SYLLABUS

Class – B.Com. II Year

Subject – Corporate Law

Unit	Syllabus
Unit – I	**Preliminary to Companies Act 2013** Company definition, characteristics, types of company, formation of company, promotion, incorporation & commencement of business. Memorandum of association. Articles of association & prospectus.
Unit – II	Board of Directors, Types of Directors: Their qualifications, powers, duties, liabilities. Company Meeting: Company Meetings: Types. Quorum, Voting, Resolution and Minutes.
Unit – III	**Dividends Accounts and Audit** Declaration and payment of dividend, maintenance and authentication of financial statements, Corporate Social Responsibility (CSR), Auditor; Appointment, Qualification, Duties, Responsibilities, Audit report.
Unit – IV	**Oppression & Mismanagement; Restructuring and Winding up** Prevention of Oppression & Mismanagement Provisions related to Compromises & Amalgamation. Concept and modes of winding up.
Unit – V	**National Company Law Tribunal** Definitions, Constitution of NCLT, Constitution of Appellate tribunal, Provisions regarding appeal and punishment. Emerging issues in company law.

UNIT — I

Company

The word 'company' in its literary sense, conveys the idea of togetherness. In the business world, the word 'company' may be found being used loosely for any large business concern. In the legal sense the word 'company' point towards a very specific form of business set-up, floated and run by more than one person. This is the body corporate form of business organization.

CAPTION	OLD COMPANIES ACT 1956	NEW COMPANIES ACT 2013.
E-governance	No such provision existed.	Inspection of documents in electronic form is made.
Women director	No such provision existed.	In prescribed companies classes or class women can be a director.
Maximum no. of Directors	Max. no of directors are 12 not beyond them with approval of central govt.	Number increased to 15 but by passing with special resolution .
Corporate Social Responsibility (C.S.R.)	• No provisions for CSR initiatives	• Constitution of corporate social responsibility (C.S.R.) Committee of the board is compulsory for companies: - Having turnover of rupees **1000 crore** or more or -a net profit of rupees **5 crore** during financial year. • Every financial year at least **2%** of the average net profits to be spent on CSR activities,

Definition of a Company:

According to the Companies Act, 2013, "Company' means a company incorporated under this Act or under any previous company law". [Sec. 2 (20)]

Chief Justice Marshall of the USA defines, "A corporation is an artificial being, invisible, intangible, existing only in contemplation of the law. Being a mere creation of law, it possesses only the properties which the Charter of its creation confers upon it, either expressly or as incidental to its very existence."

According to **Prof Haney,** "company is an artificial person created by law, having separate entity, with a perpetual succession and common seal."

Lord Justice Lindley: "A company is an association of persons who contribute money to a common stock and employed in some trade or business and who share the profit and loss arising there from. The common stock so contributed is denoted in money in money and is the capital of the company".

SPECIAL FEATURES OF A COMPANY

1. Incorporated body
2. Incorporated by a person or persons
3. Artificial person
4. Separate legal entity
5. Perpetual succession
6. Common seal limited liability and two
7. Limited liability
8. Transferable shares

9. Separate property
10. Capacity to contract
11. Capacity to sue and to be sued
12. Managerial team
13. Governance by majority
14. Social responsibility

LIFTING OR PIERCING CORPORATE VEIL:

Lifting of corporate veil means this regarding the separate legal entity of a company and identifying the realities which existed behind the legal facade. In applying this doctrine, the court/tribunal ignores the companies separate existence and concerns itself directly with the numbers or directors.

The various cases in which the corporate veil is lifted may be put under two categories:

I. Statutory Exceptions-

1. Incorporation on the basis of false information
2. Misleading statement in the prospectus
3. Failure to repay deposits accepted for fraudulent purposes
4. Investigation of ownership of a company
5. Investigation of the affairs of a company
6. Non-payment of income tax
7. Fraudulent conduct of business

II. Judicial Exceptions –

1. Misdescription or nondisclosure of name of the company
2. For determination of character of the company
3. For protecting government revenue
4. For prevention of fraud or improper conduct
5. For fixing liability for economic offences
6. Where companies formed for evading legal obligation
7. Where companies acting as agent or trustee of the shareholders
8. Where a company is used for illegal purpose
9. For fixing liability under welfare legislations
10. To punish for contempt of court
11. For determination of qualifications or technical competence

KINDS OF COMPANIES

The incorporated bodies or the companies may be put in various classes on the basis of following aspects:

I. On the basis of mode of formation
II. On the basis of liability of members
III. On the basis of number of members
IV. On the basis of control
V. On the basis of ownership
VI. On the basis of access to capital market
VII. Other companies

I. ON THE BASIS OF MODE OF FORMATION:

On the basis of mode of formation or incorporation, the companies may be classified into two categories:

A. Unregistered or Unincorporated Companies- Any entity or organisation formed but not registered under the companies act 2013 or under any previous company law may be called an unincorporated or unregistered company.

According to the companies act 2013, the expression 'unregistered company' includes the following entities:

1. Any partnership formed
2. Any limited liability partnership
3. Any co-operative Society
4. Any society
5. Any other business entity

B. Incorporated companies- The incorporated companies a company formed by registered under any statute or law. Such companies may be following kinds:

1. Companies incorporated by Royal Charter
2. Companies formed under statute/statutory companies
3. Companies incorporated under the companies act

II. On the basis of liability of members:

III.On the basis of number of members:

1. **Public company:** A public company means a company [Sec.2(71)], which:
    a. is not a private company, and
    b. has a minimum paid-up capital as may be prescribed
2. **Private company:** A private company means a company having a minimum paid-up share capital as may be prescribed, and which by its articles provides for the following [Sec.2(68)]:
    a. Restricts the right to transfer its shares.
    b. Except in case of OPC, limits the number of its members to 200 excluding the present or former employees who are members of the company.
    c. Prohibits any invitation to the public to subscribe for any securities of the company.
3. **One-person company:** "One-person company means a company which has only one person is a member." [Sec.2(62)]

IV.On the basis of control:

1. **Holding company:** "Holding company in relation to one or more companies means a company of with such companies are subsidiary companies." [Sec.2(46)]
2. **Subsidiary companies:** The companies act states that a subsidiary company means a company in which the holding company has controll in any of the following ways:
    i. Control the composition of the Board of Directors.
    ii. Exercises control on more than one half of its total share capital either at its own or together with one or more of its subsidiary companies.
3. **Associate company:** Associate company, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary of the company having such influence, it includes a joint- venture company.

V.On the basis of ownership:

A. **Government companies:** [Sec.2(45)] A government company means any company in

which not less than 51% of the paid-up share capital is held by the following-

i. By the Central government or
ii. By any state government or governments or
iii. Partly by the Central government and partly by one or more state governments.

B. **Non-government company:** A company in which 51% or more of the paid-up capital is held by one or more private entrepreneurs or by public or a group of persons other than government is said to be a non-government company.

C. **Joint companies:** The companies in which the share capital is held in parts by the private persons and the Government, are known as joint companies. However, the Government's part in the paid – up share capital is always less than 51%.

VI.On the basis of access to capital market:

A. **Listed company:** listed company means a company which has any of its securities listed on any recognised stock exchange.

B. **Unlisted company:** Unlisted companies are those companies which do not have any of its securities listed on any recognised stock exchange.

VII. Other companies: In addition to the above discussed companies, there are certain other companies, they are as under:

A. Charitable companies
B. Small companies
C. Dormant companies
D. Nidhis or mutual benefit societies
E. Foreign companies

PRIVILEGES AND EXEMPTIONS AVAILABLE TO PRIVATE COMPANIES:

1. Every private company except OPC may be formed with two members whereas a public company must have at least seven members. [Sec.3(1)]
2. A private company need not and cannot issue prospectors for issue of its security, but a public company is required to issue. [Sec.23(1)]
3. A private company can allot securities even before receiving minimum subscription. [Sec. 39]
4. Except a OPC, every private companies are required to have at least two directors there is a public company must have at least three. In case of OPC, minimum one director is required. [Sec.165]
5. The provisions as to rotational retirement directors do not apply to any independent private company. [Sec. 152(6)]
6. A private company made by its articles provide any additional disqualification for appointment as directors in addition to those specified in the act, but a public company can't do so. [Sec.164(3)]

7. An independent private companies exempted from the overall limit of managerial remuneration of 11% of the net profit. [Sec.197]
8. Unless the article provide for a larger number, only two persons personally present shall be the quorum for a meeting in case of a private company.
9. A private company need not to prepare the report on each annual general meeting and file it with the registrar. [Sec. 121]

Distinction between Private and Public Company

1. **Paid-up capital**. A private company must have a minimum paid-up capital of Rs. 1 lakh whereas the public company should have at least Rs. 5 lakhs.
2. **Minimum number of members**. In the case of a private company, minimum number of persons to form a company is two while it is seven in the case of a public company.
3. **Maximum number of members**. In case of private company the membership must not exceed 50 whereas there is no such restriction on the maximum number of members for a public company.
4. **Transferability of shares.** In a private company, the right to transfer shares is restricted, whereas in the case of public company the shares are freely transferable.
5. **Prospectus**. A private company cannot issue a prospectus; while a public company may issue a prospectus to invite the general public to subscribe for its shares or debentures.
6. **Statement in lieu of prospectus**. A public company, if it does not issue a prospectus, is required to file a Statement in lieu of prospectus with the Registrar of Companies at least 3 days before allotment. A private company is not required to do this.
7. **Minimum number of directors**. A private company must have at least two directors, whereas a public company must have at least three directors.
8. **Increase in number of directors**. The number of directors in a private company may be increased to any extent but in case of a public company if the maximum number of directors is more than twelve, then the approval of the Central Government is necessary for any increase in the number of directors.
9. **Appointment of directors**. Directors of a private company may be appointed by a single resolution, but it is not so in case of a public company where each director is to be appointed by a separate resolution.
10. **Retirement of directors**. Directors of a private company are not required to retire by rotation, but in case of a public company at least 2/3rds of the directors must retire by rotation at each annual general meeting.
11. **Quorum for general meetings**. Two members personally present form the quorum in a private company but in a public company the number is five members.

One-person company:

"One-person company means a company which has only one percent as a member." [Sec. 2(62)]

It may be stated that a OPC is an artificial person incorporated under companies act 2013 with only one person as its member, having separate legal existence from the member forming eight, with a perpetual succession.

Benefits of one-person company:

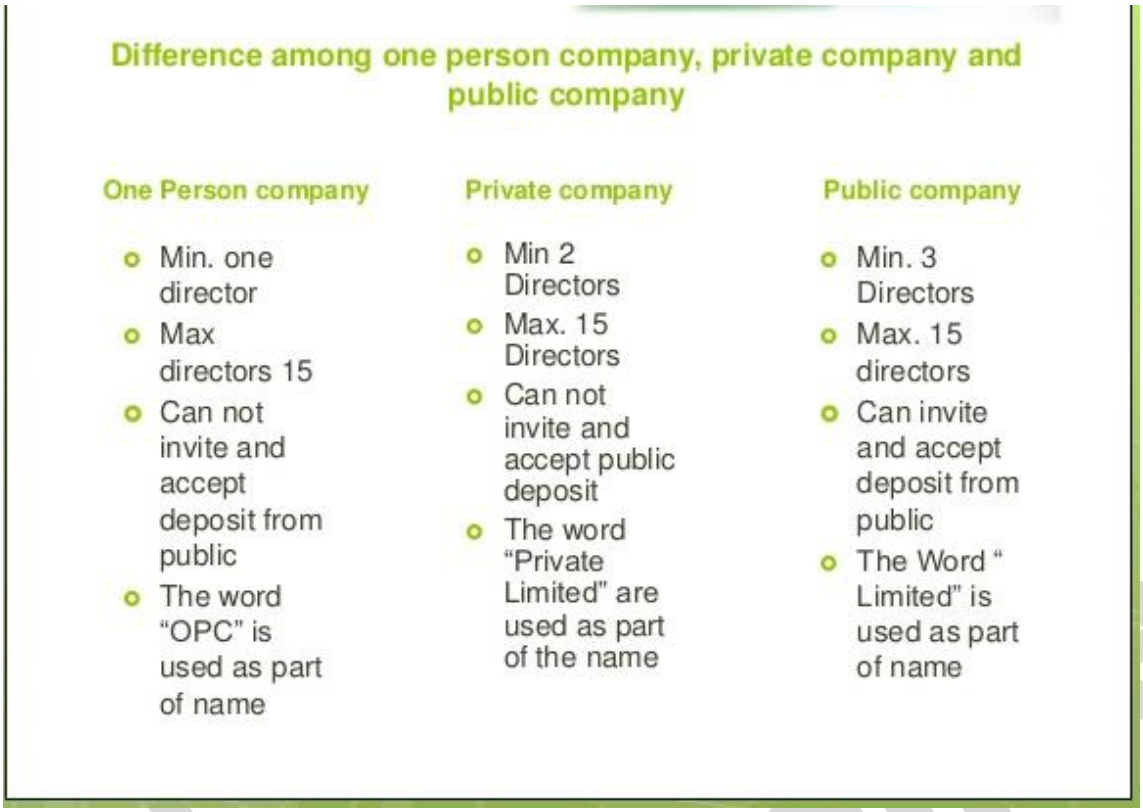
1. One-person needed to form company

2. Separate existence
3. Perpetual succession
4. Limited liability
5. Secrecy
6. Low operation cost
7. Services of professional directors
8. Easy financial and banking services
9. Low regularity cost
10. Growth of entrepreneurs

Limitations of OPC:

1 Many formalities

2. High cost of formation
3. High managerial cost
4. High rate of taxation
5. Limited financial resources
6. Limited scope of activities

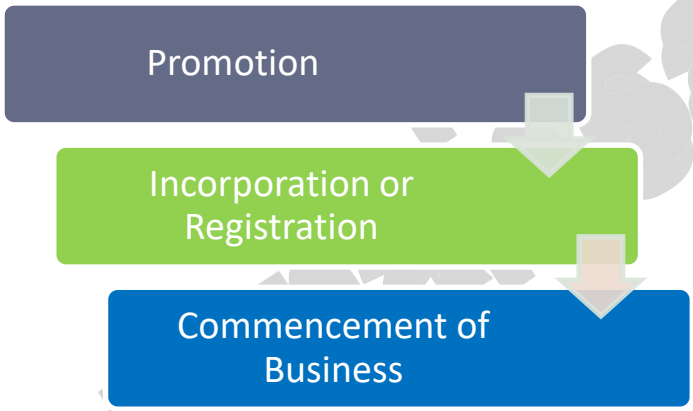


Procedure for Conversion of a public company into a private company or a private company into a public company: (Sec 18)

- Decision about conversion
- Alterstion of Memorandum
- Alteration of Articles
- Application to the Registrar

FORMATION OF A COMPANY

The process of formation of a company can be divided and discuss under the following three stages:



A. Promotion stage
B. Registration and incorporation stage
C. Commencement of business stage

Promotion

A. Promotion of company: Promotion is the process of discovery and investigation of business opportunities, planning and organisation of physical, financial and human resources with a view to forming a company.

Promoter: Promoter means a person who fulfills any of the following conditions:

a. Who has been named as promoter in a prospectors.
b. Who is identified as promoter by the company in its annual return.
c. Who has control over the affairs of the company directly or indirectly whether as a shareholder, director or otherwise.
d. In accordance with whose advice, directions or instructions the Board of director of the company is accustomed to act.

Functions/Role of a Promoter:

1. Conceiving the idea of the company

2. Investigation and verification of the idea
3. Assembling the requirements
4. Making preliminary contracts
5. Financial planning
6. Compliance of legal formalities
7. Getting the company incorporated
8. Ensuring subscription to the initial capital
9. Ensuring verification of registered office
10. Controlling affairs of the company
11. Advising and giving directions
12. Appointing directors of all directors resign

Duties of Promoters:

1. To disclose all material facts
2. Not to make secret profit
3. To disclose the interest in the transaction
4. Not to sell own property without informing
5. To make full disclosure of the property bought
6. Not to make unfair use of his position
7. Not to accept appointment as independent director
8. To provide opportunity to exit from securities if objects are changed
9. To attend before the Tribunal

Liability of Promoters:-

1. Selection liability for furnishing false information for incorporation
2. liability for misleading prospectus
3. liability for contravention of provisions as to issue of securities in private placement mode
4. liability for failure to make disclosure of a non-disclosure items of a special business
5. liability for failure to repay money or restore property
6. liability for non-cooperation to company liquidator
7. liability for preliminary contracts

Registration and Incorporation of Company

Second stage of formation of company is known as the registration or incorporation stage. A company comes into existence only after its registration and issue of certificate

of incorporation to it. The registration and incorporation of a company usually involves the following steps:

I. Preliminary steps:

1. Deciding the kind of company
2. Deciding the place of registered office
3. Obtaining DIN by the prospect of directors
4. Obtaining digital signature by promoters/prospected directors
5. Selecting and reserving name of the company
6. Drafting memorandum and articles
7. Printing the documents
8. Obtaining signature subscribers
9. Obtaining declaration as to compliance with legal requirements
10. Obtaining affidavit from subscribers and persons named as first directors
11. Obtaining particulars of subscribers and first directors
12. Obtaining consent of directors
13. Drafting other contracts

II. Application for incorporation and delivery of documents:

The application shall be accompanied by the following documents and information:

1. Notice of address for communication
2. Memorandum of the company
3. Approval of sectoral regulators
4. Articles of the company
5. Declaration as to compliance with legal requirement
6. Affidavit from subscribers and persons named as first directors
7. Particulars of every subscriber
8. Particulars of first directors
9. Consent to act as directors
10. Power of attorney by subscriber
11. Power of attorney to make corrections
12. Payment of fees

प्रारूप 1
पंजीकरण प्रमाण-पत्र

कॉर्पोरेट पहचान संख्या : U70100AP2010PLC070972 2010 - 2011

मैं एतद्द्वारा प्रमाणित करता हूँ कि मैसर्स
VISWASGOLD INFRASTRUCTURES INDIA LIMITED

का पंजीकरण, कम्पनी अधिनियम 1956 (1956 का 1) के अंतर्गत आज किया जाता है और यह कम्पनी लिमिटेड है।

यह निगमन-पत्र आज दिनांक सत्ताईस अक्तूबर दो हजार दस को मेरे हस्ताक्षर से हैदराबाद में जारी किया जाता है।

Form 1
Certificate of Incorporation

Corporate Identity Number : U70100AP2010PLC070972 2010 - 2011
I hereby certify that VISWASGOLD INFRASTRUCTURES INDIA LIMITED is this day incorporated under the Companies Act, 1956 (No. 1 of 1956) and that the company is limited.

Given under my hand at Hyderabad this Twenty Seventh day of October Two Thousand Ten .

(SATYAJIT KOLI)
सहायक कम्पनी रजिस्ट्रार / Assistant Registrar of Companies
आंध्र प्रदेश
Andhra Pradesh

कम्पनी रजिस्ट्रार कार्यालय में उपलब्ध पंजीयन का पता :
Mailing Address as per record available in Registrar of Companies office
VISWASGOLD INFRASTRUCTURES INDIA LIMITED
H.NO.1-90/12, GROUND FLOOR, OPP.CCMB, HARIGUDA 'X' ROAD,
HYDERABAD - 500007,
Andhra Pradesh, INDIA

III. **Scrutiny and registration of documents:** After receiving application and delivery of documents were incorporation, the registrar shall scrutinise the documents. When all documents are found in order, the register on the basis of documents and information filed to him shall register all these documents and information in the register of companies. [Sec. 7 (2)]

IV. **Issue certificate of incorporation and see I and CIN:** On registration of all the documents and information, the registrar shall issue a certificate of incorporation. On and from the date mentioned in the certificate of incorporation, the registrar shall allot to the company a corporate identity number or CIN.

Commencement of Business

According to the latest provisions of companies act, every company is entitled to commence its business as soon as it obtains its certificate of incorporation. No other formality is required to be complied with four commencement of business by any company after its incorporation.

If a company fails to commence its business within one year of its incorporation, the Registrar may initiate action for removing its name from the register of companies. [Sec. 248]

व्यापार प्रारंभ करने का प्रमाण-पत्र

VISWASGOLD INFRASTRUCTURES INDIA LIMITED

Certificate for Commencement of Business
Pursuant of Section 149(3) of the Companies Act, 1956

Corporate Identity Number : U70100AP2010PLC070972
I hereby cerify that the VISWASGOLD INFRASTRUCTURES INDIA LIMITED which was incorporated under the Companies Act, 1956(No. 1 of 1956) on the Twenty Seventh day of October Two Thousand Ten , and which has this day filed or duly verified declaration in the prescribed form that the conditions of the Section 149(2)(a) to (c) of the said act, have been complied with and is entitled to commence business.

Given under my hand at Hyderabad this Third day of November Two Thousand Ten .

(SHASHI RAJ DARA)
Deputy Registrar of Companies
Andhra Pradesh

Mailing Address as per record available in Registrar of Companies office:
VISWASGOLD INFRASTRUCTURES INDIA LIMITED
H.NO.1-90/12, GROUND FLOOR, OPP CCMB, HABSIGUDA 'X' ROAD,
HYDERABAD - 500007,
Andhra Pradesh, INDIA

Integrated process of incorporation

With effect from 1 May 2015, MCA has introduced a new process of incorporation of companies which is called as the integrated process of incorporation of companies. It is an alternative process of incorporation by which a company may be registered within 24 hours of the application.

The integrated process of incorporation is applicable for the registration of the following kinds of companies:

i. OPCs
ii. Private companies
iii. Public companies
iv. Producer companies

Non-trading companies on not-for-profit companies or charitable companies cannot be registered by following this procedure.

Steps in the process:

1. Application
2. One name for the proposed company
3. Memorandum
4. Articles
5. Non applicability from certain provisions

6. Verification of registered office
7. Processing of application and calling further information by the Registrar
8. Defective or incomplete resubmitted documents
9. Rejection of the from
10. Registration
11. Certificate of incorporation

Definition

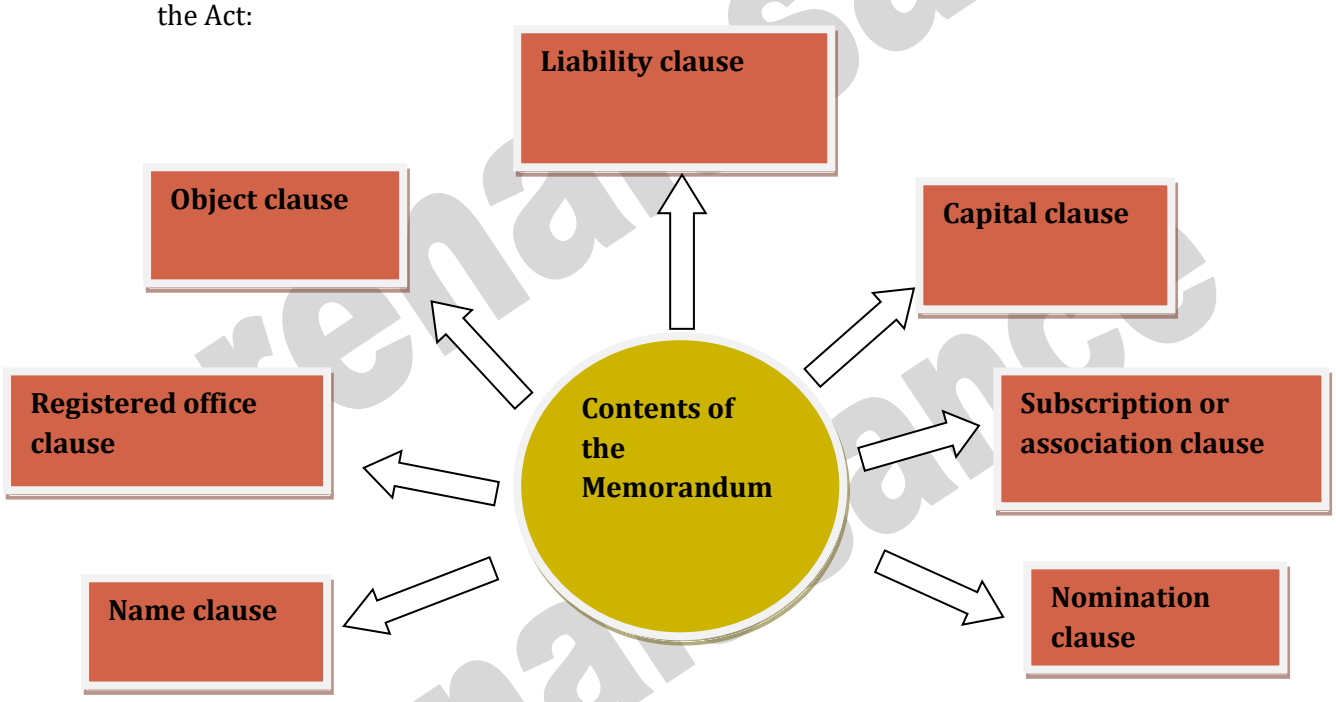
Memorandum means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous companies' law or of this Act. {Sec. 2 (56)} Palmer… It contains the objects for which the company is formed and therefore, identifies the possible scope of its operations beyond which its actions cannot go. It defines as well as confines the powers of the company.

Significance

1. It determines some basic features of the company being formed, such as its name, registered office, capital etc.
2. It determines the area of activity for the company.
3. It lays down the basic parameters to guide the relationship between the company and the outsiders who deal with the company.

Contents of the Memorandum:-

Contents of a memorandum depend on the kind of company. The contents of memorandum of a company limited by shares shall contain the following clauses as per Table A of the Schedule I to the Act:



1. **Name clause** :

Every company has to adopt its corporate name carefully. This name has to be stated in the Memorandum. The name of the company as approved by the Registrar would need to be given sufficient display as per the rules, such as outside every office, on the letters, notices etc. In the

case of a limited liability company, the word Limited Private limited must be there as the last words of the name.
In case of a **OPC**, words 'One Person Company' shall be mentioned in brackets below the name of such company, wherever its name is printed affixed or engraved.

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

3. **Object clause** :
The memorandum must state the objects for which the company is being formed. This clause defines the area of activities for which the company is being formed. Any activity outside the limits defined by this clause would be ultra vires (beyond the powers) for the company and the company can neither do it nor ratify it if it is done by any agent without its sanction.
4. **Liability clause** :
The nature of liability of the members of the company being formed must be indicated by the memorandum. The memorandum of a company limited by shares or by guarantee shall also state that the liability of its members is limited.
5. **Capital clause** :
The capital clause lays down the maximum limit of the capital beyond which the company cannot issue shares. This amount is described as registered capital or authorized capital or nominal capital.
6. **Subscription or association clause**
This clause contains the declaration by the signatories to the Memorandum about their desire to be formed into a company, about their commitment to acquire the qualification shares, if any, and the personal details about the subscribers with their signatures attested by a witness.

In case of a OPC, this clause contains the name of the only subscriber and his other particulars and his undertaking to take all the shares of the company.

7. **Nomination clause:**
This clause is application only in case of OPC. This clause contains the name of a some other person with his written consent. He shall become member of the company in the event of subscriber's/member's death or incapacity to contact.

ALTERATION OF MEMORANDUM (Section 13):

(A) Alteration of name clause:
A company may, be special resolution and with the approval of the Central Government signified in writing change its name: If a company makes default in complying with any direction given by the government.

(B) Alteration of registered office clause:

(i) Change of office within the same city. A company can make a change in the registered office within the local limits of the same city, town or village through a resolution of the Board of directors. Such a change must be brought to the notice of the Registrar within 30 days of the change.
(ii) Change from one city to another within the same state. A change in the registered office from one city to another within the same state would require the passing of a special resolution in the general meeting of the company and filing its copy with the Registrar within 30 days.

(iii) Change of registered office from one state to another. {Sec 13(4)}
The office is shifted to the new state and the address notified to the new Registrar within 30 days of shifting to the new office
.

(C) Alteration of object clause:

A company can alter its objects clause also, but, since it is a very vital clause in the Memorandum.

a) passing a special resolution in the general meeting [Sec. 13(8)]
b) Filing the resolution with the Registrar with 1 month together with the printed copy of the altered Memorandum.

(D) Alternation of liability clause:

Liability of members of a company can be altered (increased or decreased) only if the company is converted form one class of company to another class. A company of any class registered under this Act by alteration of memorandum and articles of the company.
If a company intends to convert itself from one class of company to another class of company to another class it shall pass a special resolution and make an application to the Registrar. The company shall be required to comply with all the provision application for registration of companies. The Registrar after satisfying himself shall close the former registration of the company. Then the Registrar shall register all the documents filed for re-registration and issue a certificate of incorporation in the same manner as its first registration. [sec.18]

(E) Alteration of capital clause:

If the articles authorize, a company limited by shares can alter capital clause of its memorandum. An alteration may result in increase, reduction or reorganization of the capital. Sometimes it involves the conversion of shares into stock or vice-versa. [Sec. 61] For details on alteration of capital clause, refer Chapter entitled 'Share Capital'.

DOCTRINE OF ULTRA VIRES

The doctrine of ultra vires is one of the most important principles of company law.
The word ultra means beyond, and the word vires means powers. So, the doctrine of ultra vires means that it is beyond a company's powers to do those activities which have been kept outside the scope of the objects clause in the Memorandum. If any such act is undertaken by the company or any of its agents on its behalf, the act shall not be deemed to be done by the company. Even the entire Board or the body of the shareholders cannot approve or ratify it.

Effects of ultra vires Transactions :

(i) Contact are void ab initial. A contract which is ultra vires the company is void ab initial. Under such a contract, the company cannot sue or be sued upon.
(ii) Personal liability of directors to the company. If the directors of the company utilize funds of the company in ultra vires transactions, they would be personally liable to compensate the company for any loss suffered by the company.
(iii) Personal liability of directors to third parties. As the agent of the company, the directors are expected to act within the authority available to them. If they act outside the scope of this authority by presenting themselves to the possessing the authority, this will be a breach of warranty of their authority.
(iv) Property acquired ultra vires. The funds of the company may be spent in acquiring a property ultra vires. The company's right over the acquired property shall be secure and intact.

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

Where the Doctrine does not Apply under some circumstances as mentioned below:

(i) Where the act is ultra vires only the directors, it may be ratified by the company.
(ii) Where the act is ultra vires only the Articles of Association, the Articles may be altered to make the action intra vires the articles.
(iii) Where the act is intra vires but has been done in violation of some bye-laws of the company, the Board or the general meeting may condone it.

ARTICLES OF ASSOCIATION

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

Definition: According Sec. 2(5) of the Act

"Articles means the articles of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act, including, so far as they apply the company the regulations contained in Table A in Schedule I annexed to this Act".

A public company limited by shares may either frame its own Articles and get them registered or may adopt Table A of Schedule I as its Articles.

Form:

Articles shall be printed, be divided into paragraphs numbered consecutively, and be signed by each subscriber of the memorandum of association.

Contents:

1) Various classes of shares the company shall issue and their rights.
2) Procedure for issue of shares and their allotment.
3) Procedure for issuing share certificates and share warrants.
4) Forfeiture of shares and the procedure for their re-issue.
5) Procedure for transfer and transmission of shares.
6) Calls on shares.
7) Conversion of shares into stock.
8) Payment of commission on shares and debentures to underwriters.
9) Borrowing powers of directors.
10) Rules for adoption for preliminary contracts, if any,
11) Re-organization and consolidation of share capital.
12) Alteration of shares capital.
13) Payment of dividends and creation of reserves.
14) General meetings, proxies and polls.
15) Voting rights of members.
16) Keeping of books of account and their audit.
17) Rules regarding use of the Common Seal of the company.
18) Appointment, powers, duties, qualifications and remuneration of directors.
19) Appointment, powers, duties remuneration, etc of auditors.

20) Appointment, powers, duties, qualifications, remuneration etc of the managing director, manager and secretary, if any.
21) Lien on shares.
22) Capitalization of profits.
23) Board meeting and their proceedings
24) Rules as t resolutions.
25) Winding up of the company.

ALTERATION OF ARTICLES

The expression 'alter' or 'alteration' shall include the making of additions, omissions and substitutions. [Sec. 2(3)]
Every company has a statutory power to alter its articles by a special resolution. But this power is subject to the provision of the companies Act and conditions of the memorandum of the company. [Sec 14]
It is pertinent to note that no provision in the articles can prevent a company from including any additional matter in its articles that the company considers necessary for its management. [Proviso to Sec. 5]
The power of alteration of articles is almost absolute and irrevocable. Any clause of the articles or any contract which takes away the company's power to alter its articles is void as being contrary to the provisions of the Companies Act. [State of Karnataka v. Mysore Coffee Curing Works. Ltd. (1984) 55 Comp Cases 70 Karnataka] However, a company's power to alter its articles is subject to certain statutory and judicial restrictions.

Procedure of Alteration:
The procedure of alteration of articles may be discussed under the following three heads:

I. Where the nature of company remains unchanged.
II. Where a public company is converted into a private company.

I. Where the nature of company remains unchanged:

1. Approval of the Board of directors.
2. Special resolution.
3. Complying with entrenchment provisions.
4. Filling resolution with the Registrar.

II. Where a public company is converted into a private company:

1. Board shall approve the draft resolution.
2. Special resolution.
3. Approval of the tribunal.

Limitations of freedom to alter the Articles:

(i) Alteration must not exceed the scope of or conflict with the Memorandum.
(ii) The alteration must not be inconsistent with the provisions of the Companies Act or any other law.
(iii) The Articles cannot be made to include anything which is in itself unlawful or opposed to public policy.
(iv) The alteration must not seek to undo the alteration made by the CLB or Tribunal in the documents of the company.
(v) The alteration must be bona fide and for the benefit of the company as a whole.
(vi) The alteration must not amount to a fraud by majority on the minority.
(vii) The alteration cannot be done to break a contract with a third party.
(viii) An alteration would not be complete unless it is followed by the approval of the Central Government wherever necessary.

Distinction between Memorandum and Articles:

The memorandum and articles are two important documents for incorporation and governance of a company. The two may, however, be distinguished on the basis of the following points :

(i) The memorandum contains the basic conditions associated with the incorporation of the company. This includes the name, the maximum capital and the total area of activity of the company etc. The articles however, are the rules governing the internal functioning of the company.

(ii) The memorandum is a supreme document sub-ordinate to the Companies Act only. The articles is the document sub-ordinate to the memorandum and cannot override it.

(iii) A memorandum has to be compulsorily registered. The articles may not be registered.

(iv) The memorandum defines the relationship between the company and the outside world. The articles determine the relationship between the company and the members.

(v) The alteration in memorandum requires a somewhat difficult procedure. The articles will require a simple procedure for alteration.

(vi) The acts of the company which are ultra vires the memorandum cannot be made valid through their ratification by the company. However, the acts ultra vires the articles can be made valid through their ratification if they are intra vires the memorandum.

Constructive Notice of MOA & AOA-

The term constructive notice means the presumption of notice in certain circumstances. MOA and AOA are public documents. They are open for public inspection in registrar's office. It is duty of every person dealing with the company to inspect these documents and make sure that this cataract with the company is in accordance with the provisions of these documents. He will be presumed to have read the documents and to know their contents. This kind of presumes knowledge of these documents is called 'constructive Notice' of memorandum and articles of association. If any person enters into a contract with the company which is contract to the provisions of memorandum and articles of association, he will not get any right under such contract.

Doctrine of 'Indoor Management':

According to this doctrine, a person dealing with the company is not presumed to have the knowledge of internal proceedings of the company i.e. there is no constructive notice as to how the company's internal machinery is handled by its officers. Thus, every person dealing with the company is entitled to assume that everything has been done regularly so far as the internal proceedings of the company are concerned. This doctrine seeks to protect the outsiders against the company. If the internal formalities have not been complied with the contract will be binding on the company and it will be liable to the outsiders.

PROSPECTUS

Every company require capital for its business activities. Therefore, every company issues its securities. But the public and private companies cannot use almost the same ways or methods for issuing their securities. The ways/modes of issuing securities by both the classes of companies are briefly described in the ensuing paragraphs.

Meaning of Prospectus:
Prospectus means 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 documents inviting offers from the public for the subscription or purchase of any securities of a body corporate. [Sec. 2 (70)]

Contents of the Prospectus:
The new companies Act. 2013 does not contain any model prospectus. It only prescribes the contents of a prospectus. It also states that a prospectus shall also contain the matters as may be prescribed. According to the provision of Companies Act and the Rules made there under, a prospectus to be issued shall contain the particulars with respect to the following matters:

1. The date
2. Signature
3. Information
   a. Names of address
   b. Dates of opening and closing of the issue
   c. Declaration about the issue of allotment letters and refunds
   d. A statement by the Board
   e. Underwriting
   f. Consent of the directors
   g. The authority for the issue
   h. Procedure and time schedule for allotment
   i. Capital structure
   j. Main objects of public offer
   k. Main objects and present business of the company
   l. Minimum subscription
   m. Details of directors
4. Particulars of project
5. Particulars of Litigation
6. Reports
7. Declaration

Who can issue Prospectus?
Prospectus may be issued by any of the following:

1. Public company
2. Any person on behalf
3. Who has been engaged who is or interested
4. On behalf of a person who is or who has been engaged of interested

When issue of Prospectus not Need:

1. Not offered to the public
2. Offered to the existing members
3. Offered are uniform in all respects
4. A bona fide invitation is made to a person to enter into an underwriting agreement

Public Offer:
Public offer of securities means an offer of securities made to the public through a prospectus. The expression 'public offer' is quite comprehensive and it includes the following kinds of offers:

1. Initial public offer or IPO.
2. Further or follow up public offer or FPO. Both these public offers are made through prospectus

3. Offer for sale of securities to the public by an existing shareholder. Such offer is also made through issue of a prospectus. It may be both the initial public offer or IPO and further or follow up public offer or FPO.

Abridged Prospectus
Abridged prospectus means a memorandum containing such salient features of a prospectus as may be specified by the SEBI by making regulations in this behalf. [Sec. 2 (1)]

Deemed Prospectus:
It is a common practice that the securities of a company are allotted or agreed to be allotted to some intermediary known as 'Issuing House'. The issuing house in turn, is required to offer all or any of these securities to the public by means of some documents. Such a document issued by an issuing house is known as offer for sale of securities. For all purpose it shall be and deemed to be a prospectus issued by the company. The provision relating to offer for sale of securities by a issuing house are summarized as under.

Shelf Prospectus:
Definition:- 'Shelf prospectus' means 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. [Explanation to Sec. 31]

Red Herring Prospectus:
Definition:- Red herring prospectus means a prospectus which does not have complete particulars on the quantum or price of the securities offered and the quantum of securities included therein.

Offer to the Public:
Section 67(1) of the Act States that public includes "any section of the public whether elected as members or debenture holders, or as clients of the person issuing the prospectus or in any other manner." But an offer is not to be treated as made to the public where the offer can in all the circumstances be properly regarded as a domestic concern of the persons making and receiving it.

Abridged Prospectus:
It is no longer necessary to furnish a copy of the prospectus along with every application form which the company may issue while inviting the public to purchase or subscribe for its shares or debentures. In future, application form is to be accompanied only by a gist of material formation. This is referred to as 'abridged prospectuses.

WHEN PROSPECTUS IS NOT REQUIRED TO BE ISSUED
The issue of a prospectus containing the details as required by section 23 is not necessary in the following cases:

1. Where an offer is made in connection with bonafide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.
2. Where the shares or debentures are not offered to the public.
3. Where the shares or debentures are offered to the existing members or debenture holders of the company.
4. Where the shares or debentures offered are uniform in all respects with shares or debentures previously issued and dealt in or quoted on a recognized stock exchange.

5. Where any prospectus is published as a newspaper advertisement, it is not necessary to specify the contents of the Memorandum or the signatories thereto, or the number of shares subscribed for them.

STATEMENT IN LIEU OF PROSPECTUS

All public companies either issue a prospectus or file a statement in lieu of prospectus. A private company is prohibited from inviting monetary participation of the public. But the promoters of a public company need not necessarily go to the public for money. The promoters may be confident of obtaining the required capital, through private sources.

In such a case no prospectus need be issued to the public, but promoters must prepare a document, akin to the prospectus known as 'Statement in lieu of prospectus.' This document must be in the form set out in Schedule III of the Act and must contain practically the same information as is required in the prospectus.

Unit-2

Board of Directors

According to the Companies Act 2013, a board of directors is a group of individuals elected by the shareholders of a company to manage its affairs and make decisions on its behalf. The board is responsible for the overall management of the company and must act in the best interests of the company and its stakeholders, including shareholders, employees, customers, and the wider community.

The Companies Act specifies that the board of directors must have at least three directors, with a maximum of fifteen directors. At least one director must be a resident of India. The Act also requires that at least one-third of the board must consist of independent directors who are not affiliated with the company in any way other than as directors.

The board of directors is responsible for a range of functions, including setting the strategic direction of the company, ensuring that the company complies with all relevant laws and regulations, overseeing the management of the company's operations, appointing key executives and senior management, and protecting the interests of the company and its stakeholders.

The board of directors must also meet regularly to discuss and decide on various matters related to the company's operations. The Act specifies that the board must meet at least once every quarter, with a gap of not more than 120 days between two consecutive meetings.

The Companies Act also contains provisions related to the remuneration of directors, the qualification of directors, and the powers and duties of the board of directors. The Act lays down various rules and regulations to ensure that the board of directors acts in the best interests of the company and its stakeholders and operates in a transparent and accountable manner.

Types of Directors

- Executive Director: An executive director is a director who is also an employee of the company and is involved in the day-to-day management of the company's affairs.
- Non-Executive Director: A non-executive director is a director who is not involved in the day-to-day management of the company's affairs but provides guidance and oversight to the company's executive directors.
- Independent Director: An independent director is a non-executive director who does not have any material or pecuniary relationships with the company, its promoters, or its management. Independent directors are appointed to provide an objective perspective to the board of directors and to act as a check on the management's decisions.
- Nominee Director: A nominee director is a director who is appointed by a shareholder or group of shareholders who hold a significant stake in the company. Nominee directors are appointed to represent the interests of the shareholders who appointed them.
- Women Director: As per the Companies Act 2013, every listed company or every other public company having a paid-up share capital of Rs. 100 crores or more, or a turnover of Rs. 300 crores or more, must have at least one woman director on its board.

- Additional Director: An additional director is a director who is appointed by the board of directors between two annual general meetings. The appointment of an additional director is subject to ratification by the shareholders at the next general meeting.

- Alternate Director: An alternate director is a person appointed by a director to attend meetings of the board and to vote on his or her behalf in his or her absence. An alternate director can only be appointed with the prior approval of the board of directors.

Qualifications

QUALIFICATIONS TO BE A DIRECTOR

Section 149 of the Companies Act provides that no body corporate, association or firm can be appointed director of a company. Only an individual can be appointed as a director. It is because that the office of a director is to some extent an office of trust. There should be somebody readily available who can be held responsible for the failure to carry out the obligations of such an office.

- The Companies Act does not lay down any academic or professional qualification for appointment as a company director. However, the articles of association of the company usually provide for the share qualification of a director. Such shares are known as qualification shares.

- The holder of a share warrant shall not be deemed to be the holding of qualification shares.

Disqualifications of Directors

Disqualifications for appointment of director -
Section 164
(1) A person shall not be eligible for appointment as a director of a company, if —
(a) he is of unsound mind and stands so declared by a competent court;
(b) he is an undischarged insolvent;
(c) he has applied to be adjudicated as an insolvent and his application is pending;
(d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence.
If a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;
(e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
(f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;
(g) he has been convicted of the offence dealing with related

party transactions under section 188 at any time during
the last preceding five years; or
(h) he has not got the DIN.

Power

POWERS OF DIRECTORS

The powers of the directors are generally set out in articles of the company. Followingare

the powers of Directors :

1. General Powers vested in Board under Section 179

The Board of Directors is entitled to exercise all such powers and to do all such actsand things as the company is authorised to exercise and do.

The shareholder is the ultimate and final authority within the corporate enterprise.The inherent, residuary and ultimate powers of a company lie with the general meeting of shareholders.

2.Powers exercisable at Board meeting only

Under section 179(3), the following powers can be exercised by the Board, only by resolutions passed at the Board meeting. However, some of these powers may be delegated by the Board in the manner prescribed.

(a) the power to make calls;
(aa) authorizing buy-back of shares u/s 68 i.e ., buy back of without passing a special resolution

(b) the power to issue debentures;

(c) the power to borrow money otherwise than on debentures;
(d) the power to invest the funds of the company
(e) the power to make loans.

3.Other Powers to be exercised at Board Meeting

There are certain other provisions of the Act, by which directors are required to exercise the following powers at a meeting of the Board :

- The power to fill up casual vacancies in the office of directors.
- The power to make donation to political parties.
- The power to appoint additional directors.
- The power to appoint first auditors.
- The power to grant consent to contracts in which any director, or his relative, or his partner, etc. are interested.
- The power to receive notice of disclosures of director's interest.

- The power to receive notice of disclosure of director's shareholding.
- The power to make declaration of solvency where it is proposed to wind up the company voluntarily.

The power to :

- borrow money,
- investing funds of the company and
- making loans may be delegated to the following :

(a) Committee of directors

(b)managing director

(c)manager

(d) principal officer of the company

(e) principal officer of the branch office

Duties

Duties of directors- Section 166
For the first time, duties of directors have been defined in the Act.
A director of a company shall :

— Act in accordance with the articles of the company.

— Act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.

— Exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

— Not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

— Not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.

— Not assign his office and any assignment so made shall be void.

If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than Rs. 1,00,000 but which may extend to Rs. 5,00,000

LIABILITIES OF THE DIRECTORS

(A) CIVIL LIABILITY

The directors are liable towards the company and the third parties.

1. Liability towards the company : Since the directors as an agent and trusty owe certain duties and breach of these duties make them liable for :

(i) negligence, (ii) misfeasance, (iii) breach of trust, and (iv) ultra vires acts.

(i) Negligence : A director must exercise due care and diligence in the performance of his duties. When the directors acting within their powers fail to use such reasonable skill and diligence as may be expected from persons with their knowledge and experience in the management of the company's affairs, they can be held liable for negligence.

Example : P owed some money to a company. The directors in exercise of their discretion decide not to sue to recover the debt and consequently, the money was ultimately lost on account of the delay in action. It was held though technically it would amount to a breach of duty, it would neither be an actionable breach nor amount to negligence if they exercise their discretion bonafide and in the best interest of the company.

(ii) Misfeasance : The misfeasance means willful of Dean misconduct Coat Min resulting into loss to the company.

In order to take action against a director on the ground of misfeasance, two conditions mustbe fulfilled :

(a) there must be misconduct or negligence on the part of a director, and
(b) such act must be willful.

(iii) Breach of trust : The directors are further liable for a breach of trust. It means any misapplication of the funds of the company. As directors are trustees of the company, they must exercise their powers bonafide and in the interest of the company as a whole.

(iv) Ultravires acts :Where directors do any acts which are in excess of their powers, or which areultravires and the company suffers a loss, the directors shall be personally liable to the company to make good the loss. It is not necessary to prove fraud in such cases.

2. Liability towards Third Parties :

As to contracts : Directors being agents of the company are not liable to third parties oncontractswhichthey makeon behalf of the company. They will be liable only when ordinary agents will be liable under those circumstances. This was pointed out by Lord Cairns in Ferguson vs. Wilson.

3. Director Liability for Acts of Co-directors : The directors are not liable for the acts of his co-directors, if he did not participate in the Boards action or did not know about it.

It is so because, a director is the agent of the company (other than the matters dealt with by the company in general meeting) and not of the co-directors on the Board.

In the absence of reasonable grounds for suspicion, a director cannot be held liable for the fraudulent acts of co-director on the ground that he ought to have discovered the fraud [Doveyv. Cory]. Thus, a director was not held liable for payment of dividends on false accounts declared at a meeting where the director to be made liable was absent.

B) CRIMINAL LIABILITY

Companies Act, 2013, imposes certain duties upon the statutory directors and they may be liable to penalties by way of fine or imprisonment if they fail to perform them.

- Filing of prospectus containing untrue statements-two years, imprisonment and/or fine upto ? 50,000. [Sec. 34]
- Inviting deposits in contravention of the rules, or manner or conditions-five years, imprisonment and fine. [Sec. 74]

Director knowingly makes default in repayment of deposits of small depositors (i.e ., Deposits of ? 20,000 or less) under section 58AA or order of Tribunal :

- Three years' imprisonment and fine of at least ? 500 for every day during which such non-compliance continues.
- Issuing false advertisement inviting deposits-3 years, imprisonment, ? 50,000 fine.
- Fraudulently inducing persons to invest money-imprisonment up to ten years, or fine Rs. 1,00,000 or both. [Sec. 36]
- Failure to repay excess application money-imprisonment up to one year and fine up to not less than 5 lakh and maximum 50 lakhs. [Sec. 40]
- Concealing name of creditor-imprisonment up to ten year or fine or both. [Sec. 66]
- Default in distributing dividends or posting the warrants in respect thereof * within 2 years - simple imprisonment and to a fine of ? 1,000 for every day of default if he knowingly party of default. [Sec. 127]
- Failure to assist Registrar in inspection of books of account, etc .- imprisonment up to one year and fine not less than ? 25,000 which may extend to 1 lakh. [Sec. 207]

MEANING OF MEETING

In the context of a company, the word 'meeting' implies the coming together of a certain number of members for transacting the business in the agenda, for which a previous notice has been given. It follows that to constitute a meeting there must be two or more persons Generally, the purpose of a meeting is to consider issues of common interests to its attendants Company meetings must be convened and held in compliance with the various provisions of the Companies Act, 2013 and the rules made there under.

KINDS OF MEETINGS

The management of affairs of a company is carried on by a board of directors. The board functions under the general supervision of the shareholders. So, the meetings of shareholders provide them an opportunity to review the working of the company and to safeguard their own interests. Company meetings are of different kinds.

When two or more than two persons get together at one place to discuss any common issue, it is called Meetings of the shareholders or of the directors or the debenture holder or the contributories. Meetings of shareholder are called General Meetings. Such meetings are most important meetings in the life of a company because the shareholders are the real owners of the company but the company is not managed by them. The company is managed by their elected representative called Directors.

ANNUAL GENERAL MEETINGS [Section 96]

Applicability : Every company, other than One Person Company whether public or private, having a share capital or not, limited or unlimited is required to hold an annual general meeting.

Objects of Annual General Meeting

- An annual general meeting is an important meeting of protecting the interests of the shareholders. It is only at the annual general meeting of a company that the shareholders can exercise control over the affairs of the company. Hence it is desirable that they should meet at least once every year to review the working of the company. The Board of directors place accounts for consideration, approval and adoptionby shareholders in the AGM.
- Shareholders exercise control over the management by re-electing or refusing to elect the directors.
- The auditors of the company are also replaced or reappointed by the shareholders in the AGM.
- Dividend proposed by the directors is declared in the AGM.

EXTRA ORDINARY GENERAL MEETING [Section 100]
Regulation 42 of the Table F provides "all general meetings other than annual general meetingsshall be called extraordinary general meetings." In other words, annual general meeting of a company are called ordinary meetings. All general meetings other than these are calledExtraordinary General Meetings.

Need for EGM

An extraordinary general meeting may be held for the purpose of dealing with any extraordinary matter which can't be postponed till the next annual general meetings such as :

- Changes in M. O. A
- Changes in A. O. A
- Reduction or reorganisation of share capital

- Issue of Debentures
- Removal of Director
- Removal of Auditors.

For such urgent or special business that may arise between two AGMs, an EGM is convened. Moreover such matters concerning the administration of company's affairs can be transacted only by resolution of the members in general meeting.

QUORUM [Section 103]

Quorum' means the minimum number of members who must be present in order to constitute a valid meeting and to validly transact businessat the meeting. If the quorum is not present, the meeting shall not be valid and therefore the proceedings of such meeting shall be invalid.

Quorum is the minimum number of members who are personally present and their presence is necessary to constitute meeting and to validates the transactions and resolutions passed in the meeting.

(a) Requisite Quorum:

a. Public Companies : 5 members personally present.

b.Other Companies : 2 members personally present.

Articles may provide higher number to constitute a valid quorum but, when all members of the company are present in person, the quorum is present even if quorum required by articles is more than the number of members.

VOTING

Persons Entitledto Vote :Thevotes castby the shareholders play decisive role inthe business proposed in the general meetings of the company.

- Equity shareholders : Every member of a company limited by shares and holding any equity share capital therein shall have right to vote, in respect of such capital, on every resolution placed before the company. His voting right on a poll shall be in the proportion to his paid up-capital of the company. [Sec. 47]
- Preference shareholders : Preference shareholders can vote only on the resolutions directly affecting them. [Sec. 47] Any resolution for winding up the company or for the repayment or reduction of its share capital shall be deemed directly to affect the rights attached to preference shares.
- Holder of share warrants : The bearer of a share warrant can vote only if the articles of association of the company provides for it.
- Joint holders : In the case of joint shareholders, the vote of the senior joint holder, whether in person or by proxy, shall be accepted.
- Insolvent : An insolvent shareholder is entitled to exercise the right to vote provided his name appears on the register of members.

- Representation of corporations in meetings : A body corporate can be a member or creditor of another company. It may authorise a person not necessarily an employee to attend and vote at any meeting of the company.

- Representation of the President and Governor : Where the President of India or the Governor of the State is a member of a company, he may appoint such person as he thinks fit to act as the representative to attend and vote at any meeting of the company.

- Proxy : A proxy is entitled to vote only on a poll and not on a vote by show of hands

RESOLUTIONS

Decisions of the company are made by resolutions of its members, passed at meetings of members. The word 'resolution' has not been defined in the Companies Act. It may be defined as the formal decision of a meeting on any motion before it. A proposal when passed and accepted by the members becomes resolution.

Three kinds of resolutions as recognised by the Companies Act are :

(A) Ordinary resolutions [Sec. 114(1)].

(B) Special resolutions [Sec. 114(2)].

(C) Resolutions requiring a special notice. [Sec. 115] D) Resolution by postal ballot (Section 110).

The Companies Act and the articles of association of a company lay down the type of the resolution required of any particular matter. As a rule, all 'ordinary business' as per the Act can be done by an ordinary resolution; all 'special business' can be done by any type of resolution ordinary and special.

However, under certain special conditions, as per the Act, special notice of 14 days to the company is essential for matters to be passed either by ordinary or by special resolution.

(A) Ordinary resolution. [Sec. 114(1)] : An ordinary resolution is one which is passed at a general meeting by a simple majority of members entitled to vote therein.

Simple majority means that the votes cast either by show of hands or on a poll in favour of a particular proposal including the casting vote of the chairman exceeds the votes cast against it. Thus, voting for and voting against must both be counted and the neutral votes are to be ignored. All resolutions which are not special or which do not require special notice is ordinary resolutions.

Ordinary resolutions normally do not require filling with the Registrar of companies. The usual notice of 21 days is however, required for passing an ordinary resolution.

The important items of business of a company which can be transacted with ordinary resolutions are :

- Adoption of directors' report, balance sheet, profit and loss account and auditors' report on the accounts.

- Election of directors.
- Declaration of dividend.
- Appointment of auditors and fixing their remuneration.
- Appointment of sole selling agents.
- Removal of a director before the expiry of his tenure. It also requires special notice of 14 days to the company.
- Appointment of another director in place of the one removed.
- Alterations of share capital such as increase, sub-division, consolidation, etc.
- Sale of the whole or part of the company's undertaking or business.

Special resolution [Section 114(2)] : A resolution shall be a special resolution when :

- the intention to propose the resolution as a special resolution has been duly specified in the notice;
- the notice required under the Act (21 days) has been duly given; and
- the votes cast in favour of the resolution by members entitled to vote either in person or by proxy are not less than three times the number of votes if any, cast against the resolution. The votes may be cast either on a show of hands or by poll. There is no question of a casting vote in case of a special resolution.

An explanatory statement setting out all material facts concerning the subject matter of the special resolution including in particular, the nature of the concern or interest, if any, therein of every director and manager, if any, shall be annexed to the notice of the meeting.

A copy of every special resolution together with the copy of the explanatory statement shall, within thirty days of the passing of the resolution be filed with the registrar who shall record the same.

A special resolution is required for the following purposes :

1. To alter the provision of the memorandum for changing the place of registered office from one State to another or objects of the company (Section 13).

2. To change the name of the company (Sec. 13).

3.To alter the articles of the company (Sec. 14)

4. To offer further issue of subscribed capital when shares are offered to outsiders (Sec. 62).

5. To create reserve capital.
6. To reduce the share capital of the company (Sec. 66).
7. To authorise payment of interest out of capital.
8. To request the Central Government to appoint inspectors for investigation of the affairs of the company (Sec. 210 and 2013).
9. To authorise payment of remuneration to directors who are not in the whole time employment of the company (Sec. 197).
10. To make the liability of directors unlimited.
11. To have the company wound up by the NCLT (Sec. 271).
12. To wind up the company voluntarily (Sec. 304).

A copy of the special resolution must be filed with the registrar within 30 days of passing it

MINUTES OF THE MEETING [Section 118] The term 'minutes' mean the official record of the meetings of a company. These are a summary of the business transacted; decisions and the resolutions arrived at themeeting. Minutes are like a précis, not a narrative.

Obligation to maintain minutes : Every company is required to keep minutes of the proceedings of :

- every general meeting;
- every meeting of Board of directors; and
- every meeting of committee of the Board of directors.

For this purpose, every company is required to make entries of the proceedings of its meetings in books kept for that purpose within 30 days of the conclusion thereof. The pages of every minutes book

signing of Minutes : Each page of every minutes proceeding shall be initialed or signed and the last page of the record of proceedings of each meeting in such book shall be dated and signed.

Signing by whom :

In the case of minutes the proceedings of a meeting of the Board or of a Committee thereof, by the chairman of the said meeting or the chairman of the next succeeding meeting.

In the case of minutes of proceedings of a general meeting, by the chairman of the same meeting or in the event of the death or inability of the chairman by a director duly authorised by the Board for the purpose. [Sec. 118(1)]

Minutes not to be attached by pasting or otherwise : Minutes of the proceedings of a meeting shall not be attached to any such book by pasting or otherwise. [Sec. 118] It means that the minutes have to be written by hand.

Loose leaf minute : A company may keep its minutes of meetings in loose leaf binders provided the following conditions are satisfied.

- The pages containing minutes are duly typed and serially numbered.
- Each page is initialed or signed and the last page is dated and signed by the chairman.
- The loose leaves are bound at a reasonable interval not exceeding 6 months.
- The loose leaves are kept in safe custody under lock and key.

Unit-3

COMPANIES (DECLARATION AND PAYMENT OF DIVIDEND) RULES, 2014

In the event of inadequacy or absence of profits in any year, a company may declare dividend out of free reserves subject to the fulfillment of the following conditions, namely :

- The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the three years immediately preceding that year.
  However, this sub-rule shall not apply to a company, which has not declared any dividend in each of the three preceding financial year.

- The total amount to be drawn from such accumulated profits shall not exceed 1/10th of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

- The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.

- The balance of reserves after such withdrawal shall not fall below 15% of its paid-up share capital as appearing in the latest audited financial statement.

CORPORATE SOCIAL RESPONSIBILITY (Section 135)

As per Section 135 of the Companies Act, 2013, every company having :

- Net worth of Rs 500 crore or more, or
- Turnover of Rs 1000 crore or more or .
- A net profit of Rs 5 crore or more

during any financial year shall constitute a Corporate Social Responsibility Committee.

CSR Committee

Companies that trigger any of the aforesaid conditions must constitute a Corporate Social Responsibility Committee of the Board to formulate and monitor the CSR policy of a company. Section 135 of the 2013 Act requires the CSR Committee to consist of at least three directors including at least one independent director.

However, CSR Rules exempts unlisted public companies and private companies that are not required to appoint an independent director from having an independent director as a part of their CSR Committee. In case where a private company has only two directors on the Board, the CSR Committee can be constituted with these two directors.

The Board's report u/s 134 shall disclose the composition of the Corporate Social

Responsibility Committee.

CSR Policy

CSR Policy relates to the activities to be undertaken by the company as specified in

Schedule VII to the Act and the expenditure thereon, excluding activities undertaken in pursuance of normal course of business of a company.

The Rules provide that the CSR Policy of a company shall, inter alia include the following, namely :

- A list of CSR projects or programs which a company plans to undertake falling within the purview of the schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedule for the same; and
- Monitoring process of such projects or programs.

The Board shall ensure that the activities included by the company in its CSR Policy are related to the activities mentioned in Scheduled VII of the Act.

AUDITORS

Section 139 as amended by Companies (Amendment) Act,2017laysdown provisions for the appointment of an auditor

Appointment of Auditor in a Non-governmental Company

First Auditor : To be appointed by Board of directors within 30 days of incorporation, if Board of directors fails to do so then appointed by Shareholders in GM within90daysof incorporation.

Subsequent Auditor : To be appointed in first AGM who shall hold office till the conclusion of its 6th AGM and thereafter till the conclusion of every 6th AGM but subject to ratification by members of company in every AGM.

Casual vacancy : Casual Vacancy arisen due to Death/Insolvency/Insanity, are to be filled by Board but in case of resignation, vacancy will be filled by Board but subject to ratification by shareholders in General Meeting within 30 days of appointment.

Term of the Auditor : Listed or some specified companies shall not appoint or re-appoint an individual as auditor for more than one term of 5 consecutive years; and an audit firm as auditor for more than two terms of 5 consecutive years. These auditors (either individual/audit firm) can be re-appointed after cooling off period of 5 years.

No audit firm shall be appointed as auditor of the company for a period of 5 years, if same firm presently having a common partner(s) to the previous audit firm, whose tenure has expired in a company, immediately preceeding the financial year.

Notice to the Registrar : Notice of appointment shall be given to Registrar within 15 days of meeting in which the auditor is appointed.

Reappointment of Auditor : An auditor shall not be reappointed under the following circumstances :

- He is not qualified for re-appointment

- He has given the company a notice in writing of his unwillingness to be re-appointed;
- A special resolution has been passed at that meeting appointing somebody else instead of him or providing expressly that retiring auditor shall not be re-appointed.

If no auditor is appointed on re-appointed at any AGM, the existing auditor shall continue to be the auditor of the company.

Appointment of an Auditor in a Government Company

First Auditor : First Auditor shall be appointed by CAG within 60 days of incorporation if CAG fails to appoint then auditor shall be appointed by BOD within next 30 days but if BOD also fails to do then members shall be informed who shall appoint the auditor within 60 days in EGM. [Sec. 139(5)]

Subsequent Auditor : CAG shall appoint subsequent auditor within 180 days from the commencement of financial year who shall hold office till the conclusion of AGM. [Sec. 139(5)]

Casual Vacancy : Casual Vacancy of any kind will be filled by CAG within 30 days of vacation but if CAG fails to do then BOD shall fill the vacancy within next 30 days.

Remenuration of Auditor [Sec. 142]
First auditor : shall be fixed by BOD.

Subsequent auditor : shall be fixed in GM or manner of fixation shall be determined there.

The remuneration includes out of pocket expenditure : The Remuneration shall include the expenses, if any, incurred by the auditor in connection with the audit of the company

Qualifications of the Auditor [Sec. 141(1) and (2)]
Qualification of an Auditor :

- Must be a member of ICAI holding certificate of practice i.e ., a practicing C.A :
- A firm of chartered accountants with majority of partners practicing in India : .
- A LLP but only CAs are allowed to act or sign as auditors.

Powers and Duties of Auditor [Sec. 143(1)]

Every auditor of a company shall have a right of access to the books of account and vouchers of the company (including all its subsidiaries for the purpose of consolidation) at all times, wherever kept and shall be entitled to seek such information and explanation from the officers of the company as he may consider necessary for the performance of his duties as auditor and it his duty to report the adverse features if he finds some during enquiry.

Auditor's Report 143

The auditor shall make a report to the members of the company,

- On the accounts and on every B/S and P & L A/c and every other documentdecidedby this act to be part of or annexed to B/S and P & L A/c.

- Which are laid before the company in GM during his tenure of office auditor report shall state : whether, in his opinion and to the best of his information and according to the explanation given to him, the B/S and P & L A/c give :

    a. The information required by the act; and

    b. A true and fair view of the state of the affairs of the company.

Auditors report shall also state : (Sec. 143)

- Whether he has obtained all the information and explanation;
- Whether, in his opinion, proper books of account have been kept;
- Whether the report of branch auditor has been forwarded to him and how he has dealt with the same in preparing his audit report;
- Whether the B/S and P & L A/c are in agreement with the books and returns;
- Whether AS have been complied with;
- The observations or comments of the auditors which have any adverse effect on the statements on the functioning of the company in thick type or in italics;

Maintance and authentication of financial statements

The maintenance and authentication of financial statements are important tasks in accounting and finance. Financial statements are used to communicate a company's financial performance and position to stakeholders, such as investors, creditors, and regulators. It is crucial that these statements are accurate and reliable, as they form the basis for important financial decisions.

Maintenance of financial statements involves ensuring that the data used to prepare the statements is up-to-date, complete, and accurate. This includes maintaining accurate records of financial transactions, reconciling bank accounts, and updating depreciation schedules. In addition, companies must ensure that they are following relevant accounting standards and reporting guidelines.

Authentication of financial statements involves ensuring that the statements are trustworthy and reflect a company's actual financial performance and position. This involves various internal and external checks and balances, such as internal audits, independent audits by external auditors, and review by the company's board of directors.

It is important to note that the maintenance and authentication of financial statements is an ongoing process, as the statements must be updated regularly to reflect changes in a company's

financial performance and position. This ensures that stakeholders have access to accurate and reliable information when making financial decisions

Unit-4

Prevention of oppression and mismanagement provision related to compromise and amalgamation

Section 232 of the Companies Act, 2013 contains provisions related to the compromise, arrangement, and amalgamation of companies, along with measures to prevent oppression and mismanagement.

Under this section, the National Company Law Tribunal (NCLT) may order a meeting of the company's members or creditors to be held for the purpose of considering a proposed compromise or arrangement. The NCLT will also appoint an independent expert to evaluate the proposal and submit a report to the tribunal.

The NCLT will only approve a compromise or arrangement if it is satisfied that it is fair and reasonable, and not prejudicial to the interests of the company's members or creditors. In addition, the NCLT must ensure that the company's affairs are not being conducted in a manner prejudicial to public interest or in a manner that is oppressive or mismanagement.

If the NCLT finds evidence of oppression or mismanagement, it may pass orders to protect the interests of the company and its shareholders, such as removing the company's directors or appointing new directors. The NCLT may also order an investigation into the company's affairs and take other measures as necessary to prevent oppression and mismanagement.

WINDING UP OF A COMPANY

Winding up of a company is defined as a process by which the life of a company is brought to an end and its property administered for the benefit of its members and creditors. An administrator, called the liquidator, is appointed and he takes control of the company, collects its assets, pays debts and finally distributes any surplus among the members in accordance with their rights. At the end of winding up, the company will have no assets or liabilities. When the affairs of a company are completely wound up, the dissolution of the company takes place. On dissolution, the company's name is struck off the register of the companies and its legal personality as a corporation comes to an end.

The procedure for winding up differs depending upon whether the company is registered or unregistered. A company formed by registration under the Companies Act, 1956 is known as a registered company. It also includes an existing company, which had been formed and registered under any of the earlier Companies Acts.

Difference between dissolution and winding up 1. Winding Up is first stage where assets/liabilities are realised/paid-off; Dissolution is final stage where company ceases to exist. 2. Winding up is carried on by liquidator appointed by company/court; Order for dissolution is given by court only. 3. Liquidator can represent company during winding up till dissolution; After dissolution liquidator don't represent co. 4. Creditors can prove their debts in winding up but not on dissolution 5. Winding up always don't lead to dissolution

Winding up a Registered Company The Companies Act provides for two modes of winding up a registered company: A . Winding up by the Tribunal B. Voluntary Winding Up

A. Winding up by the Tribunal or Grounds for Compulsory Winding Up The petition for winding up to the Tribunal may be made by:-

- The company, in case of passing a special resolution for winding up.
- A creditor, in case of a company's inability to pay debts.
- A contributory or contributories, in case of a failure to hold a statutory meeting or to file a statutory report or in case of reduction of members below the statutory minimum.
- The Registrar, on any ground provided prior approval of the Central Government has been obtained.

A person authorized by the Central Government, in case of investigation into the business of the company where it appears from the report of the inspector that the affairs of the company have been conducted with intent to defraud its creditors, members or any other person.

The Central or State Government, if the company has acted against the sovereignty, integrity or security of India or against public order, decency, morality, etc.

Unit-5

Under this section, the National Company Law Tribunal (NCLT) may order a meeting of the company's members or creditors to be held for the purpose of considering a proposed compromise or arrangement. The NCLT will also appoint an independent expert to evaluate the proposal and submit a report to the tribunal.

The NCLT will only approve a compromise or arrangement if it is satisfied that it is fair and reasonable, and not prejudicial to the interests of the company's members or creditors. In addition, the NCLT must ensure that the company's affairs are not being conducted in a manner prejudicial to public interest or in a manner that is oppressive or mismanagement.

If the NCLT finds evidence of oppression or mismanagement, it may pass orders to protect the interests of the company and its shareholders, such as removing the company's directors or appointing new directors. The NCLT may also order an investigation into the company's affairs and take other measures as necessary to prevent oppression and mismanagement
The National Company Law Tribunal (NCLT) was established under the Companies Act, 2013. The constitution of NCLT is governed by the provisions of the Companies Act, 2013 and the National Company Law Tribunal Rules, 2016.

According to the Companies Act, 2013, the NCLT shall consist of a President and such number of Judicial and Technical Members as the Central Government may deem necessary, appointed by notification in the Official Gazette.

The National Company Law Tribunal Rules, 2016 prescribe the qualifications and criteria for appointment of the President and Members of the NCLT.

The President of the NCLT shall be a person who is or has been a Judge of a High Court for at least five years, or is a Judicial Member who has served as such for at least five years or has been a Member of the Indian Corporate Law Service for at least fifteen years.

The Judicial Members of the NCLT shall be persons who are or have been a District Judge or an Additional District Judge for at least five years, or have practiced as an Advocate for at least ten years.

The Technical Members of the NCLT shall be persons who have special knowledge or experience of not less than fifteen years in industrial finance, industrial management, industrial reconstruction, investment and accountancy.

The appointment of the President and Members of the NCLT is made by the Central Government after consultation with the Chief Justice of India. The term of office of the President and Members of the NCLT is five years or until they attain the age of sixty-five years, whichever is earlier.

The NCLT has benches located in various parts of the country, and each bench shall consist of at least one Judicial Member and one Technical Member. The President of the NCLT has the power to constitute benches and assign cases to them.
Appeals:

The Companies Act, 2013 provides for various types of appeals related to company law matters. The following are some of the key provisions regarding appeals under the Act:

Appeals against orders of the National Company Law Tribunal (NCLT): Any person aggrieved by an order of the NCLT may file an appeal before the National Company Law Appellate Tribunal (NCLAT) within 45 days from the date of receipt of the order.

Appeals against orders of the NCLAT: Any person aggrieved by an order of the NCLAT may file an appeal before the Supreme Court within 60 days from the date of receipt of the order.

Appeals against orders of the Company Law Board (CLB): Any person aggrieved by an order of the CLB may file an appeal before the NCLT within 60 days from the date of receipt of the order.

Appeals against orders of the Registrar of Companies (ROC): Any person aggrieved by an order of the ROC may file an appeal before the NCLT within 60 days from the date of receipt of the order.

Punishments:

The Companies Act, 2013 contains several provisions for punishments in case of non-compliance with various provisions of the Act. The following are some of the key provisions regarding punishments under the Act:

Imprisonment: The Act provides for imprisonment ranging from 6 months to 10 years and/or a fine ranging from Rs. 50,000 to Rs. 5 crores for various offenses.

Disqualification of directors: The Act provides for disqualification of a person from being appointed as a director of a company for a period of 5 years or more in case of certain offenses.

Fine: The Act provides for fines ranging from Rs. 10,000 to Rs. 25 crores for various offenses.

Restitution: The Act provides for restitution of property or damages caused to a company or its shareholders in case of certain offenses.

Compounding of offenses: The Act provides for compounding of offenses with the approval of the NCLT or the Regional Director on payment of a penalty

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