#### **(a) The contents of the Memorandum:**

It expresses the name of the company, objects, nature of business, share capital and its division, liability of members, names and addresses of the signatories and the number of shares subscribed by them.

#### **(b) The qualification shares of the Directors:**

If the Articles of the company provides that certain minimum number of shares to be possessed by the directors as qualification, in that case, a person shall not be qualified to act as a director unless he holds such number of shares.

#### **(c) No. of redeemable preference shares:**

Particulars regarding debentures and redeemable preference shares with their date of redemption must be stated.

#### **(d) Remuneration of the Directors and Promoters:**

The prospectus must contain the rate of remuneration for attending meetings and for other services of the Directors and Promoters.

#### **(e) The names, descriptions and addresses of the Directors and Managing Directors:**

The names, addresses, descriptions, occupations of the Directors, Managing Directors, Managers and the provisions regarding their appointment must be stated.

#### **(f) The Minimum Subscription:**

The minimum subscription on which the directors may proceed to allotment and the amount payable on application, allotment etc. on each share should also be stated in the prospectus.

#### **(g) Time of opening:**

The time of the opening of subscription list should also be stated.

**(h) Names and Addresses:**

The names and addresses of vendors, if any, and the mode of payment of purchase price and goodwill should also be contained in the prospectus.

**(i) Underwriting Commission, Brokerage etc.:**

The names of underwriters and the opinion of the directors regarding their financial position and business integrity should also be stated clearly.

**(j) Names of the auditors with their addresses:**

The reputation of the auditors is also an important factor necessary for public patronage.

**(k) Particular of Contracts:**

The dates of and parties to every material contract, and reasonable time and place of its inspection are also significant.

**(l) Preliminary Expenses:**

The estimated amount of preliminary expenses to be incurred should also be furnished.

**(m) Particulars of Directors:**

Full particulars of the nature and interest of every director or promoter in the promotion of or in the property proposed to be acquired by the company within two years with statement of all sums paid or agreed to be paid to him in cash or shares for service rendered.

**(n) Disclosure:**

Full disclosure on these matters should also be made in the prospectus.

**(o) Expected rate of dividend and voting rights:**

The rights of shareholders relating to voting, meeting and dividends along with the nature and extent of restrictions to be imposed by Articles on their right to transfer shares should also be stated in clear and convincing terms.

**Part II of Schedule II— Reports to be set out:**

**(a) Report by the Auditor:**

**An audit report of the company relating to:**

(i) Its profits and losses, assets and liabilities,

(ii) The dividend paid by the company during the five financial years preceding the issue of prospectus should also be furnished.

**(b) Report by the Accountant:**

The accountant should also state a report relating to profits or losses and assets and liabilities on a date which must not be more than 120 days before the date of issue of the prospectus.

## **MIS-STATEMENTS IN PROSPECTUS:**

Mis-statements and false statements in the prospectus are instruments by which dishonest company promoters may practice fraud on the public money. In order to prevent this practice, the law imposes certain duties and liabilities on those persons who are responsible for such issues.

If, however, the prospectus contains any mis-statement of a material fact or if the prospectus wants in any material fact, two types of liabilities will arise.

### **They are:**

*(1) Civil Liability*

*(2) Criminal Liability*

Before discussing the above, we are to know the liability which may arise for Untrue Statement. It is the duty of the authors of the prospectus to see that the prospectus does not contain any untrue statement which may mislead the public.

**According to Sec. 65 of the Companies Act, Untrue Statement' in connection with a prospectus shall deem to include:**

- (i) A statement which is misleading in the form and context in which it is included, and
- (ii) An omission which is calculated to mislead.

In short, untrue statement means and includes any statement which is not only a false statement but also a statement which creates a wrong impression of actual fact. Concealment of material fact is also treated as mis-statement or untrue statement.

### **(1) Civil Liability:**

Sec. 62(1) of the Companies Act states that such persons are liable to pay compensation for any loss or damage which any person may suffer from the purchase of any share or debenture on the basis of the untrue statement. Consequently, a person who has suffered a loss may claim contribution from the others who were associated relating to issue of prospect until it appears that he was guilty of fraud while the others were not proved to be guilty.

### **(2) Criminal Liability:**

According to Sec. 63(1) of the Companies Act, every person who has authorized the issue of a prospectus containing untrue statements shall be punishable with imprisonment which may extend to two years or with fine which may extend to Rs. 5,000—or both.

**Penalty:**

Sec. 68 of the Companies Act provides that a person shall not, either knowingly or recklessly, by making any statement, promise or forecast which is false, deceptive or misleading or, by any dishonest concealment of material facts, induce or attempt to induce another person to enter into or to offer to enter into any

- (i) agreement for acquiring, disposing-off, subscribing for or underwriting shares or debentures;
- (ii) agreement, the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of shares or debentures, or by inference to fluctuations in the value of shares or debentures.

Otherwise, he shall be punishable with imprisonment for a term which may extend to 5 years or with fine which may extend to Rs. 10,000—or with both.

**Persons who are liable for untrue statements in the prospectus:**

**According to Sec. 62 (1) of the Companies Act, the following persons are liable and punishable for untrue statements in the prospectus:**

- (a) Every person who is a director of the company at the time of the issue of the prospectus;
- (b) Every person who has authorized himself to be named and is named in the prospectus either as a director or as having agreed to become a director, either immediately or after an interval of time;
- (c) Every person who is a promoter of the company; and
- (d) Every person who has authorized the issues of the prospectus.

**Defense available in an action on the prospectus:**

The parties against whom the proceeding have been taken for mis-statement in the prospectus may use certain pleas as their defense:

**1. Defenses against the Civil Liability:**

*According to Sec. 62(2) of the Companies Act, no decree for damage shall be passed if the person charged can prove any one of the followings:*

**(a) Withdrawal of consent:**

A person is not liable if he withdrew his consent before the issue of the prospectus.

**(b) Issue without knowledge and consent:**

If the person can prove that the prospectus was issued without his knowledge or consent and, after becoming aware of its issues, he gave public notice that the same was issued without his knowledge and consent.

**(c) Statement of an expert:**

If the statement which is alleged to be untrue purports to be a statement of an expert or a copy or of a valuation report of an expert, the person charged can be discharged from his liability if he can prove:

- (i) It is a fair and correct copy or representation or extract of the expert's statement;
- (ii) He had reasonable grounds to believe;
- (iii) The expert had given his consent to the issue of the prospectus;
- (iv) The expert had not withdrawn his consent before registration.

**(d) True Statement:**

The person charged can escape from his liability if he can prove that he had reasonable ground to believe and did, up to the time of the allotment of shares or debentures, believe that the statement was true.

**2. Defences available to an expert:**

**Sec. 62(4) states that an expert whose opinion was included in the prospectus can use the following as defence:**

**(a) Withdrawal of consent:**

After giving consent, he withdrew it in writing before delivery of a copy of the prospectus for registration.

**(b) Knowledge of untrue statement:**

If the person, on becoming aware of the untrue statement, withdrew his consent in writing and gave public notice with reasons thereof, after delivery of the copy of the prospectus to and before allotment.

**(c) True statement:**

He was competent to make such statement and he had reasonable grounds to believe and did up to the time of the allotment of shares and debentures, believe that the statement was true.

**3. Defense's against Criminal Liability:**

*Sec. 63(1) states that a person charged in a criminal court will be acquitted if he can prove any one of the following:*

- (a) That the statement was immaterial, or



(b) That he had reasonable grounds to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

### Who is an underwriter?

An underwriter is a person who agreed to take specified number of shares or debentures or specified amount of debenture stock in the case of under – subscription.

### Who is a broker?

A **broker** is an individual or firm that acts as an intermediary between an investor and a securities exchange. A **broker** can also refer to the role of a firm when it acts as an agent for a customer and charges the customer a commission for its services.

### DIFFERENCE BETWEEN BROKERS AND UNDERWRITERS

No	Brokers	Underwriters
(1)	A Broker is a person who buys and sells goods or assets for others.	An underwriter is a person or company that underwrites an insurance risk.
(2)	A broker is entitled to receive Commission only on those shares are debentures for which he procures subscription.	While an underwriter receives underwriting Commission on the entire issue which he underwritten.
(3)	Even where the shares or debentures are not offered to the public, the brokerage is payable on shares or debentures for which subscription is procured.	In case, of Underwriters, An underwriting commission is payable only on those shares or debentures which are offered to the public.
(4)	Broker's percentage of brokerage is determined as per prevailing rate	Underwriting commission is payable but it should not exceed 5% of the issue price of shares and 2.5 % of the issue price of debentures.
(5)	The brokers are entitled to brokerage even if the Article of Association of a company is silent on this point.	In case of Underwriters, only if the Article of an Association authorized underwriting Commission, the underwriters are entitled to get such Commission.

(6)	In case, of Broker, It is not required the name and address of each broker is to be disclosed in the prospectus.	While in case of underwriters the name of location and address of each one is to be shown in the prospectus.
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## SHARES

**Meaning:** A **share** is a percentage of ownership in a company or a financial asset. Investors who hold **shares** of any company are known as shareholders.

**Definition:** According to section 2(46) a share means, “A shares in the shares capital of a company and includes stock except where a distinction between stock and shares is expressed or implied”.

## STOCK

Stock is expressed in terms of money and not as so many shares. A stock is a general term used to describe the ownership certificates of any company.

## DIFFERENCE BETWEEN STOCK AND SHARE:

### Definition:

‘Stock’ represents the holder’s part-ownership in one or several companies. Meanwhile, ‘Share’ refers to a single unit of ownership in a company.

### Ownership:

When an individual owns shares of several companies, you can say that they own stocks.

But if someone bought shares of a specific company, they only own shares.

### Denomination:

Individuals who own stocks have the option to choose different stocks of different values.

Those who own shares in a specific company can, of course, own multiple shares. But the shares will only be of the same or equal value.

**Paid-up value:**

Stocks are always fully paid-up in nature.

However, shares could be either partly or fully-paid up.

**Nominal value:**

This value is assigned to each share at the time the stock is issued.

It is different from the market value which varies based on demand for and supply of the shares.

**Kind of investment:**

Shares can refer to a large group of financial instruments known as securities. They can include mutual funds, exchange-traded funds (ETFs), limited partnerships, real estate investment trusts, etc.

But stocks particularly refer to corporate equities and securities traded on a stock exchange.

**DIFFERENT TYPES OF SHARES**

There are two—Equity shares and Preference shares.

**Equity shares**

Equity shares are also referred to as ordinary shares. They are one of the most common kinds of shares. These stocks are documents that give investors ownership rights of the company. Equity shareholders bear the highest risk. Owners of these shares have the right to vote on various company matters. Equity shares are also transferable and the dividend paid is a proportion of profit. One thing to note, equity shareholders are not entitled to a fixed dividend. The liability of an equity shareholder is limited to the amount of their investment. However, there are no preferential rights in holding.

*Equity shares are classified as per the type of share capital.*

**Authorized share capital:** This is the maximum amount of capital a company can issue. It can be increased from time to time. For this, a company needs to conform to some formalities and also pay required fees to legal entities.

**Issued share capital:** This is the portion of authorized capital which a company offers to its investors.

**Subscribed share capital:** This refers to the portion of issued capital upon which investors accept and agree.

**Paid-up capital:** This refers to the portion of the subscribed capital for which the investors pay. Since most companies accept the entire subscription amount at one go, issued, subscribed, and paid capital are the same thing.

There are a few other types of shares.

**Right share:** These are the kind of shares a company issues to its existing investors. Such stocks are issued to protect the ownership rights of existing shareholders.

**Bonus share:** Sometimes, companies may issue shares to their shareholders as a dividend. Such stocks are called bonus shares.

**Sweat equity share:** When employees or directors perform their role exceptionally well, sweat equity shares are issued to reward them.

**Preference shares:**

When a company is liquidated, the shareholders who hold preference shares are paid off first. They also have the right to receive profits of the company before the ordinary shareholders.

**Cumulative and non-cumulative preference shares:** In the case of cumulative preference share, when the company does not declare dividends for a particular year, it is carried forward and accumulated. When the company makes profits in the future, these accumulated dividends are paid first. In case of non-cumulative preference shares, dividends do not get accumulated, which means when there are no future profits, no dividends are paid.

**Participating and non-participating preference shares:** Participating shareholders have the right to participate in remaining profits after the dividend has been paid out to equity shareholders. So in years where the company has made more profits, these shareholders are entitled to get dividends over and above the fixed dividend. Holders of non-participating preference shares, do not have a right to participate in the profits after the equity shareholders have been paid. So in case a company makes any surplus profit, they will not get any additional dividends. They will only receive their fixed share of dividends every year.

**Convertible and non-convertible preference shares:** Here, the shareholders have an option or right to convert these shares into ordinary equity shares. For this, specific terms and conditions need to be met. Non-convertible preference shares do not have a right to be converted into equity shares.

**Redeemable and Irredeemable preference shares:** Redeemable preference shares can be claimed or repurchased by the issuing company. This can happen at a predetermined price and at a predetermined time. These do not have a maturity date which means these types of shares are perpetual. So, companies are not bound to pay any amount after a fixed period.

## **APPLICATION AND ALLOTMENT OF SHARES**

A private company can start business as soon as it gets the certificate of incorporation. It is prohibited by law to issue any prospectus, inviting the general public to subscribe towards its share capital. The shares are taken up privately by the promoters and their relatives and friends. But in case of public company, a proper procedure has been laid down in the Companies Act for the issue and allotment of shares. The following are the main provisions of the Companies Act relating to the issue and allotment of shares.

### *Provisions of company's act relating to issue and allotment of shares*

1. A public company must file a **prospectus or statement** in lieu of prospectus, inviting offers from the public for the purchase of shares in the company.
2. After studying the prospectus, the **public applies for shares of the company** in the printed prescribed forms. The company can ask for the **issue price of the share** to be paid in full along with the application or it can be payable in installments as share application money, share allotment money, share first call, share second call and so on. The amount payable as application money must be at least 5 percent of the nominal amount of the share.
3. No allotment of shares can be made unless the '**Minimum Subscription**' as given in the prospectus had been subscribed or applied for. Minimum Subscription is the minimum amount which, in the estimate of the directors, is required to run the business. It has to be stated in the prospectus.
4. The amount of **share application money must be deposited in a bank**. It can be operated by the company only after getting the certificate of commencement.
5. If the minimum subscription amount of 90% of the issue was not achieved by the company within 60 days from the date of closure of the issue, the company has to refund the entire subscription amount immediately. For any delay beyond 78 days, the company has to pay an **interest of 6% per annum**.

After allotment, the directors can call upon the shareholders to pay the full amount due on shares in one or more installments as mentioned in the prospectus. The articles of a company

usually contain provisions regarding calls. If there is no such provision in the Articles, the following provisions shall apply:

- No call shall be for more than 25% of the nominal value of each share.
- Interval between any two calls should not be less than one month.
- At least 14 days' notice must be given to each member for a call specifying the amount, date and place of payment.

## **CALLS ON SHARES**

Reputed companies require the applicants to send the full value of the shares along with the applications. This is because, the Companies Act does not prohibit companies to collect the entire amount at the time of issue itself. But the usual practice of the companies is to collect a certain percentage of the face value of the shares on application and allotment and the balance in one or more installments known as calls.

**Definition:** A call may be defined as a demand made by the company on its shareholders to pay a part or the whole of the unpaid balance within a specified time. Lord Lindley says that the expression "Call" denotes both the demand for money and also the sum demanded.

## **LEGAL PROVISIONS RELATING TO THE CALLS**

The statutory provisions relating to the making of calls can be summed up as follows:

**Bona fide:** The power to make call is generally in nature of a trust and so it can be exercised bona fide and for the benefit of the company. It should not be made for private ends. It means the directors or the liquidator can make the call only when there is a bona fide need for funds.

**Uniformity:** The calls should be made on an uniform basis on all the shares falling under the same class . If a call is made only on some shareholders of the same class but not on others or a greater amount is demanded from some shareholders and a lesser amount from others of the same class, the call is not valid.

**Provisions of the Articles:** The calls should be made strictly in accordance with the provisions of the Articles. If this is not done, the call will be invalid.

### *Procedure for making Calls*

Generally, the procedure for making calls is incorporated in the Articles of most companies. If a company has its own Articles, it should follow the provisions of its Articles. If not, the regulations specified in Table A of the Act shall apply.

*The following provisions of Table A can be noted at this stage.*

1. The power to make calls generally vests in the Board of Directors.
2. The calls should be made by passing a resolution at the meeting of the Board.
3. The call money should not exceed 50% of the face value of the share at one time. However, companies may have their own Articles and raise this limit.
4. There must be at least 30 days interval between two successive calls.
5. When a call is made a letter known as “**Call Letter**” or “**Call Notice**” should be sent to all the shareholders of the same class.
6. The notice should also specify the amount of the call, place of payment etc. and should be sent at least 14 days before the last date for payment.
7. The Board of directors has the power to revoke or postpone a call after it is made.
8. Joint shareholders are jointly and severally liable for payment of calls.
9. If a member fails to pay call money, he is liable to pay interest not exceeding the rate specified in the Articles or terms of issue. The directors are free to waive the payment of interest.
10. If any member desires to pay the call money in advance, the directors may at their discretion accept and pay interest not exceeding the rate specified in the

### **SHARE CERTIFICATES.**

Share certificates are documents issued by companies that sell shares in the market. A shareholder receives a share certificate as a receipt of his or her purchase and to reflect ownership of a specified number of shares of the company.

*Details to be provided in a share certificate*

Every share certificate issued in India should contain the below mentioned:

1. Name of issuing Company
2. CIN no. (Corporate Identification Number) of such Company
3. Address of the company’s registered office
4. Name of owners of such shares
5. Folio number of members
6. Number of shares which is represented by such share certificate
7. An amount which is paid on such shares
8. Distinct number of the shares

## SHARE WARRANT

A Share Warrant is a document issued by the company under its common seal, stating that its bearer is entitled to the shares or stock specified therein. Share warrants are negotiable instruments. They are transferable by mere delivery without registration of transfer.

### *Conditions for issuing share warrants*

The following conditions should be satisfied for issuing share warrants.

1. Only a public company can issue share warrants.
2. It must be authorized by the Articles of Association.
3. The shares must be fully paid-up.
4. The approval of the Central Government is necessary.

## DIFFERNCE BETWEEN SHARE CERTIFICATE AND SHARE WARRANT

<b>BASIS FOR COMPARISON</b>	<b>SHARE CERTIFICATE</b>	<b>SHARE WARRANT</b>
Meaning	A legal document that indicates the possession of the shareholder on the specified number of shares is known as share certificate.	A document which indicates that the bearer of the share warrant is entitled to the specified number of shares is share warrant.
Compulsory	Yes	No
Issued by	All the companies limited by shares irrespective of public or private.	Only public limited companies have the right to issue share warrant.
Negotiable Instrument	No	Yes
Transfer	The transfer of share certificate can be done by executing a valid transfer deed.	The transfer of share warrant can be done by mere hand delivery.
Original Issue	Yes	No



<b>BASIS FOR COMPARISON</b>	<b>SHARE CERTIFICATE</b>	<b>SHARE WARRANT</b>
Amount paid	Issued against fully or partly paid up share.	Issued only against fully paid up shares
Approval of Central Government for issue	Not Required at all	Prior approval of Central Government is required for issuing Share Warrant.
Time Horizon for issue	Within 3 months of the allotment of shares.	No time limit prescribed.
Provision in Articles of Association	Not Required	Required

### **SURRENDER OF SHARES**

Surrender of shares means the return of shares by the shareholder to the company for cancellation. Holder in this case voluntarily abandons all his shares in favour of the company. A mere refusal to take up newly issued shares, to which a shareholder is entitled to, is not a surrender of share.

### **FORFEITURE OF SHARES**

If a shareholder, having been validly called upon to pay any call on his shares, fails to pay, the company may sue him to recover the amount of the call. But the articles often provide that the company may forfeit the shares of a shareholder, who has made a default.

### **RE-ISSUE OF FORFEITED SHARES**

Forfeited shares are available with the company for sale. After the forfeiture of shares, the company is under an obligation to dispose of the forfeited shares.

The company requires passing a resolution in its Board Meeting for the re-issue of forfeited shares. Re-issue of forfeited shares is a mere sale of shares for the company. A company does not make allotment of these shares.

The company auctions the forfeited shares and disposes them off. A company can re-issue these shares at any price but the total amount received on these shares should not be less than the

amount in arrears on these shares. Here, total amount refers to the amount received from the original allottee and the second purchaser.

## **SWEAT EQUITY SHARES**

As per the Section 2(88) of the Companies Act, 2013 defines “sweat equity shares” means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

### **What is the procedure to issue sweat shares?**

The issue of sweat equity shares, following broad procedure needs to be followed:

- Convene and hold a board meeting to consider the proposal of issue of sweat equity shares and to fix up the date, time, place and agenda for general meeting and to pass a special resolution for the same.
- Issue notices in writing to Shareholders for general meeting alongwith explanatory statement. The explanatory statement to be annexed to the notice for the general meeting pursuant to section 102 of the Act must contain the following particulars:
  - (a) the date of the Board meeting at which the proposal for issue of sweat equity shares was approved;
  - (b) the reasons or justification for the issue;
  - (c) the class of shares under which sweat equity shares are intended to be issued;
  - (d) the total number of shares to be issued as sweat equity;
  - (e) the class or classes of directors or employees to whom such equity shares are to be issued;
  - (f) the principal terms and conditions on which sweat equity shares are to be issued, including basis of valuation;
  - (g) the time period of association of such person with the company;
  - (h) the names of the directors or employees to whom the sweat equity shares will be issued and their relationship with the promoter or/and Key Managerial Personnel;
  - (i) the price at which the sweat equity shares are proposed to be issued;

(j) the consideration including consideration other than cash, if any to be received for the sweat equity;

(k) the ceiling on managerial remuneration, if any, be breached by issuance of such sweat equity and how it is proposed to be dealt with;

(l) a statement to the effect that the company shall conform to the applicable accounting standards; and

(m) diluted Earnings Per Share pursuant to the issue of sweat equity shares, calculated in accordance with the applicable accounting standards.

## **DEBENTURE**

The word 'debenture' itself is a derivation of the Latin word 'debere' which means to borrow or loan. Debentures are written instruments of debt that companies issue under their common seal. They are similar to a loan certificate.

Debentures are issued to the public as a contract of repayment of money borrowed from them. These debentures are for a fixed period and a fixed interest rate that can be payable yearly or half-yearly. Debentures are also offered to the public at large, like equity shares. Debentures are actually the most common way for large companies to borrow money.

### **Important features of Debentures.**

Debentures are instruments of debt, which means that debenture holders become creditors of the company.

- They are a certificate of debt, with the date of redemption and amount of repayment mentioned on it. This certificate is issued under the company seal and is known as a Debenture Deed
- Debentures have a fixed rate of interest, and such interest amount is payable yearly or half-yearly
- Debenture holders do not get any voting rights. This is because they are not instrumenting of equity, so debenture holders are not owners of the company, only creditors
- The interest payable to these debenture holders is a charge against the profits of the company. So, these payments have to be made even in case of a loss.

## TYPES OF DEBENTURES

There are various types of debentures that a company can issue, based on security, tenure, convertibility etc. Let us take a look at some of these 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/asset 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.

## **Distinctions between Debenture and Debenture stock**

1. A debenture has a nominal value whereas a stock has no nominal value.
2. Debenture may be fully or partly paid up but stock is always fully paid up.
3. Debentures can only be transferred into round numbers but stock can be transferred in small numbers.
4. All debentures are of equal denominations while stock is of unequal amount.
5. Shares or debentures always bear a distinctive number while stock or part of stock does not bear a distinctive number.
6. Debentures can be directly issued to the public but stock cannot be directly issued.

## **Debenture Certificates**

Debenture Certificates are issued under the common seal of the company. The debenture certificate is a document, which certifies that the holder is the creditor of the company to the limit of a number of debentures multiplied by the face value of each debenture.

## UNIT-V

### COMPANY SECRETARY

#### Meaning

A **company secretary** is a senior position in a private sector **company** or public sector organization. **Company secretaries** are the **company's** named representative on legal documents, and it is their responsibility to ensure that the **company** and its directors operate within the law.

#### Definition of a Company Secretary:

A Company Secretary means “**a person who is a member of the Institute of Company Secretaries of India**”. [Sec. 2(i) (c) of the Company Secretaries Act, 1980],

According to Section 2(45) of the Companies Act, 1956, “Secretary means any individual possessing the prescribed qualifications, appointed to perform the duties which may be performed by a secretary under this Act and any other ministerial or administrative duties”

#### QUALIFICATIONS OF THE SECRETARY:

Since the amendment of the Companies Act in 1994, only a person having prescribed qualifications can be appointed secretary of a company. Apart from the statutory qualifications, he should also have other qualifications as may be necessary to conduct the affairs of the company.

#### Statutory Qualifications:

According to Section 2(45) of the Companies Act 1956, as amended in 1974, a Company Secretary must possess the qualifications prescribed by the Central Govt. from time to time.

#### **The qualifications as prescribed by the Companies (Secretary's Qualifications) Rules 1975, for the Secretary of a Company are:**

(a) In case of a company having a paid-up share capital of Rs. 50 lakhs or more, the Secretary must be a member of the Institute of Company Secretaries of India incorporated under the Companies Act, 1956, and licensed under Sec. 25 of that Act. A person who is a member of the Institute of Chartered Secretaries of London shall also be eligible for appointment as Secretary of such a company.

(b) In the case of any other company, one or more of the following qualifications shall have to be possessed by the Secretary:

(i) Qualifications specified in clause (a) above;

(ii) A degree in law granted by any university.

(iii) Membership of the Institute of Chartered Accountants of India.

(iv) Membership of the Institute of Cost and Works Accountants of India.

(v) A post-graduate degree or diploma in Management granted by any university or the Indian Institute of Management.

(vi) A post-graduate degree in Commerce granted by any university.

(vii) A diploma in Company Law granted by any Indian Law Institute.

### **Other Qualifications:**

In order to be a Company Secretary, statutory qualifications are not enough.

### **A Company Secretary should also possess the following special qualifications:**

#### **1. Knowledge of Company Law:**

The Secretary must know the detailed provisions of the Companies Act and its implications. He must have a knowledge of the rules of meetings.

#### **2. Knowledge of Mercantile Law:**

Most of the companies carry on their business as mercantile firms and have to act according to different provisions of Mercantile Law including the Contract Act, Sale of Goods Act, Negotiable Instruments Act, MRTP Act, Insurance Act etc.

The company also faces problems of labour, trademarks, patents, copyrights and so on. Therefore, the Secretary must have a sound knowledge of Labour Laws, Factories Act, ESI Act, Mercantile Laws and Patent, Copyright and Trade Mark Laws.

#### **3. Knowledge of Economics:**

In order to handle economic problems of the company, the Secretary should have a sound knowledge of Economics—theoretical and practical—general money market, capital market and financial institutions.

#### **4. General Knowledge:**

The Secretary must have a sound general knowledge. He must have thorough acquaintance with social, political and economic conditions of the country.

#### **DISQUALIFICATION OF COMPANY SECRETARY**

##### *Minors or Any Other Person Under Legal Disability*

Minors are regarded as individuals under the age of eighteen (18). These by law are below the age of consent.

##### *Insolvent Individuals*

Except with the leave of the court, any person who has at any time been adjudged or otherwise declared insolvent or bankrupt under a law in force in Zimbabwe or any other country, and has not been rehabilitated or discharged. Furthermore, if a person is declared Insolvent or bankrupt in their tenure of being a company secretary, they shall cease to hold office.

##### *Convicted Individuals*

Except with the leave of the court, any person who has at any time been convicted, whether in Zimbabwe or elsewhere, of theft, fraud, forgery or uttering a forged document or perjury and has been sentenced for that offence to imprisonment without the option of a fine or to a fine exceeding level five. If the individual is convicted while in office, they shall resign from the position.

##### *Removed by Court for Misconduct*

Except with the leave of the court, any person who has been removed by a competent court from an office of trust on account of misconduct.

#### **POWERS AND RIGHTS OF COMPANY SECRETARY**

A company secretary is a high-level officer. He enjoys certain rights and power as per the contract made with the company, which are as follows:

- 1. Supervision and control:** As the head of the office, a company secretary has the right to supervise, direct, and control all office activities of subordinate offices.
- 2. Singing authority:** Being a principal officer, a company secretary can sign contracts, proceedings of the company meeting, files, and documents on behalf of the company.
- 3. Exercising power:** He has right to apply power as authorized by the board of directors.



**4. Issuing testimonial:** A company secretary can issue testimonials to employees on behalf of the company.

**5. Claiming salary and damages:** He has right to claim his salary and other allowances. He can also take legal action against the company if there is any breach of contract.

**6. Preferential creditor:** During the winding up of a company, the company secretary can claim his legal dues as like as a preferential creditor.

**7. Attending meeting:** He has the right to be present in the meetings of the shareholders and board of directors.

## **DUTIES OF A COMPANY SECRETARY**

### **(A) Non-Statutory:**

As a secretary, a Company Secretary has all the duties which a secretary should have. Such duties are non-statutory and often described as Routine and Executive duties of a Company Secretary.

#### **They are of three types:**

##### **(1) Duties as Office Executive:**

A Company Secretary is generally the chief executive in the office having general supervision and control over the functions of all the departments of the office of the company—correspondence, accounts, records, public relations etc.

##### **(2) Duties as Liaison Officer:**

A Company Secretary has to maintain liaison between the company in one hand and the members of the company, the people connected with the company (like the customers, the debtors, the creditors etc.) and the public at large on the other.

##### **(3) Duties as Advisor:**

A Company Secretary has to advise the Board of Directors in various matters related to administration of the company and particularly for the legal formalities wanted for administration. The duties of a Company Secretary as advisor has special significance as they are mostly concerned with legal formalities.

### **(B) Statutory:**

A company is a ‘body corporate’, a creation of law. The Companies Act provides elaborate formalities for its formation, its continuance and it’s winding up. The Company Secretary has to assist a company at every stage by virtue of his specialized knowledge, qualifications and experience. Such duties of a Company Secretary are called Statutory Duties.

These can also be called Routine duties because a company appoints a secretary mainly for this purpose. Other statutes, apart from the Companies Act, like the Stamp Act, the Registration Act, the Income-tax Act etc., also come in the picture. But these statutes are also required for other types of organisations too and not necessarily for a company.

**The Statutory duties of a Company Secretary can be sub-divided in the following manner:**

**(A) Prior to Incorporation:**

Before incorporation, a group of persons, the first members or the promoters of a proposed company, have to undergo some varied and complicated formalities. For this purpose either they can take the help of a lawyer or they appoint a secretary with necessary qualifications with the intention that the same person shall be formally appointed as secretary of the company after its incorporation.

**Before incorporation or rather for incorporation, a Company Secretary has to assist the promoters in the following manner:**

(a) To maintain liaison with the Registrar of Companies of that State, particularly to ascertain first whether the proposed name of the company is available.

(b) To draft the necessary documents according to the requirements of the Companies Act. Such documents are: Memorandum of Association, Articles of Association and Prospectus. The third document is required for a widely held public company only and actually after incorporation.

*The Companies Act provides models for the drafting of the documents:*

(i) Table A—A model for the Articles of Association of a company limited by shares,

(ii) Table B—A model for the Memorandum of Association of company limited by shares,

(iii) Table C—A model for the Memorandum of Association and Articles of Association of a company limited by guarantee,

(iv) Table D—A model for the Memorandum of Association and Articles of Association of a company limited by guarantee having share capital,

(v) Table E—A model for Memorandum of Association and Articles of Association for a company with unlimited liability. (Table A to E belongs to the Schedule I of the Act),

(vi) Schedule II—A model of Prospectus.

All these documents have to be printed and paragraphed with each paragraph serially numbered. The Memorandum of Association and the Articles of Association shall be signed by

the promoters and by a witness. The Prospectus shall be signed by the directors and by an 'expert' (any dependable person).

(c) To file, with necessary registration fee for registration of the company and filing fees for the documents, with the Registrar of Companies, a copy of the Memorandum of Association and a copy of the Articles of Association, with necessary stamps affixed.

(d) To file with the Registrar of Companies other statements necessary at the time of incorporation of a public company, like:

(i) A list of first directors of the company;

(ii) A consent letter from each director to act as a director;

(iii) A copy of a terms of appointment of the managing director, if any;

(iv) A letter of agreement, from each director to take qualification shares, if any.

(e) To file with the Registrar the actual address of the registered office of the company. (This can be done within 30 days from the date of registration.)

(f) To attend all the meetings of the promoters and to assist them in arranging and conducting the meetings.

(g) To assist the promoters in entering into preliminary contracts on behalf of the company, yet to be incorporated.

### **(B) After Incorporation:**

After incorporation of a company, its secretary has a variety of duties to perform. Such duties can be studied in a further classified manner.

#### **1) Immediately after Incorporation:**

Immediately after receiving the Certificate of Incorporation from the Registrar of Companies, the Company Secretary has the following acts to do:

(a) To arrange for the first meeting of the Board of Directors of the company for various preliminary formalities including his formal appointment with retrospective effect (i.e., since the date of his appointment by the promoters), finalizing the form of Share Certificate, approval of Prospectus (in case of a widely held public company), appointment of bankers, first auditor etc.

(b) To file with the Registrar of Companies, in case of a closely held public company, a Statement in lieu of Prospectus showing the allotment of shares, at least 3 days before the allotment.

(c) To file with the Registrar of Companies, in case of a widely held public company, a copy of the Prospectus and to arrange issue of the Prospectus to the public.

- (d) To receive permission of the Controller of Capital Issues, an officer under the Central Government, if the total issue of shares or debentures exceeds Rs. 50 lakhs.
- (e) To make arrangements with share-brokers, underwriters, financial institutions etc., if any, for the marketing of shares and to make application to a recognised Stock Exchange for enlistment of shares if it is so decided by the company.
- (f) To receive from intending shareholders share applications with application money, with or without premium, and to make a detailed and chronological record of such receipts.
- (g) To inform the Registrar of Companies, in order to receive the Certificate for Commencement of Business (necessary for a public company), the facts that (i) the minimum subscription has been raised and (ii) the directors have paid for their shares.
- (h) To make arrangement for allotment of shares and issue of share certificates and to prepare the Register of Members containing the details of the members and their share holdings.
- (i) To arrange after one month and not later than six months from the date of commencement of business the Statutory Meeting in case of a public company.

## **2) Regular Functioning of a Company:**

Once all the preliminary functions are over, a company has to carry out its regular functions as a going concern.

## **3) At the Time of Winding Up:**

A company may be wound up voluntarily by the members or under legal compulsion when a company is unable to pay its creditors or when a company violates legal provisions or under such other circumstances as provided in the Companies Act.

The Act also provides that the Secretary, as an officer of the company, has legal obligations to assist the Official Liquidator and to carry out the orders of the Court, if any, in the process of winding up.

## **LIABILITIES OF COMPANY SECRETARY**

### *Statutory liabilities*

1. Register all files and documents of the company.
2. Arrange a statutory meeting and preparing the statutory report and submit it to the Registrar of the joint-stock company in due time.
3. Arrange an annual general meeting in due time.
4. Sending notice of the meeting to the participant.
5. Writing minutes of various meetings and maintaining minute books.

6. Supplying a relevant copy of minutes to the shareholders.
7. Directors, shareholders, and debenture holder's registrar maintaining.
8. Submitting/financial statements of the Company to the Registrar of Joint Stock Company.
9. Issuing share certificates, dividend warrant, and bonus share certificates to the shareholders.
10. Deducting income tax from the employee salary and pay a dividend to the shareholders.
11. Appointing company auditor and arranging an audit of books of account of the company.
12. Never enter into any contract or distribute any share and debenture until the board of directors authorizes it. Also never take any loan in the name of the company.
13. Submitting income tax returns and ensures the use of required company seal and stamp.

#### ***Contractual liabilities***

1. Abide by all terms and conditions of the service contract.
2. Follow the order instructions and act as per the authorization of the board of directors.
3. Maintain secrecy of the company affairs.
4. Perform duties with due care and skills.
5. Never act beyond his authority and not to make any secret profit through any illegal activity.

#### **What is the role of a company secretary?**

A company secretary plays a largely supportive role, taking care of important tasks such as general administration, shareholder communication, corporate governance, and statutory compliance/filing of accounts. In short, the secretary acts as a bridge between the company, the shareholders and Companies House, ensuring all the relevant information is shared in compliance, on time and efficiently.

The role of company secretary involves lots of different tasks, and so an organised individual with prior experience in an administrative role is often a preferred candidate.

## COMPANY MEETINGS

**Meaning:** A **meeting** is when two or more people come together to discuss one or more topics, often in a formal or business setting, but **meetings** also occur in a variety of other environments. Many various types of **meetings** exist.

**Definition: The Oxford Dictionary defines** a meeting. “A meeting therefore, can be defined as a lawful association or assembly of two or more persons by previous notice for transacting some business. The meeting must be validly summoned and convened. Such gatherings of the members of companies are known as company meetings”.

## ESSENTIALS OF COMPANY MEETINGS

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.

## KINDS OF COMPANY MEETINGS

The meetings of a company can be broadly classified into four kinds.

1. Meetings of the Shareholders.
2. Meetings of the Board of Directors and their Committees.
3. Meetings of the Debenture Holders.
4. Meetings of the Creditors.

## **1. Meeting of the Share Holders**

The meetings of the shareholders can be further classified into four kinds namely,

1. Statutory Meeting,
2. Extraordinary General Meeting
3. Annual General Meeting,
4. Class Meeting.

### ***1. Statutory Meeting***

This is the first meeting of the shareholders conducted after the commencement of the business of a public company. Companies Act provides that every public company limited by shares or limited by guarantee and having a share capital should hold a meeting of the shareholders within 6 months but not earlier than one month from the date of commencement of business of the company.

Usually, the statutory meeting is the first general meeting of the company. It is conducted only once in the lifetime of the company. A private company or a public company having no share capital need not conduct a statutory meeting.

### ***2. Annual General Meeting***

The Annual General Meeting is one of the important meetings of a company. It is usually held once in a year. AGM should be conducted by both private and public ltd companies whether limited by shares or by guarantee; having or not having a share capital. As the name suggests, the meeting is to be held annually to transact the ordinary business of the company.

### ***3. Extra-ordinary General Meetings (EOGM)***

Statutory Meeting and Annual General Meetings are called the ordinary meetings of a company. All other general meetings other than these two are called Extraordinary General Meetings. As the very name suggests, these meetings are convened to deal with all the extraordinary matters, which fall outside the usual business of the Annual General Meetings. EOGMs are generally called for transacting some urgent or special business, which cannot be postponed till the next Annual General Meeting. Every business transacted at these meetings is called Special Business.

## **Persons Authorized to Convene the Meeting**

The following persons are authorized to convene an extraordinary general meeting.

1. The Board of Directors.
2. The Requisitionists.
3. The National Company Law Tribunal.
4. Any Director or any two Members.

#### ***4. Class Meetings***

Class meetings are those meetings, which are held by the shareholders of a particular class of shares e.g. preference shareholders or debenture holders.

Class meetings are generally conducted when it is proposed to alter, vary or affect the rights of a particular class of shareholders. Thus, for effecting such changes it is necessary that a separate meeting of the holders of those shares is to be held and the matter is to be approved at the meeting by a special resolution.

#### **2. Meetings of the Directors**

Meetings of directors are called Board Meetings. These are the most important as well as the most frequently held meetings of the company. It is only at these meetings that all-important matters relating to company and its policies are discussed and decided upon.

Since the administration of the company lies in the hands of the Board, it should meet frequently for the proper conduct of the business of the company. The Companies Act therefore gives wide discretion to the directors to frame rules and regulations regarding the holding and conduct of Board meetings.

The directors of most company's frame rules concerning how, where and when they shall meet and how their meetings would be regulated. These rules are commonly known as Standing Orders.

#### **3. Meetings of Debenture Holders**

The debenture holders of a particular class conduct these meeting. They are generally conducted when the company wants to vary the terms of security or to modify their rights or to vary the rate of interest payable etc. Rules and Regulations regarding the holding of the meetings of the debenture holders are either entered in the Trust Deed or endorsed on the Debenture Bond so that they are binding upon the holders of debentures and upon the company.

#### **4. Meetings of the Creditors**

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



## MEETING OBJECTIVES

### Purpose and Objectives

- ❖ The Purpose of the meeting is the reason the meeting is being held. The reason must be acceptable to both the organizing body and the potential attendees.
- ❖ Meeting objectives, those objectives that affect the planning process, not the content of the meeting and its various sessions, are important to consider.
- ❖ Consider why the purpose and objectives must be identified, written, and systematically organized for effective use in the meeting planning and management process.
- ❖ Setting objectives is key to the meeting's success. Use the SMART test to determine if your objectives have been stated clearly enough to serve as a guideline for future performance. An objective should be specific, measurable, attainable, relevant and time based.

### What is a Statutory Meeting?

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

#### *Contents of a Statutory Report*

*The statutory report contains information relating to:*

1. **Shares allotted:** The total number of shares allotted distinguishing those allotted as fully paid up, partly paid up, shares issued for consideration other than cash etc.
2. **Cash received:** The total amount of cash received by the company in respect of all the shares.

#### **Statutory Report**

The directors are required to prepare and send a report, called the 'Statutory Report' to every member of the company at least 21 days before the date of the meeting.

Duty of Secretary at Statutory Meeting:

The duty of the Secretary at the Statutory Meeting can be discussed in terms of his duty before the meeting, at the meeting and after the meeting.

*A. Before the Meeting:*

1. To draft the notice carefully according to statutory form and issue it.
2. To prepare the Statutory Report and obtain the approval of the Directors.
3. To prepare the Statutory Report and forward the same to every member of the company at least 21 days before the meeting.
4. To obtain the certificate of auditors.
5. To file a copy of the Statutory Report with the Registrar.
6. To prepare a list of members showing their names, addresses and occupations and the number of shares held by each of them.

*B. At the Meeting:*

1. He is to receive the members and see that no unauthorized person gets entry to the meeting.
2. He is to see that the Attendance Register of Members is properly signed by them.
3. He must see that proper Minutes are recorded.
4. He should help the Chairman to conduct the meeting.
5. If the Chairman asks, he will supply necessary information and documents.
6. He will take note of the proceedings of the meeting.
7. He is to read the notice convening the meeting and the Statutory Report.

*C. After the Meeting:*

1. He is to prepare the Minutes and get the minutes signed by the Chairman.
2. He is to execute the resolutions passed at the meeting.
3. He is to file a copy of resolutions to the Registrar of Companies.

**What is an Annual General Meeting (AGM)?**

An annual general meeting (AGM) is a mandatory yearly gathering of a company's interested shareholders. At an AGM, the directors of the company present an annual report containing information for shareholders about the company's performance and strategy.

**The main Objective of an AGM**

- One of the basic objectives of holding an Annual General Meeting is to present and get the **audited financial statements approved** by the shareholders and members of the Company.
- The Board shall convene an AGM for shareholders to **vote and elect the upcoming Board of Directors** in place of those retiring from their post on a rotational basis.

- **Selection of Auditors and finalizing their compensation** for the new accounting term is another main objective of conducting an AGM.
- The shareholders shall at the AGM **declare and confirm the dividends** as proposed by the Board.

Duty of the Secretary at the Annual General Meeting:

*A. Before the Meeting:*

1. He is to see that the Annual Accounts are prepared according to the provisions of the Act and duly audited and certified by the Auditors of the company.
2. He is to prepare the agenda in consultation with the Chairman and issue notices of the Board Meeting held just before the Annual General Meeting.
3. He is to prepare the Annual Report of the Directors in consultation with the Chairman.
4. He is to send the notice of the Annual General Meeting to all members along with necessary forms.
5. He is to prepare the Chairman's speech in consultation with the Chairman.
6. He is to receive, scrutinize, countersign & register all proxies received before fixed time.
7. He is to close the Share Transfer Register and prepare the dividend lists and warrants.

*B. At the Meeting:*

1. He is to see that no unauthorized person enters the General Meeting.
2. He is to help the Chairman to ascertain whether a quorum is present or not.
3. He is to read the notice convening the meeting.
4. He is to help the Chairman by supplying necessary information.
5. He is to help the Chairman to conduct the meeting.
6. He is to take notes of the proceedings.

*C. After the Meeting:*

1. He is to prepare the Minutes and get it signed by the Chairman.
2. He is to execute the decisions and resolutions passed at the meeting.
3. He is to file necessary documents with the Registrar.
4. He is to incorporate the alterations, if any, made in the Memorandum or the Articles of Association passed in the meeting.

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