Corporate Administration

(As per Mysore University, Mandya University and Autonomous College, and other universities of Karnataka II semester B Com Syllabus)

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Preface

We have great pleasures in presenting the first Edition **"Corporate Administration"** written for students of undergraduate Courses. The Subject matter is written in a simple and easily understandable language with sufficient support from real competitive Environment. This book helps to B. Com, & BBA, BBM Courses.

This book helps attempt to provide students with through understanding of the Company Law concepts. In writing this book we have benefited immensely from the studies of a number of reference books and research articles and journals written by scholars and Authors.

This book is an attempt to provide the students with through understanding of the methods and techniques. The subject matter has been presented in a systematic and intelligible manner with liberal use of Charts, Diagrams, so as to make it interesting and sustain reader's interests.

Our work would not attain its fulfillments, if we fail to thanks to Government Women's College (Autonomous) Mandya, The Government College, (Autonomous) Mandya, University, Mysore University Faculties, for giving us the support and encouragement to take up such work.

I am grateful to Principal, HOD, Professors and students, my family and other well wishers for their feedback, support, and encouragement, even also Am so thankful to publishers for taking interest in this publication and presenting this book in a beautiful setup. I always welcome suggestion and improve continuously more value for readers.

Dedications To

1.Ayushmati Shamiksha Praman
2.Ayushman Gunvith Praman

Syllabus

Unit – I Introduction to Company

❖	Introduction to Company.
❖	Meaning and Definition.
❖	Features of Companies Act of 2013.
❖	Types of Companies:
1.	Private Company.
2.	Public Company.
3.	Company Limited by Shares.
4.	Company Limited by Guarantee.
5.	Unlimited Companies.
6.	One Person Company.
7.	Holding and Subsidiary Companies.
8.	Government Company.
9.	Associate Company.

INTRODUCTION

A company is a voluntary association of individuals formed to carry on business to earn profits or for nonprofit purposes. These persons contribute towards the capital by buying its shares in which it is divided. A company is an association of individuals incorporated as a company possessing a common capital i.e. share capital contributed by the members comprising it for the purpose of employing it in some business to earn profit. We find many business enterprises run on individual proprietorship or partnership basis. In these forms, the owners usually control the functioning of the enterprise and are responsible for its management because law makes no distinction between the entities of owners and that of the firm. The position is different in company form of organization. Unlike a sole proprietary and partnership organization, a company enjoys a legal status and entity of its own as distinct from that of its members.

Meaning of Company: "The word 'company' is derived from the ***Latin*** word and it originally referred to an association of persons who took their meals together". ***Under Law*** "a company is a corporate body and a legal person having status and personality distinct and separate from the members constituting it". "A company is an association of both natural and artificial persons and is incorporated under the existing law of a country".

Definitions: Prof. ***L.H. Haney*** "Company is an artificial person created by law having separated entity with a perpetual succession and common seal".

FEATURES/NATURE OF COMPANIES ACT 2013:

1. Class action suits for Shareholders: The Companies Act 2013 has introduced new concept of class action suits with a view of making shareholders and other stakeholders, more informed and knowledgeable about their rights.

2. More power for Shareholders: The Companies Act 2013 provides for approvals from shareholders on various significant transactions.

3. Women empowerment in the corporate sector: The Companies Act 2013 stipulates appointment of at least one woman Director on the Board.

4. Corporate Social Responsibility: The Companies Act 2013 stipulates certain class of Companies to spend a certain amount of money every year on activities/initiatives reflecting Corporate Social Responsibility.

5. National Company Law Tribunal: The Companies Act 2013 introduced National Company Law Tribunal and the National Company Law Appellate Tribunal to replace the Company Law Board and Board for Industrial and Financial Reconstruction. They would relieve the Courts of their burden while simultaneously providing specialized justice.

6. Fast Track Mergers: The Companies Act 2013 proposes a fast track and simplified procedure for mergers and amalgamations of certain class of companies such as holding and subsidiary, and small companies after obtaining approval of the Indian government.

7. **Cross Border Mergers:** The Companies Act 2013 permits cross border mergers, both ways; a foreign company merging with an India Company and vice versa but with prior permission of *RBI.*

8. Prohibition on forward dealings and insider trading: The Companies Act 2013 prohibits directors and key managerial personnel from purchasing call and put options of shares of the company, if such person is reasonably expected to have access to price-sensitive information.

9. Increase in number of Shareholders: The Companies Act 2013 increased the number of maximum shareholders in a private company from 50 to 200.

10. Limit on Maximum Partners: The maximum number of persons/partners in any association/partnership may be up to such number as may be prescribed but not exceeding *one hundred.* This restriction will not apply to an association or partnership, constituted by professionals like lawyer, chartered accountants, company secretaries, etc. who are governed by their special laws. Under the Companies Act 1956, there was a limit of maximum 20 persons/partners and there was no exemption granted to the professionals.

11. One Person Company: The Companies Act 2013 provides new form of private company, i.e., one Person Company. It may have only one director and one shareholder. The Companies Act 1956 requires minimum two shareholders and two directors in case of a private company.

12. Entrenchment in Articles of Association: The Companies Act 2013 provides for entrenchment (apply extra legal safeguards) of articles of association have been introduced.

13. Electronic Mode: The Companies Act 2013 proposed E-Governance for various company processes like maintenance and inspection of documents in electronic form, option of keeping of books of accounts in electronic form, financial statements to be placed on company's website, etc.

14.Indian Resident as Director: Every company shall have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year.

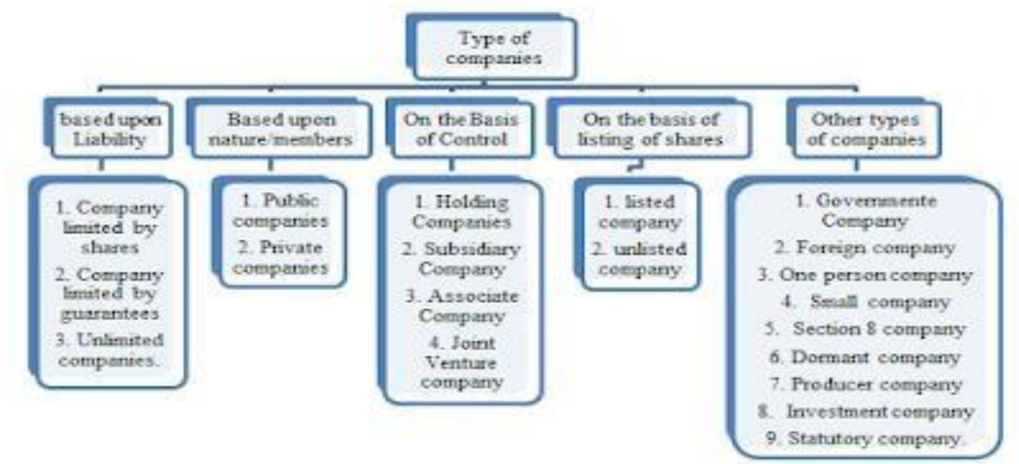
15.Independent Directors: The Companies Act 2013 provides that all listed companies should have at least one-third of the Board as independent directors. Such other class or classes of public companies as may be prescribed by the Central Government shall also be required to appoint independent directors. No independent director shall hold office for more than two consecutive terms of five years.

OBJECTIVES OF COMPANY ACT 2013:

1. To gain high standard of corporate governance, management, accountability and transparency.
2. To take strict step or action towards those companies who are involve in fraudulent activities and non compliance of latest company provision.
3. To identify new policies concepts to protect the interest of stakeholders.
4. To set up more effective institutional structure in form of authorities, bodies, panes which verify roles of professionals and other experts.
5. To promote transparency and high Standards of Corporate Governance.
6. To protect the interest of the investors by furnishing fair and accurate information in the prospects

Types of Company

Figure No-01



CLASSIFICATION OF COMPANIES UNDER THE COMPANIES ACT 2013:

I. ON THE BASIS OF LIABILITY:

1. Unlimited Liability Companies: In this type of company, the members are liable for the company's debts in proportion to their respective interests in the company and their liability is unlimited. Such companies may or may not have share capital. They may be either a public company or a private company.

2. Companies Limited by Guarantee: A company that has the liability of its members limited to such amount as the members may respectively undertake, by the memorandum, to contribute to the assets of the company in the event of its being wound-up, is known as a company limited by guarantee. The members of a guarantee company are, in effect, placed in the position of guarantors of the company's debts up to the agreed amount.

3. Companies Limited by Shares: A company that has the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them is termed as a company limited by shares. For example, a shareholder who has paid `75 on a share of face value ` 100 can be called upon to pay the balance of `25 only. Companies limited by shares are by far the most common and may be either public or private.

II. ON THE BASIS OF MEMBERS:

1. Public Company: Minimum paid up share capital as may be prescribed. 7 or more persons can form a public company. Any subsidiary of public company shall be treated as public company even if such subsidiary company has obtained the status of a private company in its articles. A company limited by share, a company limited by guarantee. An unlimited company.

2. Private Company: The Memorandum must state the name of the company (which should include the words “Private Limited”), the address of its registered office, its objects and purposes, and extent of liability of its members. It must also mention the details of subscribers to the Memorandum. Apart from this, the Companies Act has also prescribed certain other compliances, such as requirements relating to names of private companies, their Articles of Association, details of members, transferability of shares, etc.

Private companies are those whose articles of association restrict free transferability of shares.

Minimum paid up share capital as may be prescribed. In terms of members, private companies need to have a minimum of 2 or more persons can form a private company subject to a limit of maximum 200 members except in the case of one Person Company. Right to transfer its shares is restricted. These members include present and former employees who also hold shares.

Meaning of Private Company: a private company is owned by the company's founders, management, or a group of private investors.

Definitions of Private Company: *Section 2(68) of Companies Act, 2013* defines private companies. According to that, private companies are those companies whose articles of association restrict the transferability of shares and prevent the public at large from subscribing to them.

FEATURES OF PRIVATE COMPANIES:

These are some features that distinguish private companies from other types of companies:

1. **No minimum capital required:** There was a minimum paid-up share capital requirement of Rs. 1 lakh previously, but that is omitted now.
2. **Minimum 2 and maximum 200 members:** A private company can have a minimum of just two members (but just one is enough if it a One Person Company), and a maximum of up to 200 members.
3. **Transferability of shares restricted:** Private companies cannot freely transfer their shares to the public like public companies. This is why stock exchanges never list private companies.
4. **"Private Limited":** All private companies must include the words "Private Limited" or "Pvt. Ltd." in their names.
5. **Privileges and exemptions:** Since private companies do not freely transfer their shares and involve limited interest by members, the law has granted them several exemptions that public companies do not enjoy.

3. One Person Company: Under Section 2(62) of the Companies Act, a company in which one person is the whole and sole owner of the share capital of the company is known as a One Person Company, to be formed as Private limited Company, Only one person as member. A company limited by share. A company limited by guarantee, and unlimited company.

III. ON THE BASIS OF CONTROL:

1. Holding and Subsidiary Companies: Under Section 2(46) of the Companies Act, 2013, a company is known as the holding company of another company if it has administrative control over another company. Such control may be regarding the affairs of the company. Under Section 2(87) of the Companies Act, 2013, a company is known as a subsidiary company of another company when control is exercised by the other company over the subsidiary company.

2. Associate Companies/Joint Venture Companies: The Joint Venture Companies are such associate companies. U/S 2(6) of the Companies Act, 2013 are the one in which the other company has significant influence but these Companies are not the subsidiaries of such influencing companies known as the Associate Company. The significant control can be inferred directly from the explanation attached to the provision which requires the influencing company to hold 20% of the share capital or any agreement whereby the decision making of the associate is placed upon such Influencing Company.

IV. ON THE BASIS OF INCORPORATION/LISTING SHARES:

1. Statutory Companies: These are constituted by a special Act of Parliament or State Legislature. The provisions of the Companies Act, 2013 do not apply to them. Examples of these types of companies are Reserve Bank of India, Life Insurance Corporation of India, etc.

2. Registered Companies: The companies which are incorporated under the Companies Act, 2013 or under any previous company law, with ROC1 fall under this category.

V. ON THE BASIS OF OTHER FORMS OF COMPANIES: Associations not for profit having license under Section 8 of the Companies Act, 2013.

1. Government Companies: Government Company: As defined under Section 2(45) of the Companies Act, 2013, any company in which a minimum of 51 per cent of the paid-up share capital is held by the Central/State Government, and/or held fractionally by the Central Government and partly by one or more State Governments is known as a Government Company. The major drawback of having a government company is the lack of autonomy.

2. Foreign Companies: under Section 2 (42) of the Companies Act, 2013, A Company which is situated outside India, but has a registered place in India may be physical or electronic address or perhaps company has ownership itself or through the agents, representatives or managers of the company is known as a Foreign Company.

3. Holding and Subsidiary Companies: Under Section 2(46) of the Companies Act, 2013, a company is known as the holding company of another company if it has administrative control over another company. Such control may be regarding the affairs of the company. Under Section 2(87) of the Companies Act, 2013, a company is known as a subsidiary company of another company when control is exercised by the other company over the subsidiary company.

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5. Investment Companies: The Investment company, u/s 186 of the Companies Act, 2013 are based upon the market trend relating to the shares analyses the maximum profit investment for the Company. The commonly used terminology of stock market relating to the bear and bull market and the understanding of the trend plays a crucial role to attain profits aimed at by the company.

6. Nidhi Companies: Nidhi companies have been in existence right from the days of yore. Their primary objective is to support the habit of thrift. It was promoted by public spirited men drawn from affluent local persons, lawyers and professionals etc. Please visit this link for details on registering a Nidhi company.

7. Dormant Companies: Where a company is formed under Section 455 of the Company Act, 2013 for a future Endeavour or to hold an asset which may be a physical or intellectual property and has no significant accounting transaction, such a company or inactive company can make an application to the Registrar in the prescribed manner for obtaining the status of the dormant company.

8. Public Financial Institutions: Life Insurance Corporation, Unit Trust of India and other such companies are treated as public financial institutions. They are essentially government companies that conduct functions of public financing.

DIFFERENCE BETWEEN PUBLIC AND PRIVATE COMPANY:

Table No-01

Private Company	Public Company
1. A privately-owned business cansell its own, secretly or privately held shares to a couple of willing financial backers.	1. A public organization can offer its own enlisted shares to the overall population or the generalpublic.
2. Until the privately owned businesses reach 10 million and a greater number of than 500 investors orshareholders, they don't need to followany guidelines given by the Government.	2. A public organization needs to comply with a ton of guidelines and detailing principles according to the Government.
3. The essential benefit of a privately traded or exchanged organization is that it doesn't have to pay all due respects to any investors, and there's no requirement for divulgences also.	3. The essential benefit of a public corporation is that it can take advantage of the market by selling more shares.
4. Privately owned tradedorganizations can likewise be huge organizations. The possibility that a privately held organization is a more modest or small company is absolutelyfalse.	4. Public corporations are enormous organizations.
5. The Privately-held organization, the wellspring of assets is not many private financial backers or investors.	5. For the public corporation, the source of assets or funds is by selling its bonds and shares.
6. The stock of a privately owned business is claimed and exchanged or traded by a couple of private financial backers.	6. The stocks of a public organization are exchanged or traded in the stock exchanges.

QUESTIONS

Section: A

1. What is company law?
2. Define company law.
3. Give the meaning of Holding Company?
4. What is Associate Company?
5. Define private company.
6. Define Public company.
7. What is one Person Company?
8. What is Subsidiary Company?
9. Give the meaning Unlimited Company?

Section-B

1. Explain the Characteristics of a company?
2. Explain the Nature/Features of Companies Act 2013?
3. What are the objectives of Companies Act 2013?
4. Explain the Significance of the Companies Act2013?
5. What are the basic features of Public Company?

Section-C

1. What is company? Explain different types of company?
2. Examine the new Companies Act 2013.
3. Define. Explain the advantages and disadvantages of Government Company.
4. What are the difference between Public Company and PrivateCompany?
5. Briefly explain the Provisions for Public Company Activities under Schedule VII of the Companies Act 2013.

Unit – II Formation of Companies

❖ Introduction **- Promotion Stage:** Meaning of Promoter, Position of Promoter & Functions of Promoter,
❖ **Incorporation Stage:** Meaning & contents of Memorandum of Association & Articles of Association, Distinction between Memorandum of Association and Articles of Association, Certificate of Incorporation,
❖ **Subscription Stage**: Meaning & contents of Prospectus, Statement in lieu of Prospects and Book Building,
❖ **Commencement Stage:** Document to be filed, e-filing, Register of Companies, Certificate of Commencement of Business;
❖ **Formation of Global Companies:** Meaning – Types –Features – Legal Formalities– Administration.

INTRODUCTION

We know that a company is a separate legal entity which is formed and registered under the Companies Act. It may be noted that before a company is actually formed. Company is an artificial person. The formation of a company is a lengthy process. Section 3(1) states that a company may be formed for any lawful purpose by— (a) seven or more persons, where the company to be formed is to be a public company; (b) two or more persons, where the company to be formed is to be a private company; or (c) one person, where the company to be formed is to be One Person Company that is to say, a private company by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

A promoter is a generic term associated with the person who starts a business. In common parlance, this person is also referred to as the founder of the business. A promoter typically is responsible for raising capital, targeting initial leads and chasing initial business opportunities, entering into the initial contracts for the business formation and incorporating the company. In Corporate Law, a promoter is the founder or organizer of a corporation or business venture; the person who takes the initiative to create or organize a business. The term is mostly used in the context of incorporation.

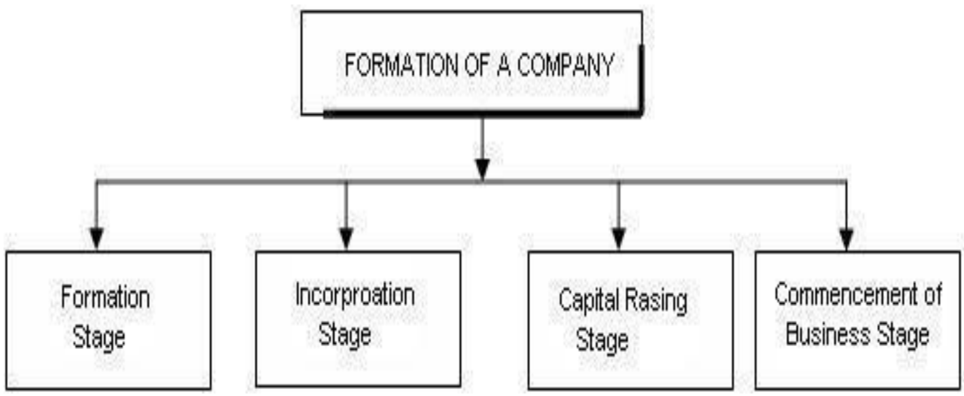
A company is a separate legal entity from its members. It has perpetual succession and can be incorporated only for lawful purposes. Prior to incorporation, promotion activities are essential. Promotion signifies a number of business operations familiar to the commercial world by which a company is brought into existence.

STEPS/STAGES TO FORMATION OF A COMPANY

All these stages are relevant to forming a public company (also known as public limited company). For forming a private company (also known as private limited company), only the first two stages and a part of the third stage are relevant as it can commence business immediately after incorporation and receiving money from signatories to documents who have agreed to subscribe to the specified number of shares.

Therefore, business commencement stage is not relevant to a private company. Further, such a company cannot invite the general public for subscribing to its shares. Therefore, a part of capital subscription stage is not relevant to it. Let us go through all these stages.

Figure No-02



1. Promotion/Formation Stage: The term 'promotion' refers to the sum total of activities by which a business enterprise is brought into existence. At the promotion stage of a company, the promoters conceive the idea of promoting a company and the type of activities that it intends to undertake. A promoter may be an individual, a group of individuals or one or more companies (promoting a company by another company or group of companies is becoming very popular). Subsequently, activities related to promoting the company are undertaken.

2. Incorporation Stage: Incorporation or registration stage involves putting an application for registering the company before the concerned Registrar of Companies and getting it registered. In India, there is an office of the Registrar of Companies in each major State of the country. The concerned Registrar is one who is located in the State where the registered office of the company is to be located.

3. Capital Subscription Stage: After a company is registered, it proceeds to get money through allotment of share capital to members. Initially, shares are allotted to persons who are signatories to documents and have agreed to subscribe to the prescribed number of shares. After this, a private company may start its business while a public company is required to get the Certificate of Commencement of Business from the concerned Registrar of Companies. The procedure for subsequent allotment of shares varies for a private company and a public company. In a private company, subsequent shares are allotted through personal contacts. In a public company, shares may be allotted through public issue of shares.

4. Commencement of Business Stage: For commencing the business, a public company has to obtain the Certificate of Commencement of Business from the concerned Registrar of Companies.

PROMOTION STAGE:

Promotion is the first step in the formation of a company. In this phase, the idea of starting a business is converted into reality with the help of promoters of the business idea. In this stage the ideas are executed. Persons who undertake promotion activities in order to incorporate the company are generally known as promoters.

Meaning of Promoter

The section 2(69) of Companies Act, 2013 defines the term ***"Promoter"*** Promoter means a person who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Who is a Promoter?

A promoter is someone who settles on an idea for establishing a specific business at a certain location and completes several formalities necessary for the establishment of the business. A promoter could be a single person, a business, a group of people, or a corporation.

Definition of Promoter in Companies Act, 2013

Recently in the Companies Act 2013 the term was defined in section 2(69) in following way: "Promoter" means a person— (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or (c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act: Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity.

According M. R. ***Praman*** "Promoter" as a "person who acting alone or in conjunction with other persons directly or indirectly takes the initiative in founding or organizing the business enterprises, or Business Activities.

According to L.J. Bowen, the term promoter is a term not of law but of business, usefully summing up in a single word a number of business operation familiar to the commercial word by which a company is generally brought into existence.

According to Lord Blackburn states that "the term promoter is a short U and convenient way of designating those who set in motion the machinery by which the Act enables them to create an incorporated company"

POSITION AND FUNCTIONS OF PROMOTERS:

Promoter is the person who comes first in the chronological order of company incorporation process. Promotion of company is tiring and tardy work as it comprises variety of activities. Promoters of the company are like parents of the company who give birth to the company as a child. Promotion includes conception of idea, incorporation, floatation and commencement of business. Promoters are deeply involved in the incorporation process and almost do everything for making a company.

Formation of company is work related with compliance of laws, regulators and authorities which involves an integrated team work by various people led by promoters. Company is a mode of doing business which is run of the motive of profit maximization. Entrepreneurship depends on modus operandi chosen by businessmen from sole proprietorship, Hindu Undivided Family, firm, Limited Liability Partnership and Company. We know that a company is the best suited legal device for running business and commerce because of separate legal existence, limited liability, wealth management and corporate financing.

THE PROMOTER VARIOUS STAGES/ STEPS OF PROMOTION:

1. **Identification of Business Opportunity:** The first stage in promotion of a business is the identification of a business opportunity. The promoter visualizes that there are opportunities for a particular type of business and it can be run profitability. The idea may be to exploit a new area of natural resources or a venture in the existing line of business. He develops the ideas with the help of technical experts of that field. When the promoter feels that there are opportunities in taking up a particular venture then the idea is taken further.
2. **Detailed Investigation:** At the second stage, various factors relating to the business are studied from a practical point of view. The demand for the product is estimated and the likely business share is determined. After determining the prospective demand, the promoter thinks of arranging finances, labour, raw materials, power, etc. The cost structure of the product is analyzed to find out profitability from the venture. An expert opinion is sought upon the viability of the project.
3. **Approval of Name:** It is necessary to get the name of the company approved from the Registrar of Companies. This is done in order to avoid duplication of the name. Generally, a company submits a list of names in order of preference. The Registrar matches the names with the names of existing companies and then one

name is approved.

4. Signatories to Memorandum: The promoters decide the names of persons to be the signatories to the memorandum of association. Usually, the first signatories to the memorandum become the first directors of the company. The written consent of the persons to act as directors is taken and they are asked to take qualifying shares of the company.

5. Appointment of Professionals: The next stage is of raising funds and deciding about various contracts. So, promoters appoint the brokers and underwriters to ensure the availability of capital by sale of company's securities. They also appoint solicitors to deal with legal matters of the company.

6. **Preparing necessary Documents:** The promoters take steps to prepare various legal documents of the company which have to be submitted to the Registrar of Companies at the time of incorporation. The documents which are required to be prepared include Memorandum of Association, Articles of Association, Prospectus, etc.

TYPES OF PROMOTERS:

There are four types of promoters, each with its own unique set of responsibilities. Here is a breakdown of each type

1. **Professional Promoters:** A professional promoter is an individual who conducts in-depth research and dedicates significant time and effort to promote a specific company during its early stages. Once the business they promote starts, they pass the company on to shareholders.

2. **Financial Promoters:** A financial promoter invests their own money or capital into a venture, resulting in them holding a stake in the business and its operations. These are often financial institutions, such as banks, who take the responsibility of promoting a company, usually when market conditions are favorable for the business's industry.

3. **Occasional Promoters:** An occasional promoter is an individual that performs promotional activities on a non-consistent basis. Unlike the other types, occasional promoters do not take part in the day to-day promotions for a single business but instead promote multiple simultaneously while only involving themselves in the venture's most critical operations.

4. **Managing Agents as Company Promoters:** These agents used to launch new companies in India and received their managing agency rights as payment. It's crucial to remember that our nation has nearly completely lost this promotion mechanism.

5. **Government Promoter:** In many countries, the government has started taking up promotional activity. In India, the Central and state Government have promote many industrial and commercial undertakings. There have been instances when the government has had to undertake the promotional activity because of economic, social or national reasons.

FUNCTIONS OF PROMOTERS:

In an agency, a promoter is trusted with carrying out several duties, which typically start even before the business comes into legal existence. These functions include:

1. Identification of Business Opportunity: The promoter wishes to discover the possibility in a selected kind of business which could show fruitful in the approaching duration. The opportunity may additionally relate to exploiting recent areas of natural sources or bringing something new into the present structure. The technical expert of that certain field helps the promoter to figure out the

Opportunity. When a promoter realizes that this specific enterprise venture has thepotential to grow, then the idea is taken further.

2. **Detailed Investigation:** Different factors are studied and analyzed from diverse points of view to assess the profitability and the long term sustainability of the enterprise. The market demand, availability of raw materials, arranging proper finance, transportation centers, mode of supply, and many others are taken into consideration. On the basis of the prospective demand, the market share of the product is computed. After analyzing the cost structure with an expert, the decision is made.
3. **Approval of Name:** After determining the shape of the commercial enterprise, now it is time to get the business registered under a specific name. The name of the commercial enterprise is permitted by means of the "registrar of companies". While determining a name, it's important to observe that it shouldn't resemble anexisting name and it needs to avoid words like national, state, king, queen, etc.
4. **Signatories to Memorandum:** The Memorandum of Association (MOA) is the charter of a company. The promoters decide the names of the person that maybe the signatories of this constitutional report. Normally, the first signatory of theMOA turns into the director of the corporation. The director wishes to offer his written consent for the same according to the format prescribed by the Law.
5. **Appointment of Professionals:** A business can't survive without adequate capital. So, it's very important to make the necessary arrangements of capital. Thepromoter makes a decision about the capital requirement and the source from which this money may be received. The various sources include bank loans, private equity, Initial public offering, and so forth. For the successful arrangement of capital, financial and legal professionals are appointed.
6. **Preparing Important Documents:** Apart from the Memorandum of Association (MOA), a commercial enterprise needs to deposit other crucial files with the registrar of organizations. It consists of Article of Association (which offers all the internal affairs of the commercial enterprise), prospectus, incorporation certificates, etc.
7. **To originate the scheme for formation of the company:** Promoters are generally the first persons who conceive the idea of business. They carry out the necessary mitigation to find out whether the formation of a company is possible and profitable. Thereafter, they organize the resources to convert the idea into a reality by forming a company. In this sense, the promoters are the originators of the plan for the formation of a company.
8. **To secure the cooperation:** To secure the cooperation of the required number of persons willing to associate themselves with the project : The promoters, in accordance with whether they want to incorporate a p5ivate pr a public company, try to secure the co -operation of persons needed to form the company. You learntthat the minimum number of members requited to form a

public company is sevenand that for a private company two minimum number is to. Depending upon the farm chosen, the promoters may decide upon the number of primary members.

9. **Seek and obtain the consent of the persons:** Seek and obtain the consent of the persons willing to act as first directors of the company: the company bas a system of representative management and is managed by individuals appointed asdirector, the first directors of the company are, however generally appointed by the promoters. The promoter seeks the consent of some individual whom they deem appropriate so that they agree to be the first directors of the proposed company.

POSITION OF PROMOTERS:

The new Companies Act, 2013 has defined promoter in Section 2(69) as; "promoter" means a person

1. Who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92.
2. Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise.
3. In accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.
4. It shall apply to a person who is acting merely in a professional capacity; a person who acts in a professional capacity is not a promoter.
5. Thus a solicitor, who prepares on behalf of the promoters the primary documents of the proposed company, is not a promoter.
6. An accountant or a valuer who helps the promotion in his professional capacity is not a promoter. But any such person may become a promoter if he helps the formation of the company by doing an act outside the scope of his professional capacity.
7. A person cannot; however become a promoter merely because he signs the memorandum as a subscriber for one or more shares.
8. Promoter was described as "one who undertakes to form a company with reference to a given project, and to set it going, and who takes the necessary steps to accomplish that purpose."
9. Promoter as a person who, acting alone or in conjunction with other persons directly or indirectly takes the initiative in founding or organizing the business enterprise.
10. To be a promoter one need not necessarily be associated with the initial formation of the company; one who subsequently helps to arrange floating of its capital will equally be regarded as a promoter.

THE MAJOR DUTIES OF THE PROMOTER:

1. Duty to disclose secret profits: A promoter is not forbidden to make profit but to make secret profits. He may make a profit out of promotion with the consent of the company, in the same way as an agent may retain a profit obtained through his agency with his principle's consent. A promoter is allowed to make a profit out of a promotion but with the consent of the company.

2. Duty of disclosure of interest: In addition to his duty for declaration of secret profits, a promoter must disclose to the company any interest he has in a transaction entered into by it. This is so even where a promoter sells property of his own to the company, but does not have to account for the profit he makes from the sale because he bought the property before the promotion began. Disclosure must be made in the same way as though the promoter was seeking the company's consent to his retaining a profit for which he is.

3. **Promoter's duties under the Indian Contract Act:** Promoter's duties to the company under the Indian Contract Act have not been dealt with by the courts in any detail. They cannot depend on contract, because at the time the promotion begins, the company is not incorporated, and so cannot contract with its promoters. It seems, therefore, that the promoter's duties must be the same as those or a person, who acts on behalf of another without a contract of employment, namely, to shun from deception and to exercise reasonable skill and care. Thus, where a promoter negligently allows the company to purchase property, including his own, for more than its worth, he is liable to the company for the loss it suffers. Similarly, a promoter who is responsible for making misrepresentations in a prospectus may be held guilty of fraud under section 17, of the Indian Contract Act and consequently liable for damages under section 19 of the Act.

4. **Termination of Promoter's:** Duties A promoter's duties do not come to an end on the incorporation of the company, or even when a Board of directors in appointed. They continue until the company has acquired the property or business which it was formed to manage and has raised its initial share capital and the Board of directors has taken over the management of the company's affairs from the promoters. When these things have been done, the promoter's fiduciary and contractual duties cease.

5. **Remedies available to the company**: Remedies available to the company against the promoter for breach of his duties Since a promoter owes a duty of disclosure to the company, the primary remedy in the event of breach is for the company to bring proceedings for rescission of any contract with him or for the recovery of any secret profits which he has made.

6. **Rescission of contract:** So far as the right to rescind is concerned, this must be exercised on normal contractual principles, that is to say, the company must have done nothing to show an intention to ratify the agreement after finding breach involving non-disclosure or misrepresentation.

7. **To recover secret profit:** If a promoter makes a secret profit or does not disclose any profit made, the company has a remedy against him.

RIGHTS OF PROMOTERS

According to the **Companies Act of 2013**, a promoter has been given certain rights. **Promoters of a Company:** A promoter of a company is an individual or a group of people who come together with the objective of setting up an enterprise. The promoter can be an individual, a company, or an association of artificial legal entities.

1. **Rights to recover Initial Expenses:** Promoters have the rights to recover the capital they seek to and build to operate the company. They payment of these expenses depends on a lot of directors.

2. **Right to receive Proportionate amount from Co-promoters:** where more than one person act as the promoters of the company, one promoter can claim against another promoter for the compensation and damages paid by him. Promoters are severally and jointly liable for any untrue statement given in the prospectus and for the secret profits**.**

3. **Remuneration (right to receive):** The promoters work hard to build and run companies and for this the companies pay them as reward this remuneration is paid by different companies in different way which may be cash or debentures.

4. **Right of Indemnity:** If there are multiple promoters involved in a business, one of them has the right to demand compensation or damages from the others in the event of a contract breach. It is significant to remember that all of the promoters are equally and individually responsible for all company affairs. It is one of the many rights of a promoter.

5. **Right to Receive Legal Expenditures:** A promoter is legally entitled to reimbursement for any legal expenses he incurred during the company's creation out of pocket. These costs include things like registration, paperwork, advertising, legal fees, etc.

6. **Right to Compensation:** The promoter will also be eligible to collect compensation from the company if he holds a managerial position there. However, a contract of this nature has to be present stating the aforementioned fact.

REMUNERATION TO PROMOTER

The promoter has to incur the initial expenses in the process of formation of a company besides undergoing a good deal of arduous task. The promoter has, therefore, a legitimate right to claim for both the expenses incurred by him as well as remuneration for the work done by him. The claim for expenses should be supported by vouchers and should be placed before the directors of the company when formed. However, there is no contractual obligation on the part of the company to pay him for these expenses unless the company has expressly agreed to pay after its formation for the services rendered by him. The same is true about his remuneration.

The promoter may be remunerated in any of the following ways:

1. Promoter may sell his own asset to the company at profit for cash or shares in the company.
2. He may be given commission on the purchase price of the business taken over by the company.
3. He may be granted a lump sum as remuneration either in cash or in shares or debentures.

4. The amount of remuneration payable or paid to the promoters is required to be disclosed in the prospectus issued by the company.

II. INCORPORATION STAGE:

A. MEMORANDUM OF ASSOCIATION:

INTRODUCTION

The Memorandum of Association acts as the foundation of every company. It explains all the rules and bubbles powers of the owner in your systematic formal representation. It has a broad scope. As it is very important for every organization, we will try to understand more about moa. Let us discuss the meaning of the memorandum of association and its aims, features, and many more. Memorandum of Association of a Company Memorandum of association of the company deals with all aspects of that particular organization such as the operations delegation of duties and policies, principles, etc. The memorandum of association of any company is formed or designed by considering the objective of a particular firm. In the year 2013, section 399 of the companies act, designed to form an MOA, which is the public document and needs to get aware of this moa to all employees of an organization

The memorandum of association definition explains that all the powers and the rights should be mentioned in this public document and no one should depart from the contract as well as not to Violet the rules and regulations specified in the moa. If anyone violates, they can be termed as ultra vires of the company and immediately can void them. This is the simple and straight away definition of the memorandum of association of any company. It is completely under legal survival. All the papers are strictly verified and are tested by the moa in company law.

What is a Memorandum of Association/Meaning? Memorandum of Associationis the most important document of a company. It states the objects for which thecompany is formed. It contains the rights, privileges and powers of the company. Hence it is called a charter of the company. It is treated as the constitution of thecompany. It determines the relationship between the company and the outsiders. The whole business of the company is built up according to Memorandum of Association. A company cannot undertake any business or activity not stated in the Memorandum. It can exercise only those powers which are clearly stated in the Memorandum.

Definition of Memorandum of Association: According to ***Lord Cairns*** "The memorandum of association of a company is the charter and defines the limitation of the power of the company established under the Act".

Thus, a Memorandum of Association is a document which sets out the constitution of the company. It clearly displays the company's relationship with outside world. It also defines the scope of its activities. MoA enables the shareholders, creditors and people who have dealing with the company in one form or another to know the range of activities.

FEATURE OF MEMORANDUM OF ASSOCIATION

1. **It is Mandatory:** The memorandum of association is the basic charter on which the company is based and is mandatory for a company.
2. **Constitution of the company:** The memorandum of association is the constitution of the company because it defines its limitations and the sphere of its activities.
3. **Specific activities:** The memorandum cannot be altered by the company, except by fulfilling the conditions laid down in the Companies Act for specific activities and situations.
4. **Specify the company's activity:** It defines the scope of the company's activity, and all acts beyond the scope are deemed to be beyond powers.
5. **Open to inspection:** It's a public document and is open to inspection by those who deal with the company.
6. **Company's relations:** It defines the company's relations with outside individuals and its activities about them.

PURPOSE OF MEMORANDUM OF ASSOCIATION

1. To explain the scope of activities of the company.
2. To know the prospective shareholders know the areas where the company will invest their money and the risk they are taking in investing the money.
3. The outsiders will understand the limits of the working of the company, and their dealings with it should remain within the prescribed scope.
4. It is helps the shareholders, creditors and any other person dealing with the company to know the basic rights and powers of the company.
5. Helps to the prospective shareholders in taking the right decision while thinking of investing in the company.

CONTENTS OF MEMORANDUM OF ASSOCIATION

According to the Companies Act, the Memorandum of Association of a company must contain the following clauses:

1. **Name Clause of Memorandum of Association:** The name of the company should be stated in this clause. A company is free to select any name it likes. But the name should not be identical or similar to that of a company already registered. It should not also use words like King, Queen, Emperor, Government Bodies and names of World Bodies like U.N.O., W.H.O., World Bank etc. If it is a Public Limited Company, the name of the company should end with the word 'Limited' and if it is a Private Limited Company, the name should end with the words 'Private Limited'.
2. **Situation Clause of Memorandum of Association:** In this clause, the name of the State where the Company's registered office is located should be mentioned. Registered office means a place where the common seal, statutory books etc., of the company are kept. The company should intimate the location of registered office to the registrar within thirty days from the date of incorporation or commencement of business. The registered office of a company can be shifted from one place to another within the town with a simple intimation to the

Registrar. But in some situation, the company may want to shift its registered office to another town within the state. Under such circumstance, a special resolution should be passed. Whereas, to shift the registered office to other state, Memorandum should be altered accordingly.

3. Objects Clause of Memorandum of Association: This clause specifies the objects for which the company is formed. It is difficult to alter the objects clause later on. Hence, it is necessary that the promoters should draft this clause carefully. This clause mentions all possible types of business in which a company may engage in future. The objects clause must contain the important objectives of the company and the other objectives not included above.

4. Liability Clause of Memorandum of Association: This clause states the liability of the members of the company. The liability may be limited by shares or by guarantee. This clause may be omitted in case of unlimited liability.

5. Capital Clause of Memorandum of Association: This clause mentions the maximum amount of capital that can be raised by the company. The division of capital into shares is also mentioned in this clause. The company cannot secure more capital than mentioned in this clause. If some special rights and privileges are conferred on any type of shareholders mention may also be made in this clause.

6. Subscription Clause of Memorandum of Association: It contains the names and addresses of the first subscribers. The subscribers to the Memorandum must take at least one share. The minimum number of members is two in case of a private company and seven in case of a public company. Thus the Memorandum of Association of the company is the most important document. It is the foundation of the company.

B. ARTICLES OF ASSOCIATION

Article of Association is rightly known as the ***'Rule Book'*** of the company. The AOA lays down all the rules and objectives of the company which one must adhere to it. A company's ***Articles of Association (AOA)*** is a primary declaration of the company's nature, purpose and ends which, along with the Memorandum of Association, forms together the company's constitution. These must be submitted at the time of application for incorporation. They define clearly the responsibilities of the directors, the kind of business to be undertaken, and the means by which the shareholders exert control over the board of directors.

Meaning: The Articles of Association (AoA) is a document that defines the purpose of a company and specifies the regulations for its operations. The document outlines how tasks should be accomplished within an organization, including the preparation and management of financial records, and the process of director appointments.

Definition: Articles of Association of a Company As per ***Section 2 (5) of the Companies Act, 2013***, "The Articles of Association (AOA) of a company originally framed or altered or applied in pursuance of any previous company law or this Act."

CONTENTS OF ARTICLES OF ASSOCIATION

The articles generally deal with the following

a. Classes of shares, their values and the rights attached to each of them.
b. Calls on shares, transfer of shares, forfeiture, and conversion of shares and alteration of capital.
c. Directors, their appointment, powers, duties etc.
d. Meetings and minutes, notices etc.
e. Accounts and Audit
f. Appointment of and remuneration to Auditors.
g. Voting, poll, proxy etc.
h. Dividends and Reserves
i. Procedure for winding up.
j. Borrowing powers of Board of Directors and managers etc.
k. Minimum subscription.
l. Rules regarding use and custody of common seal.
m. Rules and regulations regarding conversion of fully paid shares into stock.
n. Lien on shares.

COMPONENTS OF THE ARTICLES OF ASSOCIATION

The articles of association will usually specify the way a company issues stocks, distributes dividends, and performs financial records. The document is focused on giving the reader information about the methods a company uses to achieve its daily, monthly, and yearly goals. The articles of association are relatively similar in any part of the world, even though the exact terms and items vary across jurisdictions. In general, it includes the following:

1. **Company Name;** A company must adopt an official name as a legal entity. It must be present in the articles of association. Usually, the following suffixes "Inc" or "Ltd" are used to show that an entity is a company. Please note that jurisdictions vary from country to country, and thus, there are various rules regarding company names. The words "government" or "church" cannot be used as a name because it might confuse the public. Also, words that are offensive and vulgar are also prohibited.
2. **Purpose of the Company:** Companies are incorporated for a specific reason. Primarily, it is a for-profit reason to pursue a certain goal by delivering value to society. The reason or purpose of the organization must be clearly stated in the articles of association. Some jurisdictions allow for very broad purpose statements, such as "management," while others require a more detailed purpose of an enterprise, i.e., "the operation and growth of a restaurant chain."
3. **Share Capital:** The articles of association will state the number and type of shares comprising a company's capital. Typically, there is always at least one form of common shares that makes up its capital. Additionally, one can also see several types of preferred stock. If information about stocks is found in the articles of association, it means they can be issued by the company when there is a need for funding.

4. **Organization of the Company:** The document includes legal information about the company, including the registration address, the number of directors and employees, and the identity of the founders and original shareholders. Legal advisors and auditors may also appear here, depending on the type of business and a country's jurisdiction.
5. **Shareholder Meetings:** The first general shareholder meeting provisions are listed in the shareholder meetings section. Notices, resolutions, and votes are detailed as well in the section, governing subsequent annual shareholder meetings.

ALTERATION OF ARTICLES OF ASSOCIATION

The alteration of the Articles should not sanction anything illegal. They should be for the benefit of the company. They should not lead to breach of contract with the third parties. The following are the regulations regarding alteration of articles.

A company may alter its Articles with a special resolution. Due importance and care should be given to ensure that the alteration of AoA does not conflict with the provisions of the Memorandum of Association or the Companies Act. A copy of every special resolution altering the Articles must be filed with the Registrar within 30 days of its passing.

a. The proposed alteration should not contravene the provisions of the Companies Act.

b. The proposed alteration should not contravene the provisions of the Memorandum of Association.

c. The alteration should not propose anything that is illegal.

d. The alteration should be bonafide for the benefit of the company.

e. The proposed alteration should in no way increase the liability of existing members.

f. Alteration can be made only by a special resolution.

g. Alteration can be done with retrospective effect.

h. The Court does not have any power to order alteration of the Articles of Association.

Difference between Memorandum and Articles of Association

The fundamental differences between Memorandum of association and articles of association are listed below:

Table N-02

Memorandum of Association	Articles of Association
❖ Association refers to a document that comprises the conditions essential for the company's incorporation	❖ Articles of Association enclose the rules and norms for the company's management.
❖ It is a subsidiary of the Companies Act	❖ It is subsidiary to both the Act and MoA
❖ In any contradiction between the MoA relating to any clause	❖ MoA shall prevail over the Articles of Association.
❖ It has details relating to the objects and powers of the company.	❖ It has information about the norms and rules of the company.
❖ should have six fundamental clauses	❖ Is drafted as per the company's discretion.
❖ It has to be registered with the Registrar of Companies at the time of incorporation.	❖ AoA, the company is not required to fulfill such requirements, though there is a provision for voluntarily registration.
❖ Specifies the interplay between the company and third parties. On the opposite,	❖ Regulates the interplay between the company and its serving members. It also defines the interplay between the members.
❖ The activities carried out beyond the scope of MoA are null and void.	❖ On the contrary, activities performed outside the scope of AoA can be ratified by shareholders' voting.

THE CERTIFICATE OF INCORPORATION

A ***Certificate of Incorporation*** is a legal document/license relating to the formation of a company or corporation. It is a license to form a corporation issued by the state government or, in some jurisdictions, by a non-governmental entity/corporation. Its precise meaning depends upon the legal system in which it is used. The certificate of incorporation is the certificate which specifies the birth of the company as a separate entity. A company legally comes into existence or becomes a separate legal entity on the date stated in its certificate of incorporation.

CERTIFICATE OF INCORPORATION SIGNIFICANCE:

1. **Issuance Authority:** The Certificate of Incorporation is typically issued by the government agency or regulatory body responsible for company registrations in a specific jurisdiction. In the United States, for example, this might be the Secretary of State's office. In India, it would be the Registrar of Companies (RoC).
2. **Contents:** The Certificate of Incorporation includes important details about the company, such as its name, registered office address, authorized share capital, details of directors and shareholders, and the date of incorporation.

3. Legal Recognition: Once the Certificate of Incorporation is issued, the company gains legal recognition as a separate legal entity from its owners, shareholders, and directors. It can conduct business, enter into contracts, own property, and sue or be sued in its own name.

4. Limited Liability: The Certificate of Incorporation also provides limited liability protection to the company's shareholders. This means that the shareholders are generally not personally liable for the company's debts and obligations beyond their investment in the company.

5. Validity: The Certificate of Incorporation remains valid as long as the company complies with ongoing legal and regulatory requirements, including filing annual reports and maintaining accurate records.

6. Public Record: The Certificate of Incorporation is a public record, which means that it is available for public inspection. Anyone can access this document to verify the legal existence and details of the company.

7. Requirement for Business Operations: The Certificate of Incorporation is often required to open bank accounts, enter into contracts, apply for licenses and permits, and engage in other business activities.

8. Unique Identification: The Certificate of Incorporation typically includes a unique identification number or code that distinguishes the company from others. In the case of companies in India, this is known as the Corporate Identification Number (CIN).

9. Use in Legal Proceedings: The Certificate of Incorporation is used as evidence of the company's legal existence and status in legal proceedings, such as litigation or disputes.

10. Annual Compliance: After obtaining the Certificate of Incorporation, the company is required to fulfil annual compliance obligations, including filing annual financial statements, holding annual general meetings, and updating any changes in company details with the regulatory authorities.

CONSEQUENCES OF INCORPORATION

1. Legal Existence: The Certificate of Incorporation confirms the legal existence of the company as a separate entity distinct from its shareholders, directors, and promoters. This legal personality allows the company to conduct business, own assets, enter into contracts, and engage in various activities in its own name.

2. Limited Liability: The Certificate of Incorporation provides limited liability protection to the shareholders. This means that the personal assets of shareholders are generally shielded from the company's debts and liabilities. Shareholders' liability is limited to the amount they have invested in the company.

3. Perpetual Succession: The issuance of the Certificate of Incorporation ensures the company's perpetual succession. This means that the company continues to exist even if there are changes in ownership, management, or the death of shareholders. The company's operations are not affected by such changes.

4. Separate Legal Identity: With the Certificate of Incorporation, the company gains its own legal identity. It can own property, sue or be sued, and undertake legal actions in its own name. This separation prevents the company's actions from being attributed directly to its shareholders or directors.

5. Access to Contracts and Transactions: The Certificate of Incorporation enables the company to enter into contracts, agreements, and transactions. It can engage in business activities, sign leases, make investments, and negotiate with other parties as a distinct legal entity.

6. Ability to Raise Capital: The issuance of the Certificate of Incorporation allows the company to raise capital through various means, such as issuing shares, debentures, or loans. Investors and lenders are more likely to engage with a legally recognized entity.

7. Share Trading and Ownership: For companies with shareholders, the Certificate of Incorporation enables the issuance and trading of shares. Shareholders can buy, sell, and transfer shares, allowing for ownership changes and investments.

8. Taxation and Reporting: The Certificate of Incorporation has implications for taxation. The company becomes subject to taxation as a separate entity, and it must fulfill tax reporting requirements based on the jurisdiction's laws.

9. Corporate Governance: With the Certificate of Incorporation, the company is expected to follow corporate governance standards, maintain proper records, and fulfill regulatory obligations. This includes holding annual general meetings, maintaining financial records, and submitting annual financial statements.

10. Legal Rights and Obligations: The Company gains legal rights and obligations, similar to those of an individual. It can enforce contracts, protect intellectual property, and engage in legal proceedings.

11. Investor Confidence: The issuance of the Certificate of Incorporation enhances investor confidence. It provides assurance that the company is a legally recognized entity adhering to legal and regulatory standards.

III. SUBSCRIPTION STAGE:

PROSPECTS:

Introduction: A prospectus is defined as a legal document describing a company's securities that have been put on sale. The prospectus generally discloses the company's operations along with the purpose of the securities being offered. Prospectus refers to an information booklet or offer document on the basis of which an investor invests in the securities of an issuer company.

It has been defined under section 2(70) so as to mean any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate. Red herring Prospectus under Explanation to section 32 has been referred to mean a prospectus which does not include complete particulars of the quantum or price of the securities included therein. Shelf Prospectus under Explanation to section 31 has been referred to mean a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

The definition clarifies that any notice, circular, advertisement or any other document inviting offers from public for the subscription or purchase of securities shall be included in the definition of Prospectus.

Meaning of Prospectus: Prospectus is a formal legal document designed to provide information and full details about an investment offering for sale to the public. Or it means a **formal document** that a Public Company issues to invite **offers from public** for subscribing its shares. It includes all the material information related to shares that a Company offers to the public. Furthermore, it usually helps the investors to take investment decisions.

Definition of Prospectus: According to ***the Companies Act 2013*** defines "Prospectus of a Company as any document issued as a prospectus. It includes Shelf, Red Herring or any other document inviting offers from public for subscription of securities of the Company". Or ***Section 2(70) of the Companies Act 2013*** defines Prospectus as "any document issued for advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate".

Prospectus is basically a document through which a company (public company) invites application for its shares or debentures. As per companies act it is any document described or issued as a prospectus and includes a red herring prospectus referred to in section 31 or any notice, circular, advertisement or any other document inviting offers from the public for the subscription or purchase of any securities of a body corporate

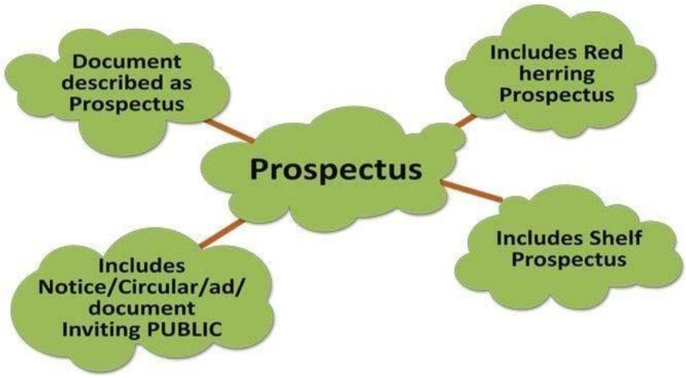
UNDERSTANDING PROSPECTUS

As per the Companies Act, 2013, a prospectus can include information such as advertisement, circular or notice among other legal documents inviting the public for the offering. Also, the prospectus should be issued only for the purchase of a company's securities. In order for a document to be considered a prospectus, it should act as an invitation for the public to purchase of stocks/shares, debentures or other instruments. Also, the prospectus should be issued by the company or an institution on behalf of the company and made solely for the public. In case a private company wishes to convert to a public company, it is required to either issue a prospectus or file a statement in lieu of prospectus of which the provisions are mentioned under Section 70 of the Companies Act, 2013

TYPES OF PROSPECTUS:

According to Companies Act 2013, there are four types of prospectus.
Figure No-03

1. Deemed Prospectus – Deemed prospectus has mentioned under



Companies Act, 2013 Section 25 (1). When a company allows or agrees to allot any securities of the company, the document is considered as a deemed prospectus via which the offer is made to investors. Any document which offers the sale of securities to the public is deemed to be a prospectus by implication of law.

2. Red Herring Prospectus – Red herring prospectus does not contain all information about the prices of securities offered and the number of securities to be issued. According to the act, the firm should issue this prospectus to the registrar at least three before the opening of the offer and subscription list.

3. Shelf prospectus – Shelf prospectus is stated under section 31 of the Companies Act, 2013. Shelf prospectus is issued when a company or any public financial institution offers one or more securities to the public. A company shall provide a validity period of the prospectus, which should not be more than one year. The validity period starts with the commencement of the first offer. There is no need for a prospectus on further offers. The organization must provide an information memorandum when filing the shelf prospectus.

4. Abridged Prospectus – Abridged prospectus is a memorandum, containing all salient features of the prospectus as specified by SEBI. This type of prospectus includes all the information in brief, which gives a summary to the investor to make further decisions. A company cannot issue an application form for the purchase of securities unless an abridged prospectus accompanies such a form.

CONTENTS OF PROSPECTUS

The prospectus contents are specified in the Companies Act in 2013. The prospectus must touch over the following content points:
Figure No- 04

1. **Name of the company and Addresses:** The prospectus should have names and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed;

2. **Date and signature:** The prospectus should be dated and signed. The prospectus should have dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time;

3. **The Separate Bank Account**: The prospectus should have a statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilized and unutilized monies out of the previous issue in the prescribed manner.

4. **Details of the Directors:** The prospectus should have a statement by the Board of Directors about their designation, allotments, and criteria etc.

5. **Underwriting:** The prospectus should have details about underwriting of the issue and consent of the directors, auditors, bankers to the issue, expert's opinion, if any, and of such other persons, as may be prescribed.

6. **The authority to issue Resolutions:** The prospectus should have the authority for the issue and the details of the resolution passed the procedure and time schedule for allotment and issue of securities and capital structure of the company in the prescribed manner.

7. **Public offer:** The prospectus should have main objects of public offer; terms of the present issue and such other particulars as may be prescribed.

8. **Present business of the company:** The prospectus should have main objects and present business of the company and its location, schedule of implementation of the project.

9. Promoter of the company: The prospectus should have management perception of risk factors specific to the project, gestation period of the project, extent of progress made in the project, deadlines for completion of the project and any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company.

10. Minimum subscription: The prospectus should have minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash and details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company.

11. Disclosures: The prospectus should have disclosures in such manner as may be prescribed about sources of promoter's contribution.

12. Voting Rights: Details of shares offered and the class of the issue as well as voting rights.

13. Shareholding: Details of signatories to the Memorandum and their shareholding particulars, the amount payable on application, on allotment, and on further calls.

14. Declaration: The company should also make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made there under and state such other matters and set out such other reports, as may be prescribed.

15. Registration: Also, every prospectus issued shall state that a copy has been delivered for registration to the Registrar and specify any documents required for registration.

16. Auditors of the company: in a Prospectus should be mention Auditors of the company.

17. Audited Reports: Audited reports regarded profit or losses of the company.

DISCLOSURES TO BE MADE IN A PROSPECTUS

1. General Information: The general information contained in a prospectus will be related to the name and address of the company's head office, officers, company secretary, directors, bankers, legal advisers. It accounts for the primary objective and business operated by the company. It describes the company's capital structure in a specified manner. Further, it contains information about the issue opening and closing date, procedure and terms for allotment. It lists out the objective of the public offer and terms and conditions of the issue. It also contains the consent of all the officers.

2. Financial Information: The financial information includes reports provided by company's auditors in connection to the profitability, liquidity, assets and liabilities, etc. as well as the report relating to the business in which the capital raised from the public will be utilized.

3. Statutory Information: The prospectus should include an official declaration concerning the compliance of the Companies Act and also that the prospectus does not contain anything which violates the provisions of the law.

REGISTRATION AND ISSUE OF PROSPECTUS

1. No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India.
2. a copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed.
3. Section 60(3) of the 1956 Act was amended by the Companies (Amendment) Act, 1960 for reasons explained thus "Section 60 provides that no prospectus shall be issued unless, on or before the date of its publication, there has been delivered to the registrar for Company registration of a copy thereof signed by the persons named there in as directors or proposed directors of the company.
4. It may not always be possible for companies to file the prospectus with the Registrar on the same date as it bears. In practice, it appears that prospectus are prepared and printed a few days previous to the date they bear.
5. There is nothing objectionable in a prospectus bearing a date posterior to its presentation for company registration.
6. It appears that in some cases Registrars have refused to register prospectuses on grounds other than those referred to in section 60(3).
7. it should not be within the province of the Registrar to refuse registration of a prospectus on the ground that the company is directly or indirectly contravening the policy of the Act of that its business is sought to be carried on in a manner contrary to law thought it will be in order for him to point out the defects in the documents on security."
8. Section 60(6) of the 1956 Act was amended and penalty was enhanced by the Companies (Amendment) Act, 2000. The Companies (Amendment) Act, 2000 also empowered SEBI to administer the provisions of section 55 of the 1956 Act in relation to listed companies and those which intended to get listed.
9. The provision relating to all other companies were to be administered by the Central Government. The Companies (Amendment) Act, 2000 also vested in SEBI the power to inspect books of account and other books and papers with respect to listed companies and the companies which intended to get listed.

10. SEBI was also authorized to file complaints under section 621 of the 1956 Act for offences relating to issue and transfer of securities and non-payment of dividend.

Issue of Prospectus after Registration

It is obligatory to issue a prospectus, containing the prescribed particulars, except when the shares are not offered to the public, or when the shares are offered to existing shareholders as rights issue, or when the issue relates to shares which are in all respects uniform with shares previously issued and quoted in a stock exchange. In the case of rights issue without any rights to renounce and in which the shares remaining unsubscribed by the existing shareholders of the company, are not to be offered to the public, having regard to the provisions of section 67 (3) of the 1956 Act. Offer of shares to the public without complying with the provisions of section 59 of the 1956 Act is a violation.

Statement in Lieu in Prospectus

The Statement in Lieu of Prospectus is a document filed with the Registrar of the Companies (ROC) when the company has not issued prospectus to the public for inviting them to subscribe for shares. The statement must contain the signatures of all the directors or their agents authorized in writing.

Misstatement in a Prospectus and its Consequences

The prospectus is trusted on by the members of the general public for subscribing or purchasing the securities and other instruments from the corporation and any misstatement by the prospectus can lead to punishment. Misstatement in a prospectus occurs when a untrue or misleading statement is included and issued in the prospectus. Any deletion and inclusion of any matter which misleads the public is also a misstatement under Section 34 of this Act. For instance, and statement which gives the incorrect location of the company’s office is misstatement in the prospectus or any statement offering shares misleads the public is a misstatement in a prospectus.

Misleading Prospectus or Mis-statement in prospectus:

A prospectus is said to be misleading or untrue in two following cases:

1. A statement included in a prospectus shall be deemed to be untrue, if the statement is misleading in the form and context in which it is included.
2. Omission from prospectus of any matter to mislead the investors.

CONSEQUENCES / REMEDIES FOR MISSTATEMENTS IN PROSPECTUS:

1. Remedies for civil liability:

a. **Revocation of the Contract:** The person who purchased the securities can cancel the contract. The money will be refunded to him, which he paid to the company.

b. **Damages for Fraud-** After revocation, the shareholders can claim damages from the company by filing a case in the court.

2. Remedies for Criminal Liability:

a. Imprisonment up to 2 years or Rs. 50000 fine must beard by the people that mislead.

b. Person who knowingly issued a misstatement is punishable for imprisonment up to 5 years or with a fine Rs. 100000 or both.

3. Remedies Directors, promoters and the Authorized Persons:

a. **Damages for misstatement-** Compensation will be given to the shareholders for the loss by the directors, promoters and the authorized persons.

b. **Damages for non-disclosure-** Fine of Rs. 50000 ad recovering the damages must be given by the people who mislead the purchasers from the one that is chargeable for the damages.

Iv. Commencement Stage

Document to be Filed

After the promoters have got the necessary documents prepared, these are required to be filed with the Registrar of companies. 'The documents that are necessary for the purpose of registration are as follows.

1. Memorandum of Association: The Memorandum of Association is the charter of ' the company. It needs to be originally prepared for every company. It defines the objectives for which the company is being formed. The memorandum by its clauses, describes the whole character of the company. This includes its objectives, its name, the nature of its 'liabilities, the address of its registered office, the capital C which the company is authorized to have as well as the names, addresses and agreement of people who agree to form the company. The memorandum defines the powers of a company and its relations with third parties. For purposes of registration, the promoters have to file with the Registrar of companies, a duly signed and properly stamped printed memorandum of association.

2. Articles of Association: The articles of association contain the rules and regulations for managing the internal affairs 'of the company and, therefore, govern the relationship between the company and its members. A private company must prepare its own articles because the articles impose restrictions on the right to transfer shares, prohibit invitation to the public to subscribe to its share capital and restrict the maximum number of members to fifty.

3. Copy of the proposed agreement: According to the Companies Amendment Act, 1988 a clause has been inserted in the Act which provides that if a company proposes to enter into an agreement with any individual for appointment as its managing director, or a whole time director or manager, a copy of such an agreement should also be filed with the Registrar along with the other documents

4. **Statement of nominal Capital:** In case of a company limited by shares or by guarantee, and having a share capital, the promoters must also file a statement declaring the amount of nominal capital with which the company is proposed to be registered. Normal capital is also called the 'authorized capital '. It means the I amount of capital which a company is authorized to issue. The nominal capital is divided into shares of a uniform fixed value. The authorized capital must be clearly defined in the memorandum of association in its capital clause. The amount of nominal capital for a company depends upon its projected capital requirement. In accordance with the provisions of Capital Issues (Control) Act, 1947, if the company proposes to raise more than one crore of rupees within twelve months of its incorporation through the issue of shares or debentures, the promoters should also obtain and file the consent of the Controller of Capital Issues.

5. **Address of the registered office of the company:** Though not required for the purposes of registration, the address of registered office of the company is usually filed with the Registrar, by both private and public companies. In case it is not given at the time of filing of other documents, it should be filed within thirty days of incorporation.

6. **A list of persons who have agreed to become the first directors of the company should also be filed:** This is not necessary in case of private companies. The directors of a public company have also to give a written undertaking to take up and ‘pay for their qualification shares.

7. **Statutory declaration:** Lastly, the promoters must file a statutory declaration in the prescribed form stating that all requirements of the Companies Act and its rules relating to registration have been complied with. This declaration may be signed by 48 any of the following.

a. an advocate of the Supreme Court or of a High Court; or ,

b. an attorney or a pleader entitled to appear before a High Court; or

c. a secretary, or a chartered accountant practicing in India and who has been engaged in the formation of the company; or

d. By a person named in the articles as a director, manager or secretary of the ' company.

Register of Companies

The Registrar of Companies will scrutinize, all these documents and if he is satisfied that the process of securing the minimum prescribed capital has been done honestly and efficiently and the minimum prescribed capital has been obtained from the public, then he shall issue a Certificate of Commencement of Business.

Certificate of Commencement of Business

Commencement of Business Certificate is the official declaration that the Director of the Company needs to file with the Registrar of Companies. This declaration is filed before starting the business and exercising borrowing powers by the Company, within 180 days of the incorporation of the Company.

This is a declaration filed before commencing the business and exercising borrowing powers by the Company. Company has to comply with Section 10A (1) (a) of Companies Act 2013 and Companies (Incorporation) Rules, 2014 while filing the Certificate of Commencement of Business.

What is Certificate of Commencement of Business?

The certificate of commencement of business is the declaration filed by the company's directors with the registrars. After the company is incorporated, it is provided with a sufficient one hundred and eighty days to file the proclamation in Form INC-20A. The Ministry of Corporate affairs launches Form 20 A & which can be directly seen in their official website portal.

Procedure for Obtaining the Certificate of Commencement of Business:

If a public company, having share capital, has issued a prospectus, inviting the public to subscribe for its shares or debentures, it cannot commence any business until

1. The company has received in cash, the amount mentioned in the prospectus as minimum subscription and the shares up to the amount of minimum subscription have been allotted, Formation of a Company
2. every director has paid to the company, in cash, the application and allotment money on the shares taken or contracted to be taken by him:
3. No money is liable to be repaid to the applicants for failure to apply for or to obtain permission for the shares or debentures to be listed on any recognized stock exchange.
4. Where the shares of the company are to be quoted on the stock exchange, Requisite application must have been submitted to the stock exchange and approval obtained within the stipulated time; .
5. The prescribed stamp duty as prescribed by the Indian Stamp Act and as prevalent in that State in which the company is registered is paid;
6. a treasury challan showing payment of prescribed fee is attached; and
7. A statutory declaration on duly verified in the prescribed form has been filed with the Registrar. The declaration should specify that clause (i), (ii), and (iii), as above have been complied with. The declaration should be verified by one of the directors or the Secretary of the Company. Where the Company has not t appointed a Secretary, the declaration may be verified by a practicing Secretary.

Formations of Global Company

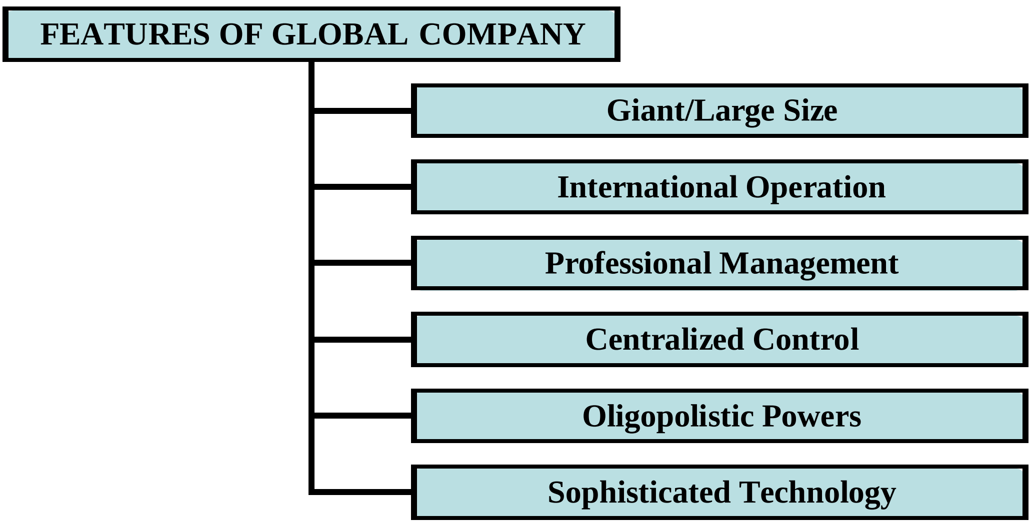
Managing global organizations has been a business challenge for centuries. But the natural history of the task is changing with the accelerating shift of economic activity from Europe and North America to markets in Africa, Asia, and

Latin America. McKinsey Global Institute research suggests that 400 midsize emerging-market cities, many new in the West, will generate nearly 40 percent of global growth over the next 15 years. The International Monetary Fund confirm that the ten fastest-growing economies during the years ahead will all be in emerging markets. Against this backdrop, progressing advance in information and communications technology have made possible new forms of international coordination within global companies and potential new ways for them to flourish in these fast-growing markets.

Meaning of Global Company: A company that operates facilities (such as factories and distribution centers) in many countries around the world.

Definitions: They Global Business as involving “transactions across. Borders, primarily through export-import trade and foreign direct investment (FDI)” where. these transactions “are devised and carried out across national borders to satisfy the objectives.

Features of Global Companies:
Figure N0:05



1. Giant/Large Size: The assets and sale of Multinational corporations are quite large. These companies operate on large scale as they trade in more than one company. These companies generate large wealth. Their operations are so huge that sometimes their sales turnover exceeds the GROSS NATIONAL PRODUCT of developing Countries. By this we can imagine about the powers and caliber of a multinational company. Example of MNC”s is, the physical assets of IBM exceed 8 billion dollars.

2. **International Operation:** A multinational corporation operates in more than one country. It has branches, factories, offices in several countries. It operates through a network of branches and subsidiaries in host countries. They sell their products in different countries. For e.g.: Coca Cola, apple etc.

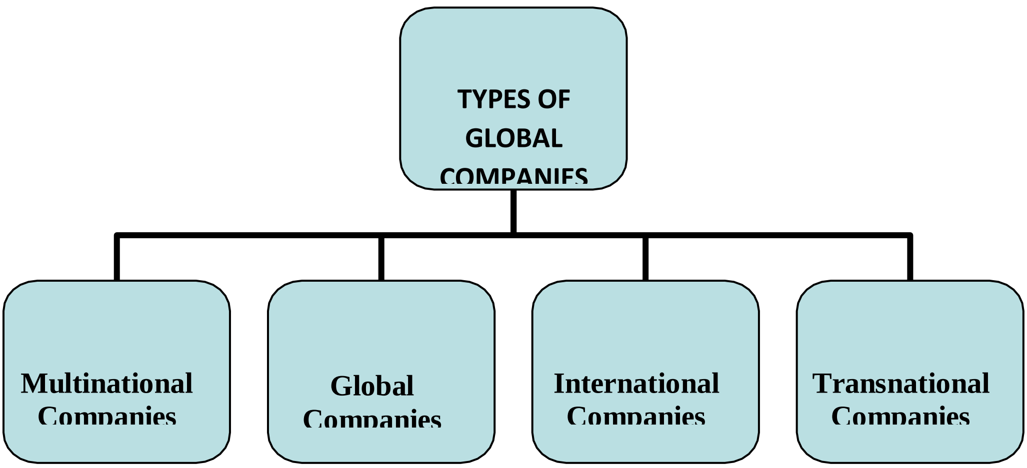
3. **Professional Management:** A Multinational corporation employs professional experts, specialized people. MNC"S try to keep their employees updated by imparting them training from time to time. It employs professionals to handle the advance in technology effectively.

4. **Centralized Control:** The branches of Multinational companies spread in different countries are controlled and managed from the headquarters situated in the home country. Headquarters in the home country is the main branch. All branches operate within the policy framework formed by headquarters.

5. **Oligopolistic Powers:** Oligopoly means power in the hands of few companies only. Due to their giant size, the multinational companies occupy dominating position in the market .They join hands with big business houses and give rise to monopoly. They also take over other firms to acquire huge power and improve market share

6. **Sophisticated Technology:** Multinational companies make use of latest and advanced technology to supply world class products. They use capital-intensive technology and innovative techniques of production.

Types of Global Companies:
Figure N0:06



1. **Multinational Companies:** The multinational or multi domestic organization offers a very high degree of local receptiveness. It is a decentralized partnership of local businesses, linked together from side to side personal control by expatriates who occupy key positions abroad.

2. **Global Companies:** Global organizations offer scale efficiencies and cost advantages. With global scale services, the global organization seeks to create standardized products. It is often centralized in its home country, with overseas operations considered as delivery pipelines to tap into global market opportunities. There is tight control of strategic decisions, resources, and information by the global hub.

3. **International Companies:** International companies have the aptitude to transfer knowledge and expertise to overseas environments that are less superior. They are corresponding federations of local businesses, controlled by sophisticated management systems and corporate employees. The attitude of the holding company seems to be parochial, fostered by the superior know-how at the center of the organization.

4. **Transnational Companies:** Global competition is forcing many businesses to shift to a transnational model, this organization combine local awareness with global efficiency and the ability to transfer know-how better, cheaper, and faster. The transnational company is arranged up of a network of specialized or differentiated units, which focus on managing integrative linkages between local businesses as well as with the center. The subsidiary becomes a distinctive asset, rather than simply an arm of the parent company. Manufacturing and technology development are located wherever it makes sense, and there is an explicit focus on leveraging local know-how in order to exploit worldwide operations.

LEGAL FORMALITIES AND ADMINISTRATION

Step 1: Obtain Director's Identification No: Directors of an Indian company have to register and obtain the identification number which is called Director Identification Number or DIN. It can be obtained by filing Application form DIN-1 online on www.mca.gov.in. The provisional DIN is immediately issued. All the documents are verified by the concerned authority and after that a permanent DIN is issued. The entire process takes about 4 weeks. Cost to Complete Rs.100

Step 2: Obtain Digital Signature Certificate: Directors are also required to get Digital Signature Certificate or DSC. Digital Signature Certificate (DSC) is required for all Directors or authorized representatives of the company and professionals who will be necessary to sign ROC forms or documents. This certificate can be obtained from one of six private agencies authorized by MCA such as Tata Consultancy Services. Company directors submit the prescribed application form along with proof of identity and address. Each agency has its own fee structure, ranging from INR 400 to INR 2650.

Step 3: Registration of Company Name

The name of the company should be registered by the Registrar of Companies of the state where the registered office of the company will be located. The application should mention at least four names in order of preference. There should not be an existing company by the same name. Further, the last words in the name are required to be "Private Ltd." in the case of a private company and

"Limited" in the case of a Public Company. The ROC generally informs the applicant within seven days from the date of submission of the application, about the availability of the desired name. After obtaining the name approval, it normally takes approximately two to three weeks to incorporate a company. Cost to complete: INR 500

Step 4: Stamping of Company Documents: The Memorandum of Association and Articles of Association are the most important documents to be submitted to the ROC for the purpose of incorporation of a company. The Memorandum of Association is a document that states the constitution of the company, objectives, scope of activities of the company and also defines the relationship of the company with the outside world. The Articles of Association contain the rules and regulations of the company for the management of its internal affairs. These documents should be stamped and submitted to the ROC along with relevant forms and registration fee. Cost to complete: Rs. 1,300 which includes INR 200 for MOA + INR 1000 for AOA for every INR 500, 000 of share capital held by the company and also INR 100 for the stamp paper for declaration.

Step 5: Get the Certificate of Incorporation: The ROC scrutinizes the documents and, if necessary, instructs the authorized person to make necessary corrections. Thereafter, a Certificate of Incorporation is issued by the ROC, from which date the company comes into existence. It takes one to two weeks from the date of filing of the Memorandum of Association and Articles of Association to receive a Certificate of Incorporation. Although a private company can commence business immediately after receiving the certificate of incorporation, a public company cannot do so until it obtains a Certificate of Commencement of Business from the ROC. Cost: Rs.14, 133

Step 6: Make a Seal: Making a seal is not a legal requirement for the company. However a seal is required to issue share certificates and other documents. Cost depends on the number of words engraved and the time period of delivery. Apart from the above procedures, one is also required to obtain the following documents from the concerned authorities. You can apply for these registrations simultaneously and they can be obtained at minimum or no charges. Cost: INR 530(depends on the number of seals required and the time period of delivery).

Questions

Section: A

1. What is Memorandum of Association?
2. Define Memorandum of Association.
3. What is Articles of Association?
4. Define Articles of Association.
5. Give the meaning of Prospects?
6. Who is liable for misstatement in prospectus?

Section: B

1. Explain the documents required to formulation of a company.
2. Explain the contents of prospects.
3. Explain the registrations of prospects.
4. Examine the misstatement prospects and its consequences.

Section: C

1. Explain The Stages of Formulation of a Company as per The New Companies Act 2013.
2. Explain the procedure of incorporation of a company.
3. What is Global Company? Explain the Features and Legal Formalities of a Global Company.
4. What are the Major differences between AoA & MoA.
5. Explain The procedure of alteration in Article of Association
6. Define prospectus. Who is liable for misstatement in prospectus? Explain the Civil and Criminal liability?
7. What is MoA? What are its classes? How it's altered.
8. What is AoA? What are its classes? How it's altered.

Unit - III Company Administration

❖	**Managerial Personnel**
❖	Managing Director Appointment.
❖	Powers, duties and responsibilities.
❖	Whole time Director.
❖	Independent Director.
❖	**Auditor's Appointment.**
❖	Qualification, duties and responsibilities.
❖	**Company Secretary:**
❖	Qualifications, Appointment, Rights, Duties, Liabilities and Removal.

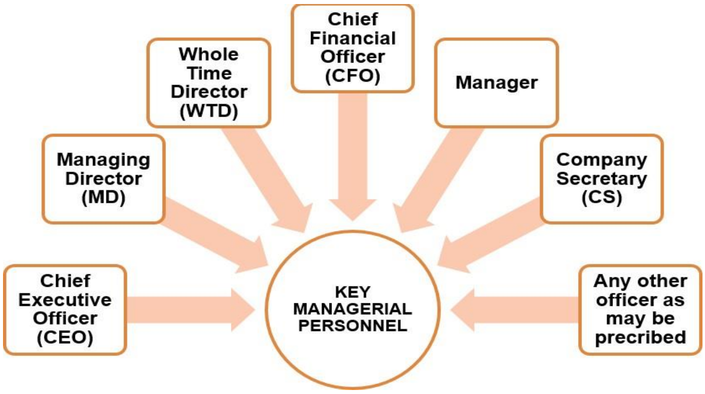
Introduction

Administration, also referred to as business administration, is the management and application of the processes an office, business, or organization. It involves the efficient and effective organization of people, information, and other resources to achieve organizational objectives. Information is key to business operations, and people are the resources who make use of information to add value to an organization. This means that companies will struggle without some type of administration management.

The administration is a systematic process of administering the management of a business organization, an educational institution like school or college, government office or any nonprofit organization. The main function of administration is the formation of plans, policies, and procedures, setting up of goals and objectives, enforcing rules and regulations, etc.

Administration lays down the fundamental framework of an organization, within which the management of the organization functions. The nature of administration is bureaucratic. It is a broader term as it involves forecasting, planning, organizing and decision-making functions at the highest level of the enterprise. Administration represents the top layer of the management hierarchy of the organization. These top level authorities are the either owners or business partners who invest their capital in starting the business. They get their returns in the form of profits or as a dividend.

KEY MANAGERIAL PERSONNEL:
Figure No-07



Managing Directors Section 2(54)

Managing directors play a significant role in the company's management and are responsible for its expansion, profitable growth and innovation. They are senior-level managers in a company looking after its day-to-day operations. They oversee the functioning and performance of different departments. They obtain reports from the department managers and, in turn, report them to the Chief Executive Officer (CEO) and the board of directors.

'Managing Director' means a director who by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

A Managing Director (MD) possesses substantial powers of management. The powers of a Whole Time Director are given in their terms of appointment. Therefore, he or she doesn't have discretionary or arbitrary power to take decisions on policy matters

Meaning of Managing Directors: Managing Director (MD) means a director who, by virtue of – i. the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company.

Definition Managing Directors: The Companies Act, 2013 ('Act') defines a managing director as a director entrusted with substantial powers of managing the company affairs by virtue of either an agreement with the company, articles of association or a resolution passed in its general meeting or board of directors.

Managing Director (MD): According to ***Section 2(54) of the Companies Act, 2013,*** Managing Director means a director who, by virtue of, An agreement with the company, A resolution passed by its BoDs (Board of Directors), The articles of the company, A resolution passed by its general meeting.

Managing Director under the Companies Act, 2013:

The Companies Act, 2013 ('Act') defines a managing director as a director entrusted with substantial powers of managing the company affairs by virtue of either an agreement with the company, articles of association or a resolution passed in its general meeting or board of directors. However, the managing director must exercise their powers subject to the board's control, superintendence and direction. The Act also states that substantial powers of the managing director do not include the power to do administrative acts that are of a routine nature authorized by the board, such as the following: Power to affix the company's common seal on any document. Draw and endorse cheques on the company's account in any bank. Draw and endorse a negotiable instrument. Sign any share certificate. Direct registration of transfer of a share.

APPOINTMENT OF A MANAGING DIRECTOR

1. **Forms involved:** DIR-12: Particulars of Directors and key managerial personnel and the changes among them. MGT- 14: Filling of Resolutions and Agreements to the Registrar. MR-1: Return of Appointment of MD/WTD to the Registrar.
2. **Documents to be provide by the person:** A declaration that he is not disqualified to become a director under the Act (DIR-8) Consent on or before appointment(DIR-2) Self attested copy of identity and address proof)
3. **Tenure of Managerial Personnel:** Maximum tenure for appointment of Managing Director, Whole Time Director or Manager is 5 years at a time.
4. Exemption is given to only government companies by exemption notification dated 05thJune, 2015.
5. **Re-appointment:** Re-appointment may be done for next term but not earlier than one year before expiry of the current term, company may re-appoint them for next term in last one year of current term.
6. **Minimum Age:** Minimum age for appointment as MD/WTD/Manager is 21 years.
7. **Maximum age:** for appointment as MD/WTD/Manager is 70 years(But subject to approval of Shareholders in General Meeting a person can be appointed as MD/WTD/Manager even after obtaining age of 70 years.
8. **Cessation of Continuation of Appointment of MD/WTD/Manager:** Where a person is below age of 21years or has attained the age of 70years. Person who is an undercharged insolvent or has at any time been adjudged as an insolvent. Where a person at any time suspended payment to his creditors or make or has at any time made a composition with them. Where a person at any time convicted by a court of an offence and sentenced for a period of more than six months.
9. **Appointment of Managing Director and Manager at same time:** A private company or public company shall not appoint Managing Director or Manager at the same time. However whole-time director can be appointed along with appointed Managing Director or Manager.

10. Number of Directorship: A person shall not hold office as a director in more than 20 companies, including alternate directorship (Section 165 of the Act). The appointee and the company in which he is appointed as Managing Director shall confirm the same.

11. Entry in the Register of Directors and KMP and their Shareholding: The company shall make necessary entry of the requisite particulars in the register of directors and managerial personnel and their shareholding (under Section 170 of the Act)

Powers/Duties of Managing Directors

A managing director is appointed to manage the affairs of a company. His powers and duties are usually defined by

POWERS AND DUTIES OF MANAGING DIRECTORS

1. The agreement with the company by which he is appointed, or by the Memorandum and Articles of the company,
2. By the resolutions of the shareholders or the directors.
3. A managing director is entrusted with substantial powers of management.
4. His powers may relate either to particular division or divisions of the business.
5. A managing director is required to exercise his powers subject to superintendence, control and direction of the board of directors of the company.
6. A managing director must be a director; he has also the duties, responsibilities and liabilities of an ordinary director.
7. The power to do administrative acts of a routine nature when so authorized by the Board.
8. the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank.
9. Power to draw and endorse any negotiable instrument.
10. To sign any certificate of share or to direct registration of transfer of any share.
11. Powers to include within the substantial powers of management.

Role and Responsibilities of Managing Director

1. Manages the company’s budget and allocates its resources.
2. Create strategic business plans for meeting the company’s goals.
3. Promote development and research for boosting business growth.
4. Track technology advancements and trends to stay competitive.
5. Interact with clients and company shareholders.
6. Meeting the public and engaging in promotional activities.

7. Ensuring that the company's policies comply with industry and legal regulations.
8. Take up directing, planning, controlling and overseeing the business operations of the company's departments.
9. Ensure smooth functioning and supervise department managers and heads.
10. Update and inform the board and CEO about business strategies, budget targets and industry developments.
11. Develop public relations strategies, research programmes and marketing initiatives to promote the company.
12. Represent the company in business negotiations with other suppliers, companies, customers, vendors and government officials.

Whole Time Directors (WTD): "Whole-time Director" has been defined to include a director in the whole-time employment of the company. The definition of 'whole-time director' is an inclusive definition. A whole-time director refers to a director who has been in employment of the company on a fulltime basis and is also entitled to receive remuneration.

Meaning of Whole-Time Director: The terms Whole Time Director and Director in whole-time employment were used in several sections. As an outcome, a request was made seeking clarifications as to whether/or not the two terms can be considered synonyms. This position was explained by the Department of Company Affairs, which specified that the two terms are synonymous and can be used interchangeably.

Definitions: Whole Time Director ***Section 2 (94) of the Companies Act, 2013*** defines "whole-time director" as a director in the whole-time employment of the company.

Process to Appoint a Whole-Time Director

The following process is followed for appointment of whole-time Director:-

1. First appoint the candidate as Additional Director of the Company, if not already appointed as director.
2. Prepare notice of board meeting along with draft resolution(s) to be passed in the board meeting.
3. Convene board meeting and pass the following board resolution.
4. Sending of Outcome of Board Meeting to Stock exchange wherever company's securities are listed within 30 minutes from the conclusion of meeting.
5. Issue letter of appointment to the candidate.
6. File e-Form DIR-12 along with attachments with the Registrar of Companies regarding appointment of whole-time director within thirty (30) days.

7. File e-form MGT-14 for board resolution along with attachments with the Registrar of Companies regarding appointment or variation (if any) in terms of appointment of whole-time Director within thirty (30) days from passing of resolution.
8. Filling of E-form MR-1 within sixty (60) days
9. Prepare Annual General Meeting/ Extra Ordinary General Meeting notice for taking approval from member for appointment of whole-time Director whichever is coming first after their appointment.
10. Convening and passing of ordinary resolution for appointment of whole-time.
11. Sending of Appointment letter to whole-time Director and entry in register minutes, etc of company.

Difference between Managing Directors and Whole Time Directors
Table No-03

Basis	Managing Director	Whole Time Director
Definition	The Managing Director represents the Board in the regular activities of the company.	The Whole Time Director is a director
Power	Managing Director (MD) possesses substantial powers of management.	The powers of a Whole Time Director are given in their terms of appointment. Therefore, he or she doesn't have discretionary or arbitrary power to take decisions on policy matters.
Holding Office	An individual or a person can be appointed as MD of one of the other companies providing the same is approved by a Board Resolution with joint consent.	An individual cannot be a Whole Time Director in more than one company except in a subsidiary company at the same time.
Manager	A person or an individual can be appointed as Managing Director (MD) of one other company provided the same is approved by a Board Resolution with joint consent.	A company can appoint both a Whole Time and a manager at the same time.
Appointment	Resolution is passed at the board meeting. Shareholders' consent is not required.	A resolution is passed at the AGM (Annual General meeting). Except when the Whole Time Director is appointed as a Trustee for debenture holders.

Independent Director (ID)

As per section 149(6) of the Companies Act, 2013, Independent Director is a Director other than a Managing Director or a whole time Director or a nominee Director, who should, not be a promoter or director of the company of the company or its subsidiary company.

a. Not be a Relative of promoter or director in the company, its holding, subsidiary or associate company.

b. Have no pecuniary relationship with the company's holding, subsidiary or associate company, or their promoters, or directors, during the 2 immediately preceding financial years or during the current financial year;

c. None of whose relatives has or had Pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to 2 % or more of its gross turnover or total income or 50 lakh rupees or such higher amount as may be prescribed, whichever is lower, during the 2 immediately preceding financial years or during the current financial year.

Role of an Independent Director

Independent Director Acts as a guide, coach, and mentor to the Company. The role includes improving corporate credibility and governance standards by working as a watchdog and help in managing risk. Independent directors are responsible for ensuring better governance by actively involving in various committees set up by the company. The independent directors are required because they perform the following important roles:

1. Facilitate withstanding and countering pressures from owners.
2. Fulfill a useful role in succession planning.
3. On issues such as strategy, performance, risk management, resources, key appointments and standards of conduct he or she must support in gaining independent judgment to bear the board's deliberations.
4. While evaluating the performance of the board and management of the company, he or she needs to bring an objective view.
5. Scrutinizing, monitoring and reporting management's performance regarding goals and objectives agreed in the board meetings.
6. Safeguard the interests of all stakeholders, particularly the minority shareholders.
7. Balance the conflicting interest of the stakeholders.
8. Check on the integrity of financial information and ensure financial controls and systems of risk management are in operation.
9. In situations of conflict between management and shareholder's interest, aim towards the solutions which are in the best interest of the company.
10. Establishing suitable levels of remuneration of executive directors, key managerial personnel, and senior management.

Duties of an Independent Director

1. Undertake appropriate induction and regularly update and refresh their skills, knowledge, and familiarity with the company.
2. Attempt to attend company's general meetings.
3. Attempt to attend BOD's meetings and board committees meeting being a member.
4. Have adequate knowledge about the company and the external environment in which it operates.
5. Report matters concerning unethical behavior, actual or suspected fraud or violation of the company's code of conduct or ethics policy.
6. Acting within his or her authority, assist in protecting the legitimate interests of the company, shareholders and its employees.
7. Not to unfairly obstruct the functioning of the company or committee of the Board.
8. Participate in the Board's committee being chairpersons or members of that committee.
9. Not to disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.
10. Ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use.

Resident Director

Section 149(3) of the Companies Act, 2013 provides that every Company shall have at least one director who has stayed in India for a total period of at least 182 days during the financial year.

Criminal Liability of Directors

The Companies Act, 2013 not only makes the director criminally liable but also includes officers in default under the concept of corporate criminal liability in India. The term Officer in a default is a broad term and can include whole-time director, key managerial personnel and such other directors in the absence of KMP who has been specified by the Board of Directors and every other director who is aware of the default which is being done by virtue of receiving of board proceedings or by participating in same without raising any objection or where non-compliance has taken place with his consent or connivance. The corporate criminal liability is recognized under the following sections of the Companies Act, 2013

1. Prohibition on an issue of shares on discount: The Company will be fined for the amount not less than one lakh but which may extend up to five lakhs. Further, the officer in default may be imprisoned for up to six months or fine of minimum one lakh which may extend to five lakhs or both.[section 53]

2. Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot: If a person is found tampering with the minutes of meeting then such an officer in default may be imprisoned for the term which may extend to 2 years or with fine of not less than twenty-five thousand but may extend to one lakh.[Section 118(12)]

3. Books of account, etc., to be kept by Company- Officer in default- Maximum imprisonment of 1 year or Fine: Not less than Rs. 50,000 and may extend to Rs. 5 lakhs or with both.[Section128(6)]

4. Financial statement Officer in default- Maximum imprisonment of 1 year or Fine: Not less than Rs. 50,000 and may extend to Rs. 5 lakhs or with both.[Section129(7)]

5. Financial statement, Board's report, etc- Company Fine: Not less than Rs. 50,000 and may extend to Rs.25 lakhs and Officer in default- Maximum imprisonment of 3 years or Fine- Not less than Rs. 50,000 and may extend to Rs. 5 lakhs or with both.[Section 134]

6. Related party transactions: In case of unlisted Company, be punishable with fine which shall not be less than 25,000 rupees but which may extend to 5 lakh rupees.[Section188(5)]

7. Punishment for person of shareholder: Such person in default- Minimum 1 year to Maximum 3 years imprisonment or Fine- Not less than Rs. 1 lakh and may extend to Rs. 5 lakhs.[Section 57]

8. Refusal of registration and appeal against refusal: Such person in default- Minimum 1 year to Maximum 3 years imprisonment or Fine- Not less than Rs. 1 lakh and may extend to Rs. 5 lakhs.[Section 58(6)]

9. Prohibitions and restrictions regarding political contributions: Company- Fine- 5 times of the amount of contribution in contravention and Officer in default- Maximum imprisonment of 6 months and Fine- 5 times of the amount of contribution in contravention.[Section 182(4)]

10. Disclosure of interest by the director: Such person in default- Minimum 1-year imprisonment or Fine- Not less than Rs. 50,000 and may extend to Rs. 1 lakh or both. [Section 184(4)]

11. Investments of Company to be held in its own name: Company-Fine- Not less than Rs.25, 000 and may extend to Rs.25 lakhs and Officer in default- Maximum imprisonment of 6 months or Fine- Not less than Rs. 25,000 and may extend to Rs. 1 lakh or with both. [Section 187(4)]

12. Punishment for fraud: Any person who is found to be guilty of fraud- Maximum imprisonment of 6 months may extend to 10 years. Such person also liable to fine which may extend up to 3 times the amount involved. .[Section 447]

Chief Financial Officer (CFO)

The CFO's role is multi-faceted and includes a range of responsibilities, from developing and implementing financial strategies to overseeing financial operations and controls. A CFO must also be an expert in financial reporting and analysis and be able to provide clear and concise insights into the financial performance of a business. As the head of a company's finance department, a ***Chief Financial Officer (CFO)*** plays a critical role in determining an organization's financial direction and success.

Evolution of the Chief Financial Officer (CFO)

The role of a CFO has undergone a remarkable transformation over the years. Traditionally, the CFO was primarily responsible for financial record-keeping and reporting. However, in the present era, the CFO has emerged as a strategic partner, actively contributing to high-level decision-making processes. The demands for a CFO have grown exponentially due to rapidly changing market conditions, globalization, and the ever-increasing complexity of financial regulations. Today's CFOs not only manage financial aspects but also play a critical role in shaping business strategy, risk management, and investor relations.

Meaning of Chief Financial Officer: "***Chief Financial Officer"*** means a person appointed as the chief financial officer of a company. The term refers to a senior executive responsible for managing the financial actions of a company.

Role and Responsibilities of Chief Financial Officer:

1. **Developing and Implementing Financial Strategies:** A CFO creates and executes financial plans that complement the overarching business strategy. This involves working closely with other senior leaders to ensure the company's financial plans and budgets support its long-term growth and success.
2. **Overseeing Financial Operations and Controls:** As the head of the finance department, the CFO is responsible for overseeing all financial operations, including accounts payable, accounts receivable, and payroll. The CFO must also ensure that internal controls are in place to minimize financial fraud risk and comply with accounting and tax regulations.
3. **Financial Planning and Analysis:** CFOs are responsible for developing and implementing a company's financial strategy, including budgeting, forecasting, and financial planning. They examine financial data to spot patterns and offer suggestions for enhancing the company's financial performance. CFOs also evaluate the financial impact of potential investments and provide insight into potential risks.
4. **Financial Reporting:** CFOs are in charge of creating and delivering precise financial reporting. The balance sheet, income statement, and cash flow statement are examples. The Chief Financial Officer (CFO) ensures that financial reports are prepared in line with GAAP and filed on time. Additionally, **CFO Roles and Responsibilities PDF** the CFO must be able to explain financial data to the board of directors, investors, and other stakeholders.

5. Risk Management: CFOs are responsible for managing and identifying financial risks. This includes conducting risk assessments, implementing risk management strategies, and monitoring risk exposure. The CFO must also ensure the company has appropriate insurance coverage and complies with relevant regulations.

6. Tax Planning and Compliance: CFOs are responsible for ensuring the business abides by all tax laws and rules. This involves creating tax planning plans, managing tax audits, and preparing and filing tax returns. The Chief Financial Officer (CFO) must possess a thorough understanding of tax laws and regulations and be able to apply this knowledge to the business's financial operations. The CFO must also ensure that the company's financial practices align with best corporate governance practices. The CFO must be able to navigate the complex regulatory landscape and ensure that the company complies with all relevant regulations, including securities laws, tax laws, and environmental regulations. The CFO may assist the business in maintaining its reputation and guaranteeing its long-term success by ensuring it complies with all pertinent legislation.

7. Treasury Management: CFOs oversee the company's cash flow and ensure there are enough resources on hand to pay for all of the company's financial commitments. This includes controlling the firm's financial ties, making cash flow projections, and ensuring the company has enough liquidity. The CFO must also manage the company's currency exposure and ensure that foreign exchange risk is managed appropriately.

8. Capital Management: Capital Management refers to managing an organization's financial resources, including allocating, using, and managing its capital (i.e. equity, debt, and other funding sources). The CFO oversees the capital management process, ensuring that the organization has access to sufficient funding to support its operations, grow its business, and achieve its strategic objectives. This may involve managing the organization's debt structure, securing new funding sources, optimizing the use of capital, and balancing the trade-off between risk and return. Capital management is a critical aspect of financial management that helps the organization to achieve financial stability and sustainable growth.

9. Mergers and Acquisitions: under CFO Roles and Responsibilities PDF, the CFOs are critical in the company's mergers and acquisitions (M&A) activities. The CFO must assess the financial impact of potential M&A opportunities, negotiate financing arrangements, and ensure that the integration of acquired companies is financially sound. The CFO must also ensure that the company's financial reporting and control systems are effective for newly acquired companies.

10. Financial Operations: CFOs oversee the company's financial operations, including accounts payable and receivable, payroll, and treasury. The CFO must ensure that financial processes are efficient and effective and that the company's financial systems are robust and secure. Additionally, the CFO is responsible for ensuring that financial data is timely and correct and that fraud and mistakes are prevented via financial controls.

11. Investment Management: The CFOs heavily influence the company's investment management operations. They must assess potential investment opportunities, monitor investment performance, and make recommendations to the CEO and board of directors. The CFO must ensure that the company's investment portfolio is diversified and in line with the company's financial goals and risk tolerance.

12. Budgeting and Forecasting: Budgeting and forecasting are crucial components of a CFO's responsibilities. Budgeting involves creating a plan for the company's financial resources that aligns with the company's strategic goals. This includes setting revenue targets, determining expenses, and estimating capital expenditures. On the other hand, forecasting entails predicting future financial outcomes using data from past and present market patterns. The CFO must work with other executive team members to develop accurate and realistic budgets and forecasts and monitor the company's financial performance against these projections to make any necessary adjustments.

13. Developing and Maintaining Relationships with Key Stakeholders: A CFO must communicate effectively with various stakeholders, including the board of directors, investors, lenders, and regulatory agencies. The CFO must develop and maintain strong relationships with these stakeholders, informing them of the company's financial performance and ensuring it meets its financial obligations. The CFO must also be able to represent the company in financial negotiations and be able to communicate the company's financial strategy and goals effectively.

14. Keeping up with the Latest Trends in Financial Management: The financial landscape is constantly changing, and CFOs must stay current with the latest financial management trends and developments. Keeping up with evolving accounting standards, tax legislation, and financial regulations is a part of this. The CFO must also know emerging technologies and tools to improve financial performance, such as cloud computing and artificial intelligence. By staying informed and adapting to new developments, CFOs can help their companies stay ahead of the competition.

15. Debt and Equity Financing: This refers to the responsibility of the CFO in managing the organization’s funding sources, including debt (such as loans) and equity (such as stock offerings). This includes negotiating favorable terms, structuring financial instruments, and ensuring that the organization’s financial position remains strong and attractive to potential lenders and investors.

16. Internal Audit: An internal audit is assessing an organization’s financial and operational systems, processes, and controls by internal auditors. The CFO is responsible for ensuring that the internal audit function operates effectively, providing valuable insights and recommendations to senior management, and contributing to the overall improvement of the organization’s financial management processes.

17. Building a Strong and Efficient Finance Team: A CFO is responsible for leading the finance team and ensuring that the team can effectively support the company's financial operations. This includes recruiting and training finance professionals, setting performance goals, and creating an environment that fosters collaboration and innovation. The CFO must also ensure that the finance team has the necessary resources to meet the company's financial goals, including technology and software. The CFO may aid the business in achieving its financial goals and maximizing its financial performance by assembling a capable and effective finance staff.

COMPANY SECRETARY (CS):

Is a vital link between the company and its Board of Directors, shareholders, government and regulatory authorities and all other stakeholders. Ensures that Board procedures are followed and regularly reviewed and provides guidance to Chairman and the Directors on their responsibilities under various laws. Commands high position in the value chain and acts conscience seeker of the company. With the growing complexities of modern business, supervision of the day to day administration of company affairs has assumed great importance.

Moreover, with increasing complications of the Companies Act regulating joint stock companies, it has become quite burdensome for top management to ensure compliance with various provisions of the Act. It is, therefore, necessary that an official who is well versed in Company law as well as administration should be appointed to take care of the legal requirements and day-to-day administration of company affairs. The office of the company secretary is expected to fulfill this need.

Company Secretary has been recognized as Key Managerial Personnel along with the Chief Executive Officer/ managing director/manager, whole-time director and Chief Financial Officer. (Section 203) Being Key Managerial Personnel, Company Secretary is required to be mandatorily appointed in every company belonging to such class or classes of companies as may be prescribed. As per the Rule 8 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, such prescribed class are every listed company and every other public company having a paid-up share capital of ten crore rupees or more shall have whole-time key managerial personnel. Also as per Rule 8A, i.e. appointment of Company Secretaries in companies not covered under Rule 8, A company other than a company covered under rule 8 which has a paid up share capital of five crore rupees or more shall have a whole-time company secretary.

Qualifications of Company Secretary

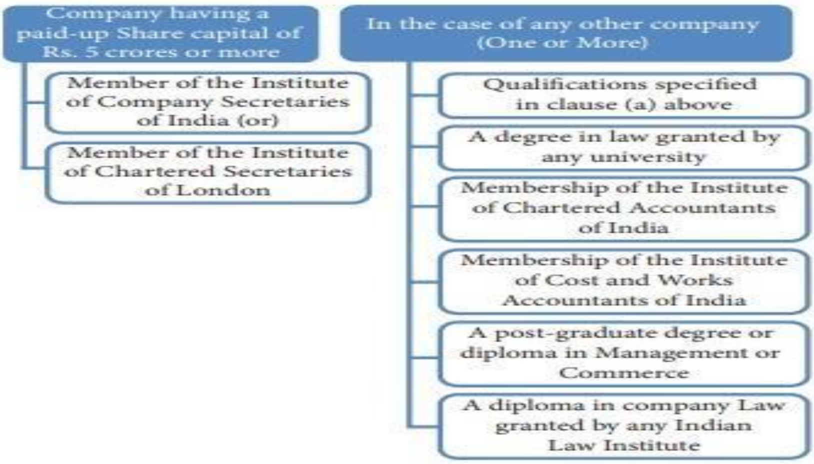
A person having prescribed qualifications can be appointed secretary of a company. Apart from the statutory qualifications, he should also have other qualifications as may be necessary to conduct the affairs of the company.

According to ***Section 2(45) of the Companies Act 2013***, a Company Secretary must possess the qualifications prescribed by the Central Government from time to time. The qualifications prescribed by the Companies Secretary's Qualifications) Rules 1975, for the Secretary of a Company are:

Figure No-08

Statutory Qualification

Figure No-09



A (i) In case of a company having a paid-up share capital of ₹5 crore 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.

(ii) 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 or Commerce granted by any university or the Indian Institute of Management.

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

Other Qualifications

The Secretary also holds the following qualifications.

Figure No-10

DUTIES OF A COMPANY SECRETARY:

Rule 10 of the Rules provides the duties of the CS, which are as follows:

1. **Guidance to Directors:** Provide the company directors guidance as they may require concerning their powers, duties and responsibilities.
2. **Convening of meetings:** Facilitate the convening of meetings, attend general, board and committee meetings, and maintain the minutes of these meetings.
3. **Approvals of Meetings:** Obtain approvals from the general and board meetings, government, and other required authorities as provided under the provisions of the Act.
4. **Represent regulators and other authorities:** Represent before several regulators and other authorities under the Act connected with the discharge of duties under the Act.
5. **Conducting Meetings:** Assist the company board in the conduct of the company affairs.
6. **Best Practices:** Advice and assist the board in complying with the corporate governance requirements, ensuring good corporate governance and best practices.
7. **Discharges of duties:** Discharge such other duties as specified under the Act or rules.

Roles and Responsibilities of Company Secretary

The job responsibilities of Secretary vary from organization to organization, some basic roles and responsibilities which are common are explained below.

1. **Minutes:** The Secretary is responsible for ensuring that accurate minutes of meetings are taken and approved. Requirements of minutes may vary as per the needs of the organization but should include at a minimum, Date, time, location of meeting, List of those present and absent; List of items discussed; List of reports presented, List of motions presented and description of their disposition. Minutes should have enough information to help absent members to understand what issues were discussed and what decisions were made. The Secretary signs a copy of

the final, approved minutes and ensures that this copy is maintained in the organization's records.

2. Implementation of decisions: Even though it is for the management/staff team primarily to implement the decisions of the Board, it is the role of the Secretary to communicate such decisions, ensure implementation and report back to the Board in the next meeting on actions taken on them and updates. This is the role of the Secretary in between Board meetings.

3. Custodian of records: As the custodian of the organization's records, the Secretary is responsible for maintaining accurate documentation and ensuring that the records are made available when required by authorized persons. These records may include governing documents, details of board members, board meeting minutes, financial reports, and other official records.

4. Communication: The Secretary ensures that proper information about the schedule of next meeting and upcoming events is shared with the Board and on time. In most of the case, the Secretary is responsible for sending out necessary notices for meetings.

5. Meetings: The Secretary participates in Board meetings as a voting member or as specified in the governing laws. The Secretary provides items for the agenda as appropriate and informs all the members well in advance about the meeting. Further, the minutes of the previous meeting are read, and if they are approved, the signature of the Chairperson is obtained on them.

In the absence of the Chairperson (and Vice-Chairperson, if the position exists), the Secretary calls the meeting to order, presiding until a temporary chairperson is elected. The Secretary records meeting minutes as described above depending upon the practices of the organization.

6. Signing Officer: The Secretary may be designated by the Board and/or bylaws as one of the signing officers for certain documents. In this capacity, the Secretary may be authorized or required to sign or countersign cheques, correspondence, applications, reports, contracts or other documents on behalf of organization.

7. Accountability: The Secretary is accountable to the Board and the general members of the organization.

Appointment Process of a Company Secretary

Section 203 of the Companies Act, 2013 ('Act') and Rules 8 and 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 ('Rules'), states that the following companies must appoint a CS as a Key Managerial Personnel (KMP).

1. Convene board meeting by giving a notice to all the directors and pass a resolution for appointing a whole-time company secretary.
2. Inform the Registrar of Companies about the appointment of the company secretary by filing form MGT-14 and DIR-12 within 30 days from the date of appointment.
3. Make necessary entries and maintain a proper register of directors and key managerial personnel after the appointment of the company secretary.

4. Inform the stock exchange where the company shares are listed, in the case of a listed company.
5. All listed companies with a paid-up share capital of more than Rs.10 crore.
6. All public companies with a paid-up share capital of more than Rs.10 crore.
7. All private limited companies with a paid-up share capital of more than Rs.10 crore.
8. All unlisted companies with a paid-up share capital of more than Rs.10 crore.

Removal and Dismissal of Company Secretary

The Companies Act 2013 is the governing legislation for companies in India. It outlines various provisions and guidelines for the functioning and management of companies, including the appointment and removal of key officers such as the company secretary. Under the Companies Act 2013 in India, the position of a Company Secretary holds great importance in ensuring compliance and maintaining corporate governance within a company. However, there may be situations where it becomes necessary to remove a company secretary from their role. The circumstances in which a company secretary may be removed after company registration in India, and also the removal of a company secretary while adhering to the provisions of the Companies Act 2013.

Removal Procedure of Company Secretary:

How a company appoints a Company Secretary in India, the board of directors can decide to end their employment by passing a resolution in a board meeting. They should follow these steps:

1. In accordance with section 173 of the Companies Act, 2013. After having informed all the directors of the company, call a board meeting. Talk about removing or resigning the Company Secretary, and pass a resolution on this.
2. Submit an electronic version of DIR-12 in 30 days to the company registrar, accompanied by the requisite filing fees. Optionally, present evidence of the termination, such as a via note.
3. Notify the stock exchange where the company is listed.
4. Record the details of the termination in the register maintained for Company Secretaries under Section 170.
5. If needed, issue a public notice based on the company's size and nature.
6. The board should fill the resulting vacancy within six months from the date of the termination in a board meeting.

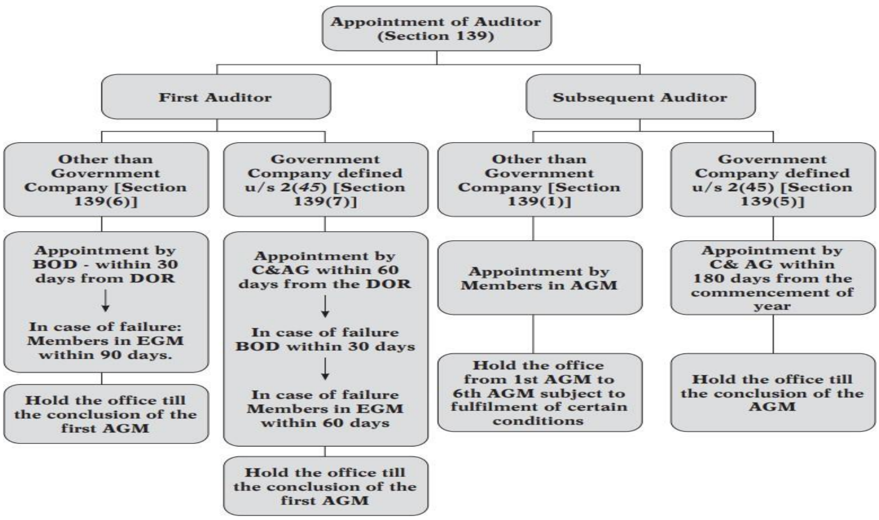
AUDITORS

The Board of Directors of a company shall appoint an individual or firm as the first auditor of a company, other than a Government company, within thirty days from the date of registration of the company. The appointment of first auditor shall be ratified by members at the first annual general meeting.

Eligibility or Qualifications of the Auditor

1. A person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant.
2. A firm whereof majority of partners practicing in India are chartered accountants may be appointed by its firm name to be auditor of a company.
3. If a limited liability partnership firm is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorized to act and sign on behalf of the firm.

APPOINTMENT OF AUDITORS (SEC 139)



1. **Appointment of first auditor of a company, other than a government company:** Sub-section (6) of section 139 of the Act states that, notwithstanding anything contained in sub-section (1), the first auditor of a company, other than a government company, shall be appointed by the board of directors within 30 days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within 90 days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

2. **Appointment of auditors in a Government Companies:** As per sub-section (7) of section 139, notwithstanding anything contained in sub-section (1) or sub-section (5), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the C&AG within 60 days from the date of registration of the company.

3. Appointment of subsequent auditor(s) in case of a Government Company: Sub-section (5) of section 139 of the Act provides that notwithstanding anything contained in sub-section (1), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the C&AG shall appoint an auditor duly qualified to be appointed as an auditor of companies under this Act. Such appointment shall be made in respect of a financial year within a period of 180 days from the commencement of the financial year. Such auditor shall hold office till the conclusion of the annual general meeting.

4. Appointment of an auditor to fill casual vacancy: "Casual" means "not expected, foreseen, or planned". Casual vacancy may arise out of death, disqualification, resignation or removal etc. of the auditor or non-ratification of appointment by the shareholders as per the first proviso to sub-section (1) of section 139.

5. Term of auditor and rotation after expiry of term: As per sub-section (2) of section 139 read with Rule 5, following companies (excluding one person companies and small companies) shall not appoint an individual as auditor for more than one term of five consecutive years; and an audit firm as auditor for more than two terms of five consecutive years.

6. Rotation of auditing partner and his team: As provided in sub-section (3) of section 139 of the Act, subject to the provisions of this Act, members of a company may resolve to provide that— (a) in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or (b) the audit shall be conducted by more than one auditor. The Central Government may, by rules, prescribe the manner in which the companies shall rotate their auditors in pursuance of sub-section (2). No such rules are prescribed till date.

7. Tenure of statutory auditor: Sub-section (1) of section 139 of the Act provides that the auditor appointed at the first annual general meeting shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting subject to ratification in every annual general meeting. Similarly the auditor appointed thereafter shall hold office till the conclusion of every sixth meeting. The auditor appointed by the board or by members of a company on recommendation of the board (in case of of filling of vacancy caused by resignation) holds office till the conclusion of next annual general meeting. The auditors appointed by Comptroller & Auditor General within one hundred eighty days from the commencement of the financial year holds office till the conclusion of the annual general meeting. The first auditor of a company specified in sub-section (7) of section 139 is required to be appointed by C&AG within 60 days from the date of registration of the company who holds office till the conclusion of the annual general meeting.

8. Re-appointment of retiring auditors at the annual general meeting: As provided in sub-section (9) of section 139, a retiring auditor may be reappointed at an annual general meeting, if following three conditions are satisfied: (a) he is not disqualified for re-appointment; (b) he has not given the company a notice in writing of his unwillingness to be reappointed.

TYPES OF AUDITORS

1. **Government Auditors:** Central and state audit agencies employ auditors to work with government agencies, bureaucratic departments, ministries and private business entities. The primary goal of a government auditor is to ensure that institutions properly account for their expenses and income, as per regulatory requirements. Auditors assess whether government departments are ready for audits by reviewing their financial statements and internal audit reports. They also conduct performance and compliance audits to identify operational irregularities and productivity issues within departments.
2. **External Auditor:** An external auditor may be an independent contractor or part of an auditing company. Companies hire them to conduct annual audits for specific departments or for the entire company. Though external auditors work with a company's internal auditors, they may not allow internal stakeholders of a company to interfere with or influence their auditing processes.
3. **Internal Auditor:** The board or the management of a company may hire an internal auditor to review and audit its internal functions. Some companies may hire experienced auditors from auditing companies to work as internal auditors on a contract basis. They scrutinize financial records and documents to ensure legal and regulatory compliance. They may identify methods to improve a company's processes and suggest steps to reduce expenses and wastage of resources.
4. **Forensic auditors:** Regulatory bodies appoint forensic auditors to obtain evidence from companies charged with financial malpractice. Central and state-level judicial bodies can accept a forensic auditor's reports as valid evidence. Forensic auditors investigate various aspects of financial fraud and submit reports to a concerned regulatory body. They may conduct audits for both government and private institutions.
5. **Tax Auditors:** Tax Auditors are responsible for overseeing financial records to determine whether they are complying with the various applicable laws. Tax Auditors apply various principles of Accounting in their daily operations.
6. **Financial Auditors:** Financial Auditors are in charge of reviewing that an organization's financial statements must be accurate and in accordance with generally accepted accounting rules. Financial Auditors examine the transactional paperwork that the company has provided in order to evaluate the accounting and financial reports of the organization.
7. **Operational Auditors:** operational Auditors are basically Internal Auditors who are specialized in conducting reviews in their area of expertise. Operational Auditors are responsible for auditing various operating activities of an organization both on a day-to-day basis as well as on a broader scale.

8. Compliance Auditors: Compliance Auditors majorly work with the higher management body of an organization. They are responsible for checking whether a company is complying with federal and other state laws and regulations. They are also responsible for enforcing guidelines within an organization.

POWERS AND DUTIES OF AUDITORS

1. Access all books of account and vouchers: Every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place.

2. Information and explanation: The auditor shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor.

3. Loans and advances: Whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members.

4. Check all transaction: Whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company.

5. Check all Investments: where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company.

6. Loans and Advances: Whether loans and advances made by the company have been shown as deposits.

7. Personal Expenses: Whether personal expenses have been charged to revenue account.

8. Check the books of account and documents: where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading.

RESPONSIBILITIES OF AUDITORS

Under the Companies Act of 2013, Chapter X talks about the auditors and audits, which includes the power and duties of auditors and auditing standards. Access to the Company's Accounting Books: Auditors inspect these company account books, which include books related to statutes, financial records,

1. Access to the Company's Accounting Books: Auditors inspect these company account books, which include books related to statutes, financial records, stocks, costing records, etc. These books are recorded and maintained at the registered office and the company's main branch.

2. Right to acquire Information: The auditors have the right to acquire information and explanations from the officers of the company who might be required to perform their duties and inquiry about the access to the security of loans and advances, the fairness of transactions, the sale of assets, the accuracy of loans and advances, and the accuracy of company's personal expenses. They also have the right to verify the accuracy of allotments for cash and exactness in the position in the account books and balance sheet. A holding company auditor has the right to access the records of every subsidiary mentioned in the financial statement.

3. Attend General Meetings: The auditor has the right to attend general meetings and shall receive notices of every discussion related to the auditors.

4. Legally Complying: The audits shall comply with the provisions stated in law for it, the auditing stand the taxation laws, the relevant industry rules and the corporate governing regulations.

5. Maintaining of Documents: The auditors shall prepare a document that includes the plans related to audits, its paperwork, and the notes on its proceedings, research and their conclusion.

6. Report of the Members: The auditor must report examined members of the company on the accounts and financial statements, also considering the provisions mentioned under the act, accounting standards, and other relevant laws. The report shall provide a fair view of the financial state including.

7. Providing an Audit Report: The primary responsibility of an auditor is to look after all the financial statements and accounts of the company and check for any miscalculation. It is the foremost duty of an auditor to give his opinion, in the form of an audit report, to the company as to whether or not the financial statements give a true and fair view of the state of the company's affairs.[2] The auditor has to make sure that the report prepared is in consonance with the relevant provisions of the Companies Act.

8. Reporting Failure: If it ever comes to the notice of an auditor that the company is not maintaining proper books of accounts, then he/ she has to notify the company and if no actions are taken by the director in this regard, the auditor notify the Companies Registration Office within a period of seven days.

9. Reporting Indictable Offence: If an auditor finds out that the company or someone associated with it has committed an indictable offence, then he/ she shall report this to the Office of the Director of Corporate Enforcement[3] ("ODCE") and must also help them with their investigation of the report.

10. Exercising Professional Integrity: Auditors shall always carry out their duties with utmost professional integrity by maintaining reasonable skills and by exercising care while auditing. If anything, contrary to it is found, then they can be held liable for damages to the company or to any of its members.

REMUNERATION OF THE AUDITORS

1. The remuneration of the auditor of a company shall be fixed in its general meeting.
2. The Board may fix remuneration of the first auditor appointed by it.
3. The remuneration shall be in addition to the fee payable to an auditor include the expenses.

4. If any, incurred by the auditor in connection with the audit of the company and any facility extended to him.
5. The remuneration fixed does not include any remuneration paid to him for any other service rendered by him at the request of the company

BASIC ELEMENTS OF AN AUDIT REPORT

1. Title: The auditor's report shall have a title that clearly indicates that it is the report of an independent auditor.

2. Addressee: The auditor's report shall be addressed, as appropriate, based on the circumstances of the engagement. Law, regulation or the terms of the engagement may specify to whom the auditor's report is to be addressed.

The auditor's report is normally addressed to those for whom the report is prepared, often either to the shareholders or to those charged with governance ofthe entity whose financial statements are being audited. In case of a company, the report is addressed to the shareholders of the company.

3. Auditor's Opinion: The first section of the auditor's report shall include the auditor's opinion, and shall have the heading "Opinion."

Basis for Opinion: The auditor's report shall include a section, directly following the Opinion section, with the heading "Basis for Opinion", that:

a. States that the audit was conducted in accordance with Standards on Auditing;
b. Refers to the section of the auditor's report that describes the auditor's Responsibilities under the SAs.
c. Includes a statement that the auditor is independent of the entity in accordance with the relevant ethical requirements relating to the audit and has fulfilled the auditor's other ethical responsibilities in accordance with these requirements.
d. States whether the auditor believes that the audit evidence the auditor has obtained is sufficient and appropriate to provide a basis for the auditor's opinion.

Thus, the Basis for opinion section provides important context about the auditor's opinion.

4. Key Audit Matters: For audits of complete sets of general purpose financial statements of listed entities, the auditor shall communicate key audit matters in the auditor's report in accordance with SA 701. When the auditor is otherwise required by law or regulation or decides to communicate key audit matters in the auditor's report, the auditor shall do so in accordance with SA 701. Law or regulation may require communication of key audit matters for audits of entities other than listed entities.

5. Responsibilities for the Financial Statements: The auditor's report shall include a section with a heading "Responsibilities of Management for the Financial Statements."

6. Auditor's Responsibilities for the Audit of the Financial Statements: The auditor's report shall include a section with the heading **"Auditor's Responsibilities for the Audit of the Financial Statements."**

7. Location of the description of the auditor's responsibilities for the auditof the financial statements: The description of the auditor's responsibilities for the audit of the financial statements.

8. **Other Reporting Responsibilities:** If the auditor addresses other reporting responsibilities in the auditor's report on the financial statements that are in addition to the auditor's responsibilities under the SAs, these other reporting responsibilities shall be addressed in a separate section in the auditor's report with a heading title.

9. **"Report on Other Legal and Regulatory Requirements"** or otherwise as appropriate to the content of the section, unless these other reporting responsibilities address the same topics as those presented under the reporting responsibilities required by the SAs in which case the other reporting responsibilities may be presented in the same section as the related report elements required by the SAs.

If other reporting responsibilities are presented in the same section as the related report elements required by the SAs, the auditor's report shall clearly differentiate the other reporting responsibilities from the reporting that is required by the SAs. If the auditor's report contains a separate section that addresses other reporting responsibilities, the requirements stated above shall be included under a section with a heading "Report on the Audit of the Financial Statements." The "Report on Other Legal and Regulatory Requirements" shall follow the "Report on the Audit of the Financial Statements."

10. **Signature of the Auditor:** The auditor's report shall be signed. The report is signed by the auditor (i.e. the engagement partner) in his personal name. Where the firm is appointed as the auditor, the report is signed in the personal name of the auditor and in the name of the audit firm.

The partner/proprietor signing the audit report also needs to mention the membership number assigned by the Institute of Chartered Accountants of India. They also include the registration number of the firm, wherever applicable, as allotted by ICAI, in the audit reports signed by them.

11. **Place of Signature:** The auditor's report shall name specific location, which is ordinarily the city where the audit report is signed.

12. **Date of the Auditor's Report:** The auditor's report shall be dated no earlier than the date on which the auditor has obtained sufficient appropriate audit evidence on which to base the auditor's opinion on the financial statements, including evidence that:

DISQUALIFICATIONS OF THE AUDITOR

The following persons shall not be eligible for appointment as an auditor of a company.

1. **An officer or employee of the company:** A person who is a partner, or who is in the employment, of an officer or employee of the company.

2. **his relative or partner and holding any security :** a person who, or his relative or partner and holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company not exceeding Rs. 1 lakh.

3. **His relative or partner is indebted to the company:** A person who, or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company not exceeding Rs. 5 lakh.
4. **His relative or partner has given a guarantee**: A person who, or his relative or partner has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, not exceeding Rs. 1 lakh.
5. **Business with the company :** a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company
6. **Relative is a director:** A person whose relative is a director or is in the employment of the company as a director or key managerial personnel.
7. **appointment as auditor of more than twenty companies:** a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies.
8. **Convicted by a court of an offence:** A person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction.
9. **Subsidiary or associate company:** Any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialized services as provided in section 144.

AUDIT COMMITTEE,

INTRODUCTION: The audit committee, ***inter-alia,*** plays an important and critical role in ensuring the integrity of the financial statements through its oversight of the company’s financial reporting process, internal control system and audit functions. To discharge this role effectively and efficiently, the Board of Directors (“the Board”) must ensure that it has directors with appropriate qualifications to provide an independent, objective and effective oversight through audit committee.

SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 [here in after referred as “Listing Regulations”], Composition o audit Committee as per Regulation 18 (1) of the Listing Regulations.

What Is an Audit Committee? An audit committee is one of the major operating committees of a company's board of directors that is in charge of overseeing financial reporting and disclosure.

Objectives of an Audit Committee:

1. The accuracy, integrity and transparency of the company’s financial statement with adequate and timely disclosures.
2. Compliance with legal and regulatory requirements, Internal control over

financial reporting and on policies and procedures adopted for orderly and efficient conduct of business;

3. Monitoring the independence of the statutory auditors;
4. External and internal audit processes including performance of the statutory auditors and internal auditors of the company;
5. Impact of schemes involving merger, demerger, amalgamation, etc. on the company and its shareholders; and
6. Scrutiny of loans given, investments made, guarantees and securities provided in connection with any loan taken by any person or entity.

THE RESPONSIBILITIES OF AUDIT COMMITTEE:

a) Overseeing the processes that ensure the integrity of financial statement issued by management from time to time. Where specific disclosures are required to be made in financial statement, the audit committee shall ensurecompliance thereof.

b) Review the audit strategy risk involved in the audit and audit observations.

c) Overseeing the adequacy and effectiveness of the internal controls and processes by which confidential or anonymous complaints or information regarding financial, operational or commercial matters are received and acted upon.

d) Ensuring that the process of identification of related parties is exhaustive. The audit committee may check whether the company seeks the updated details of all related parties from its promoters, promoters group, directors, key managerial personnel, holding company / parent, subsidiaries, associates and joint ventures of the company at least oncein a financial year.

e) Evaluate that the payment of royalty / brand usage value by the company torelated party is not disproportionately high and the same is consistent with the benchmarks, if any, prescribed by the regulators such as SEBI/RBI etc.

f) Evaluate the transaction on financial assistance given to promoter entities which have to be written off or are deemed unlikely to be recovered and ensure monitoring of the same.

g) To seek confirmation from CEO and CFO that all loans (or other form of debt), guarantees, comfort letters (by whatever name called) or securities Enquiring into reasons for default by the company in honouring its obligations to its depositors, debenture holders, creditors, shareholders (in case of non- payment of declared dividend) and recommending appropriate action tothe Board.

h) Appointing expert values for any valuation by the company either of its ownassets or liabilities or those of any other party and adopt the value's reporton conclusion of the valuation.

i) Approve and recommend to the Board the appointment of the company's Chief Financial Officer including extension of service tenure.

j) Enquire into the end-use of funds raised from the public and to draw the attention of the Board to significant deviations from the use of funds asstated in the offer document.

CORPORATE SOCIAL RESPONSIBILITY COMMITTEE:

As a sequel, necessary amendments have been made in ***The Companies Act 2013*** incorporating the guidelines for Corporate Social Responsibility. S.135 has been included laying down the broad framework of corporate social responsibility and relevant rules have been formulated as CSR rules 2014. This section and the rules made there under lay down the principles and regulations for implementation of CSR in India.

Constitution of CSR committee is not mandatory where the amount spent on CSR is less than Rs.50 lakhs. Board of Directors can discharge the functions. Composition of the CSR committee and the dates of meetings are to be mentioned in the directors' report of the Company.

FUNCTIONS OF THE CSR COMMITTEE:

The Committee is constituted with the following responsibilities:

1. To formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII of the Act.
2. To recommend the amount of expenditure to be incurred on the CSR activities.
3. To monitor the CSR policy of the company from time to time.
4. Formulate and recommend to the board the annual action plan in pursuance of the CSR Policy.

Section: A

1. Who is Director?
2. Who is Managing Director?
3. Who is a Whole time Director?
4. Who is Independent Director?
5. Give the meaning of Company Secretary?
6. Expand: MD, CS, ID and WTD.
7. Who is Whole Time Director?
8. Who are Managing Directors?

Section: B

1. Who is Managing Directors? Explain their role in a company?
2. Explain the Duties and Responsibilities of Managing Directors.
3. Briefly Explain The Duties and Responsibilities Company Secretary?
4. What is auditor? Explain their appointment process?
5. Write a note on Whole time Director.
6. Explain The Classes of Directors Under Companies Act 2013?
7. Explain the role and responsibilities of a Independent Director
8. Explain the rights and duties and responsibilities of Company Secretary.

Section: C

1. Examine the managerial persons in company management and administration?

2. Who is Managing Directors? Explain their Appointment, Powers and Liabilities.
3. Briefly explain the provision relating to appointment and removal of the Company Secretary.
4. Explain the Power and duties of Auditors.
5. How the directors of a public company appointed and how they are removed?
6. Explain the process of Appointment of a Managing Director in a company as per 2013 new companies Act?
7. Explain the duties and responsibilities of company secretary?

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Unit – IV Corporate Meetings

❖	Introduction
❖	Meaning and Definitions
❖	Types of Corporate Meetings
❖	Importance of Corporate meetings
❖	Requisites of a Valid Meeting
❖	Notice
❖	Quorum
❖	Resolutions
❖	Voting
❖	Proxy
❖	Role of a Company Secretary in convening the meetings.

Introduction

A meeting may be generally defined as a gathering or assembly or getting together of a number of persons for transacting any lawful business. There must be at least two persons to constitute a meeting. Therefore, one shareholder usually cannot constitute a company meeting even if he holds proxies for other shareholders. However, in certain exceptional circumstances, even one person may constitute a meeting.

Meetings involve people of the company. Meetings, thus, encourage participation and motivate them. Participants in a meeting, if given responsibility, turn out to be more productive and contribute to organizational success.
Corporate Meetings thus turn out to be a place where various aspects of business management are discussed- the performance of the company, the mission and vision of company, the weaknesses of company, the obstacles faced and how to overcome them. Effective meetings involve presentations and lead to personality development. Efficient meetings save time, money and resources of the company.

Meaning and Definitions

Corporate Meeting means that, meeting is the congregation of several persons in a particular place for the purpose of discussing some important matters and expressing their opinion on the questions raised.

Corporate meetings are those business-oriented meetings in which the participants represent the same company, corporate group, joint-venture, or client/provider relations.

Meaning of Valid Meetings

Private meetings can be from the viewpoint of authenticity, classified into valid and invalid. Decisions taken at a valid meeting are binding on the members of the association or committee or sub-committee as the case may be whether present at the meeting or not or whether agree or disagree with the decisions.

Actions have to be taken according to the decisions and the decisions can be imposed on the members. If the decision itself is wrong or unlawful and for that if there is any punishment on the decision-makers, they cannot escape the punishment. But a decision-making member, disagreeing with the majority may escape personal liability if he has recorded a note of dissent.

According to Dawes "An assembly of people for a lawful purpose" or "the coming together of at least two persons for any lawful purpose."

According to P.K. Ghosh "Any gathering, assembly or coming together of two or more persons for the transaction of some lawful business of common concern is called meeting.

According to K. Kishore, "A concurrence or coming together of at least a quorum of members by previous notice or mutual agreement for transaction business for a common interest is meeting."

Meetings under Companies Act

Companies Act has also recognized the importance of company and gave some procedure to be followed by holding various meetings in a formal way. When our type of organization is a body formed under Companies Act, there are various kinds of meetings recognized in the Act. The rules and procedures are important for effectively conducting meeting. Meetings are important stage in making any decision and so are the rules given with regard to them.

For a meeting to be properly constituted there must be proper quorum to begin the meeting, a proper chairman of the meeting, rules for discussion and proper debate must be observed, proceedings should also be recorded properly and proper compliance with the relevant provisions of the Companies Act and the Articles of association of the company.

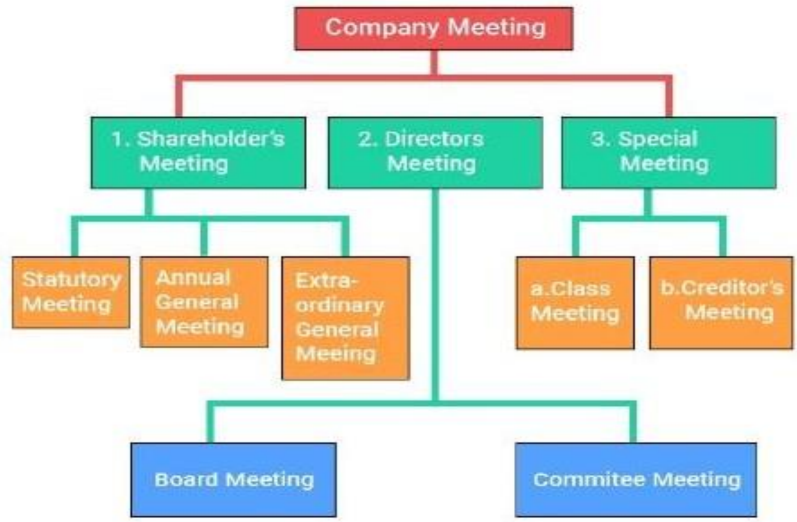
Characteristics of a Corporate Meeting

1. Two or more persons (who are the members of the Company) must be present at the meeting.
2. The assembly of persons must be for discussion and transaction of some lawful business.
3. A previous notice would be given for convening a meeting.
4. The meeting must be held at a particular place, date and time.
5. The meeting must be held as per provisions/rules of Companies Act.

6. The topics or matters to be discussed at a meeting are pre-determined or known to the participants earlier, so that they can come prepared with their thoughts.
7. Decisions are generally taken at meetings. Taking of decisions on some matters is the main purpose of a meeting. The decisions taken at a meeting are binding on the members of the organization whether present at the meeting or not, whether agree to the decisions or not.

Types / Kinds/ Classification of Corporate Meetings

Figure No-11



1. Shareholders Meeting:

a. Statutory Meeting: Every company limited by shares and every company limited by guarantee and having a share capital shall, within not less than one month and not more than six months from the date at which the company is entitled to commence a business, hold a general meeting of the members of the company. This meeting is called the 'statutory meeting.' This is the first meeting of the shareholders of a public company and is held only once in the lifetime of a company. The Board of directors shall, at least 21 days (based on Companies Act) before the day on which the meeting is to be held, forward a report, called the 'statutory report,' to every member of the company.

b. Annual General Meeting : This is defined u/s 96 of CA'13, wherein every company, whether public or private, except One Person Company, is required to convene first AGM within 9 months from the end of first Financial Year to decide the overall progress of the company as well as to plan future courses of action. Meeting Place Such meeting is called at Registered Office of the Company or any other such place in the city where such Reg. Office is situated. Time and Hours of meeting Between 9.00 am – 6:00 pm., and not on any public holiday as so declared by Central or State Government.

c. The Extraordinary Meeting: Certain matters are so much important that they require an immediate attention of the members, and that's where the Board has been granted to call for such EGM u/s 100 of CA'13.A statutory meeting and an annual general meeting of a company are called ordinary meetings. Any meeting other than these meetings is called an extraordinary general meeting. It is called for transacting some urgent or special business which cannot be postponed till the next annual general meeting. It may be convened. (1) By the Board of directors on its own or on the requisition of the members; or (2) by the requisition is it themselves on the failure of the Board of directors to call the meeting. The extraordinary meeting convened by the Board of directors. The Board of directors may call an extraordinary general meeting.

2. Directors Meetings

a. Board of Directors Meeting: As per Sec. 173 of CA'13, every company needs to convene first board meeting within 30 days of its incorporation, and then minimum four meetings in each calendar year, with time gap of not more than 120 days(at present it is 180 days because of COVID-19) between two board meeting.

b. Committee meetings: The Board of Directors may form certain committees and delegate some of its powers to them. These committees should consist of only directors. The delegation of powers to such committees is to be authorized by the Articles of Association and should be subject to the provisions of the Companies Act. In a large company routine matter like Allotment, Transfer, and Finance are handled by sub-committees of the Board of Directors. The meetings of such committees are held in the same way as those of Board Meetings.

3. Special Meetings

a. Class Meetings: Such meeting is convened by a particular class of shareholders only and only if they think that their rights are being altered or if they want to vary their attached rights, as mentioned u/s 48 of CA'13, and u/s 232 also, if under Mergers and Amalgamation scheme, meetings of particular shareholders and creditors can be convened if their rights/privileges are being varied to their interests in such company.

b. Creditors Meeting: The meetings of creditors are called when the company proposes to make a scheme for arrangement with its creditors. Section, 391 to 393 of the Companies Act not only give powers to the company to compromise with the creditors but also lay down the procedure of doing so. (Sec. 230) / Debenture Holders Meeting with the Board of Directors.

Importance of Corporate Meeting

When we run an organization, it comprises of various people. It is run by various people who have stakes in the organization. It is important for every people to feel inclusive of the organization and more importantly to advance their interest. Meetings give important opportunities for our team members to contribute their ideas and also letting they know our expectations, needs and want from them.

1. **Opportunities for members to come together:** Meetings provide common platform and an opportunity to the members who are scattered all over different areas to come together. Discuss the matters and working of the company and arrive at decisions.
2. **Minutes of the previous meeting**: During the meeting Secretary has to read the notice. The agenda of the meeting and minutes of the last meeting held. After reading the minutes, he has to get them confirmed and signed by the Chairman. This enables the members to get clear ideas about the matters discussed in the previous meeting.
3. **Fixation and implementation of policies:** Plans and programmes Management determines the policies, plans and programmes in the Board Meetings. It also decides ways and means of implementation of policies, plans and programmes in the meetings of the Board and conveys them to members for their approval in the General Meetings of the company.
4. **Analysis of problems:** Meetings are essential to discuss the nature of problems faced by the organization and to find solutions.
5. **Legal requirements:** Meetings are necessary to comply with statutory (legal) requirements as per the provisions made in the Companies Act. Legal formalities in relation to convening and conducting various meetings of the company are completed by organizing and conducting the meetings.
6. **Business:** Meetings are essential to declare dividend, to appoint auditors, to elect directors, to study and give approval to annual report, auditors' report, statements of accounts and to review the progress made by the company.

REQUISITE OF VALID MEETING

1. **Proper Authority:** The authority to call a general meeting is the board of directors of the company. The notice of the meeting should be issued under their authority, granted at a duly constituted meeting of the board or passing a resolution by circulation. A single director has no power to convene a meeting. The secretary of the company has no authority to call a general meeting unless the Board resolves and authorizes him to do so.
2. **Notice:** Notice to whom? Notice of every general meeting should be given to the following persons: Every member of the company. (ii) Every person entitled to a share in consequence of the death or insolvency of a member.(iii) Auditor or auditors of the company [Sec. 172 (2)]. Deliberate omission to give notice to a single member may invalidate the meeting. However, an accidental omission to give notice to or non-receipt of it, by a member will not invalidate the meeting [Sec. 172 (3)].
3. **Length of Notice:** A proper notice in writing to every member of the company is required by law for the holding of every valid meeting. Notice must be given even though a member has waived his right to have notice. It must disclose the purpose for which the meeting is called. It must be given at least 21 clear days before the date of the meeting. In calculating 21 days, the date of receipt of notice

and the date of the meeting should be excluded [Sec. 171 (1)]. Articles may provide for a notice longer than 21 days, but not shorter than 21 days. The notice shall be deemed to have been received by a member at the expiry of 48 hours from the time of posting [Sec. 53 (2) (b)].

4. Service of Notice: Company may serve notice on the members either personally or by prepaid post or by advertisement in the newspaper. It must be properly addressed. Service of notice' by advertisement shall be deemed to be complete the day when the advertisement appears in the newspaper on both resident and non-resident members. Explanatory statement need not be advertised, but the fact that the same has been sent to the members through post shall be mentioned in the advertisement. In case of joint- holding of shares, notice to first named shareholder would be sufficient. When the meeting is adjourned for 30 days or more and the new business is to be transacted at the adjourned meeting, a fresh notice has to be given.

5. Contents of the notice: The notice must contain the following particulars:

a. It should specify the name of the meeting, the place, day and hour of the meeting and the meeting to be valid must be held at the place and time specified. Annual General Meeting should be held on a working day during business hours. However, a meeting may continue beyond business hours. Extraordinary general meeting can be held on any day including a holiday and not necessarily during working hours.

b. It should also specify the nature of the business to be conducted at the meeting. Section 173 puts business into two categories:

(a) General business: In case of annual general meeting, all business relating to : (i) the consideration of annual accounts, (ii) the declaration of a dividend, (iii) the appointment of directors in place of those retiring, and (iv) the appointment of, and the fixing of remuneration of the auditors, are considered as general business.

(b) Special business: Any other business at an annual general meeting and all businesses in case of any other meeting are regarded as special business. If special business is to be transacted at a general meeting, an 'explanatory statement' giving all the material facts of the item of special business including the particulars of interest, if any, of every director or other managerial personnel, must be annexed to the notice.

6. Agenda: Agenda gives guidance and information as to the business to be discussed and transacted in the meeting. It sets out the chronological sequence in which the various items of business shall be taken up in the meeting for discussion. The sequence should not be changed unless agreed to by the members present. Routine items should be put first and debatable items later. Similar items should be placed closer to each other. Agenda is prepared by the Secretary in consultation with the Chairman or the Managing Director. Agenda must be clear and complete. A company may be restrained from transacting that business which is not mentioned in the agenda.

7. Other General Meetings: There is no such provision in the Companies Act which requires that the general meetings of the company other than the annual general meeting must be held at some particular place. It, therefore, follows that the other general meetings can be held, subject to any specific provision in the articles at any other place. However, the directors must act reasonably in fixing the time and place of the meeting so that members get full opportunity in exercising their voting rights.

8. Place of the Meeting: Annual General Meeting. The annual general meeting is to be held by a public company at its registered office or at some other place in the same city, town or village where the registered office of the company is situated. However, the Central Government has the power to grant exemption to any company from this provision. A private company can hold its annual general meeting at any other place if: It has fixed the place of the meeting by the articles; or It has fixed the place of the meeting by a resolution agreed by all the members. A company registered under section 25 of the Companies Act can hold the annual general meeting at any place. In case of a Government company, meeting can be held at any other place with the approval of the Ministry of Corporate Affairs.

9. Quorum: Minimum number of members required to constitute a valid meeting and to transact business therein is called 'quorum'. No meeting can be valid without quorum. Any resolution passed at a meeting without quorum shall be invalid. Quorum is to be fixed by the Articles of Association. But unless the articles provide for a large number, 5 persons personally present in the case of a public company and 2 members personally present in the case of private company shall be the quorum for a meeting of a company. [Section 174 (2)]. Thus, articles cannot provide a smaller quorum than what has been provided in section 174 (1). Besides that, for the purpose of quorum, only members present in person and not by proxy are counted.

REQUIREMENT OF A VALID MEETING

There must be some requisites in order to validate the meeting. The necessary pare-conditions of a valid meeting are stated below:

1. Right convening authority: A valid meeting must be convened by the proper authority otherwise it wills loss its validity. Company's secretary is the proper authority to call a formal meeting.

2. Proper notice: Duty signed notice must be submitted to members before meeting. The place of meeting, time and date must be stated on the notice.

3. Proper publicity of agenda: Every member of the meeting should be properly informed of the agenda.

4. Legal purposes: Every meeting must have a legal purpose. Any meeting should be properly informed of the agenda.

5. Requisite quorum: For valid meeting requisite quorum is necessary. The meeting should not be stared until the requisite members of member s are resent.

6. Presence of right persons: Only legal members can present in the meeting. If there is an unauthorized person in the meeting, the meeting will lose its validity.

7. Proper presiding officer: The chairman of a valid meeting must be a proper person.

8. Conducting meeting according to the agenda: A valid meeting must be conducted according to the agenda. No decision will get validity, if it is not related to the agenda.

NOTICE: **SECTION 101(1):**

Notice is an advance intimation of the meeting so that person receiving it gets an opportunity to prepare himself for it. Notice must be given to every such member who is entitled to attend the meeting. Generally issue of notice is obligatory but where meetings are fixed to be held on specified date and days, it may not be necessary to send the notice. However, it is necessary to send the reminder in such cases also.

Notice must be served in the manner prescribed in the rules of the concerned department. It should be written. Verbal notice may be given personally or over the telephone but it should be confirmed by the written notice. Period of notice calling meeting is prescribed in the rules of the organization but generally, in the case of annual general meeting of a company, notice must reach the members at least 21 days before the meeting. The secretary must ensure that the notice is circulated to all the members within the stipulated time. Notice must specify the date, time and place of the meeting. It must also indicate the nature of the business to be transacted. Copies of certain reports, statements etc. must also be enclosed to the notice, if required. For example, in the case of an annual general body meeting of the company, a copy of the balance sheet and profit and loss accounts of the company and the directors' report have to be sent along with the notice

A general meeting of a company can be called by giving not less than 21 days' notice either in writing or through electronic mode in such manner as may be prescribed. However, a company may, by its Articles, provide a period longer than 21 days for convening a meeting. It must be noted that 20 days imply 21 clear days i.e., 21 days excluding the day of the service of notice and the day on which the meeting is to be held.

For companies covered under section 8, general meeting of a company can be called by giving not less than 14 clear days notice. If the notice is sent through post then service of notice shall be deemed to have been effected in the case of notice of meeting on the expiry of 48 hours since the posting of the same. It may be noted that a general meeting may be called up by giving a notice shorter than 21 days, if consent is accorded thereto in writing or by electronic mode, by not less than 95% of the members entitled to vote at such meeting.

The consent of the members may be obtained either at the meeting or before the meeting. The expression "electronic mode" shall mean any communication sent by a company through its authorized and secured computer programme which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the members.

QUORUM

The Companies Act, 2013 (hereinafter referred to as the Act) requires that a company established under the Act has to hold General meetings as well as Board meetings periodically. To ensure that the companies follow this regulation and that such meetings are held properly, it requires a quorum to be met for it to be deemed as a valid meeting.

A 'Quorum' in simple words means the minimum number of members that have to be present in a meeting. Under the Act, the quorum for a General Meeting, a Board Meeting and an Extraordinary General Meeting is enumerated within its provisions.

Quorum Required for a General Meeting

Section 103 of the Act states the quorum required for a General Meeting. Under this Section, unless the Articles of Association of the company provide for a larger quorum, the minimum quorum must be:

For Public Companies:

i. members to be present if as on the date of the meeting being held, the number of members in the company does not exceed one thousand.

ii. 15 members to be present if as on the date of the meeting there are more than one thousand members but less than five thousand members.

iii. 30 members to be present if as on the date of the meeting there are more than five thousand members.

For Private Companies

1. In the case of a private company regardless of the number of members, two members must be present for the quorum to be met for a meeting.

Non- Fulfillment of Quorum Requirements:

1. Sub-clause (2) and (3) of Section 103 of the Act provides for when the quorum has not been met. If the quorum is not present within half an hour of the time set for the meeting to begin, then the following options will be applicable.
2. The meeting will be adjourned, and it shall be held on the same day and at the same time next week, or any other date and time as the Board may determine. If the meeting is adjourned then the date, time and place of the meeting will be notified personally or via advertisement.
3. The advertisement must be published in both English as well as the vernacular language in a newspaper which is in circulation at a place where the registered office of the company is situated.
4. The meeting, if called by requisition is under Section 100, shall stand cancelled.
5. Under sub-clause (3), if the quorum is not present at the adjourned meeting, then the members present shall be the quorum.

Quorum Required for a Board Meeting

A board meeting is a meeting that is held between the directors of a company. Such meetings are held usually to take important decisions about the company. To make sure that such decisions are not taken arbitrarily, the Act requires a quorum for the meeting and the decisions taken in the meeting to be valid. Section 174 of the Act provides the quorum for a board meeting.

Section174 (1) of the Act

The quorum for a board meeting must be 1/3rd of the total number of directors or 2 directors whichever is the higher number. Therefore in case, there are only three directors in a company, then at least two must be present even though 1/3rd would entail that only one director needs to be present. If the directors are not physically present but take part in the meeting via any audio/visual means, they too shall be considered part of the quorum.

Section174 (2) of the Act

a. In the case where the quorum for a board meeting is not present, the directors may only take two courses of action:

b. They may act for the purpose of increasing the number of directors to that fixed for the quorum or,

c. They may act to summon a general meeting.

Section174 (3) of the Act

Where the number of interested directors, i.e. directors who have invested in the company, exceeds or is equal to 2/3rd of the board of directors, the number of not interested directors present at the meeting has to be at least 2 for the quorum.

Section174 (3) of the Act

In the case where the board meeting could not take place due to the lack of the quorum, the board meeting shall be adjourned. This is subject to the Articles of Association of the company. Therefore as long as the articles of the company states otherwise the meeting will be adjourned.

The meeting will be adjourned to the same time and place as the original meeting on the same day the following week. In the case where the adjourned date is a national holiday, then the board meeting will be held at the same place and time on the following day.

Exceptions to Quorum

A valid meeting may be constituted by the presence of one person in the following cases:

1. If the meeting is an annual general meeting which was called by, or on the direction of the registrar pursuant to S.131 (2). In such a case, the section empowers the registrar to direct “that one member of the company present in person or by proxy shall be deemed to constitute a meeting”.

2. If the meeting is one which has been called pursuant to a court order under S.135 (1). The section empowers the court to direct that "one member of the company present in person or by proxy shall be deemed to constitute a meeting".
3. If the meeting is a class meeting held pursuant to the provisions of the articles for the purpose of authorizing a variation of a right to those shares and all the shares are held by one member.
4. If the meeting is an adjourned meeting and the articles provide that "the member or members present shall be a quorum".

RESOLUTIONS: Decisions of the members at a general meeting are expressed by way of resolutions. In Companies, major decisions are taken by the board of directors. These decisions are in the form of resolution. A resolution is an agreement made by the members of the company in a meeting. It is a document in writing dealing with significant decisions. A resolution is a firm decision for doing an act.

Meaning of Resolutions: A resolution is a formal way in which a company can note decisions that are made at a meeting of company members.

The "**resolution**" **is a plan sent to the meeting for discussion and approval.** If the motion is approved by the members present at the meeting unanimously, it is referred to as a resolution. Three forms of resolutions are available: **ordinary resolution, special resolution and unanimous resolution.** There is no concept of special resolution in board meetings and very few unanimous resolutions are also required. However, all three are covered in the case of general meetings.

Under **the *Companies Act 2013*,** most of the decisions that affect a company need to be made by a resolution. Additionally, a company's constitution may have its own rules about what decisions need to be made by resolution.

TYPES OF RESOLUTIONS

1. **Ordinary resolution:** An ordinary resolution is one which is passed by a simple majority, that is to say that the votes cast in favor of the resolution exceed the votes cast against the resolution. For example, if at a meeting where, say, 81 members cast their votes in a manner that 41 cast votes in favor and 40 against the motion, the ordinary resolution is said to be taken as passed. The voting may be either by show of hands or by poll. An ordinary dissolution is required to pass the annual accounts, to declare dividend, to appoint auditors, to elect directors, to issue shares at a discount etc.
2. **Special Resolution:** According to Section 189(2) of the Companies Act, a resolution shall be a special resolution. A special resolution is one which is required for transacting special business and is required to be passed by a three-fourths majority. The voting may be either by show of hands or by polls. In determining the three-fourths majority, all the votes cast by members, whether personally or by proxy, are considered.

3. **Resolution requiring special notice:** Resolution Requiring Special Notice A resolution requiring special notice is, in fact, not a type of resolution, but is a kind of ordinary resolution for which a prior notice of intention to move the resolution has to be given to the company. With regard to certain matters, a special notice is required to be given of a resolution to be moved at a meeting of the company. The object is to give members sufficient time to consider the proposed resolution. Where special notice of a resolution is required by the Act or the articles, the notice of the intention to move the resolution must be given to be company at least 14full days before the date of the meeting. On receipt of such a notice the company must give notice of the resolution to the members at least seven days before the meeting either individually or through an advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles.

VOTING'S (SECTION 106 TO 110]

Voting means expressing one's statement either for or against a proposed resolution, called motion. In a company meeting voting can be by way of acclamation of voice, show of hands and poll.

What is E-voting?

"Electronic voting system" means a secured system based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favor or against, in such a manner that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate cyber security. It includes remote e-voting.

"Remote e-voting" means the facility of casting votes by a member using an electronic voting system from a place other than venue of a general meeting.

TYPES OF VOTING IN COMPANY

1. **Voting by Acclamation of Voice:** Those favoring the motion arerequested to say 'yes' or those who are against it are requested to say 'no'. The intention of the members is ascertained by the volume of sound.
2. **Voting by Show of Hands:** Members favoring a resolution are asked toraise their hands and the number is counted. Similar procedure is adopted to countthe number of members who are against it. Thus the resolution is declared passedor lost.
3. **Voting by Poll:** dissatisfied with the result of voting by show of hands, apoll may be demanded. Here each member records his vote on a voting card for or against the resolution. The voting rights of a member are in proportion to his share of the paid up equity capital of the company. Either the chairman on his own motion or on demand by prescribed number of members present in person or by proxies can order poll. Proxy is allowed to vote in a poll.

Rules in respect of Voting:

As per the provisions of the Act, rules regarding voting may be noted as follows:

1. Every holder of equity shares shall have a right to vote [Sec 87(1)].
2. Right of an equity shareholder to vote cannot be prohibited on the ground that, he has not held his shares for any specified period before the meeting or on any other ground (Sec.182).
3. a provision in the Articles of a company that only those shareholders would be entitled to vote whose names have been there on the register for two months before the date of the meeting were held to be in contravention of the Act.
4. The only ground on which the right to vote may be excluded is non-payment of calls by a member or other sums due against a member or where the company has exercised the right of lien on his shares (Sec 181).
5. A preference shareholder shall have the right to vote only on resolutions which directly Notes affect the rights attached to his preference shares Sec 87(2)].
6. Where the directors proposed to increase the shares of the company (i) by issue of further equity shares, or (ii) by capitalizing an amount standing to the credit of the company's reserve account and applying the same in paying-up the new equity shares and distributing the same as fully paid among the equity shareholders, the proposed resolution was held to affect the rights of the preference shareholders and could, therefore, be only carried out with their sanction.
7. Voting rights of a member are not affected by the fact that his shares have been attached or pledged or a receiver has been appointed.
8. Voting by show of hands in the first instance. Section 177 provides that, at any general meeting, a resolution put to vote shall, unless a poll is demanded under Sec 179, be decided on a show of hands.
9. A declaration by the chairman that on a show of hands, a resolution has or has not been carried either unanimously or by a particular majority and an entry to that effect in the minutes book of the company, shall be conclusive evidence of the fact. No proof of the number or proportion of the votes cast in favor of or against such resolution shall be required Sec 178.

POXY

A person who is appointed by a member to attend and vote at a meeting in the absence of the member at the meeting is termed as proxy. Thus proxy is an agent of the member appointing him. The term 'proxy' is also used to refer to the instrument by which a person is appointed as proxy. Section 105 of the Companies Act, 2013 provides that a member, who is entitled to attend to vote, can appoint another person as a proxy to attend and vote at the meeting on his behalf. This section also provides the manner of appointing proxy.

The provisions are as follows.

1. **Who can appoint a proxy:** Any member of a company who is entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf. The SS added that where allowed, one or more proxies, to attend and vote instead of him and a Proxy need not be a Member. If a Proxy is appointed for more than fifty Members,

he shall choose any fifty Members and confirm the same to the company before the commencement of specified period for inspection. In case, the Proxy fails to do so, the company shall consider only the first fifty proxies received as valid.

2. **Disabilities of proxy:** A proxy shall not have the right to speak at the meeting. A proxy cannot vote on a show of hands. A proxy is not counted for the purpose of quorum.
3. **Rights of proxy:** A proxy has the right to attend the meeting. A proxy has the right to vote only on a poll. A proxy, if eligible under section 109, has the right to demand a poll.
4. **Restriction on proxy:** A member of a company registered under section 8 (Not for Profit Company) shall not be entitled to appoint any other person as his proxy unless such other person is also a member of such company. A person appointed as proxy shall not act as proxy on behalf of more than fifty members and members holding in the aggregate more than ten percent of the total share capital of the company carrying voting rights. A member holding more than 10% of the total share capital of the company carrying voting rights may appoint a single person as proxy, provided that such person shall not act as proxy for any other person or shareholder.
5. **Time limit for deposit of proxy forms:** The instrument appointing the proxy must be deposited with the company, 48 hours before the meeting. Any provision contained in the articles, requiring a longer period than 48 hours shall have effect as if a period of 48 hours had been specified.

SECRETARIAL STANDARD OF PROXIES

1. **Deposit of proxies:** proxies shall be deposited with the company either in person or through post not later than forty-eight hours before the commencement of the Meeting in relation to which they are deposited and a Proxy shall be accepted even on a holiday if the last date by which it could be accepted is a holiday.
2. **Records of proxies:** all Proxies received by the company shall be recorded chronologically in a register kept for that purpose. Provides that in case any Proxy entered in the register is rejected, the reasons there for shall be entered in the remarks column.
3. **Appointing a proxy is Form No. MGT. 11:** It needs to be in writing and signed by the appointer or his attorney duly authorized in writing. If the appointer is a body corporate, the instrument should be under its seal or be signed by an officer or an attorney duly authorized by the body corporate. An instrument appointing a proxy, if in MGT-11, shall not be questioned on the ground that it fails to comply with any special requirement specified for such instrument by the article of a company.
4. **Inspection of proxy:** Every member entitled to vote at a meeting of the company, or on any resolution to be moved there at, is entitled to inspect the proxies lodged with the company, if at least 3 days notice in writing is given to the company. Such notice shall be received at least three days before the commencement of the Meeting. Such inspection can be taken during the period

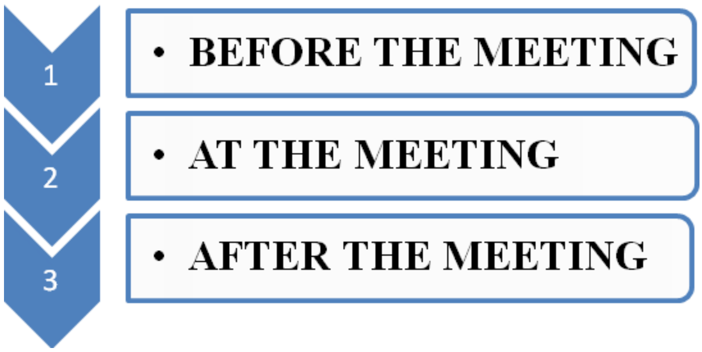
beginning 24 hours before the time fixed for the commencement of the meeting, during the business hours of the company, and ending with the conclusion of the meeting. Such inspection should be allowed between 9:00 am and 6:00 pm during such period. A fresh requisition confirming to the above requirements, shall be given for inspection of Proxies in case the Original Meeting is adjourned.

5. Revocation of proxy: If after appointment of proxy, the member himself attends the meeting, it amounts to automatic revocation of proxy. But once the proxy has voted, it cannot be revoked.

Role of a Company Secretary in Convening the Meetings

A company secretary has to perform various duties before the meeting, during the meeting and after the meeting which is discussed as follows

Figure No-12



1. Before the Meeting

a. To convene a board meeting, after giving notice as per section 173(3). Give advance notice to the stock exchange.
b. Invite auditors for their report.
c. To consider and discuss the report of the audit committee.
d. To approve and authorize the signing of accounts.
e. To secure auditors reports.
f. To consider the payment of dividends
g. To consider the closure of the register of members and the share transfer book (compliance of section 91) and to authorize for its publication. In the case of a listed company 7 days, prior notice must be given to the stock exchange before such closure.
h. To arrange for printing of balance sheet, auditor's report, directors report.
i. To issue notice to the shareholder.
j. Check proxies
k. Arrange attendance slip, ballot paper etc

2. At the Meeting

a. To read out notice, auditor's report.
b. To help the chairmen in ascertaining quorum.
c. Produce copies of MOA, AOA.
d. To keep minutes of previous meetings.

e. To ensure that the chairman of the audit committee is present at the meeting.

3. After the Meeting

a. To prepare minutes of the proceedings.

b. To record the minutes and get them signed by the chairman within 30 days from the meeting.

c. To send intimation of appointment of directors and file Form DIR-12 with the registrar of companies within 30 days of appointment.

d. To send intimation of appointment of auditors.

e. To file copies of special and other resolutions (form MGT within 30 days).

f. Deposit DDT.

g. Copy of BS to RBI.

h. Deposit the amount of dividend within 7 days of declaration.

i. To dispatch dividend warrants with notice of dividend within 30 days.

j. Details of meeting within 48 hours to the stock exchange.

Questions

Section: A

1. What is Company Meeting?
2. Give the meaning of valid meeting?
3. Give the meaning of Notice?
4. Give the meaning o f Quorum?
5. What is Proxy?
6. What is Resolutions?
7. Give the meaning of Voting?
8. Give the meaning of e-Voting?

Section: B

1. Write a note on “Video Conferencing”
2. Why valid meeting is required in a company?
3. What is e-voting? Explain its basic features?
4. Explain the role of Company Secretary in conveying the meeting?
5. Explain the different types of Company Meeting.
6. Write a note on requisites of valid meeting.

Section: C

1. Define Corporate Meeting. Explain its different Types of Corporate Meeting?
2. Explain the Minutes and Proceedings under the company’s Act 2013?
3. What are the requisites of Valid Meeting? Explain its steps.

Unit – 05 Liquidations/Winding up of Companies

❖	Introductions
❖	Meaning
❖	Liquidation of Companies
❖	Meaning and Definitions
❖	Modes of Liquidation/Winding Up
❖	Consequence of Liquidation/ Winding Up
❖	Appointment of Official Liquidator
❖	Role of Liquidator.
❖	Duties and Responsibilities of Liquidator.
❖	Defunct Company
❖	Insolvency Code

Introduction

A company comes into being through a legal process and also comes to an end by law. Liquidation is the legal procedure by which the company comes to an end. Thus a company being a creation of law cannot die a natural death. A company, when found necessary, can be liquidated.

Liquidation or winding up refers to the process whereby the company gives up Its business, sells off its assets , pays its debts and distributes whatever surplus Remains amongst its members or otherwise as its constitution may provide. Liquidation or winding up refers to the process whereby the company gives up its business, sells off its assets , pays its debts and distributes whatever surplus Remains amongst its members or otherwise as its constitution may provide. Liquidation of company refers to a process in which a company's existence is brought to an end. On liquidation the affairs of a company are wound up and its name is struck off from the Register of the Registrar of Companies and this fact is published in the Official Gazette.

Section 361 of the Companies Act, 2013 specifies a short process for the dissolution of corporations. The Central Government appoints an Official Liquidator to oversee the liquidation procedures. The summary procedure specifies a mechanism for winding up other than insolvency due to incapacity to pay debts. Winding up of as company is basically the first stage where the assets of the company are realized the company at this point of time does not lose its legal status, but at the final stage which is the stage of dissolution the legal status of a company ceases to exist. And a Company comes to an end on dissolution.

Meaning of winding up of a company: Winding up of a company is the process through which the life of a company comes to an end and its property is administered for the benefit of its members & creditors. An Administrator, called a liquidator is appointed and he takes control of the company, collects its assets, pays its debts, and finally distributes any surplus among the members in accordance with their rights.

What Is Winding Up? Winding up means a proceeding by which a company is dissolved. The assets are disposed, the liabilities are paid, and the surplus, if any, is distributed among the shareholders/ members in proportion to their shareholding in the company. Winding up can be defined as a means by which a company can be dissolved.

Winding up is the liquidation of Company's assets which are collected and sold in order to pay the debts incurred. When the company winding up takes place firstly the debts, expenses and costs are paid away and distributed among the shareholders.

Modes of Winding up
Figure No-13

1. Removal / Strike off of name of the Company.

2. Winding up under the Companies Act, 2013 by the Tribunal.

3. Liquidation of Company under the Insolvency and Bankruptcy.

1. Removal / Strike off of name of the Company: Section 248(2) of the Companies Act, 2013 read with Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 implies two different modes for removing the name of the Company from the Register of Companies.

a. By the Registrar of Company (ROC) on suo motu basis:

i. Company has failed to commence its business within 1 year of its incorporation.

ii. a company is not carrying on any business or operation for a period of 2 immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under Section 455 (In such case, ROC shall send a notice to the Company and all their directors of his intention to remove the name of Company and requesting them to send their representations along with relevant document within 30 days from the date of the notice).

iii. The subscribers to the memorandum have not paid the subscription amount which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within 180 days of its incorporation.

iv. The company is not carrying on any business or operations, as revealed after the physical verification of registered office of the Company.

b. By a Company upon filing of an application with the Registrar:

If a Company ***suo motu*** opts to remove its name as mentioned in option 2, it can be done by taking following steps which are summarized below Company may after extinguishing all its liabilities, pass special resolution or take consent of seventy five per cent. members in terms of paid-up share capital; File an application for removal of name of the company in e Form STK-2 along with the fee of 5,000 rupees and the prescribed list of documents.

i. No Objection Certificate from a regulatory body constituted or established under that Act, in case of a company being regulated by special Act.

ii. Indemnity bond duly notarized by every director in Form STK 3.

iii. a statement of accounts containing assets and liabilities of the company made up to a day, not more than 30 days before the date of application and certified by a Chartered Accountant;

iv. An affidavit in Form STK 4 by every director of the company.

v. Copy of the special resolution duly certified by each of the directors of the company or consent of seventy five per cent of the members of the company in terms of paid up share capital as on the date of application.

vi. A statement regarding pending litigations: if any, involving the company.

vii. On receipt of such application, the registrar shall issue a public notice in Form STK-6 and shall place it on MCA website, company’s website, publish in newspapers and also issue in the Official Gazette for the information of the general public.

viii. The Registrar of Companies shall, simultaneously intimate the concerned regulatory authorities regulating the company, viz, the income-tax authorities, central excise authorities and service-tax authorities having jurisdiction over the company.

ix. Upon expiry of the time mentioned in the notice, if no objection is received, the Registrar may, unless cause to the contrary is shown by the company, strike off the name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved.

2. Winding up under the Companies Act, 2013 by the Tribunal: Section 272 of the Companies Act, 2013 clarifies about the list of persons, who shall be entitled to file an petition for the winding up of a company the company; any contributory or contributories (holder of partly/fully paid up shares); all or any of the persons specified in clauses (a) and (b); the Registrar; any person authorized by the Central Government in that behalf; or in case falling under clause (b) of section 271, by the Central Government or a State Government.

a. Section 271 of the Companies Act, 2013 lays down circumstances in which Company may be wound up by the tribunal.

b. If the company has, by special resolution, resolved that the company be wound up by the Tribunal.

c. if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

d. If on an application made by the Registrar or any other person authorized by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up.

e. If the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years.

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

3. Liquidation of Company under the Insolvency and Bankruptcy

A. Voluntary Liquidation of a company (Section 59 of the IBC, 2016): A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of IBC, 2016. Voluntary Liquidation proceedings of a corporate person registered as a company.

1. **a declaration from majority of the directors of the company verified by an affidavit:** they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that, it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and the company is not being liquidated to defraud any person.
2. **a declaration under sub-clause (a) shall be accompanied with the documents:** audited financial statements and record of business operations of the company for the previous 2 years or for the period since its incorporation, whichever is later; a report of the valuation of the assets of the company, if any prepared by a registered valuer.
3. **within four weeks of a declaration under sub-clause (a):** a special resolution of the members in a general meeting requiring the company to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator; or a resolution of the members in a general meeting requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles or on the occurrence of any event in respect of

which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act as the liquidator.

4. Notify to the Registrar of Companies: The Company shall notify the Registrar of Companies and the Board (IBBI) about the resolution to liquidate the company within 7 days of such resolution or the subsequent approval by the creditors.

5. Approval of the creditors: Subject to approval of the creditors (if required), the voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution.

6. The provisions of sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.

7. Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person.

8. On receipt of an application by the liquidator, the Adjudicating Authority shall pass an order that the corporate debtor be dissolved from the date of that order.

9. A copy of an order made by the Adjudicating Authority, shall within 14 days from the date of such order, be forwarded to the authority with which the corporate person is registered.

B. Liquidation process in case of company has made default in payment of debts

1. The amount of the default is 1 Lakh rupees or more: The provisions relating to insolvency and liquidation of corporate debtors shall be applicable only when the amount of the default is 1 Lakh rupees or more. However the Central Government may, by notification, specified the minimum amount of default of higher value which shall not be more than 1 Crore rupees.

2. A creditor (financial or operational) or the corporate debtor : Where any corporate debtor commits a default, a creditor (financial or operational) or the corporate debtor itself may initiate Corporate Insolvency Resolution Process (CIRP) by filing an application before Adjudicating Authority.

3. A financial creditor& **an operational creditor**: either by itself or jointly with any financial creditors may file an application under section 7 of the Code, whereas an operational creditor shall first serve demand notice- demanding repayment of the operational debt as per section 8 and file an application under section 9 of the Code.

4. The Corporate Insolvency Resolution Process: The Corporate Insolvency Resolution Process (CIRP) shall be completed within a period of 180 days from the date of admission of application. Further such period may be extended by maximum 90 days, if a resolution has been passed at a meeting of committee of creditors by vote of seventy-five per cent. of the total voting shares.

5. On admission of an application, the adjudicating authority shall by an order: (a). Declare a moratorium (calm period); (b). Cause a public announcement of initiation of CIRP and call for submission of claims; (c). Appoint an Interim Resolution Professional (IRP).

6. The Interim Resolution Professional: The Interim Resolution Professional shall manage the entire affairs of the corporate debtor, exercise the power of Board/Partners, collect all claims received against the corporate debtor and constitute a Committee of Creditors.

7. The Committee of Creditors : The Committee of Creditors shall comprise of all financial creditors, who on their first meeting shall appoint Interim Resolution Professional as a Resolution Professional or replace it by some another Resolution Professional.

8. The Resolution Professional: The Resolution Professional shall submit a resolution plan, which if not submitted within the prescribed timeline or rejected by the Tribunal, then an order for liquidation of the company can be passed in such manner and procedure as has been laid down in the Code and as may be necessary to give effect to the same

CONSEQUENCES OF WINDING UP OF A COMPANY

Winding up of a company is defined as the condition when the life of the company is brought to an end. The properties of the company are administered for the profit of its members and its creditors. Once a business has been declared insolvent a liquidator will be appointed to sell-off the assets of the business. There are a number of consequences of having appointed a liquidator.

1. As Regards the Company Itself: Winding up doesn’t take away the existence of the company completely. The company continues to exist as a corporate entity till its dissolution. All the ongoing business of the company is administered by the liquidator during the phase of liquidation.

2. As Regards the Shareholders: a new statutory liability comes into existence. Every transaction of share during the liquefaction done without the approval of the liquidator is termed void.

3. As Regards the Creditors: The creditors cannot file a case against the company except with the consent of the court. If the creditors already have decrees, they cannot proceed with the execution. They must explain their claims and justify their claims to the liquidator.

4. As Regards the Management: With the appointment of the liquidator, all the powers of the directors, chief executives and other officers tend to cease. Only the powers to give notice of resolution and the power of appointment of the liquidator upon winding up of the company are given to the members.

5. As Regards the Disposition of the Company’s Property: All the dispositions of the company’s properties are void if the dispositions are not approved by the court or the liquidator.

6. **You lose control**: The first consequence is the most obvious but one that you have to understand before you goes down this path. Once a liquidator is appointed you lose all control over the company and its assets.
7. **The directors are directors in name only**: The directors may still hold that title but they too lose all control. Once the liquidator takes over the directors can no longer exert any influence on the direction of the company.
8. **All of the assets will be sold to pay debts**: If the company needs to have a liquidator appointed it's because the business is insolvent and can't pay back creditors. A liquidator's primary responsibility is to pay back as much of that debt as possible.
9. **The directors may still owe for personal guarantees**: If a director or someone else at the company has personally guaranteed any of the debts incurred by the business that money still has to be paid back. The bankruptcy of a company won't wipe out the debt that was personally guaranteed.
10. **Government regulations may stop you from practicing your profession:** If you're company has gone bankrupt in certain trades like the building industry you are banned from being able to operate in that industry for three years. Different industries have different rules so you need to know what those rules are before you declare bankruptcy.

OFFICIAL LIQUIDATOR

A liquidator in the general sense is a person who is appointed when a company is about to wind up either by compulsion or voluntarily in order to carry out the liquidation process of the company. it is required to realize the assets of the company which are to be adjusted against the creditors, debenture holders, and other liabilities of the company, and this is the duty of the liquidator. A liquidator comes into the picture only at the time of winding up of a company. An Official liquidator is appointed by the court at the time of compulsory winding up whereas a company liquidator is appointed by the members of the company at the time of voluntary winding up.

Meaning of Official Liquidator

Definitions: Company liquidator as defined by the Companies Act, 2013 means a person appointed by the Tribunal as the Company Liquidator in accordance with the provisions of section 275 for the winding up of a company under this Act.

Company Liquidators and their Appointments

1. For the purposes of winding up of a company by the Tribunal, the Tribunal at the time of the passing of the order of winding up, shall appoint an Official Liquidator or a liquidator from the panel maintained under sub-section (2) as the Company Liquidator.
2. The provisional liquidator or the Company Liquidator, as the case may, shall be appointed by the Tribunal from amongst the insolvency professionals registered under the Insolvency and Bankruptcy Code, 2016.

3. Where a provisional liquidator is appointed by the Tribunal, the Tribunal may limit and restrict his powers by the order appointing him or it or by a subsequent order, but otherwise he shall have the same powers as a liquidator.
4. The terms and conditions of appointment of a provisional liquidator or Company Liquidator and the fee payable to him or it shall be specified by the Tribunal on the basis of task required to be performed, experience, qualification of such liquidator and size of the company.
5. On appointment as provisional liquidator or Company Liquidator, as the case may be, such liquidator shall file a declaration within seven days from the date of appointment in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal and such obligation shall continue throughout the term of his appointment.
6. While passing a winding up order, the Tribunal may appoint a provisional liquidator, if any, appointed under clause (*c*) of sub-section (1) of, as the Company Liquidator for the conduct of the proceedings for the winding up of the company.

ROLE/ POWERS OF OFFICIAL LIQUIDATOR

Section 290 of the 2013 Act provides for the powers and duties of company liquidator in winding up by the tribunal. The company liquidator can exercise certain powers subject to the overall control of the tribunal. The tribunal may require the company liquidator to perform any other duty. The powers of the company liquidator as specified in Section 290(1) of the Act. Following are some of the powers of a liquidator.

1. To carry on the business of the company so far as may be necessary for the beneficial winding up of the company.
2. To sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels.
3. To invite and settle claim of creditors, employees or any other claimant and distribute sale proceeds in accordance with priorities established under this Act.
4. To inspect the records and returns of the company on the files of the Registrar or any other authority.
5. To draw, accept, make and endorse any negotiable instruments including cheque, bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if such instruments had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business.
6. To take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases, the money due shall, for the purpose of enabling the Company Liquidator to take out the letters of administration or recover the money, be deemed to be due to the Company Liquidator himself.

7. To take all such actions, steps, or to sign, execute and verify any paper, deed, document, application, petition, affidavit, bond or instrument as may be necessary,— (i) for winding up of the company, for distribution of assets, in discharge of his duties and obligations and functions as Company Liquidator.

DUTIES OF OFFICIAL LIQUIDATOR

1. The first duty which a liquidator has to fulfill is that of providing notice of his appointment. It is clearly stated under Section 178 (b) of the Income tax act that an individual who is appointed as a liquidator must within thirty days of him becoming such liquidator, give notice to the Assessing Officer sanctioned to evaluate the revenue of the company of his appointment.
2. It is the duty of the liquidator to act equitably and impartially the whole winding-up procedure in accordance with the provisions of law and the directions of the tribunal.15 It is also his duty to make himself thoroughly acquainted with the state of affairs of the company, and also about the technical hurdles that the company is facing. The liquidator has to act fairly and honorably in considering the claims of persons against the company.
3. The liquidator must bring into his custody and control the property of the company. The Supreme Court in Indian Official Liquidator, (**U.P.& Uttarakhand v/s. Allahabad Bank)** held that company judge under Companies Act has no jurisdiction at instance of official liquidator to set aside auction or sale held by recovery officer under RDB Act.
4. He must submit a preliminary report to the tribunal within sixty days from the winding up order.
5. He must within 30 days from date of direction from the tribunal shall call a meeting of the creditor and other contributories in order to determine the persons who are to be made the members of the advisory committee, if such committee is to be appointed. And, he must chair this committee.
6. He must keep all sums received by him on behalf of the company into some scheduled bank, or in accordance to the directions of the tribunal.
7. He must maintain proper books in the prescribed manner in which he must make entries or minutes to be made of the proceedings of meetings and of other such matters as may be prescribed. The books may be inspected by any creditor or contributory or their agents subject to control of the tribunal.
8. A liquidator owes a duty to act with care and efficiency. He has a duty to exercise his particular professional skills to complete the winding up process and he shall incur liability if he fails to show the required degree of care and skill which, by accepting the office, he holds himself out as possessing. Therefore, a high standard of care and diligence is required of a liquidator.
9. As the liquidator is acquainted with all the state of affairs of the company and has all the records and accounts of the company, it is his duty to maintain all these records and accounts safely and not discloses this information to any person not authorized to access them or has legitimate reason to gain access to them.

REMOVAL AND RESIGNATION OF LIQUIDATOR

1. Section 276 of the Companies Act, 2013 provides for the removal and replacement of liquidators.24 Section 276 corresponds with Sections 448(6), 463 and 515 of the 1956 Act insofar as those sections deal with the removal of the liquidator.
2. Section 276 of the 2013 Act lists the grounds on which the liquidator maybe removed. Since there is a panel of liquidators constituted under Section 275 of the 2013 Act, there is no provision for appointment of the official liquidator in a voluntary winding up. There is no specific provision for the appointment and removal of a liquidator in a voluntary winding up by the tribunal.
3. Under Section 275 of the 2013 Act, the power to maintain and accordingly remove professionals from the panel vests with the central government. Under Section 276, the tribunal has the power to remove a provisional liquidator or company liquidator. The grounds on which the tribunal may remove the company liquidator are set out in this section. Additionally, the company liquidator can be removed on the grounds of
4. Failure to exercise due care and diligence in the performance of his powers and functions.
5. Inability to act as the provisional or company liquidator.
6. Conflict of interest or lack of independence during the term of the appointment that would justify removal. Transfer of company or provisional liquidator in section 276 would arise only in the case of death, resignation or removal of a company or provisional liquidator.
7. The court may remove a liquidator if his duty conflicts with his interests. If there is a conflict of interest in respect of creditors, it is for the creditors alone to decide what is to be done.
8. For breach of any of his duties a Voluntary Liquidator may render himself liable for the consequences arising out of such breach. Thus if he acts partially or commits breach of trust or betrays that fiduciary relationship in which he stands towards his Company.
9. he shall be liable for the consequences of the wrongful acts, omission or breach of trust. He must be honest and impartial, and should never act in his own interest, or else he shall be liable.
10. If he makes any secret profits he shall be liable to make good to his Company all that he has received secretly. If he is unfair towards the general body of Creditors or Contributories, an application may be made to the Court for his removal, and the Court may remove him if it thinks fit to do so.
11. He also has the option to resign from the office but to do so, he is required to call a members or creditors meeting and submit his resignation and he is also obligated to submit record of all his dealings and actions as the liquidator of the company and he is also required to submit a statement with respect to his tenure and all other related documents which were in his possession.
12. Any vacancy occurring in the office of the company liquidator by reason of removal or resignation or death shall be filled in the manner provided in Section 310.

Section-A

1. Give the meaning of Winding up of a company?
2. Who is official liquidator?
3. Give the meaning of Liquidation of a Company.

Section-B

1. Explain the modes of Winding up of a company?
2. Explain the consequences of Winding up of a company?

Section-C

1. What is official liquidator? Explain their Duties and Responsibilities of company Liquidators?
2. Briefly explain the provision relating to appointment and removal of the official liquidator.
3. Explain the Winding up process and voluntary winding up process of a company
4. Explain the consequences of Winding up of a company.

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