UNIT I Introduction – Definition of a company – characteristics – Character of One Person Company; Lifting of Corporate Veil – Illegal Association – Kinds of Companies Formation of Company – Incorporation – Documents to be filed with the Registrar – Certificate of Incorporation – Effects of Registration – Promoter; Duties and Liabilities of Promoter – Preliminary contracts; Memorandum of Association – Articles of Association – contents – Alteration; Doctrine of constructive notice – Indore management – Ultra Vires ; Prospectus – Contents – Red herring prospectus – Shelf prospectus – misstatement in prospectus and their consequences - statement in lieu

Definition of a Company:

A company has been defined in the Companies Act, 1956, as "Company means a 'company' formed and registered under this Act and also existing companies" [Sec. 3(1) (i)].

The term 'body corporate', as defined in Sec. 34(2) of the Act, has the following characteristics:

(a) It is an association of persons,

(b) Each such person contributes some money,

(c) Money is contributed for some purpose,

(d) It has a separate legal entity. It is an artificial person created by law.

(e) It has a perpetual succession, i.e., once formed it continues to exist until it is wound up by the legal procedure,

(f) It has a common seal, bearing it name and

(g) The members of the association have as much liability at the time of its winding up as decided by them.

NATURE AND CHARACTERISTICS OF COMPANY

1. CORPORATE PERSONALITY:

A company incorporated under the Act is vested with a corporate personality so it bears its own name, acts under name, has a seal of its own and its assets are separate and distinct from those of its members. It is a different 'person' from the members who compose it.

2. COMPANY AS AN ARTIFICIAL PERSON:

A Company is an artificial person created by law. It is not a human being but it acts through human beings. It is considered as a legal person which can enter

into contracts, possess properties in its own name, sue and can be sued by others.

3. LIMITED LIABILITY:

"The privilege of limited liability for business debts is one of the principal advantages of doing business under the corporate form of organisation." The company, being a separate person, is the owner of its assets and bound by its liabilities. The liability of a member as shareholder, extends to the contribution to the capital of the company up to the nominal value of the shares held and not paid by him.

4. PERPETUAL SUCCESSION:

An incorporated company never dies, except when it is wound up as per law. A company, being a separate legal person is unaffected by death or departure of any member and it remains the same entity, despite total change in the membership. Perpetual succession, means that the membership of a company may keep changing from time to time, but that shall not affect its continuity.

5. SEPARATE PROPERTY:

A company being a legal person and entirely distinct from its members, is capable of owning, enjoying and disposing of property in its own name. The company is the real person in which all its property is vested, and by which it is controlled, managed and disposed off.

Classification of a Company

(1) Unlimited liability:

A company may be formed where the members will have unlimited personal liability for the liability of the company. This type of Company is rare and is generally a non- trading one.

(2) Limited by Shares:

Such a company has a share capital which is divided into some equal parts and each part is called a share. Any shareholder shall be liable for the value of the shares taken by him and no further. Companies limited by shares are also known as Joint Stock Companies.

One Person Company

Section 2(62) of Companies Act defines a one-person company as a company that has only one person as to its member.

It is a form of a company where the compliance requirements are lesser than that of a private company. The Companies Act, 2013 provides that an individual can form a company with one single member and one director.

Features of a One Person Company

- Private company: Section 3(1)(c) of the Companies Act says that a single person can form a company for any lawful purpose. It further describes OPCs as private companies.
- Single-member: OPCs can have only one member or shareholder, unlike other private companies.
- Nominee: A unique feature of OPCs that separates it from other kinds of companies is that the sole member of the company has to mention a nominee while registering the company.
- No perpetual succession: Since there is only one member in an OPC, his death will result in the nominee choosing or rejecting to become its sole member. This does not happen in other companies as they follow the concept of perpetual succession.
- Minimum one director: OPCs need to have minimum one person (the member) as director. They can have a maximum of 15 directors.

Lifting of Corporate Veil

Lifting of corporate veil means ignoring the fact that a company is a separate legal entity and has a separate identity (Corporate personality). This concept disregards the separate identity of the company and looks behind the true owners or real persons who are in control of the company.

Formation of a Company

The formation of a company is a complex process which involves completion of legal formalities and procedures.

There are three steps or stages involved in formation of a company. They are:

- Promotion
- Incorporation
- Subscription of Capital

Promotion of a Company

As per the chapter on Formation of a Company, promotion is also a vital part of starting a business and can also be termed as the visualization of a company. It is the first stage and involves the formation of the idea, which exploits an opportunity to meet market demand for a product or service.

- Involves the process of formulating a business concept or idea and taking steps towards forming a company
- This is done so that one can avail the business opportunity and exploit it to their benefit
- It is the primary stage in the formation of a company

Incorporation

After submitting all necessary documents, an application for the incorporation of the company is made by promoters. This is submitted to the Registrar of Companies of the State with which the company is be registered. There are many case studies out there following the footsteps of successful companies and how they were formed. It presents a wonderful insight into how the world of business truly works.

Capital Subscription

Minimum Subscription

- To prevent companies from beginning with inadequate resources it has been provided that the company must receive a certain minimum number of shares before going ahead with the allotment of shares. This according to the Companies Act is called the Minimum Subscription

Application to Stock Exchange

- An application needs to be made to one stock exchange at least for the permission to deal in its shares or debentures

Allotment of Shares

- The application money should be in a separate bank account till the time, shares are allotted
- Allotment letters are issued to the successful allottees

Commencement of Business

Once the minimum subscription is raised, the next step is to send the application to the registrar of companies for issuance of the certificate. This step is necessary for public companies only, as for private companies, the same is achieved right after incorporation. The application must contain the following documents:

- A declaration that minimum subscription has been met
- A declaration with details of allotment of directors
- A declaration of the money payable to applicants
- A statutory declaration

DOCUMENTS TO BE FILED WITH THE REGLSTRAR

1. Memorandum of Association
2. Articles of Association:
3. Copy of the proposed agreement

4. Statement of nominal Capital
5. Address of the registered office of the company
6. A list of persons who have agreed to become the first directors of the company should also be filed.
7. Statutory declaration

Memorandum of Association

A Memorandum of Association (MoA) represents the charter of the company. It is a legal document prepared during the formation and registration process of a company to define its relationship with shareholders and it specifies the objectives for which the company has been formed. The company can undertake only those activities that are mentioned in the Memorandum of Association. As such, the MoA lays down the boundary beyond which the actions of the company cannot go.

Name Clause: This clause specifies the name of the company. The name of the company should not be identical to any existing company. Also, if it is a private company, then it should have the word 'Private Limited' at the end. And in case of public company public company, then it should add the word "Limited" at the end of its name. For example, ABC Private Limited in case of the private, and ABC Ltd for a public company.

Registered Office Clause: This clause specifies the name of the State in which the registered office of the company is situated. This helps to determine the jurisdiction of the Registrar of Companies. The company is required to inform the location of the registered office to the Registrar of Companies within 30 days from the date of incorporation or commencement of the company.

Object Clause: This clause states the objective with which the company is formed.

Liability Clause: It states the liability of the members of the company. In case of an unlimited company, the liability of the members is unlimited whereas in case of a company limited by shares, the liability of the members is restricted by the amount unpaid on their share. For a company limited by guarantee, the liability of the members is restricted by the amount each member has agreed to contribute.

Capital Clause: This clause details the maximum capital that a company can raise which is also called the authorized/nominal capital of the company. This also explains the division of such capital amount into the number of shares of a fixed amount each.

Articles of association

The articles of association set out how the company is run, governed and owned. The articles can put restrictions on the company's powers – which may be useful if shareholders want comfort that the directors will not pursue certain courses of action, at least without shareholder approval. By default, however, the Companies Act 2006 gives a company unlimited powers.

Prospectus

1. The prospectus is a legal document, which outlines the company's financial securities for sale to the investors.
2. According to the companies act 2013, there are four types of the prospectus, abridged prospectus, deemed prospectus, red herring prospectus, and shelf prospectus.

Prospectus Definition

The prospectus is a legal document for market participants and investors to pursue, detailing the features, prospects, and promise of a financial product.It is mandated by the law to be supplied to prospective customers.

Types of prospectus

- 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.
- 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.
- 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.

- 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.

Prospectus and its contents

The prospectus contents are specified in the Companies Act. The prospectus must touch over the following content points:

1. Details of the company, such as name, registered office address, and objects
2. Details of signatories to the Memorandum and their shareholding particulars
3. Details of the directors
4. Details of shares offered and the class of the issue as well as voting rights
5. Minimum subscription amount
6. The amount payable on application, on allotment, and on further calls
7. Underwriters of the issue
8. Auditors of the company

Audited reports regarded profit and losses of the company

UNIT II Capital; share capital – meaning – kinds – certification of Shares- Calls on Shares – Forfeitures of shares – alteration of capital – reduction of capital – procedures for reduction of capital – application of premium received and prohibition on discount on shares – Right shares – guidelines for issue of fresh capital – Bonus shares - guidelines – Sweat Share – Issue and Redemption of Preference shares; buy back of shares - transfer and transmission (Including depository mode); dividend – Unpaid dividend account – Investor Education & Protection fund: Borrowing; Borrowing

UNIT – II

Share:The capital of a company is divided into small units and each such unit is called as share.

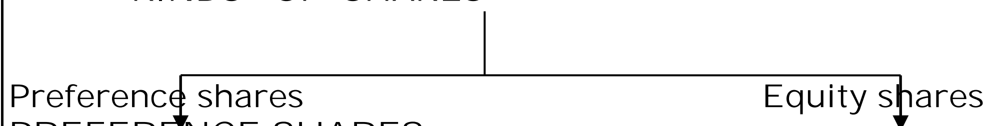
Features of share

- A share is a fractional part of the capital of a company.
- It is a movable property.
- It can be transferred in the manner specified in the Articles.
- It forms the basis of ownership.
- It is not a sum of money but an interest or right measured in a sum of money.

KINDS OF SHARES

According to the companies act, a company can issue only two types of shares namely,preference shares and equity shares.

KINDS OF SHARES



Preference shares Equity shares

PREFERENCE SHARES

Preference shareholders enjoy preferential right over equity shareholders.The shares which enjoy preferential rights as to;

- The payment of dividend at a fixed rate during the life of the company.
- Return of capital on winding up of the company.

Preference shareholders do not normally enjoy voting rights. They get the right to vote

- On any resolution affecting their rights.
- On all resolutions when dividend has not been paid to them for certain period as prescribed in the act.

EQUITY SHARES

- Equity shares are those, which are not preference shares. They were also known as ordinary shares. They are entitled to get dividend only after the fixed rate of dividend is paid to preference shareholders.

Types of Share Capital

(i) Authorized, registered or nominal capital:
(ii) Issued capital:
(iii) Subscribed capital:
(iv) Called up capital:
(v) Paid up capital:

Alteration of Share Capital

Definition of Alter or alteration:
Sec 2(3) "Alter or alteration" includes the making of additions, omissions and substitutions.

Types of alteration of share capital U/s 61:

1. It has to be confirmed whether a company is authorized to increase its share capital according to the Articles of Association (AOA) and if it does not authorize then the procedure for such alteration has to be carried out.

2. A board meeting should be called for an Extraordinary General Meeting (EGM) to get the approval of the shareholders for such alteration.

3. The EGM should be called comprising of the shareholders by sending a notice mentioning the purpose of the scheduled meeting regarding the alteration of the MOA and AOA thus altering the Share capital of the company.

4. The Special resolution shall be passed to alter the MOA and AOA thus altering the Share Capital of the Company.

5. Authorising the board to file necessary forms and resolutions with Registrar of Companies (ROC) having jurisdiction.

Reduction of Share Capital

The need of reducing capital may arise in various circumstances, for example, accumulated business losses, assets of reduced or doubtful value. So the need will arise to adjust capital and assets.

1. Passing of Special Resolution
2. Application to National Company Law Tribunal (NCLT)
3. Notice of Tribunal
4. Order of Tribunal
5. Publication of order confirming the reduction
6. Registration of order to be filled with ROC

ALLOTMENT OF SHARES

The term allotment is not defined by the Companies Act. In simple words, prospectus is an “invitation to make an Offer”.

GENERAL PRINCIPLES

1. Proper Authority: - The allotment to be valid must be made by the Board of Directors or a Committee authorized on behalf of BOD.

2. Allotment against written request only: The allotment can be made only against written request (i.e. Application) only. Oral request is Invalid.

3. Within Reasonable Time: - Allotment must be made within reasonable period of time. Although no time is mentioned in the law, it depends upon case to case.

4. Communication: - Acceptance must be communicated to the other party. Posting of properly addressed and stamped letter of allotment is a sufficient communication, even if it is lost in transit or delayed in the course of post.

5. Absolute and unconditional:- The allotment to be valid must be made on same terms for everyone.

SPECIAL PROVISIONS

1. Prospectus to be Registered. (Sec. 26):- With the Registrar on or before the date of its publication. Copy of prospectus should be signed by every director, or proposed director or agent.
2. Public offer of Securities should be issued only in Dematerialized form by complying with the provisions of SEBI and Depositories Act 1996. (Sec. 29).
3. Minimum Subscription [Sec. 39(1)]:- The minimum shares the company needs to get from the public out of the total issue by the date of closure. (Presently every company needs to raise 90% of the issued amount as per SEBI). Else, the company shall refund the whole amount received.

CALLS

A call may be defined as a demand made by the company for payment of part of the issue price of shares or debentures which has not been paid. Liability of payment arises only if a valid call is made.

Requisites of a Valid Call

- A Call to be valid must be made by the directors duly appointed & qualified, against a resolution passed at the meeting of the BOD.
- Besides, it must be made on uniform basis and bonafide in the interest of the company.
- Notice of the Call must specify the exact amount & the time of payment.

FORFEITURE OF SHARES

If a shareholder fails to pay the due amount of allotment or any call on shares issued by the company, the BOD may forfeit his shares as penalty and his membership is cancelled. Procedure for Valid Forfeiture

- Authorized by AOA
- Proper Notice by BOD mentioning amount due and the exact date by which amount is to be paid.
- Resolution by BOD
- Exercised in good faith in the interest of the Company.

Share Transfer and Share Transmission

The transfer of shares is a voluntary act by the holder of shares and takes place by way of contract. Whereas, the transmission of shares takes place due to the operation of law that is on the death of the holder of shares or in an event where the holder becomes insolvent/lunatic.

Transmission of shares takes place due to the operation of law that is when the holder is no more or has become lunatic or insolvent. It can also take place when the holder of shares is a company, and it has wound up. There is no transfer deed executed, and the transferee will be given the rights to the shares, and the transmission is recorded only when the transferee gives proof of entitlement to the shares.

DEBENTURE

TYPES OF DEBENTURE

- Registered Debenture: The debenture which are payable to the registered debenture holder, are called registered debenture.
- Bearer Debenture: The debenture which are payable to the bearer, are called registered debenture. The names of the debenture holders are not recorded in the Register of debenture holders.
- Secured Debenture: Secured debenture creates a charge on the assets of the company, thereby mortgaging the assets of the company.
- Unsecured Debenture: Unsecured debenture does not carry any charge or security on the assets of the company.
- Redeemable Debenture: The debenture, which are repayable after a certain period, are called redeemable debenture.
- Irredeemable Debenture: The debenture, which are not repayable during the life of the company, are called redeemable debenture.

- Convertible Debentures: The holders of which are given an option to exchange the whole or a part of the amount of their debentures for share after a specified period.
- Non-Convertible Debentures: They are those, the holders of which have no right to convert them into equity shares.

Charge

A charge is a right created by any person including a company referred to as "the borrower" on its assets and properties, present and future, in favour of a financial institution or a bank, referred to as "the lender", which has agreed to extend financial assistance.

Section 2(16) of the Companies Act, 2014 defines charges so as to mean an interest or lien created on theproperty or assets of a company or any of its undertakings or both as security and includes a mortgage.

The following are the essential features of the charge which are as under:

1. There should be two parties to the transaction, the creator of the charge and the charge holder.
2. The subject-matter of charge, which may be current or future assets and other properties of the borrower.
3. The intention of the borrower to offer one or more of its specific assets or properties as security for
repayment of the borrowed money together with payment of interest at the agreed rate should be manifested
by an agreement entered into by him in favour of the lender, written or otherwise.

A charge may be fixed or floating depending upon its nature.

TYPES OF CHARGES :-

Fixed Charge:

A charge which is identifiable with specific and clear asset/property at the time of creation of charge.

The Company cannot transfer such identified and defined property unless the charge holder (creditor) is paid off his dues.

Floating Charge:

- It covers the floating and circulating nature of properties of a company, like sundry debtors, stock in trade etc.
- The nature of the property charged may change from time to time.
- The floating charge crystallizes into fixed charge if the Company crystallizes or the undertaking ceases to be a going concern.

Mortgage

A mortgage is a legal process whereby a person borrows money from another person and secures the repayment of the borrowed money and also the payment of interest at the agreed rate, by creating a right or charge in favour of the lender on his movable and/or immovable property.

UNIT III Membership in a company ; Member and shareholder – Qualification – Cessation of membership- rights and liabilities of members – register and index of members; Directors; Board of Directors – Appointment of Directors – Selection of Independent Directors – Appointment of Additional Directors – Disqualification for appointment of directors- duties of directors – vacation of office, resignation and removal of directors; appointment of Managing

By definition, the term "Member" in relation to a company means, one who has agreed to become the member of the company by entering his name into the 'Register of Members'. Every person who has agreed in writing to become a part of the company and also holds shares of the company is considered the 'Member of the Company' and is said to hold membership in a company.

Difference between Member and shareholder

- A company limited by guarantee having no share capital will have only members but no shareholders.
- When a person transfers his shares, he ceases to be a holder of those shares but continues to be the member of thecom~any until his name is replaced by the name of the transferee.
- The legal representatives of a deceased member become shareholders immediately on the death of the member but they do not become members until their names are entered in the register of members.
- The holder of a share warrant is a shareholder but he is not a member. You have . learnt that when share warrants are issued the holder's name is struck off from the register of members. However, the articles of association of the company may give membership rights to holders of share warrants.

RIGHTS OF MEMBERS

i) Right to receive copies of memorandum and articles of association on request and , on payment of the prescribed fee.

ii) Right to receive share certificate within the prescribed period.

iii) Right to transfer his shares according to the articles of association. . .

iv) Right to have his name entered in the register of members.

v) Right of priority to have shares offered in case of increase of' capital.

vi) Right to receive notice of meetings, to attend, to appoint a proxy and vote at the
meeling.

vii) Right to participate in the appointment of directors, auditors etc at the annual
general meeting.

LIABILITY OF MEMBERS

Liability of members of a company depends upon the nature of the company. This is discussed accordingly as follows:

) Unlimited company: Every member of such a company is liable for all debts contracted by the company during the period when he was a member.

ii) Company limited by guarantee: Every member is liable to contribute to thc extent of the amount guaranteed by him which is given in the liability clause of the memorandum.

iii) Company limited by shares: The majority of the companies belong to this category. In the case of such companies, the liability of a member is limited to the amount unpaid on the shares held by him. If he has paid full amount on shares, his liability is nil.

Register and index of members

Register of members

Section 150of the Companies Act, 1956 requires every company to maintain a register of its members containing the following particulars:

i) the name, address and occupation, if any, of each member.

ii) the shares held by each member with their individual numbers and the amount paid or agreed to be considered as paid on the shares of each member;

iii) the date on which each person was entered in the register as a member;

iv) the date which each person ceased to be a member; and

v) where the wares have been converted into stock, the register show the amount Of stock held by each member instead of the amount and particulars relating to shares.

Index of members

Section 151 of the Companies Act, requires that every company having more than fifty members shall keep an index of members along with the register. If the register of members is in such form that it can serve the purpose of index, no separate index of members need be maintained. The index must be kept at the same place as the register of members. The index must contain sufficient indication to enable the account of each member in the register of members to be easily found. If any alteration is made in the register of members, the company must make the necessary alteration in the index within 14 days after the date on which the alteration is made in the register.

Director

Section 2(13) of the Companies Act defines a director as "any person occupying the position of director by whatever name called." This is an inclusive and not an exhaustive definition. To explain the meaning of the term 'director' we can say that directors are the individuals who direct, control, manage or superintend the affairs of a company.

Number of Directors and Directorships

The Companies Act has fixed the minimum number of directors which a company must have. According to Section 252 of the Act:

a) every public company shall have at least three directors, and

b) every other company shall have at least two directors.

Qualifications of a Director

- The Companies Act does not lay down any academic qualification for appointment as a company director. The Act does not lay down any share qualifications for a person to be a director. A director need not hold any shares and need not be a member of the company. 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 directors are required to have these shares so that they also have some financial stake in the company. The articles specify the number or value of shares to constitute qualification shares.
- The nominal value of the qualification shares must not exceed Rs. 5,000 or the nominal value of one share where it exceeds Rs. 5,000. Any provision in the articles which requires a director to take qualification shares of more than this amount, shall be invalid.
- If a director does not acquire the qualification shares within two nionths of his appointment or thereafter does not possess such shares of any time, his office shall automatically become vacant. Further, he shall be punishable with fine which may extend to Rs. 50 for every day from the date of expiry of two months up to the date he acted as a director.

DISQUALIFICATIONS OF DIRECTORS

The circumstances in which a person cannot be appointed as a director of a company are listed in Section 274 of the Companies Act. A person shall not be capable of being appointed director of a company if:

i) he has been found to be of unsound mind by a competent court;

ii) he is an undischarged insolent;

iii) he has applied to be adjudicated as an insolvent and his application is pending;

iv) he has been convicted by a court of any offence involving moral turpitude ahd sentenced to imprisonment for not less than six months and a period of five years has not elapsed since the expiry of his sentence;

vi) he has not pilid any call in respect of the 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; .

vii) he has been disqualified by an order of the Court under Section 203, of an offence in relation to promotion, formation or management of-the company of fraud in relation to the company.

APPOINTMENT OF DIRECTORS

Directors may be appointed in any of the following ways

(i) by the articles;

(ii) by the shareholders in the general meeting;

(iii) by the Board of directors;

(iv) by Central Government and

(v) by third parties.

Removal of Directors

a) Removal of Shareholders: A company may remove a director by giving a special notice and passing an ordinary resolution. However, they cannot remove (i) director appointed by the Central Government; (ii) a life time director in a private company; (iii) a director representing special interests e.g., creditors or debenture holders; and (iv) a director elected by proportional representation.

b) Removal by Central Government. The Central Government may remove a director on the recommendation of the Company Law Board. The Central Government may refer the matter to the Company Law Board if it feels that the person has been guilty of fraud, misfeasance, negligence or breach of trust, or that the business of the company has not been conducted according to prudent commercial principles or the company is managed by such a person in such a manner as to cause or likely to cause serious injury to trade, industry or business.

c) Removal by Company Law Board. The Company Law Board is also empowered to remove the director on an application made to it for prevention of oppression or mismanagement. Such a person cannot be appointed in any managerial capacity in the company for a period of five years, Also he cannot sue the company Cor compensation for loss of office.

DUTIES OF DIRECTORS

Some of the statutory duties of directors are:

i) Every director must disclose his shareholdings in the company [Sec. 3081.

ii) Every director must disclose his personal interest in contracts to be entered into

by the company [Sec. 2991.

iii) Directors must not receive any loan from a public company or its subsidiary of which he is a director in contravention of Section 295.

iv) To hold statutory and annual general meetings and lay before the company a Balance Sheet and Profit and Loss Account and other reports.

v) To convene extraordinary general meeting on the requisition of the specified number of members.

vi) Directors must not receive remuneration in contravention of Section 309 read

with Section 198.

vii) To file with the Registrar the reports and resolutions as required by the Act.

viii) To maintain books and registers required under the Act and articles.

.ix) To perform all such duties as required under the Act and articles.

MEETINGS OF DIRECTORS

i) A meeting of the Board of directors of every company must be held once in every three calendar months and at least four such meetings must be held every year. The Central Government may, however, by notification in the Official gazette; exempt any class of companies from the above mentioned rule. This has been done to help small sized companies where it is not necessary to hold meeting once in every three months. Though the Act does not state anything about the place where the meetings of the Board should be held, but since register of contracts and other books are kept of the registered office, the intention is that such meetings should be held at or near the place of the registered office of the company.

ii) Notice of every meeting of the Board must be given in writing to every director in India at his usual address.

iii) If a meeting of the Board could not be held for want of quorum, it shall stand adjourned till the same day in the next week at the same time and at the same place. If that day happens to beapublic holiday, then it will be held on the next following day, which IS not a public holiday.

iv) It is essential that all the proceedings of every meeting of the Board should be recorded in writing in a book called the minute book. Minutes of every meeting must be signed by the chairman in whose presence those resolutions were passed or by the chairman of the next succeeding

meeting. As per Section 289, the resolution may also be passed by circulation.

UNIT IV Meetings; Statutory meeting – Annual General Meeting – Extra Ordinary General Meeting; Notice, Quorum, Agenda, Resolution, Minutes, Proxies; Meeting of Board: Powers of Board – Voting rights – Chairman of meeting – Audit committee

UNIT 4

MEETINGS

Company meeting may be defined as *"gathering, assembling or coming together of two or more persons for discussion and transaction of some lawful business".*

Characteristics of a Company 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.

Requisites of convening a 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 authorises him to do so.

2. 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.

A general meeting may be called at a shorter notice, if,

(i) In the case of an annual general meeting, all members entitled to vote thereat agree;

(ii) In the case of any other meeting (a) if the company has a share capital, members holding 95% of the paid-up share capital carrying voting rights exercisable at the meeting agree, (b) if the company does not have a share capital, members holding at least 95% of the total voting power exercisable at the meeting agree.

The consent of the members for shorter notice may be obtained either at the meeting or before the meeting. It may also be obtained after the meeting and the post consent will validate the resolution originally passed without sufficient notice. It is usual to obtain it by asking the shareholders to sign a form of consent.

Contents of the notice:

The notice must contain the following particulars:

(i) 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.

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

3. 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.

4. Quorum:
   - It means the minimum number of members required to be present at the meeting. If this minimum number of members is not present, then the meeting is held to be invalid and no business can be transacted at it. Generally, it is the Articles of Association of the company wherein the requirement of the quorum is specified regarding various meetings whether it is Board Meeting or General Meeting of the members.
   - Quorum, is required to be present at the beginning of the meeting. It need not be present throughout or at the time of taking votes on any resolution. A quorum must be present throughout in the case of Board's Meetings.

5. Chairman:

- A general meeting of the company is to be presided over by a chairman who regulates and supervises the proper conduct of the business at a meeting. He decides all incidental questions arising in the course of the proceedings of the meeting. Chairman should act bonafide and in the best interest of the company as a whole. Articles usually provide the mode of appointment of the chairman of a meeting. If the articles do not provide otherwise, the members

personally present at the meeting shall elect one of themselves to be the chairman thereof on a show of hands [Sec. 175 (2)].

- If a poll is demanded on the election of the chairman, it must be taken forthwith and the chairman elected on a show of hands can exercise all the powers in this connection [Sec. 175 (2)]. If some other person is elected chairman as a result of the poll, he shall be the chairman for the rest of the meeting [Sec. 175 (3)].

Powers of a Chairman:

1. The chairman has prima facie authority to decide all questions which arise at a meeting and which require decision at the time.
2. The entry in the minute's book of the chairman's decision is evidence of the decision of the meeting.
3. The chairman has a right to decide priority amongst speakers, to demand poll, to exercise casting vote, to expel an unruly member and he may, with the support of the majority, apply closure to a discussion after it has been reasonably debated.
4. He can adjourn a meeting when it is impossible, by reason of disorder or other like causes, to conduct the meeting and complete business.

6. Proxy:

The term proxy has two meanings:

(a) A personal representative of the member at a meeting i.e. the person authorised to act or vote for another at a meeting of the company, and

(b) The instrument by which a person is appointed to act for another at a meeting of the company, since a representative can be appointed only in writing.

The following are the provisions of the Companies Act regarding appointment and rights of proxy:

(1) Law entitles every member of a company to appoint a person as his proxy to attend and vote at company meeting instead of himself [Sec. 176 (2)]. However, a member of a company having no share capital does not have this right unless its articles provide otherwise [Sec. 176 (4)].

(2) A member of a private company is not entitled to appoint more than one proxy to attend on the same occasion unless its articles provide otherwise. But a member of a public company may appoint more than one proxy i.e., he may appoint one proxy in respect of certain shares held by him and a different proxy for other shares held by him.

(3) Any person can be appointed as a proxy whether he is a member of the company or not. In case the proxy is not a member of the company, he shall have no right to speak at the general meeting unless the articles otherwise provide. There is, however, no provision preventing a proxy putting questions in writing and sending the same to the chairman for answer.

(4) A proxy is ordinarily entitled to vote only on a poll. But he may vote on voting by show of hands if the articles provide. Besides that, he may demand or join in demanding a poll [Sec. 176 (1) (n)]. However, he shall have no right to inspect proxy forms or the minutes of the meeting.

(5) Proxy must be appointed by an instrument in writing, duly stamped and signed by the member of the company. A blank but stamped proxy is valid and may be completed by the person authorised to do so.

Proxy must be deposited with the company at least 48 hours before the commencement of the meeting. A company, however, cannot legally require proxies to be deposited with it earlier than 48 hours before the time of the meeting.

After giving 3 days' notice to the company, members may inspect during business hours the proxies lodged with the company at any time during the period commencing 24 hours before the time fixed for the commencement of the

meeting and ending with the conclusion of the meeting [Sec. 176 (7)]. Proxy lodged for the original meeting remains valid for the adjourned meeting also.

(6) Every notice of a meeting must appropriately mention that a member is entitled to appoint a proxy and that the proxy need not be a member [Sec. 176 (2)]. A company cannot send invitation to members to appoint any one or more persons as proxies.

(7) A proxy is revocable. It can be revoked at any time. Death of the shareholder appointing a proxy will, in the absence of provisions in the Articles revoke the authority of the proxy. Shareholder may himself attend and vote in the meeting. Vote tendered by the proxy in such a case will not be accepted because the need for exercising the proxy had never arisen. Proxy in this case shall stand revoked impliedly.

(8) The relationship between the member and the proxy is that of principal and agent. A minor member has no capacity to appoint a proxy. He can act only through his guardian. However, a minor can be appointed a proxy.

In the case of joint holders of shares, proxy appointed by the first named joint holder will have precedence over the proxy appointed by second joint holder. Proxy appointed by first joint holder will exercise voting right to the exclusion of the joint holders who may be present in the meeting. There is no need to obtain prior consent of the proxy to his appointment as such.

KINDS OF COMPANY MEETING

1. Shareholders Meeting:

a. 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.

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 Hours: Between 9.00 am – 6:00 pm., and not on any public holiday as so declared by Central or State Government.

Quorum: In case of Public Company–

5 if members are less than 1000

15 if between 1000-5000

30 if more than 5000 members

b. Extraordinary General 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.

It can be called through the following ways:

By Board, on suo-moto basis, and the same can be held at any parts of the country.

By requisition of eligible members, wherein the company if having Share Capital, then members holding at least $1/10^{th}$ of such Share Capital, and if not having Share Capital, then members holding at least 10% of the total voting powers in that company can request to call for such meeting. Such notice has to be well written and specify the nature of business, and duly signed by all the members or any one authorized person acting on behalf of all. And Board need to call meeting within 21 days of getting such request or maximum of 45 days, by giving such notice to such members prior to 3 days of conducting such meeting.

2. Directors Meeting:

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 meetings

3. Other Meetings:

Creditors Meeting (Sec. 230) / Debenture Holders Meeting with the Board of Directors

Audit Committee Meeting (Sec. 177)

Nomination and Remuneration Committee Meeting (Sec. 178)

Any other committee meetings with the respective Board of Directors of the Company, as and here specified under Companies Act of 2013.

UNIT V Winding up of Companies: modes of winding up- appointment, duties and remuneration of company liquidator – removal and replacement of company liquidator – appointment of official liquidator – effect of winding up

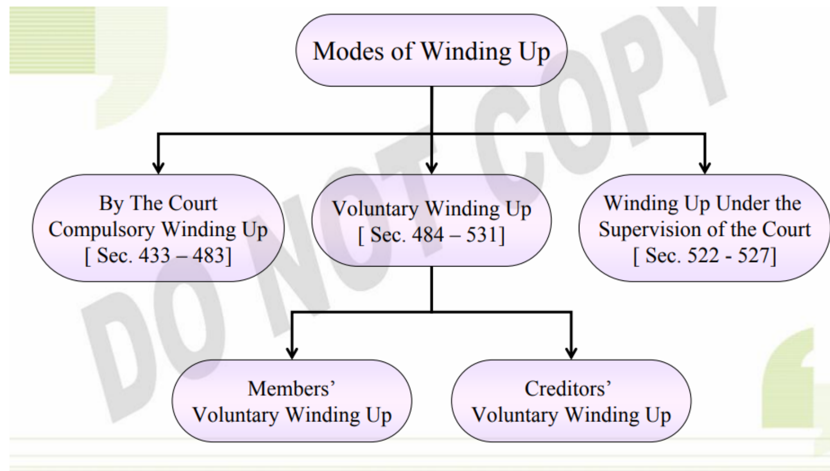
UNIT 5

Winding Up - Meaning

It refers to the last stage in the life of a company. It means a proceeding by which a company is dissolved. The asset of the company are disposed of, the debts are paid off out of the realized asset and the surplus, if any is then distributed among the members in proportion to holding in the company.

Modes of winding up

A company may be wound up in any of the following two ways:
1. Compulsory winding up. (Sec. 272)
2. Liquidation under Insolvency and Bankruptcy Code, 2016.



Grounds for Compulsory Winding-up (Sec. 433):

(i) Special Resolution of the Company

(ii) Default

(iii) Not commencing or suspending the Company:

(iv) Reduction of Members:

(v) Inability to pay Debts:

(vi) The Just and Equitable Clause

Consequences of Winding-up Order:

If the court makes an order for winding-up, its consequences date back to the commencement of winding- up.

Voluntary winding up

Can be of two types.

1. Member's voluntary winding up, and
2. Creditor's voluntary winding up.

Member's voluntary winding up

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

Creditors voluntary winding up:

Creditor's voluntary winding up takes place only when the company is in an insolvent condition and so it is unable to discharge its liabilities in full.If the declaration of solvency is not made and filed with the Registrar, it may be presumed that the company is insolvent. In that case, the company must call a meeting of its creditors (for the day or the day next following the day fixed for the company's general meeting) for passing the resolution for winding-up.

The following are the effect of Consequences of winding up

a. Consequences as to shareholder

   A shareholder is liable to pay the full amount up to the face value of the shares held by him. The liability of the shareholder on this account continues even after the company goes into liquidation although he is, in this case, unknown as a contributory. The liability of a present contributory is the amount remaining unpaid on the shares held by him. A past contributory can only be called upon to pay if the present contributory is unable to pay.

b. Consequences as to creditors

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

c. Consequences as to officers of the company

If a winding-up order has been made or the official liquidator has been appointed as provisional liquidator, no suit or other legal proceedings against the company can be commenced except by the leave of the Court. Similarly, if a suit is pending against the company at the date of the winding-up order, it cannot be proceeded with against the company, except by the leave of the Court

Liquidator:

A liquidator is the officer appointed when a company goes into winding-up or liquidation who has responsibility for collecting in all of the assets of the company and settling all claims against the company before putting the company into dissolution.

Powers and duties of 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 do all acts and to execute, in the name and on behalf of the company all deeds, receipts and other documents and for that purpose, to use when necessary, the common seal.
3. 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 the parcels;
4. To sell the whole of the undertaking of the company as a going concern
5. To raise any money required on the security of the assets of the company

Removal and replacement of liquidator.

1. The Tribunal may, on a reasonable cause being shown and for reasons to be recorded in writing, remove the provisional liquidator or the Company Liquidator, as the case may be, as liquidator of the company on any of the following grounds, namely:—

   a. misconduct;
   b. fraud or misfeasance;
   c. professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;
   d. inability to act as provisional liquidator or as the case may be, Company Liquidator;
   e. conflict of interest or lack of independence during the term of his appointment that would justify removal.

2. In the event of death, resignation or removal of the provisional liquidator or as the case may be, Company Liquidator, the Tribunal may transfer the work assigned to him or it to another Company Liquidator for reasons to be recorded in writing.

3. Where the Tribunal is of the opinion that any liquidator is responsible for causing any loss or damage to the company due to fraud or misfeasance or failure to exercise due care and diligence in the performance of his or its powers and functions, the Tribunal may recover or cause to be recovered such loss or damage from the liquidator and pass such other orders as it may think fit.

4 The Tribunal shall, before passing any order under this section, provide a reasonable opportunity of being heard to the provisional liquidator or, as the case may be, Company Liquidator.

Fixation of remuneration of liquidators

The Committee of Inspection or where there is no such Committee, the creditors may fix the remuneration to be paid to the liquidators. Where it is not so fixed, the Court may fix the same.

Duty of liquidator to call meetings of the company and its creditors

Section 508 provides that in a creditors' voluntary winding up, the liquidator shall call a meeting of members and a meeting of creditors at the end of every year from the date of commencement of winding up which will be held not later than three months from the end of the year or such longer time as the Central Government may allow. The liquidator shall place before the meeting all details of the winding up.