Uttarakhand Open University, Haldwani

BBA(N)-406

School of Management Studies and Commerce

Company Law

BBAN-406

Company Law

UTTARAKHAND OPEN UNIVERSITY
SCHOOL OF MANAGEMENT STUDIES AND COMMERCE
University Road, Teenpani By pass, Behind Transport Nagar,
Haldwani- 263 139
Phone No: (05946)-261122, 261123, 286055
Toll Free No.: 1800 180 4025
Fax No.: (05946)-264232, e-mail: info@uou.ac.in, som@uou.ac.in
Website:http://www.uou.ac.in
Blog Address: www.blogsomcuou.wordpress.com

Index

Board of Studies

Professor O. P. S. Negi,
Vice-Chancellor,
Uttarakhand Open University
Haldwani

Dr. Gagan Singh (Convener),
Director In-Charge, School of Management Studies and Commerce, Uttarakhand Open University, Haldwani

Professor Amit Joshi,
Head, Department of Management Studies
Kumaun University, Campus Bhimtal

Professor Rajeev Shukla,
School of Management Studies,
IGNOU, New Delhi

Professor H. C. Purohit
Head, Department of Management Studies
Doon University, Dehradun

Dr. Manjari Agarwal,
Department of Management Studies
Uttarakhand Open University, Haldwani

Dr. Sumit Prasad
Department of Management Studies
Uttarakhand Open University, Haldwani

Mr. Somesh Pathak
Department of Management Studies
Uttarakhand Open University, Haldwani

Programme Coordinator (BBA Programme)

Dr. Sumit Prasad
Assistant Professor,
Department of Management Studies, SOMC
Uttarakhand Open University, Haldwani

Cover Design

Title of Image on Cover Page: Company

License:	Creative Commons 3 - CC BY-SA 3.0
Attribution:	Alpha Stock Images - http://alphastockimages.com/
Original Author:	Nick Youngson - link to - http://www.nyphotographic.com/
Original Image:	https://www.picpedia.org/chalkboard/c/company.html

ISBN : --

Copyright : Uttarakhand Open University

Edition : 2023 (Restricted Circulation)

Published by : Uttarakhand Open University, Haldwani, Nainital – 263 139
Printed at : (Name of the Printer)

UNIT 1 INDIAN COMPANIES ACT 2013

1.1 INTRODUCTION

Generally speaking, a company is an association of individuals for a common purpose. 'Company' is derived from the Latin words com, meaning with or together, and panis, meaning bread, and originally referred to a group of individuals who eat together. 'Joint-stock company' is the traditional term for a company as a business structure. "A company is an association of many individuals who contribute money or money's worth to a common stock and use it for a common purpose." The contributed common stock is denoted in currency and serves as the company's capital. Members are those who contribute or to whom it belongs. His share is the proportion of capital to which he is entitled. Shares are always transferable, although their transferability is frequently subject to restrictions.1 However, capital contributions alone are insufficient to define a company. In partnership businesses, capital is also contributed jointly by the partners. Company, in contrast to partnership enterprises, is not merely an association of persons; it is a legally incorporated association of persons formed to pursue the statutorily defined objectives. A corporation exists only in the eyes of the law. Law creates it, and only law can eliminate it. It can be established by a parliamentary act, a royal charter, or registration under company law. The defining characteristic of a company is that it is a legally constituted corporation. Chief Justice Marshal of the United States of America defined a corporation as "an artificial, invisible, intangible person that exists only in the eyes of the law." Being a mere creature of law, it possesses only those properties that the charter of its creation confers upon it, either expressly or as an incident of its very existence." The company as a method of conducting business dates back to 1600 A.D., when the East India Company was established in England through a Royal Charter. Consequently, the mid-nineteenth century legislative developments in the United Kingdom give rise to the modern form of company. Currently, the corporation is the predominant business structure. This is due to the numerous advantages a business possesses. Corporate laws throughout the globe regulate the formation and operation of businesses. The Companies Act of 2013 (also known as the Indian Companies Act, 2013) governs companies in India. As the Act of the Central Legislature (i.e. Parliament), the Companies Act applies uniformly to all Indian corporations.

1.2 OBJECTIVES

After reading this unit you will be able to understand:

- You shall be able to Know the meaning of company
- Learn the broad features of the Companies Act 2013
- Understand how the Companies Act is implemented

1.3 INDIAN COMPANIES ACT 2013

The 2013 Companies Act was enacted to consolidate and revise the law pertaining to corporations. 7 schedules, 29 chapters, and 470 sections make up the Act. The Act applies to the entirety of India. The Act of Parliament obtained the President's approval on August 29, 2013.The Act shall be applicable beginning with the 2014-15 fiscal year.

1.4 OBJECTIVES OF COMPANIES ACT 2013

Objectives According to the Results- Framework Document (RFD), Ministry of Corporate Affairs-(2013-2014), the following are the objectives of the Companies Act, 2013:

- To simplify the laws governing the Corporate Sector in order to facilitate effective compliance and an enlightened regulatory regime.

- Online delivery of all registry-related services with speed, certainty, and transparency, as well as access to public information and effective monitoring of companies' statutory compliance.
- Effective enforcement of the 'Companies Act' and other Acts under the purview of the Ministry of Corporate Affairs (MCA) for improved Corporate Regulation and Governance.
- Protection of Investors and Promotion of Investor Education and Awareness for the Development of the Country's Corporate Sector.
- Through the Indian Institute of Corporate Affairs (IICA), develop capacity building and obtain policy advisory support.
- To Encourage Competition.
- Publish Corporate Sector Data/Official Statistics in accordance with the National Data Sharing and Accessibility Policy (NDSAP).
- Enhancing the performance of Official Liquidators through the implementation of e-Government.
- Developing and enhancing Serious Fraud Investigation Office (SFIO) capabilities.

1.5 NATURE AND SCOPE

The Companies Act is a statute passed by the federal government. Therefore, it applies uniformly to corporations throughout India (with the exception of Jammu & Kashmir, Goa, Daman & Diu, and Sikkim, which are subject to special provisions and notifications issued by the Central Government).

- Companies incorporated under this Act or any prior company law; Insurance companies, except to the extent that the provisions of this Act are inconsistent with the provisions of the Insurance Act of 1938 or the Insurance Regulatory and Development Authority Act of 1999;
- Banking companies, except where the aforementioned provisions are inconsistent with the Banking Regulation Act of 1949;

- Companies engaged in the generation or distribution of electricity, unless the aforementioned provisions are inconsistent with the 2003 Electricity Act;
- Any other company governed by any special Act currently in effect, except to the extent that said provisions are inconsistent with such special Act; and
- Such a body corporate, incorporated under any Act in force at the time, as the Central Government may specify by notification in this regard, subject to such exceptions, modifications, or adaptations as may be specified in the notification.

1.6 MACHINERY FOR ADMINISTRATION

Companies Act administration and enforcement is primarily the responsibility of the federal government. The Government of India's Ministry of Corporate Affairs (MCA) is the central agency/authority vested with various powers under the Act. The majority of authority is delegated to the authorities established by the Act.

1. National Company Law Tribunal (NCLT)

   The 2013 Companies Act establishes the National Company Law Tribunal (NCLT) and outlines its composition and authority. The sections 407 to 434 of Chapter XXVII concern the National Company Law Tribunal and the National Company Law Appellate Tribunal. With the implementation of the Amendment Act, the High Court will no longer have jurisdiction over company matters. In addition, the Company Law Board (CLB) and BIFR will be eliminated. The NCLT will consolidate the work of all Company Courts, the Company Law Board, and BIFR, while the NCLAT will replace the High Court's appellate powers. The NCLT and NCLAT have yet to be established. Consequently, the provisions pertaining to the NCLT are currently inapplicable.

   The Tribunal shall consist of a President and no more than sixty-two Judicial and Technical Members, as determined by the Central Government.

   The Act specifies the qualifications for the appointment of the President and members of the Tribunal.

   The term of office for the President and each other member of the Tribunal is three years from the date of their appointment, but they are eligible for reappointment.

The powers of the Tribunal may be exercised by Benches, which are constituted by the President of the Tribunal and consist of one Judicial Member and one Technical Member.

After affording the parties to any proceeding before it an opportunity to be heard, the Tribunal may issue whatever orders it deems appropriate.

Any party aggrieved by a Tribunal order or decision may file an appeal with the Appellate Tribunal.

The Tribunal and the Appellate Tribunal are not bound by the procedure outlined in the Code of Civil Procedure, 1908, but are instead governed by the principles of natural justice.

The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their duties under this Act, the same powers as a civil court under the Code of Civil Procedure, 1908 would have in trying a complaint relating to the matters specified by the Act.

Any person aggrieved by a decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order to him, on any question of law arising out of such decision or order.

2. Regional Directors

The Six Regional Directors are responsible for their respective territories, each of which includes a number of States and Union Territories. They oversee the operations of the regional offices of the Registrars of Companies and Official Liquidators. In addition, they serve as liaisons between the respective State Governments and the Central Government in matters pertaining to the implementation of the 2013 Companies Act. Under the Companies Act, the Central Government has delegated certain powers to the Regional Directors.

3. Registrar of Companies (ROC).

Registrars of Companies (ROCs) appointed under the Companies Act, 2013 for various States and Union Territories have the primary responsibility of registering companies floated in their respective States and Union Territories and ensuring compliance with statutory requirements under the Act. These offices serve as registries of documents pertaining to the companies enrolled with them, which are accessible to the public upon payment of the required fee. These institutions are under administrative control of the federal government.

1.7 MEANING & DEFINITION OF COMPANY

According to section 2(20) of the Companies Act, a company is "a company incorporated under this Act or any previous company law." "Existing company" refers to a corporation formed and registered under a prior Companies Act. Thus, a company is any entity formed and registered under the Companies Act, 1956 or any earlier Indian Companies Act.

Before the passage of the Companies Act 2013, registration and regulation of companies in India were governed by the Indian Companies Act 1956, the Indian Companies Act 1850, the Indian Companies Act 1866, the Indian Companies Act 1882, and the Indian Companies Act 1913. These were subsequently repealed.

1.8 COMPANY AND BODY CORPORATE

'Body corporate' or 'corporate body' refers to a body that is incorporated under a statute, has perpetual succession and a common seal, and is a separate legal entity from its members. The term 'body corporate' is broader than 'company' and encompasses the following:

- Businesses registered under the Companies Act of 2013 or any former Indian Corporations Act
- Foreign Businesses
- Corporations incorporated pursuant to a special Act of the Parliament, State Legislatures, or a foreign country
- Public financial institutions as defined in Section 2(72) of the Companies Act 2013 Government-Owned Banks
- Limited Liability Partnerships registered in accordance with the Limited Liability Partnership Act, 2008.

However, 'body corporate' does not include the following:

- A society incorporated under the Societies Registration Act of 1860; A sole proprietorship;

- A co-operative society registered under any law relating to co-operative societies; and Any other body not being a company as defined in the Companies Act that the Central Government may specify in this regard by notification in the Official Gazette.

1.9 COMPANY AND CORPORATION

Corporation refers to a body or institution with a separate legal personality and perpetual succession. It can be of two varieties:

(i) Corporation alone, and (ii) Corporation collectively.

Corporation sole refers to a singular individual who holds a perpetual office in regard to certain functions, such as a Public Trustee, President, Governor, or Minister. It is not considered a corporation for purposes of this statute, but it is still a legal person and can be a member of a corporation.

1.10 SUMMARY

Company is a legally created association. The Indian Companies Act 2013 comprises the applicable company law in India.

The Act is a piece of central legislation enacted by the Parliament and sanctioned by the President on August 29, 2013. T

The Act superseding the five-decade-old Companies Act of 1956 will take effect beginning with the 2014-2015 fiscal year.

The purpose of the Act is to simplify the laws governing the Corporate Sector and facilitate effective compliances and an enlightened regulatory framework.

Companies Act administration and enforcement is primarily the responsibility of the federal government.

The Government of India's Ministry of Corporate Affairs (MCA) is the central agency/authority vested with various powers under the Act.

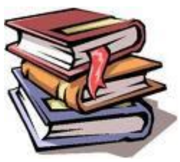
National Company Law Tribunal and National Company Law Appellate Tribunal were established by the 2013 Companies Act to supersede the Company Law Board and Board for Industrial and Financial Reconstruction.

Company refers to a company incorporated and registered in accordance with the Indian Companies Act of 2013 or "an existing company." "Existing company" refers to a corporation formed and registered under a prior version of the Companies Act. Company is a corporation, but not all corporations are companies.

1.11 REFERENCES

- Pathak, LEGAL ASPECTS OF BUSINESS, Tata Mcgraw- Hill Publishing Company Limited, New Delhi, 2010.
- Keith-davis & William Frederick, BUSINESS AND SOCIETY, McGraw-Hill, Tokyo.
- M.M. Sulphey & Az-Har Basheer, LAWS FOR BUSINESS, Phi Learning Pvt. Ltd. Delhi 2011
- Maheshwari & Maheswari, MERCANTILE LAW, Himalaya Publishing House. Mumbai
- Rudder Dutt & Sundaram, INDIAN ECONOMY, Vikas Publishing House, New Delhi.
- Veena Keshav Pailwar, ECONOMIC ENVIRONMENT OF BUSINESS, Phi Learning Pvt. Ltd, New Delhi, 2010

1.12 SUGGESTED READINGS



- Pathak, LEGAL ASPECTS OF BUSINESS, Tata Mcgraw- Hill Publishing Company Limited, New Delhi, 2010.
- Keith-davis & William Frederick, BUSINESS AND SOCIETY, McGraw-Hill, Tokyo.
- M.M. Sulphey & Az-Har Basheer, LAWS FOR BUSINESS, Phi Learning Pvt. Ltd. Delhi, 2011
- Maheshwari & Maheswari, MERCANTILE LAW, Himalaya Publishing House. Mumbai
- Rudder Dutt & Sundaram, INDIAN ECONOMY, Vikas Publishing House, New Delhi.
- Veena Keshav Pailwar, ECONOMIC ENVIRONMENT OF BUSINESS, Phi Learning Pvt. Ltd, New Delhi, 2010

1.13 TERMINAL QUESTIONS

1. Define a Company in your own words and state its objectives.
2. Explain in detail the applicability of provisions laid down in companies act
3. Write Short Notes on:
   a) Company Law Board
   b) Registrar of Companies c) Body Incorporate

UNIT 2 TYPES OF COMPANIES

2.1 INTRODUCTION

In this section, we will examine the characteristics and functions of diverse categories of businesses. A corporation may be incorporated pursuant to a special act of the legislature, the Companies Act of 2013 or 1956, or both. Consequently, a company can be either 1) Statutory Company or 2) Registered Company.

2.2 OBJECTIVES

After completing this section, you will be able to:

- Identify the numerous types of businesses
- Learn the distinctions between public and private companies
- Determine the holding and subsidiary company Comprehend a foreign company Recognize an illegal association

2.3 TYPES OF COMPANIES

The 2013 Companies Act specifies the types of businesses that may be promoted and registered under the Act.

Statutory Company

Statutory Company refers to a company constituted by a special Act passed by either the Central or State Legislature. These corporations are subject to their respective Acts. Despite the fact that statutory companies are governed by the provisions of their special Acts, the provisions of the 2013 Companies Act that are not inconsistent with the special Acts apply to these companies. Typically, these corporations are founded to carry out specific public projects requiring extraordinary powers and privileges. The purpose of such businesses is less to generate a profit and more to serve the public. Even though the liability of the members of such companies is limited, they are typically not required to include the word 'limited' in their names. Each of these companies is required to submit an annual report to the legislature (Parliament or State Legislative Assembly, as the case may be). This audit is conducted under the supervision, direction, and control of the Comptroller and Auditor General of India.

Important statutory corporations include the Reserve Bank of India, the State Bank of India, the Life Insurance Corporation of India, and the Industrial Finance Corporation, amongst others.

Registered Companies

Registrants of the Indian Companies Act are referred to as Registered Companies. The Companies Act, the Memorandum of Association, and the Articles of Association govern and regulate these businesses. These businesses could be limited by shares, limited by guarantee, or unlimited.

Companies Limited by Shares, or 3.2.1. A company whose members' liability is limited to the amount, if any, unpaid on their respective shares is referred to as a company limited by shares [Sec. 2 (22)]. For instance, if AB.Ltd. has a share capital of 10,000 shares at Rs. 10 each, and A has purchased 100 shares for which he has paid Rs. 6 per share thus far, A's utmost liability is only Rs. This category, also known as 'Limited Liability Company', comprises the vast majority of companies registered in India. This company's name concludes with "Limited" (or "Ltd." for short).

Company Limited by Shares

Section 2 (22) of the Companies Act of 2013 defines a limited by shares company as one in which the liability of the members is limited to the amount of unpaid dividends on their respective shares. This liability may be incurred during the company's existence or as it winds down.

Companies Limited by Guarantee

Company limited by guarantee, also known as Guarantee Company, is a company in which the liability of each member is limited to the amount that the members may voluntarily undertake under the articles of association to contribute to meet the deficiency of the company's assets in the event of its dissolution. [Sec. 2 (21)] The guaranteed quantity may vary from member to member. The quantity guaranteed by each member resembles reserve capital. Except in the event of the company's liquidation, it cannot be called upon. No fees may be imposed on the members' guarantee. These businesses might or might not have share capital. If the company has a share capital, the members' liability is twofold: first, they are liable for the outstanding balance on their shares, plus the amount payable under the guarantee. The members' guarantee would only become payable in the event of the company's dissolution. Also known as non-trading companies, the purpose of these organizations is not to generate a profit. Typically, these organizations are created for the promotion of educational or scientific research, or for other social or charitable causes. Typically, sports clubs, trade associations, and NGOs register as guarantee companies.

Unlimited Companies

[Sec. 2 (92)] An unlimited company is a corporation in which the liability of its members is unrestricted. In the case of an unlimited company, the liability of each member extends to the total debts and liabilities of the company. A company with unlimited liability may or may not have share capital. If it has any share capital, it is free to increase or decrease it without restriction. Although permitted by the Companies Act, there are very few companies of this form in the country. The registered companies (whether limited or unlimited) may be public or private.

2.4 PRIVATE COMPANY AND PUBLIC COMPANY

Private Company

Private company, as defined by Section 2 (68), is a corporation with a minimum paid-up capital of Rs 1 lakh or such higher paid-up capital as may be prescribed, and whose articles of association include the following restrictions:

(a) restricts the right of members to transfer its shares; (b) limits the number of its members to 200 (except in the case of a One-Person Company); (c) prohibits any invitation to the public to subscribe for the company's securities. A private limited liability company may only have two members. A private limited company must include the words 'private' (or pvt.) in its name.

Public Company

[Sec. 2 (71)] Public company as defined by Section 2(71) is a corporation that is open to the general public.

(a) is not a private company; (b) has a minimum paid-up capital of Rs. 5 lakh or such higher paid-up capital as may be prescribed; and (c) is a private company that is a subsidiary of a company that is not a private company (i.e. a subsidiary of a public company, whether constituted as a private company or public company, shall be regarded as a public company). A public company must have at least seven shareholders. The public company's articles of incorporation do not contain the restrictions applicable to private companies. Thus, shares of a public company are freely transferable, the maximum number of members is unrestricted, and a public company may invite the public to subscribe for its securities (shares or debentures). However, a public company is not required by law to solicit subscriptions for its shares or debentures.

Distinction between a Private and a Public Company

The primary distinctions between a private and public company are as follows:

- Minimum number of participants. Two members are required to establish a private company, whereas seven members are required to form a public company.
- Maximum amount of members allowed. Unrestricted membership is permitted in a public company. However, a private company cannot have more than 200 members, excluding former and current employees.
- Minimum paid up capital. A private company must have a minimum paid-up capital of Rs. 1 lakh, whereas a public company must have a minimum paid-up capital of Rs.
- Invitation to the general public. It is prohibited for a private company to invite the public to subscribe to its share capital. It is not required to issue a prospectus. However, a public company can invite the general public to subscribe or purchase its shares.
- Deposits from the general public. A private company is unable to accept deposits from the general public, excluding its shareholders, directors, and their relatives. However, a public can invite and/or receive public deposits.
- The ability to transfer interests. Articles of Association impose restrictions on the transfer of shares in a private company. However, public company shares are readily transferable.

- Directors. A public company must have a minimum of three directors, whereas a private company may have only two. Directors of private companies are not required to retire by rotation. They could be designated permanently for life. Unlike public companies, private companies can appoint their entire board of directors with a single resolution.
- Restrictions on compensation for managers. Private businesses are exempt from restrictions on the payment of managerial compensation. Private companies are allowed to spend any amount on their management, unlike public companies which cannot pay more than 11% of their net profits in managerial compensation. In addition to these distinctions, private limited companies enjoy a vast array of legal exemptions and privileges not available to public limited companies.

Conversion of a Private Company into a Public Company

Section 14 of the Company Act specifies the following methods for a private company to become a public one. A private company may convert itself into a public company at its own discretion. In this situation, it must

(i) Adopt a special resolution to amend its bylaws in order to eliminate the restrictive clauses applicable to a private company.

(ii) If the paid-up capital is less than Rs 5 lakh, increase it to at least Rs 5 lakh. If the number of members is less than 7, it should be increased to 7.

(iii) If there are fewer than three directors, increase the number to three.

(iv) File a copy of the special resolution to amend the articles within 15 days.

The company will cease to be a limited liability company as of the date of Articles amendment and will become a public company.

A public company can also be converted into a private company by taking the following steps:

- The company's Articles must be modified by adopting a special resolution to include the restrictions, limitations, and prohibitions imposed by the Act on private companies.

- The approval of the Tribunal is required.
- The company must file a printed copy of the amended Articles with the Registrar within 15 days of receiving sanction from the Tribunal. The transformation of a private company into a public company or vice versa does not result in the formation of a new company. Therefore, the conversion has no effect on the legal personality of the corporation, which remains unchanged despite the conversion.

2.5 HOLDING AND SUBSIDIARY COMPANIES

A company that governs another company is referred to as a Holding company, while the controlled company is referred to as a Subsidiary company. According to section 2 (87), a company is deemed to control another in each of the following situations:

(1) If it controls the majority of another corporation's board of directors.

It is deemed to control the composition of another company's board of directors if it can appoint or remove all or a majority of the directors at its direction without the consent or concurrence of any other person.

(2) If it owns the majority of another company's shares. For control purposes, a company must possess more than fifty percent of the nominal value of another company's equity shares.

(3) A company is considered the holding company of another company if another company is a subsidiary of the subsidiary of the first company (i.e. subsidiary of the subsidiary).

Illustration A subsidiary of company A is company B, and company C is a subsidiary of company B. Company C is considered a subsidiary of company A. By virtue of the preceding provision, if company D is a subsidiary of company C, it will also be a subsidiary of companies B and A.

Private companies that are subsidiaries of public companies are considered public companies. A subsidiary company cannot be a member of its holding company, and any allocation or transfer of holding company shares to the subsidiary will be void. Section 129(3) of the Companies Act requires holding companies to append copies of their subsidiaries' Balance Sheets, Profit & Loss Accounts, Directors' Reports, and Auditors' Reports to their Balance

Sheets. In addition, listed companies are required by the Accounting Standards to produce a Consolidated Balance Sheet to provide creditors, shareholders, and the public with more complete information about the financial position of the group as a whole.

2.6 ONE PERSON COMPANY UNDER SECTION 2(62)

The term "One Person Company" refers to a company with only one member. (c) OPC may be registered as a private company with at least one member and one director. (b) One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall become a member of the company in the event of the subscriber's death or incapacity to contract, and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles [Sec 3]. A One-Person Company may be: (a) a company limited by shares; (b) a company limited by guarantee; or (c) an unlimited company.

2.7 GOVERNMENT COMPANY

Government Company refers to a corporation in which at least 51 percent of the paid-in capital is held by:

The Central Government, or One or more State Governments, or Partially by the Central Government and one or more State Governments.

Government Company comprises a subsidiary company of a Government Company.

For this purpose, the holding of shares by municipal and other local authorities or statutory corporations (which are government bodies) is irrelevant. A Government company may be either a private or public entity. Government private companies are not required to include the term 'private' in their names. A Government company is not a government agent because it is a separate legal entity from its members (the government).

Provisions Particular to Government Agencies

(a) The Comptroller and Auditor General of India appoints and reappoints the auditor of a government company. The Comptroller and Auditor General of India has the authority to instruct the auditor on how the company's accounts are to be audited and on any other matter pertaining to the performance of his responsibilities as such. He may also appoint officers to conduct a supplementary test audit of the company's accounts. The auditor must submit a copy of his report to the Comptroller and Auditor-General, and the report, along with his comments, must be presented to the company's annual general meeting.

(b) Where the Central Government is a member of a Government company, it shall prepare an annual report on the workings and affairs of the company within three months of the annual general meeting and submit it to both Houses of Parliament along with the audit report and comments thereon. When a State Government is a member of a Government Company, it must present the annual report on the company's operations, along with the audit report and any comments, to the State Legislature.

(c) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification: do not apply to any Government company; or apply only with the exceptions, modifications, and adaptations specified in the notification.

2.8 FOREIGN COMPANIES

Foreign companies are companies incorporated outside of India that (a) have established a place of business in India or (b) had established a place of business in India prior to the implementation of the Companies Act, 1956 and continue to have the same. Where, however, not less than fifty percent of the paid-up share capital of a company incorporated outside India and having a place of business in India is held by one or more citizens of India or by one or more bodies corporate incorporated in India, or by one or more citizens of India and one or more bodies corporate incorporated in India, either singly or in the aggregate, such company shall comply with the provisions of this Act as if it were a co-operative society.

Obligations of an International Business The file to be submitted: A foreign company is required to deliver the following documents to the Registrar for registration within 30 days of establishing its place of business: (a) a certified copy of the charter, statutes, or memorandum and articles of the company or other instrument constituting or defining the constitution of the company; and, if the instrument is not in the English language, a certified translation thereof; (b) a certified copy of the certificate of good standing;

(b) the full address of the registered or principal office of the company; (c) a list of the directors and secretary of the company, including their names, usual residential addresses, nationality, business occupations, and other directorships held; (d) the name and address or the names and addresses of some one or more persons resident in India, authorized to accept on behalf of the company service of process and any notices or other documents required.

2.9 ASSOCIATION: NOT FOR PROFIT OR LICENSED COMPANIES

Where the Central Government is satisfied, an association-

(a) is about to be formed as a limited liability company for the purpose of promoting commerce, art, science, religion, charity, or any other useful object, and (b) is intended to promote commerce, art, science, religion, charity, or any other useful

(b) intends to apply its profits, if any, or other income to the promotion of its objects and to prohibit the payment of dividends to its members, the Central Government may, by license, direct that the association may be registered as a company with limited liability without the addition of the words "Limited" or "Private Limited" to its name (section 8).

Articles of the Statute Upon registration, these associations enjoy all the rights and responsibilities of limited liability companies, subject to the provisions of this section. The Central Government grants the license subject to the conditions and regulations it deems appropriate, and these conditions and regulations are binding on the organization to which the license is granted. The association to which a license is granted is not required to include the terms "Limited" or "Private Limited" in its name, unless its articles provide otherwise. A partnership firm may be a member of any association or company licensed under this section, but its membership in the association or company shall terminate upon dissolution of the partnership. The license may be revoked at any time by the Central Government, and upon revocation, the entity shall no longer be exempt under this section. A body for which a license under this section is in effect may not change the provisions of its memorandum regarding its objectives without the prior written sanction of the Central Government. These organizations are not required to have a minimum amount of paid-in capital, as is the case for corporations.

Benefits of Section 8 businesses

It is a privilege for non-profit organizations to enjoy limited liability protection without the word "Limited" at the end of their company name. The privilege is restricted to corporations that cannot distribute their profits to their members. This privilege is frequently utilized by organizations with charitable goals, such as chambers and societies. Such associations enjoy all the benefits of incorporation but are not required to indicate in their name that they are limited liability corporations. Their officers and members enjoy personal liability immunity. A member who makes a donation may be granted the right to run for office. Generally, membership is determined by the decision of the governing body, but the right to run may be granted to a member who makes a donation. Section 25 companies are permitted to admit partnership firms as members. They also enjoy numerous exemptions from the Companies Act's operational provisions. Numerous organizations register as Section 25 companies. They do not have a Board of Directors (as is required for corporations) but have an annually elected management committee.

2.10 ILLEGAL ASSOCIATION

An 'association' is a group of individuals whose purpose is to attain common goals. In order to protect the general public from the misdeeds of large trading associations, whose membership may continue to fluctuate, section 464 mandates their registration.

Section 464 stipulates that every association with more than 50 members must either be registered as a company under the Companies Act or be formed in accordance with the provisions of another Indian law. An unregistered association is an illicit association with no legal existence.

When the following conditions are met, a group is deemed illegal:

The association has more than 50 members; The association is established to carry on a business with the intention of earning profits; and The association is neither registered as a company under the Companies Act nor formed in accordance with the provisions of another Indian law.

Exceptions: The illicit association provisions do not apply in the following instances:

Hindu Family Unit. This type of family can operate a business with more than 20 members without registering as a corporation under the Companies Act or any other law.

Associations that are non-profit. Associations of a literary, scientific, or religious nature, societies, welfare, charitable, or commercial nature, or the formation of a common fund for the investment of certain securities by trustees, etc.

Implications of Illegal Association

Section 464 is a self-regulating provision because the government has not designated a specific agency to enforce its prohibition. In addition, because the offense is not cognizable, the police cannot investigate it under the criminal law. The repercussions are:

No legal existence. "As a result of the association's or partnership's illegality, its members have no recourse against each other for contribution or allocation in relation to partnership dealings and transactions." An illegal association:

(a) can't enter into legally binding contracts (b) can't sue a member or an outsider if the illegality becomes manifest (c) can't be sued by a member or an outsider because it can't pay its debts

(d) may not be dissolved pursuant to the Act at the request of a creditor, a member, or the association itself. Individually or collectively, members of an unlawful association cannot file a valid lawsuit against another member or any other person for a contract they have entered into.

A subsequent registration will not affect the status of previous deeds. Contracts made prior to registration cannot be validated or sued upon after registration has occurred. On the basis of an unlawful association, no cause of action can arise.

Unlimited individual liability. Every member of an unlawful association is personally responsible for all liabilities incurred by the organization. Whether or not the creditors were aware of the illegality of the association is irrelevant.

Penalty. Each member of an unlawful organization is subject to a fine of up to Rs 1 lakh. The penal provisions will only apply if a company is formed in violation of this section, and not if the irregularity becomes apparent at a later stage.

2.11 SUMMARY

Statutory company is formed by special act passed by central or state legislature.

Companies registered under the Indian companies act are known as Registered companies.

There are various privileges enjoyed by a private company over a public company.

One person company is a company which has only one person as a member.

Government Company is a company in which at least 51% of the paid-up capital is held by the Government.

Foreign company is a company incorporated outside India but having a place of business in India.

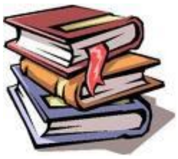
Licenced companies are associations not for profit which have been granted licences by the Government.

An illegal association is an association of more than 50 persons which carries a business without being registered under any law.

2.12 REFERENCES

- Goode Principles of Corporate Insolvency Law (3rd Edn, Sweet & Maxwell 2013)
- Gullifer and Payne Corporate Finance Law: Principles and Policy (2nd Edn Hart Publishing, 2015) 5-41
- Janet Dine, Marios Koutsias Company Law(Macmillan International Higher Education 2014), 77
- In England, see Ebrahimi v Westbourne Galleries [1973] AC 360
- Banerjee. A Company Law & Meetings (Taxman 2018)

2.13 SUGGESTED READINGS



- Goode Principles of Corporate Insolvency Law (3rd Edn, Sweet & Maxwell 2013)
- Gullifer and Payne Corporate Finance Law: Principles and Policy (2nd Edn Hart Publishing, 2015) 5-41
- Janet Dine, Marios Koutsias Company Law(Macmillan International Higher Education 2014), 77
- In England, see Ebrahimi v Westbourne Galleries [1973] AC 360
- Banerjee. A Company Law & Meetings (Taxman 2018)

2.14 TERMINAL QUESTIONS

1. What are the various types of companies?
2. Discuss the features of Public Company & Private Company
3. Write Distinction between Holding Company & Subsidiary Company
4. Under Which Circumstances a Private company can be converted to a public company
5. Write Short Notes on
   a) One Person Company b) Government Company c) Foreign Company
   d) Illegal Association

UNIT 3 INCORPORATION OF COMPANY

3.1 INTRODUCTION

The procedure for the formation of a company, from the time the idea of forming a company is first conceived till the company is actually formed and commences business, may be divided into three principal stages:

(i) Promotion

(ii) Incorporation

(iii) Commencement of business.

3.2 OBJECTIVES

After completing this section, you will be able to:

- Explain how a corporation is formed
- Comprehend the procedure for the company's formation.
- Learn about the different phases of company incorporation.
- Determine the preliminary agreements.

3.3 PROMOTION

The first step in establishing a business is the gathering of ideas. During this phase, a novel business concept is developed. Obviously, the proposal must be feasible. This phase in which an idea is developed and implemented is known as promotion. This process's facilitator is known as the promoter. The promoter may develop the idea using his own resources, influence, or expertise, or he may, if necessary, enlist the assistance of technical and legal experts to establish a company.

Promoters

The term 'promoter' is a business term, not a legal one. A promoter is a person who conceives the concept for a business, organizes its formation, and brings it into existence. He is the "father of the company" if he sees profit potential in a business he desires to establish and believes he can persuade others to share his perspective.

A promoter is 'one who undertakes to establish a company for a specific purpose and to get it up and running, and who takes the necessary steps to achieve that objective. Palmer defines company promoter as "a person who originates a scheme for the formation of the company, has the Memorandum and Articles prepared, executed, and registered, and finds the first directors, settles the terms of preliminary contracts and prospects (if any), and makes arrangements for advertising and circulating the prospectus and placing the capital." Thus, a promoter identifies, formulates, and assembles a business proposition and establishes a company for its growth. They plan and determine the nature, scope, and extent of the proposed company's business. They provide or secure the initial capital of the company, negotiate for the acquisition of an existing business, instruct and direct the lawyers to prepare the necessary documents, select and arrange with individuals to become directors, have the prospectus issued and approved, persuade individuals to purchase shares, find funds for the registration fees, and carry out a number of other tasks associated with the formation of a company.

A promoter can be an individual, a family, a business, a group of individuals, a corporation, or even the government. A promoter who has assumed a much less active and dominant role may exist. It may apply to any individual or business that hires a director, purchases stock, or negotiates preliminary contracts. A promoter need not necessarily be associated with the initial formation of the company; one who subsequently helps to arrange the "floating off of its capital" will also be considered a promoter. However, those who perform acts of a purely ministerial nature or in a professional capacity for remuneration or fees (e.g., solicitors, valuers, etc.) are not considered promoters. According to subsection 62(6)(a) of the

Companies Act, the term "promoter" does not include a person who is engaged in procuring the formation of the company in a professional capacity. A person who only lends money to promoters to cover initial expenses is not considered a promoter. However, professionals who introduce investors to a business are considered promoters.

Functions of a Promoters

The primary responsibilities of a promoter are as follows:

Conceive a concept for starting a business and investigate its viability. Determine the technical, economic, and commercial viability of business propositions. Expert assistance may be sought for this.

To conduct negotiations for the purchase of a business if an existing business is to be acquired.

To collect the required number of individuals, which is two for a private company and seven for a public company, who can sign the memorandum and articles of the company and also consent to serve as the company's first directors. the nature of the company the location of its registered office the amount and form of its capital the underwriters or brokers for capital issue, if necessary the financiers the auditors the legal counsel.

To compose and print the memorandum of association and articles of association. To enter into preliminary agreements with suppliers, underwriters, etc.

To organize the preparation of a prospectus, its filing, advertising, and capital issuance.To pay for preliminary costs. To acquire the necessary funds for the company, including loans.

Duties & Liabilities of a Promoters

A promoter cannot act as the agent or trustee of a company that has not yet been formed. The reason for this is because there was no principal or trust for whom or whose benefit the promoter acted. However, the promoter has broad authority over the formation of the company. The law has established a fiduciary relationship between promoters and the company they found, as well as those they persuade to become its shareholders. This relationship is founded on the uttermost trust and confidence. "Those who embrace and exercise such extensive authority are not permitted to disregard the corporation's interests in their entirety. They must make reasonable use of the legislative powers they accept; as a result, they stand in what is commonly referred to as a fiduciary relationship with the corporation when it is formed."

This fiduciary relationship imposes on the promoters the obligation to disclose all relevant information regarding the formation of the company. Although the fiduciary relationship begins when the company is formed, a promoter's fiduciary obligation begins when he begins acting for or promoting the company.2 Promotes should not secretly profit at the expense of the company without the company's knowledge or consent. A competent and independent board of directors should be informed of all material facts regarding contracts entered into and profits generated by the company since its inception. If the promoters fail to disclose all relevant information, the company may void the transaction and recover the benefit they received. As an illustration:

Therefore, it is the promoters' responsibility to provide the company with an independent board. However, if the board of directors is not independent from the company, as is typically the case, the disclosure must be made to all prospective shareholders in order to be effective. The disclosure can be made to the purchasing company's shareholders via its articles, prospectus, or any other method. If this is accomplished, the absence of an independent board of directors will not render the agreement invalid. The company is permitted to recover from promoters any secret profits or concealed benefits of any kind.3 The company has recourse against the promoters for any harm caused by their fraud or breach of duty. If any benefit accrued to the estate of a deceased promoter, the estate remains liable in an action by a company for fraud or breach of trust. A promoter may also be liable for any factual omission (section 56) or false statement (section 62) in the prospectus.

Remuneration of Promoters

In the process of forming a company, the proprietor must incur the initial expenses in addition to completing a number of laborious tasks. Therefore, the promoter has the legal right to seek reimbursement for both expenses incurred and compensation for work performed. The expense claim should be supported by receipts and presented to the board of directors when the company is formed. However, the company has no contractual obligation to reimburse him for these expenses unless it has expressly agreed to pay him for services rendered prior to its formation. The same holds true for his compensation. The promoter may be compensated in any of the following ways: (a) The promoter may sell his own asset to the company for a profit in exchange for cash or company shares. b) He may be compensated with a commission on the purchase price of the acquired business. c) He may be compensated with a fixed sum in the form of cash, shares, or debentures. The quantity of compensation payable to or paid to the promoters must be disclosed in the company's prospectus..

3.4 INCORPORATION OF COMPANY

Incorporation establishes a company as a distinct corporate entity. In this regard, the promoter must perform the following steps:

Instructions for incorporating a new business.

Select, in order of preference, at least one suitable name and no more than six names indicative of the company's primary objectives. Verify that the name does not resemble the name of an already registered company and does not violate the provisions of emblems and names (Prevention of Improper Use Act, 1950) by utilizing the portal's name availability verifying services.

Apply to the relevant Registrar of Companies (RoC) in e-Form 1A to determine the availability of a name by logging into the portal. The form must be accompanied by a payment of Rs. 500/-* and the digital signature of the applicant proposing the company. If the proposed name is unavailable, the user must submit a new name request using the same application.

Within 60 days of name approval, the applicant may submit for registration of the new company by filing the required forms (Form 1, 18 and 32).

Coordinate the crafting of the memorandum and articles of association by the attorneys, their review by the RoC, and their printing.

Arrange for the memorandum and articles of incorporation to be stamped with the appropriate stamp duty.

Obtain the Memorandum and Articles signed by at least seven subscribers (two in the case of a private company) in his or her own hand, along with his or her father's name, occupation, address, and the number of shares subscribed for, with at least one witness.

Ensure that the Memorandum and Article has a date that is subsequent to the date of stamping.

Log in to the portal, complete the forms below, and attach the required documents specified on the eForm:

Submit the eForms with the digital signature attached, pay the filing and registration fees, and send a hard copy of the Memorandum and Articles of Association to the RoC. After Form processing is complete and Corporate Identity is generated, the Registrar of Companies would issue the Certificate of Incorporation.

Submission of Documents and Forms for the Incorporation/Registration of a Company

The promoter must file the following documents with the applicable fees with the Registrar of Companies of the state where the company's registered office will be located:

a) the memorandum and articles of association duly signed by all subscribers to the memorandum in the manner prescribed;

b) a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles of association as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with;

c) an affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he has not been convicted of any offence in connection with the promotion, formation, or management of any company, or that he has not been found guilty of any fraud or misfeasance or of a breach of duty to any company under this Act or any previous company law during the preceding five years, and that all the documents filed

d) the mailing address until the registered office is established;

e) the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity as prescribed, and in the case of a subscriber being a body corporate, such particulars as prescribed;

f) the particulars of the persons named in the articles as the first directors of the company, including their surnames or family names, Director Identification Number, residential address, nationality, and such other particulars as may be prescribed, including verification of identity; and

g) the particulars of the interests of the persons named in the articles as the first directors of the company in other firms or corporations, as well as their assent to serve as directors of the company in the prescribed form and manner.

Obtaining an incorporation certificate.

Upon receipt of these documents and the required fees, the Registrar will examine them and, if he is satisfied that the requirements of the Companies Act have been met, will issue a certificate of incorporation in the prescribed form stating that the proposed company has been incorporated under this Act. On the date specified in the certificate of incorporation, the Registrar will assign the company a corporate identity number, which will serve as a unique identifier and will also be included in the certificate. In accordance with section 447, a person is liable for legal action if he provides false or incorrect information or omits material information of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company.

Consequences of certificate of incorporation.

Section 9 of the Companies Act states, "From the date of incorporation specified in the certificate of incorporation, such of the subscribers of the Memorandum and other persons as may from time to time be the members of the company shall be a body corporate by the name contained in the Memorandum, immediately capable of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to acquire, hold, and dispose of property." Therefore, the results are:

(1) The certificate of incorporation gives the company existence as of the date specified in the document.

(2) It provides conclusive evidence that the company was properly incorporated. (3) It confers the company legal personality, corporate existence, and perpetual succession.

(4) The subscribers to the Memorandum and such other persons as may from time to time become members of the company form a separate legal entity with perpetual succession and a common seal, with the liability of the members limited to the amount unpaid on the shares they hold.

(5) The Memorandum and Articles of Association become enforceable as if signed by the corporation and each member.

Validity of the Certificate of Incorporation

The certificate of incorporation is conclusive proof of a company's appropriate and regular registration and formation. Even if irregularities prior to registration are later discovered, it cannot be challenged. It is considered conclusive even if it was legally impossible for the company to have been properly registered, e.g., if all the members' signatures were forged, if instead of seven only six members signed, if the signers lacked the legal capacity to enter into contracts, etc. Even if the date on the certificate of incorporation is incorrect, it is conclusive.

The validity of the certificate of incorporation cannot be contested under any circumstances. The promoters, the persons named as the first directors of the company, and the persons making the declaration shall each be liable if, at any time after the incorporation of a company, it is proven that the company has been incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action.

Similarly, granting a company a certificate of incorporation does not render the company's objectives legal if they are otherwise unlawful.

3.5 COMMENCEMENT OF BUSINESS

A corporation with a share capital may not engage in commerce or exercise its borrowing authority unless:

(a) a declaration is filed by a director with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him and the paid-up share capital of the company is not less than Rs 5 lakh in case of a public company and not less than Rs 1 lakh rupees in case of a private company on the date of making this declaration; and

(b) the company has filed with the Registrar a copy of the memorandum of association

(c) If the company fails to comply with the requirements of this section, the company is subject to a fine of up to Rs 5,000, and each officer in default is subject to a fine of up to Rs 1,000 per day that the violation persists.

If no declaration is filed with the Registrar within 180 days of the date of incorporation and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may initiate action to remove the company's name from the register of companies.

3.6 SUMMARY

Promotion is the stage of devising a business formation concept and working on that concept.

Promoters have a fiduciary relationship with the company they promote.

A company may adopt preliminary contracts under the Specific Relief Act.

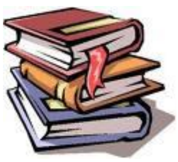
Certain documents must be lodged with the Registrar of Companies in order to incorporate a company. Incorporation brings a company into existence.

The commencement of business by a company necessitates the filing of a prescribed declaration and verification of the company's registered office..

3.7 REFERENCES

- "Corporations". Wex. Cornell Law School. Retrieved 3 April 2018
- Dr. S P Narang — Highlights of the Companies (Amendment) Bill, 2001, Companies (Second Amendment) Bill, 2001 and Sick Industrial Companies (Special Provisions) repel Bill, 2001, Chartered Secretary, Sept. 2001.
- Sharma JP (2012), "An easy approach to Corporate Laws" Ane Books Pvt. Ltd. New Delhi, India.
- Kuchhal MC (2009), "Corporate Laws" Shree Mahavir Book Depot (Publishers), New Delhi, India
- "The World Price of Insider Trading" by Utpal Bhattacharya and Hazem Daouk in the Journal of Finance, Vol. LVII, No. 1 (Feb. 2002)
- Larson, Aaron (20 July 2016). "Where To Incorporate Your Business". ExpertLaw.com. Retrieved 3 April 2018.

3.8 SUGGESTED READINGS



- "Corporations". Wex. Cornell Law School. Retrieved 3 April 2018
- Dr. S P Narang — Highlights of the Companies (Amendment) Bill, 2001, Companies (Second Amendment) Bill, 2001 and Sick Industrial Companies (Special Provisions) repel Bill, 2001, Chartered Secretary, Sept. 2001.
- Sharma JP (2012), "An easy approach to Corporate Laws" Ane Books Pvt. Ltd. New Delhi, India.
- Kuchhal MC (2009), "Corporate Laws" Shree Mahavir Book Depot (Publishers), New Delhi, India
- "The World Price of Insider Trading" by Utpal Bhattacharya and Hazem Daouk in the Journal of Finance, Vol. LVII, No. 1 (Feb. 2002)
- Larson, Aaron (20 July 2016). "Where To Incorporate Your Business". ExpertLaw.com. Retrieved 3 April 2018.

3.9 TERMINAL QUESTIONS

1. Explain the procedure of formation of a company
2. Discuss the various stages of company formation.
3. Write the functions of a Promoter

UNIT 4 MEMORANDUM OF ASSOCIATION (MOA)

1.1 INTRODUCTION

Memorandum of association is the main document of a company which defines its objects. It lays down the fundamental conditions upon which alone the company is allowed to be formed. It may be termed as the charter or the constitution of the company since it governs the relationship of the company with the outside world.

1.2 OBJECTIVES

After completion of this section, you will be able to:

- Understand the purpose of the Memorandum of Association;

- Know the various clauses of the Memorandum of Association;
- Understand the procedure for altering the various clauses of the Memorandum of Association; and
- Acquaint oneself with the doctrine of ultra-vires.

1.3 MEANING & PURPOSE

Section 2(56) of the Companies Act defines Memorandum as "the Memorandum of Association as originally drafted or as amended in accordance with any previous companies law or this Act." Any provisions in the Articles of Association that are inconsistent with the provisions of the Companies Act will be null and void. The Memorandum of Association serves two functions: First, the prospective investor who wishes to invest in the company must be aware of the activities in which his money will be invested by the company, as well as the associated risk.

The proprietors and other investors are protected by the memorandum of association, which stipulates that their funds will only be used for specified purposes. Secondly, any person doing business with the corporation shall know beyond a reasonable doubt whether the contractual relationship he intends to enter into with the corporation relates to a matter within its corporate objects.

Thus, the Memorandum of Association defines the investors' investment scope and risk exposure. It also describes the enterprise and scope of the company's activities.

The Memorandum of Association must be printed, divided into paragraphs, numbered consecutively, and signed by each subscriber (seven or more in the case of a public company, two or more in the case of a private company) in the presence of at least one witness, who must attest the signatures.

Since the Memorandum of Association is a public document, everyone dealing with the company is presumed to be familiar with its contents. It is available for public examination. A company is required to provide a member with a copy of its memorandum upon his request and payment of the prescribed fee. The duplicate must be sent within one week.

1.4 CLAUSES

The following clauses must be included in the memorandum of association: Name Clause Situation Clause Objects Clause Liability Clause Capital Clause Association Clause or Subscription Clause

Name Clause:

A Company must have a name to establish its identity as a legal entity. The Name Clause in the Articles of Association protects against subsequent company registration with the same or a similar name. It provides the company with a de facto monopoly on corporate commerce under a specific name.

A company may have any name except –

• a name that is identical to or closely resembles the name of another company in order to deceive or mislead a prospective client of one company trading with another.

• a name that, in the view of the Central Government, is objectionable or will mislead the public, and whose use is therefore prohibited under the Emblems and Names (Prevention of Improper Use) Act of 1950.

• the last word of the name must be 'limited' for public corporations and 'private limited' for private limited corporations. It is not required that the term 'company' be included in the name.

The name of each company and the address of its Registered Office must be painted or affixed in a conspicuous location on the exterior of each business location in readily readable letters in one of the local languages. [Sec. 12(3)]]

All letters, negotiable instruments, orders, invoices, and other documents written or executed by the company must also include the company's full name and registered office. [Sec. 12(3)]]

Every company must engrave its name and the address of its Registered Office on its corporate seal and include it on all official documents and publications. [Sec. 12(3)].

If a company fails to comply with the requirements of Section 12(3), its officers may face severe consequences. For instance, an officer signing a bill of exchange, promissory note, or cheque on behalf of the company on which the company's name does not appear in accordance with the preceding provisions is personally liable to the holder of such an instrument if the company fails to make payment. In addition, he may be subject to a fine of up to Rs 1,000 per day for as long as the default persists.

Situation Clause: The Articles of Association must specify the state where the company's registered office will be located. It will repair the company's domicile. The registered office of a company is its residence for the purposes of delivering or addressing any communications, serving any legal notice or process, and determining the question of jurisdiction in any action brought against the company. It is the location where the company's statutory accounts, records, and registers must be kept.

The Object Clause is the most significant provision in the Articles of Incorporation. It defines and restricts the scope of the company's operations. It describes to the members the scope of the company's activities and how their capital will be utilized. It protects shareholders by ensuring that funds raised for specific enterprises will not be placed at risk in another. The extent of the company's authority is communicated to the general public who interacts with it. The only powers that can be exercised by a corporation are those that are either expressly stated in the articles of incorporation or can be reasonably inferred from them, including matters that are incidental or consequential.

The company's objectives must be legal and well-defined. The purposes cannot violate the provisions of the Companies Act. The memorandum should outline the company's objectives, not its powers.

According to Section 4(C), the Memorandum of Association of a company must include the purposes for which the company is proposed to be incorporated as well as any matters deemed necessary in furtherance of such purposes.

In the instance of a company that existed immediately prior to the start of the Companies Act of 2013: Other objects of the company not listed in subclause (i).

Liability Clause

The liability clause specifies the liability of the company's members. In the case of a company limited by shares, the Memorandum of Association must contain a clause stating that the members' liability is limited to the outstanding portion of the shares they hold. In the Memorandum of Association of a company limited by guarantee, each member's commitment to contribute to the company's assets in the event of dissolution must be stated. [section 4 (1) (d)] In a limited liability company, the liability of the directors or any director or manager may be unlimited if the memorandum so provides.

Capital Clause

The Memorandum of Association of a limited company with a share capital must specify the quantity of authorized or nominal capital with which the company will be registered. In addition, the memorandum must specify the division of registered share capital into fixed-amount shares. Each subscriber must take at least one share and indicate the number of shares he takes next to his name.

Association Provision

This clause states that the individuals who sign the Memorandum intend to form an association pursuant to the terms of the document. In the case of a public company, the Memorandum of Association must be signed by seven or more individuals, and by two or more individuals in the case of a private company. Witnesses must attest to signatures. One witness may be present for all signatures, but one subscriber cannot serve as a witness for another's signature. There must be a complete description, address, occupation, etc. of the subscribers and witnesses. In the case of a company with a share capital, each subscriber must take at least one share and indicate the number of shares he agrees to take next to his name. Subscribers must pay for these shares following the company's incorporation. They must also sign the company's articles of incorporation.

It is not required that all signatories have a personal beneficial interest in the shares for which they have subscribed. They need not be separate or unrelated. All of them may be nominated by a single individual, and their signatures may be a formality.

However, subscribers to the Memorandum of should be capable of contracting. A minor or a partnership firm is ineligible to sign the Memorandum. A business may be a subscriber of another business. Once a company has been incorporated, no subscriber may rescind his name for any reason, not even on the grounds that he/she was misled into signing the memorandum.

1.5 ALTERATION IN MEMORANDUM OF ASSOCIATION

Alteration in the name clause can be effected in the following ways:

(i) A business entity may change its name at any time by (a) enacting a special resolution and (b) obtaining the written consent of the Central Government to the change. However,

(ii) No sanction is required from the Central Government if the only change to a company's name is the addition or deletion of the word "Private" as a result of the conversion of a public company into a private company or vice versa.

(iii) If, by mistake or otherwise, a company on its first registration or on its registration by a new name has been registered by a name identical to or too similar to the name of a previously registered company, it may change its name by ordinary resolution and with the prior written approval of the Central Government.

The new name must be reported to the Registrar, who will enter the new name in the register in lieu of the old name and issue a new certificate of incorporation incorporating the necessary changes. Only upon the issuance of such a certificate will the name change be complete and effective. In addition, the Registrar shall make any necessary modifications to the memorandum. Note that the name change will not affect the company's rights or obligations, nor will it render any legal proceedings by or against the company invalid.

Section 13 of the Companies Act stipulates that a company's memorandum of association may only be amended to the extent that such an amendment is essential.

Alteration in the Circumstances Clause.

Changing a company's registered office can occur in the following ways: (i) Change of registered office outside the municipal limits of the city, town, or village in which the office is located. The company can accomplish this by adopting a special resolution, and a notice of the change in registered office must be given to the Registrar within 15 days of the passing of the resolution. (Sec. 13)

(ii) Change of registered office within the same state from one municipality to another. The procedure is the adoption of a special resolution at a general meeting of the company's shareholders. When the jurisdiction of one Registrar of Companies changes to that of another Registrar of Companies, however, confirmation of the Regional Director is required. Currently, it only applies to the states of Tamil Nadu and Maharashtra, each of which has two offices located in Chennai, Coimbatore, Mumbai, and Pune.

(iii) Transfer of the registered office to another state A corporation cannot move its registered office from one state to another automatically.

The company must follow the following procedure: Passage of a special resolution by the company's members at a general meeting. Obtaining confirmation from the Central Government on petition. Before approving the change, the Central Government must be satisfied with the following:

(a) that sufficient notice has been given to every holder of debentures of the company and to every other person or class of persons whose interests will be affected by the alteration, in the opinion of the Central Government; and

(b) that, with respect to every creditor who, in the opinion of the Central Government, is entitled to object to the change and who notifies the Central Government of his objection, either his consent to the change has been obtained or his debt or claim has been discharged, determined, or secured. The Central Government shall serve the Registrar with notice of the petition for confirmation of the alteration. The Registrar shall be afforded a reasonable opportunity to appear before the Central Government and state his objections and suggestions, if any, regarding the confirmation of the alteration.

The Central Government shall consider the rights and interests of the company's members and each class thereof, as well as the rights and interests of the company's creditors and each class thereof. The Central Government may issue an order confirming the modification on such terms and conditions, if any, as it deems appropriate, and may issue such an order regarding costs as it deems appropriate.

Modification must be registered. The company must file with the Registrar of each state a certified copy of the order from the Central Government confirming the change. The Registrar of each of these states must register the document and attest to its registration with his signature. The Registrar of the state from which the office is transferred shall forward to the Registrar of the receiving state all documents pertaining to the company registered, recorded, or lodged in his office.

Modifications to the Objects Clause

By enacting a special resolution, a company's objectives may be altered at any time if it has not raised capital through a prospectus. The company passes a special resolution by mail-in ballot, and the notice of the resolution to change the objects must include the following information:

o Total amount received

o the total amount utilized for the objects stated in the prospectus;

o the unutilized amount from the funds raised through the prospectus;

o the particulars of the proposed alteration or change in the objects;

o the justification for the alteration or change in the objects;

o the amount proposed to be used for the new objects;

o the estimated financial impact of the proposed alteration on the earnings and cash flow of the company;

o any other pertinent information.

o the details, as may be prescribed, in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which are in circulation at the registered office of the company, indicating therein the justification for such change;

o the dissenting shareholders shall be given an opportunity to exit by the promoters

Within thirty days of the filing of the special resolution, the Registrar shall register any amendments to the company's memorandum pertaining to its purposes and certify the registration.

Amendment to the Liability Clause

Typically, it cannot be altered to make the members' liability unlimited. With the authority of the Articles of Association, a company may, however, adopt a special resolution changing the liability clause of the Memorandum of Association to make the liability of directors or any individual director or manager unlimited. In such a circumstance, however, a person who held office as a director or manager prior to the change is not liable until the expiration of his current term or unless he has consented to his liability becoming unlimited. Changes that are likely to impose additional liability on a member or that are likely to require a member to purchase additional shares of the company after the date he became a member may not be made without the member's written consent. However, if the company is a club or other association and the change requires the member to pay recurring or periodic subscriptions or charges at a higher rate, the member will be bound by the change even if he does not agree in writing to be bound by the change.

Amendment to the Capital Clause

Changes to the capital clause of the Articles of Incorporation may be of the following types: Changes to the share capital. (Sec. 61) Decrease in the share capital. (Sec.66)

• Modifications to the share capital

A limited company with a share capital may make the following changes to its share capital:

a) increase its share capital by issuing new shares; b) consolidate or sub-divide its share capital into shares of larger or smaller denominations; c) convert its fully paid-up shares into stock, and re-convert that stock into fully paid-up shares of any denomination; d) cancel shares which have not been taken or agreed to be taken by any person, and reduce its share capital by the amount of the cancelled shares. If authorized to do so by its Articles of Association, a company can make these changes by enacting a regular resolution. These modifications must be notified and a copy of the resolution must be lodged with the Registrar within 15 days of the resolution's passage.

• Reduction of Capitalization.

In order to safeguard the interests of investors, particularly creditors of companies, the law permits the reduction of share capital under strict conditions. A company limited by shares or a company limited by guarantee with a share capital may reduce its share capital through any of the following means:

a) extinguish or reduce the liability on any of its shares in respect of unpaid-up share capital; b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the company's needs.

1.6 DOCTRINE OF ULTRA VIRES

'Ultra' signifies beyond, and 'vires' refers to capabilities. A company's Memorandum of Association defines the company's powers. Any act performed outside the purview of the company's activities as outlined in its articles of incorporation is ultra-vires the company, i.e., beyond the company's legal powers and authority, and shall be null and void and not bind the company. Acts ultra-vires the company cannot be legalized or ratified, not even with the unanimity of the company's members. This doctrine seeks to defend investors' and creditors' interests. A corporation's authority is limited to those acts that either fall within its memorandum of association-described objectives or are reasonably incidental to achieving those objectives.

Acts of a corporation may also be ultra-vires the Articles or the directors' powers. Acts ultra-vires the Articles may be valid and enforceable if the Articles of Association are amended at a general meeting by special resolution. Changes to the Articles of Association with a retroactive effect that benefit the company are valid. An act that exceeds the directors' authority may also be ratified by the shareholders' general meeting.

However, the doctrine of ultra-vires should not be interpreted and applied in an unreasonable manner. It does not prohibit a corporation from acting in a manner that is reasonable, incidental to its objectives, or authorized by the Companies Act.

The distinction between objects and powers exists. Powers are not to be included in the memo. Even if they are stated, they can only be used to accomplish the company's goals. They cannot become independent objects on their own.

Repercussions of ultra-vires transactions

The effects of ultra-vires transactions are as follows:

Injunction: Any member of the organization may file an injunction against the organization to prevent it from committing ultra-vires acts.

Personal liability of directors: The directors of a company are personally responsible for reimbursing the company for funds used for ultra vires activities. It is the responsibility of the company's directors to use company funds and assets for the purposes outlined in the company's articles of incorporation.

Void contracts: Any contract that is ultra vires the company is null and void and has no effect. " An ultra vires contract, being void ab initio, cannot become intra vires by reason of estoppel, lapse of time, ratification, acquiescence, or delay"However, if the contract is only ultra-vires the powers of the directors and not ultra-vires the company, the general meeting may ratify the contract and bind the company to it.

Ultra-vires acquisition of property: When a company's funds are used ultra vires to acquire a property, the company's claim to that property is secure. This is due to the fact that the property represents corporate capital, even though it was acquired illegally. However, if payment for a property/asset acquired ultra vires has not been made, the vendor can obtain a tracing order to recover the property from the company. A company cannot profit from these transactions at the expense of the other party.

Ultra vires borrowings: A bank or other lender to a company for purposes beyond the scope of the memorandum cannot recover the funds under the terms of the loan agreement. However, nothing prevents the business from returning the money. The lender is also entitled to a tracing order, and if the money lent can be traceable to specie or any investment held by the company, the lender can recover the funds from the latter. Moreover, if that money is used by the company to pay off its debts or liabilities, the lender will, under the principle of subrogation, assume the position of the creditors whose claims have been satisfied and acquire their rights against the company.

Ultra vires lending: If the company lends money beyond its legal authority, the contract is null and void. It cannot be sued, but the company can suit for the return of its funds. This is due to the fact that a creditor who has promised to repay money cannot avoid doing so on the grounds that he or she lacks authority.

1.7 SUMMARY

It has six clauses: Name clause, Situation clause, Objects clause, Liability clause, Capital clause, and Association clause. Memorandum of Association is the primary document of a company that defines its objectives.

A company can modify its Memorandum of Association by following a prescribed procedure. The doctrine of ultra vires states that any act done adverse to or beyond the scope of the company's activities as outlined in the memorandum is invalid and cannot be adopted by a company. The doctrine of ultra-vires provides protection for the company's investors.

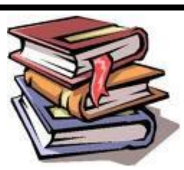
1.8 REFERENCES

- Kuchhal MC (2013), “Modern Indian Company Law” Shree Mahavir Book Depot (Publishers), New Delhi, India.
- Sharma JP (2014), “Governance, Ethics and Social Responsibility of Business”

Ane Books Pvt. Ltd. New Delhi, India.

- Black's Law Dictionary, 8th edition (2004), ISBN 0-314-15199-0
- Prasad, Suresh. "Complete list of Sections of the Companies Act, 2013"
- "Commencement Notification Of Companies Act 2013"(PDF). Ministry of Corporate Affairs, India. Archived (PDF) from the original on 11 January 2014. Retrieved 11 January2014

1.12 SUGGESTED READINGS



- Kuchhal MC (2013), “Modern Indian Company Law” Shree Mahavir Book Depot (Publishers), New Delhi, India.
- Sharma JP (2014), “Governance, Ethics and Social Responsibility of Business”

Ane Books Pvt. Ltd. New Delhi, India.

- Black's Law Dictionary, 8th edition (2004), ISBN 0-314-15199-0
- Prasad, Suresh. "Complete list of Sections of the Companies Act, 2013"
- "Commencement Notification Of Companies Act 2013"(PDF). Ministry of Corporate Affairs, India. Archived (PDF) from the original on 11 January 2014. Retrieved 11 January2014

1.13 TERMINAL QUESTIONS

1. What is purpose of Memorandum of Association?
2. Discuss the Clauses of Memorandum of Association
3. Explain the various procedures of alteration of memorandum of association
4. Write a note on doctrine of ultra-vires

UNIT 5 ARTICLES OF ASSOCIATION (AOA) & PROSPECTUS

5.1 INTRODUCTION

Articles of Association are an essential company document. It contains rules, regulations, and bylaws for the company's internal administration. Articles govern the relationship between the company and its constituent members by stipulating their rights and responsibilities.

5.2 OBJECTIVES

After reading this unit you will be able to understand:

- To grasp the meaning and scope of Articles of Association.

- To comprehend the procedure for amending an article. To understand the binding effects of the memorandum and articles.
- To identify instances where protection under the interior management doctrine is provided

5.3 MEANING & SCOPE OF AOA

Articles are defined by section 2(5) of the Companies Act: "Articles means the articles of association as originally drafted or as amended from time to time in accordance with any previous companies law or this Act."

5.4 RELATIONSHIP WITH AOA

The connection between MOA and AOA: The company's charter is the memorandum. It describes the company's constitution and defines the scope of its activities and authority. Articles establish the norms and regulations that govern its operations. The Articles of Organization are subordinate to the Memorandum. Within the bounds of the company's memorandum, shareholders are free to implement whatever regulations they deem necessary for the organization's internal operations. Articles may be used to clarify the purposes outlined in the Memorandum, but never to expand on them. They are unable to alter the terms of the Memorandum. Memorandum includes terms for use by creditors, shareholders, and the general public. The articles of incorporation comprise a contract between the company and its members in their capacity as members. It is challenging to modify the Memorandum's clauses. However, the articles are readily amendable through a special resolution, and they can even be changed retroactively. Articles, unlike Memorandums, need not be interpreted as precisely.

5.5 CONTENT OF ARTICLE OF ASSOCIATION

Typically, the Articles of Association of a company address the following:

(i) Definitions of essential terms and phrases.

(ii) Share capital and the privileges associated with various classes of stock.

(iii) Procedure regarding the calling of shares and their forfeiture.

(iv) Appointment of managerial personnel, such as directors, managing directors, etc., as well as their rotation, responsibilities, and powers.

(v) Rules regarding (a) transfer and transmission of shares; (b) general meetings; (c) the company's common insignia; (d) dividends, reserves, and capitalization of profits; (e) accounts and audit; (f) a lien on shares; (g) compensation of managerial personnel; and (h) the issuance of redeemable preference shares. (i) dissolution of the business

The Articles of Association must not contain any provisions that exceed the company's powers as outlined in the Memorandum of Association or that contravene the Companies Act. All Articles clauses that violate the Memorandum or the Act shall be null and void.

5.6 DIFFERENCE BETWEEN ARTICLE & MEMORANDUM

The Memorandum comprises the fundamental conditions that must be met for the company's incorporation. These conditions are implemented for the benefit of creditors, the general public, and shareholders. The Articles of Association are the company's internal regulations.

The primary distinctions between memos and articles are as follows: The Memorandum of Association is the company's charter. It contains the fundamental conditions upon which the company's incorporation is granted. The Articles of Association outline the rules and regulations that govern the company's internal management.

The clauses of the Memorandum cannot be modified readily. They may be modified for specified purposes and in accordance with the Act's specifications. Altering some of them requires the approval of the Tribunal/Company Law Board, while in other instances court approval is required. In the case of Articles of Association, a company possesses the inherent authority to modify it. Members may amend the articles by adopting a special resolution so long as other requirements are met. Ordinary alterations do not necessitate the court's or government's approval.

The Memorandum defines the company's objectives and authority. It determines the scope and extent of the company's activities. Articles constitute the company's bylaws and stipulate the regulations by which the company's objectives and powers can be carried out.

The Articles of Incorporation cannot contain any clause that is inconsistent with the provisions of the Companies Act. Both the Companies Act and the Memorandum of Association subordinate the Articles of Association. Contrary to the provisions of the Companies Act and the Memorandum, an organization's articles cannot be drafted.

Although both the Memorandum and the Articles are public documents, the Memorandum defines the relationship between the company and outsiders, while the Articles govern the relationship between the company and its members or members alone or members in general.

Acts performed by a corporation outside the scope of the Memorandum are null and void and cannot be ratified by a unanimous vote of all shareholders. But actions of a corporation that go beyond the Articles are merely irregular and not void, and shareholders can easily confirm or subsequently ratify them.

5.7 BINDING EFFECT OF MEMORANDUM & ARTICLE OF ASSOCIATION

Section 10 of the Companies Act states: "Subject to the provisions of this Act, the Memorandum and Articles shall, when registered, bind the company and its members to the same extent as if they had been signed by the company and each member, and contained covenants on their part to observe all the provisions of the Memorandum and Articles."

The Articles therefore bond the company to its members, the members to the company, and the members to one another. They are a contract between a company and its members regarding their rights and responsibilities as members.

Creating a contractual relationship between the company and its members.

The company's members are required to monitor and comply with the articles. In the event that the company violates its articles, members may bring an injunction against the company to prevent it from doing so. Members may file a lawsuit to prevent a corporation from committing ultra-vires or unlawful acts, or from acting on a resolution obtained through fraud or which is incompatible with the Articles. Members may also sue the company to enforce their personal rights under the Articles, such as the right to receive declared dividends. However, only a shareholder or a member of the company, acting in their capacity as a member and in no other capacity, can enforce the Articles' rules and regulations.

Wood v. Odessa Waterworks Co. is a case study illustrating the binding effect of articles on the company's members. The Waterworks Co.'s articles of incorporation stated that "the directors may, with the approval of the members in general meeting, declare a dividend to be paid to the members." Instead of paying the dividend in cash, a resolution was passed to issue debenture bonds to the shareholders. In an action by a member to prevent the directors from acting on the resolution, the court ruled: "The question is whether the proposed action is in accordance with the company's articles of incorporation." These provisions stipulate that the directors may declare a dividend to be paid to shareholders with the approval of a general meeting. Initially, this implies being compensated in cash. The proposed issuance of debenture bonds is not a payment in cash." Directors were therefore prevented from acting on the resolution

Regarding the members' relationships with the company, the bylaws are binding.

The Articles of Association are a 'contract of the most sacrosanct character' between the company and each member, binding the members to the company through a statutory covenant. All money payable by a member to the company pursuant to the Memorandum or Articles is owed by him to the company. Each member is assumed to have signed and consented to observe the articles. Members are obligated by the articles as if each had individually agreed to abide by them. A company can prosecute its members for both the enforcement of its Articles and the prevention of their violation. Instances include:

Borland's Trustees v. Steel Bros. & Co. Ltd. (1901): A Case Study The company's articles of association stipulated that in the event of a member's insolvency, his shares would be sold at a price determined by the directors." Borland became insolvent. His bankruptcy trustee desired to sell these shares at their actual value and argued that he was not obligated by the articles. It was deemed obligated to comply with the provisions of the articles of incorporation.

Binding between individuals

The contractual force of the articles is limited to matters deriving from the relationship between the members as members of the company and does not extend beyond this relationship. The articles are a contract between each member and the organization. The articles do not regulate their individual liberties. These rights can only be enforced by or against a member via the organization. Nevertheless, there are exceptions. Courts have interpreted the articles as constituting a contract between individual members in their capacity as members, without enlisting the company as a defendant.

The case of Rayfield and Hands (1960) provides insight into the issue at hand. Rayfield was a company's shareholder. He was required to notify the board of directors if he intended to transfer the shares. Directors were required to purchase shares at a reasonable price. Rayfield notified the directors as required by the articles. The board of directors argued that they were not required to accept and pay for Rayfield's shares and that the articles could not impose such a requirement on them. By considering the directors as members, the court rejected this argument and compelled them to purchase Rayfield's shares at a fair price. The court also determined that Rayfield did not need to join the company in order to sue the directors.

No obligation towards outsiders.

The company's memorandum and articles do not constitute a contract with the third party. The company and its members are not required to implement the provisions of the memorandum and articles with respect to third parties.

In Browne v. La Trinidad, the company's articles of incorporation contained a clause stating that Browne should be a director and should not be removed. However, he was dismissed after filing a lawsuit to prevent the company from excluding him. It was determined that no contract existed between Browne and the company. Even if articles purport to grant him certain rights, no external can enforce them against the company.

Therefore, an interloper cannot use the Articles to establish a claim against the company. Even if a member has certain rights in a capacity other than that of a member, they cannot be enforced against the company. For these 'outside privileges', the member would be an outsider..

5.8 ALTERATIONS OF ARTICLES

A corporation has the inherent authority to amend its articles. Section 14 of the Companies Act grants the company the ability to amend its articles through the adoption of a special resolution. A corporation can even amend its Articles with retroactive effect. Any provision making Articles unchangeable is deemed unlawful. Company cannot deprive itself of the ability to amend its articles through an express provision in the Articles or an independent contract. However, there are limitations or restrictions on the company's ability to modify its articles of association. These are listed below

Articles may only be modified through a special resolution. Even if they provide for such a procedure, articles cannot be amended by a regular resolution.

No amendment may exceed the provisions of the Companies Act or the articles of incorporation. However, articles may be modified to clarify ambiguous passages or to supplement the memorandum with regard to matters on which it is silent.

An amendment to the articles of incorporation that removes the company's ability to amend its articles would be invalid because it violates the Act's provisions. However, an Article prescribing a specific procedure for enacting the special resolution for amending the Articles is valid.

Alteration seeking to impose an additional liability on a member of the company after the date he became a member, to take more shares than he has already taken or to pay any more money than he is obligated to pay on his shares shall not be binding on him unless he consents in writing to such an alteration, except where the company is a club or other association and the alteration of Articles provides for an increase in the rate of subscriptio.

Alteration should not be prohibited or contrary to public policy, in addition to not violating any other statutes in effect.

The ability to amend the Articles must be exercised in good faith for the benefit of the entire company by the shareholders.2 Changes made in good faith and in the best interests of the company are valid even if they are likely to harm the personal interests of some company members. The amendment of the Articles of Incorporation to grant the directors the authority to require any shareholder who competed with the company's business to transfer his shares at full value is valid and binding on the members of the corporation because it will be advantageous and in the best interests of the corporation as a whole.3 Amendments to the Articles shall not be valid if made to benefit an aggressive, vindictive, or fraudulent majority.

Certain Articles provisions cannot be amended without the prior sanction of the Central Government. Among these is the transformation of a public company into a private one.

A corporation may amend its articles even if doing so violates an agreement with an external. It cannot be restrained by injunction from modifying its articles that constitute a breach of contract, but it may be liable for damages if it does so. The outsider's remedy depends on whether his contract is governed solely by the terms of the articles or is independent. In the first scenario, the modification will take effect and the outsider will have no recourse against the company. In the latter scenario, the company can repudiate the contract by amending its terms, but will be culpable for any damages caused to the third party as a result. This is because "a company cannot violate a contract by modifying its provisions.

5.9 CONSTRUCTIVE NOTICE OF THE MEMORANDUM AND ARTICLES

Articles and Memorandum are public documents. These are accessible for public inspection in the office of the Registrar. The company's memorandum and articles of incorporation are presumed to be known to all parties and to have been understood in their appropriate context.

This assumed notification is known as constructive notice. A person who violates the provisions of the company's Memorandum and Articles of Incorporation must endure the consequences of the lapse.

The case of Kotla Venkataswamy v. Rammurthy exemplifies the rule. The company's Articles of Association stipulate that all contracts, deeds, etc. must be signed by the managing directors, secretary, and a working director. On behalf of the business, a mortgage deed was executed in favor of Rammurthy. The only signatures on the document were those of the secretary and a working director. It was determined that the company was not obligated to pay the money under the deed because Rammurthy was required by the company's articles to examine the deed's.

5.10 DOCTRINE OF INDOOR MANAGEMENT

The doctrine of indoor management endeavours to provide protection for outsiders by requiring the individuals in charge of the company's management to follow the procedure outlined in the Articles of Association. It allows outsiders to presume that actions have been taken in accordance with the Articles of Association's provisions and procedures. Those responsible for the management of the company's affairs are obligated to observe internal managerial procedures, such as those pertaining to the Board's composition, quorum, voting, internal resolutions and regulations, etc. Company shall remain liable to third parties in all such cases, even if internal formalities are found to be incomplete. According to the indoor management doctrine, "persons dealing with the company are obligated to read the registered documents and ensure that the proposed transactions appear to be regular and consistent with the Memorandum and Articles." However, they are not obligated to investigate the legality of the company's internal operations."6 They need not inquire as to whether the delegation of authority to the person with whom the outsider is interacting followed the correct protocol. An outsider is not required to investigate compliance with all internal management regulations. This is because a person can be presumed to know the company's constitution as disclosed in public documents, but not what may or may not have occurred behind closed doors.

Thus, outsiders are required to know only the company's external position and are not required to know its "indoor management." Without the aforementioned norm, businesspeople would be hesitant to deal with corporations. If those who do business with a company are required to view its internal management to ensure that no wrongdoing has occurred, it would significantly impede the seamless operation of the marketplace. The indoor management doctrine operates in opposition to the rule of constructive notice. In numerous instances, the doctrine also known as the Turquand rule has been applied.

Exceptions to the Indoor Management Doctrine:

The doctrine of indoor management is subject to the following exceptions, in which the protection afforded by the rule may not be extended to the company's business partners.

Knowledge of inconsistency. A person with actual or constructive knowledge of the transaction's irregularity is not afforded the protection of the doctrine. In Howard v. Patent Ivory Co., for instance, the company's directors were authorized to borrow up to £1,000 without the approval of the general meeting. Directors lent £3500 to the company without a resolution. It was determined that the company would only be liable for £1000. The Turquand rule was not applied because the directors should have known that the resolution was not approved and therefore could not claim ignorance and immunity.

Suspicious circumstances. When suspicious circumstances surrounding a transaction necessitate further investigation, it is the responsibility of the individual intending to do business with the company to conduct the necessary research and satisfy himself or herself. If the individual does not comply, the rule's protection may not apply to him or her. Suspicion may arise due to an unusually large transaction, an unusually quick completion of a transaction, or a company officer acting beyond his evident authority. In the case of Anand Bihari Lal v. Dinshaw & Co., the plaintiff accepted a transfer of Company property from its accountant. The transfer was deemed invalid. Without a properly executed power of attorney, the plaintiff cannot presume the accountant has the authority to sell the company's property. Forgery. The concept of indoor administration does not apply to forgeries committed by company employees. This is due to the fact that the doctrine legalizes irregularities but not illegalities.

Forgery is unlawful and therefore null from the start. The case Ruben v. Great Fingall Consolidated clarifies the situation. In this instance, the Secretary of the company forged the signatures of the two directors and issued the document to Ruben after affixing the company's insignia. The Certificate was denied by the Company. The plaintiff argued that he had no way of knowing whether the signatures are authentic or forgeries, and therefore it is a part of the company's internal administration. But it was determined that the indoor management rule has never been applied to a forgery.

5.11 PROSPECTUS & ITS CONTENT

A prospectus is a document issued by a company that invites the general public and investors to subscribe to its securities. A prospectus also informs investors about the risk associated with investing in the company. A prospectus is mandated to be issued only after the company has been incorporated.

The section 2(70) of the 2013 Companies Act defines a prospectus as follows: A prospectus signifies Any document referred to or issued as a prospectus, including any notices, circulars, advertisements, or other documents soliciting public deposits or soliciting public proposals for the subscription of shares.

Included in a prospectus:

- Address of the company's registered office. Names and addresses of the company secretary, auditors, financiers, and underwriters, etc.
- The opening and concluding dates of the issue.
- Declaration regarding the timely distribution of allotment letters and refunds.
- A statement from the board of directors regarding the distinct bank account into which all funds received from issued shares are to be deposited.
- Information regarding the underwriting of the issue.
- Consent of directors, auditors, and financiers to the issue, and, if applicable, an expert's opinion.
- The authority for the issue and the specifics of the adopted resolution.
- Procedure and timetable for the allocation and issuance of securities.
- Capital structure of the organization.
- The company's primary objectives and current business, as well as its location.
- Principal purpose of the public offering and parameters of the current issue.
- Minimum subscription quantity payable as a premium, other than on cash, for the issuance of shares.

- Information regarding directors, including their appointment and compensation.
- Disclosure of sources of promoter's contribution.
- Particulars relating to management perception of risk factors unique to the project, gestation period of the project, extent of progress made on the project, and completion deadlines for the project.

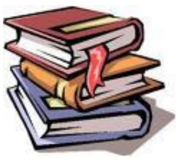
5.12 SUMMARY

Article of association is a document containing the company's internal rules, regulations, and bylaws. The Memorandum and Articles of Incorporation bond the company and its members. Section 14 of the Companies Act permits a company to amend its articles by passing a special resolution to this effect. The doctrine of indoor management protects parties dealing with a company whose internal procedures are not in accordance with its articles of association.

5.13 REFERENCES

- David Needle., Business In Context: An Introduction To Business And Its
- Environment (Revised Edition), Thomas Rennie, 2004.
- ● David P. Baron, Business And Its Environment, Pearson Education, 2006.
- ● Thomas Childs Cochran And Harold I. Sharlin, Business And Its Environment: Essays For Thomas C. Cochran, Greenwood Press, 1983.
- ● Patrick J. Cihon and James O. Castagnera, Employment and Labor Law, South- Western College.
- ● Richard Schaffer, Beverley Earle, and Filiberto Agusti, International Business Law and Its Environment, South-Western College, 2005.

5.14 SUGGESTED READINGS



- David Needle., Business In Context: An Introduction To Business And Its
- Environment (Revised Edition), Thomas Rennie, 2004.
- ● David P. Baron, Business And Its Environment, Pearson Education, 2006.

- ● Thomas Childs Cochran And Harold I. Sharlin, Business And Its Environment: Essays For Thomas C. Cochran, Greenwood Press, 1983.
- ● Patrick J. Cihon and James O. Castagnera, Employment and Labor Law, South- Western College.
- ● Richard Schaffer, Beverley Earle, and Filiberto Agusti, International Business Law and Its Environment, South-Western College, 2005.

5.15 TERMINAL QUESTIONS

1. What do you mean by the Articles of Association?
2. Explain the alteration of Article of Association
3. Write down the circumstances when protection under the doctrine of indoor management is provided.
4. Discuss the doctrine of Indoor Management.

UNIT 6 MEANING AND TYPES OF SHARES

6.1 INTRODUCTION

A company's share capital is divided into units. Each element is known as a share. Thus, a share represents a fraction of the company's capital. There are various types of shares. A company's Board of Directors has the authority to issue shares.

6.2 OBJECTIVES

After reading this unit you will be able to understand:

- Understand the meaning and nature of a share

- Distinguish between a stock and a share
- Recognize the various types of shares

6.3 MEANING & NATURE OF SHARE

The Companies Act defines a share as "a share in the share capital of a company and includes stock" [Section 2 (84)]. A share consists of a series of mutual covenants entered into by all the shareholders inter se in accordance with the provisions of the Companies Act and the Articles of Association and measures the shareholder's interest in the company for purposes of liability and interest. In addition to contractual rights, a shareholder is also entitled to the rights granted by the Companies Act. It gives its proprietor the right to receive a proportionate share of the company's profits, if any, as well as a proportionate share of the company's assets upon liquidation. Alternatively, the shareholder may be required to pay the full value (amount unpaid on a share he owns) upon dissolution. The shares or other interests of a member in a company are movable property, transferable in accordance with the company's bylaws. Unless the shares are held in Demat form with a depository (Section 45), each share in a company with a share capital is identified by a unique number known as a distinctive number. A share cannot be subdivided further. Subject to the Articles of Association, directors have the authority to issue shares on behalf of the company. They must, however, use this authority legitimately for the company's benefit.

6.4 SHARES V/S STOCK

A person's total holdings of a company's share capital are referred to as his or her stock. It can be divided and transmitted in any fractions and subdivisions, regardless of the shares' original par value. If the Articles of Incorporation permit, fully paid-up share capital may be converted into stock by enacting an ordinary resolution at the annual meeting of shareholders. Conversion of shares into stock has no effect on the holder's relationship with the company. The holder continues to be a member. The holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as if they held the shares from which the stock arose in regard to dividends, voting at meetings of the company and other matters, but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets on the winding-up) shall be conferred by an amount of stock which, if existing in shares, would not have had such rights, privileges or advantages.

By means of an ordinary resolution, stock may be reconverted into shares. The practice of converting shares into equities or vice versa is uncommon in India.

Difference between Stock and Shares

- A share may or may not be completely paid, whereas a stock is always fully paid.
- A share has a nominal value, whereas a share of stock does not.
- A share cannot be transmitted in fractions, whereas a stock may be transferred in any amount.
- All shares have unique identifiers (except when held in demat form), whereas stocks disclose the share capital's consolidated value. None of the fractions of the stock are numbered.
- All shares have the same face value. Stocks may be of differing quantities. Unlike shares, stock cannot be issued directly in the beginning. Only completely paid-up shares are convertible into stock.

6.5 TYPES OF SHARES

According to section 43 of the 2013 Companies Act, a company limited by shares (public or private) may issue the following types of shares:

- Preference Shares
- Equity Shares
- Equity Shares with Differential Rights
- Sweat Equity Shares

6.6 PREFERENCE SHARES

Preference shares, in the context of a company limited by shares, are those that carry the following preferential rights over other classes of shares: (a) a preferential right to a fixed dividend, which may consist of a fixed amount or a fixed rate; and (b) a preferential right to repayment of capital in the event of the company's winding up, in preference to other classes of shares.

Types of Preference Share:

Cumulative preference shares: A cumulative preference share has the right to receive the current year's fixed dividend from future profits. Unless paid, the dividend on these shares accumulates. The accumulated dividend arrears must be paid prior to any distribution of profits to holders of other classes of shares. If a company is unable to generate sufficient profits in a given year to pay dividends on preference shares, the shortfall is made up with profits from subsequent years. Unless otherwise specified in the Articles of Incorporation, preference shares are always cumulative.

Non-cumulative preference shares: Dividends on non-cumulative preference shares can only be paid out of the current year's profits and cannot accumulate to be paid out of future years' profits. In the absence of a profit in a given year, the right to claim dividends expires.

Participating preference shares: In addition to a fixed dividend rate, the holders of these shares are also entitled to partake in the excess profits remaining after paying dividends to equity shareholders, up to a specified limit. They may also be entitled to a portion of the company's surplus assets upon dissolution. Unless otherwise expressly stated in the articles of incorporation, preference shares shall be presumed to be non-participating.

Non-participating preference shares: The proprietors of these shares are only entitled to a fixed dividend rate and do not receive a portion of the company's excess profits. Thus, the entire surplus profit will be distributed to the equity shareholders.

The proprietors of convertible preference shares have the right to convert their preference shares into common stock within a specified time frame.

Non-convertible preference shares: These preference shares are not convertible into common shares.

Redeemable shares are those that can be redeemed after a fixed period or after giving a certain notice at any time at the company's discretion out of the company's profits or the proceeds from the sale of new shares.

Non-redeemable preference shares have the characteristics of a persistent and perpetual liability that cannot be redeemed during the company's existence. The Companies Act prohibits a company from issuing preference shares that are irredeemable or redeemable 20 years after the date of issue.

6.7 EQUITY SHARES

Equity shares, with reference to any company limited by shares, are those which are not preference shares. They possess no preferential privileges. In terms of dividends and capital repayment, these shares rank behind preference shares. They have the opportunity to participate in the company's decision-making process. They are entitled to the opportunity to vote. They receive dividends from profits declared at the annual general meeting only after the fixed dividend on preference shares has been paid.

6.8 EQUITY SHARES WITH DIFFERENTIAL RIGHTS

In accordance with the Companies (Issue of Share Capital with Differential Voting Rights) Rules of 2001, a company limited by shares may issue shares with differential dividend, voting, or other rights, subject to the following regulations:

The company's articles of association authorize the issuance of these shares. A company may issue equity shares with differential rights up to a maximum of 25% of the total issued share capital. Shareholder approval is obtained through the adoption of an ordinary resolution at a general meeting. A publicly traded company must approve the resolution via postal ballot.

The company has distributable profits in accordance with section 205 of the Companies Act for the three financial years preceding the year in which it decided to issue such shares; The Company has not defaulted in filing annual accounts and annual returns for the three financial years preceding the year in which it decided to issue such shares; and The company has not failed to repay its deposits or interest thereon by the due date or redeem its debentures by the due date.

A holder of equity shares with differential voting rights is entitled to bonus shares, right shares of the same class. A register of members containing all pertinent information about the shares issued and the shareholders should be kept.

6.9 SWEAT EQUITY SHARES

"Sweat equity shares" refers to equity shares issued by a company to its employees or directors at a discount (to the market price) or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions. Section 54 states that a company may issue sweat equity shares of an already issued class of shares if the following conditions are met.

a) the issue is authorized by a special company resolution;

(b) the resolution specifies the number of shares, the current market price, any consideration, and the class or classes of directors or employees to whom the shares will be issued;

(c) at the date of such issue, one year must have elapsed since the date the company began operations; and

(d) where the company's equity shares are listed on a recognized stock exchange, the sweat equity shares must be issued in accordance with SEBI's regulations; if they are not listed, the sweat equity shares must be issued in accordance with the rules prescribed by the government.

6.10 DEFERRED SHARES

A deferred share is a share that has no rights to the assets of a bankrupt corporation until all common and preferred shareholders have been paid. It may also be a share issued to company founders that prevents them from receiving dividends until all other classes of shareholders have received dividends. Long-term investments in a company may also include the issuance of deferred shares to venture capital and other private investor groups.

6.11 SUMMARY

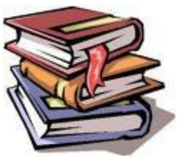
Share is a fractional portion of the company's capital. Share includes stock. A person's total holdings of a company's share capital are referred to as his or her stock.

A company limited by shares may issue Preference Shares, Equity Shares, Equity Shares with Differential Rights, and Sweat Equity Shares.

6.12 REFERENCES

- M.M. Sulphey & Az-Har Basheer, LAWS FOR BUSINESS, Phi Learning Pvt. Ltd Delhi, 2011
- Maheshwari & Maheswari, MERCANTILE LAW, Himalaya Publishing House.Mumbai
- Rudder dutt & Sundaram, INDIAN ECONOMY, Vikas Publishing House, New Delhi.
- Veena Keshav Pailwar, ECONOMIC ENVIRONMENT OF BUSINESS, Phi Learning Pvt. Ltd, New Delhi, 2010

6.13 SUGGESTED READINGS



- M.M. Sulphey & Az-Har Basheer, LAWS FOR BUSINESS, Phi Learning Pvt. Ltd Delhi, 2011
- Maheshwari & Maheswari, MERCANTILE LAW, Himalaya Publishing House.Mumbai
- Rudder dutt & Sundaram, INDIAN ECONOMY, Vikas Publishing House, New Delhi.
- Veena Keshav Pailwar, ECONOMIC ENVIRONMENT OF BUSINESS, Phi Learning Pvt. Ltd, New Delhi, 2010

6.14 TERMINAL QUESTIONS

1. What do you mean by Share ?
2. Differentiate between Stock and Share
3. Discuss the meaning and types preference shares

4. Explain Equity Share. How it is different from preference share?
5. Write a short note on sweat equity share.

UNIT 7 ISSUE AND ALLOTMENT OF SHARES

7.1 INTRODUCTION

A share is the smallest unit into which the company's total capital is divided. The mechanism by which a company distributes new shares to existing or new shareholders. Individuals, institutions, and corporations are all eligible to receive stock.

7.2 OBJECTIVES

After reading this unit you will be able to understand:

- Identify the general principles and statutory provisions of allotment of shares
- Comprehend the meaning of allotment of shares

- Understand the types of share issues

7.3 WHY DO COMPANY ISSUE SHARES

Companies issue shares in order to raise capital from investors who invest their funds. These funds are then utilized for the development and expansion of businesses. The company issues various categories of shares, including preference shares, common shares, shares without voting rights, and any other shares permitted by law. These provide shareholders with a stake in the company's equity and a dividend share of its profits, as well as the ability to vote at shareholder meetings.

7.4 TYPES OF ISSUE OF SHARES

As discussed below, there are a number of methods in which a company can issue its shares.

Public issue or public offering refers to the issuance of shares or convertible securities in the primary market by the company's promoters in order to attract new investors for subscription. In a public offering, shares are offered for sale to the general public in order to raise capital, for which the company issues a prospectus. Investors who wish to subscribe for shares submit an application to the company, which then assigns them shares. The entity that issues securities is known as the Issuer.

Initial Public Offering (IPO): Also known as an IPO, this is the first time that a company sells its shares to the general public. It is an offer in which an unlisted or privately held company makes its first public offering of shares or convertible securities, or an already listed company makes its first public offering of existing shares or convertible securities. In this manner, the unlisted or developing company lists its shares on a recognized stock exchange and goes public in order to raise capital for operations. On the other hand, established entities make IPOs possible for their proprietors to sell a portion or all of their shares to the public.

Follow-up Public Offer or Further Public Offer (FPO): If an already-listed company that has undergone an IPO offers new or additional shares to the public for sale in order to increase their equity base or pay off debts, this is known as a Follow-up Public Offer or Further Public Offer.

Right Issue: In a right issue, shares or convertible securities are issued to existing shareholders at a discounted price, on a date predetermined by the company. The primary objective of issuing right shares, as opposed to a new issue, is to raise additional capital by offering shares to existing equity shareholders in proportion to their holdings.

A composite issue occurs when an already-listed company offers shares on a public-cum-rights basis and simultaneously allots the shares.

Bonus Issue: As the name implies, it refers to the free additional shares distributed to current shareholders in proportion to the number of completely paid-up equity shares they held on a specific date. These shares are issued using the company's free reserves or premium account for securities.

Private Placement: Private placement is when a company offers shares to a restricted group of investors, such as mutual funds, banks, insurance companies, pension funds, etc., in order to raise capital.

Preferential Allotment: A publicly traded company allots shares on a preferential basis to a select group of investors, such as individuals, venture capitalists, and corporations.

Qualified Institutional Placement (QIP): When a listed company sells equity shares or non-convertible securities to a qualified institutional client. Institutional buyers such as mutual funds, venture capital funds, public financial institutions, insurance funds, scheduled commercial banks, pension funds, etc., qualify as institutional buyers.

Institutional Placement Programme (IPP): If a publicly listed company makes a follow-on offer of equity shares or the promoters offer shares for sale, wherein the shares are allotted exclusively to qualified institutional buyers (QIBs) with the goal of achieving a minimum public shareholding.

The company issues stock in order to raise capital from the general public for use in its business operations. However, they can also be issued for other purposes, such as debt repayment, funding a new initiative, or the acquisition of another.

7.5 ALLOTMENT OF SHARES

A company's prospectus is an invitation to the public to make an offer (or application) for the company's shares. The application for shares is the applicant's offer to purchase shares. Because the application for shares is made in response to the company's invitation to the public to subscribe for securities, there is no contractual obligation between the company and the applicant. The allocation of shares signifies the company's acceptance of the offer. The transmission of acceptance of this offer through an allotment order or notice creates a legally binding contract between the parties, i.e., the company and the shareholder.

Allotment refers to "the appropriation from the company's previously inappropriate share capital." Allotment is the company's acknowledgment of the offer to purchase shares. Ordinarily, a board resolution authorizes the distribution of shares.

7.6 GENERAL PRINCIPLES FOR ALLOTMENT

The contract between the company and the person to whom shares are allotted (allottee) is the allotment of shares. To be valid, an allotment must adhere to the following general allotment principles:

1. allotment must be made by the appropriate authority. The allocation of company shares is the responsibility of the board of directors. The board should ratify an allocation resolution during its meeting.

It should be completed within a reasonable amount of time. Allotment must occur within a reasonable time frame; otherwise, the offeree or recipient may decline the shares. What constitutes a'reasonable time' is a matter of fact in each instance.

3. It must be transmitted. There can be no legally binding agreement unless the applicant is duly notified of the offer's acceptance. Even if a properly addressed letter of allotment is delayed or lost during transit, it will be considered a valid communication.

It should be unconditional and unequivocal. Allotment must be absolute, unconditional, and in accordance with the application's terms and conditions; otherwise, the applicant is not bound by the allotment.

7.7 STATUTORY PROVISION FOR ALLOTMENT

Company Law imposes no restrictions on the allocation of shares by a private company. However, a public company offering shares or debentures for public subscription cannot proceed with a valid allotment unless it complies with Sections 39-40 of the Companies Act 2013.

Minimum Subscription (Sec 39(1)): A company may not issue securities to the public until the minimum amount stated in the prospectus has been subscribed and the quantities payable on application for the amount stated have been received by the company in the form of a check or other instrument.

Application Money (Sec 39 (2)): At least 5% of the nominal value of the shares must have been received in cash by the company as application money, or as specified by the Securities and Exchange Board through the issuance of regulations.

Money to be kept in a scheduled bank(Section 40(3)): All application money received from the public for subscription to the securities shall be kept in a separate bank account in a scheduled bank and shall be used only for— (a) adjustment against allotment of securities where the securities have been permitted to be dealt with in the stock exchanges specified in the prospectus; or (b) repayment of monies received from applicants within the time specified in the prospectus.

Return of Application Money (Sec 39(3)): If the stated minimum amount has not been subscribed and the sum payable on application has not been received within thirty days from the date of issue of the prospectus, the amount received from applicants shall be returned within the time and manner prescribed.

Return of Allotment (Section 39 (4)): Whenever a company with a share capital allots securities, it must file a return of allotment with the Registrar in the manner prescribed. The return of allotment should include the number and nominal value of the shares allotted, the names, addresses, and occupations of the allottees, as well as the amount, if any, paid, due, or payable on each share.

Penalty: In the event of a default, the company and the officer in default will be subject to a penalty of one thousand rupees per day for as long as the default continues, or one lakh rupees, whichever is greater.

Securities eligible for trading on stock exchanges (Section 40):

Application to recognized stock exchange: Prior to making a public offering, a company must submit an application to one or more recognized stock exchanges and obtain permission for the securities to be traded on such exchanges.

When a prospectus specifies that an application has been made to a stock exchange, it must also include the name or names of the stock exchange in which the securities will be traded.

Any conditions purporting to require or obligate a securities applicant to waive compliance with any of section 40's requirements are invalid.

If the company fails to comply with the provisions of this section, it will be subject to a fine of not less than five lakh rupees and up to fifty lakh rupees, and each officer of the company who is in default will be subject to imprisonment for up to one year or a fine of not less than fifty thousand rupees and up to three lakh rupees, or both..

7.8 SUMMARY

Share is a fractional portion of the company's capital. Share includes stock. A person's total holdings of a company's share capital are referred to as his or her stock.

A company limited by shares may issue Preference Shares, Equity Shares, Equity Shares with Differential Rights, and Sweat Equity Shares.

Allotment of share is acceptance by the company of the offer/application to take shares in the company. Allotment to be valid must comply with general principles and statutory provisions. Every company making a public offer must apply to one or more recognised stock exchanges and obtain permission for the securities to be traded on such exchanges.

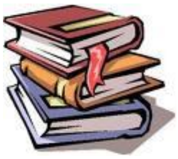
7.9 REFERENCES

- Varma, Sindhu. "India: New Companies Act, 2013 – The Cat Is Finally Out".
- Mondaq. Archived from the original on 28 March 2014. Retrieved 27 March 2014.
- Sharma JP (2012), “An easy approach to Corporate Laws” Ane

Books Pvt. Ltd.
New Delhi, India

- Pathak, LEGAL ASPECTS OF BUSINESS, Tata Mcgraw- Hill Publishing Company Limited, New Delhi, 2010.
- Keith-davis & William Frederick, BUSINESS AND SOCIETY, McGraw-Hill, Tokyo

7.10 SUGGESTED READINGS



Varma, Sindhu. "India: New Companies Act, 2013 – The Cat Is Finally Out".

- Mondaq. Archived from the original on 28 March 2014. Retrieved 27 March 2014.
- Sharma JP (2012), "An easy approach to Corporate Laws" Ane Books Pvt. Ltd.

New Delhi, India

- Pathak, LEGAL ASPECTS OF BUSINESS, Tata Mcgraw- Hill Publishing Company Limited, New Delhi, 2010.

Keith-davis & William Frederick, BUSINESS AND SOCIETY, McGraw-Hill, Tokyo

7.11 TERMINAL QUESTIONS

1. What do you mean by allotment of shares
2. Discuss the general principles and statutory provisions of allotment of shares.
3. Why do companies issue shares ?
4. What are the different types of issuing shares
5. Write Short notes on
   - Bonus Issue
   - IPO
   - FPO
   - Composite Issue

UNIT 8 TRANSFER OF SHARES & DEPOSITORY SYSTEM

8.1 INTRODUCTION

The shares of a corporation are movable property that shareholders may transmit in accordance with the Articles. The proprietorship of shares confers an absolute and inherent right to transfer them. Articles cannot prohibit members from transferring shares, rendering shares non-transferable. A public company's shares are freely transferable (Section 58), whereas a private company must restrict the transferability of its members' shares. Private companies' articles of incorporation contain restrictions on the transferability of shares. Typically, the restriction imposed by a private company is pre-emption, in which the members are required to offer their shares to the existing members of the company prior to offering them to outsiders.

8.2 OBJECTIVES

After reading this unit you will be able to understand:

- Mechanism for the transfer of securities
- Reliefs available in the event that a company refuses to register a transfer of securities
- Determine the need for the development of the Depository system
- Analyze the advantages of the depository system
- Examine the operation of the depository system.

8.3 FREE TRANSFERABILITY OF SHARES OF PUBLIC COMPANY

Section 58 of the Companies Act stipulates that listed and unlisted public company shares are freely transferable. A public company cannot limit the transferability of its shares. A public company's board of directors, or a depository if the shares are in demat form, cannot refuse or delay the transmission of securities. However, if the transfer of shares is in violation of any of the provisions of the Securities and Exchange Board of India Act, 1992, or regulations made thereunder, or the Sick Industrial Companies (Special Provisions) Act, or any other law in force at the time, a depository, company, participant, investor, or SEBI may apply to the Company Law Board (Tribunal, once it is constituted) to inquire about the violations. After conducting the investigation, if the Company Law Board (Tribunal) determines that a violation has occurred, it shall direct the depository or the company to correct its register or record. The Company Law Board (Tribunal) may suspend the transferee's voting rights pending the investigation. Nonetheless, the transferee will continue to be eligible to receive dividends and bonus shares, if declared by the company during the period of the investigation. The transferee may also transfer the shares to a third party while the investigation is ongoing.

8.4 REFUSAL OF TRANSFER OF SHARES

If a private company limited by shares refuses to register the transfer or transmission of the right to, any securities or interest of a member in the company, it must send a notice of the refusal to the transferor and the transferee or the person giving intimation of such transmission within thirty days of the date the instrument of transfer or the intimation of such transmission was delivered to the company.

If a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission was delivered to the company, the transferee may appeal to the Tribunal within sixty days from the date on which the instrument of transfer or the intimation of transmission was delivered to the company.

(a) direct that the transfer or transmission be registered by the company, and that the company comply within ten days of receiving the order; or

(b) order the correction of the register and direct the company to pay any damages sustained by any aggrieved party.

Whoever contravenes the order of the Tribunal under this section shall be punished with imprisonment for a term of not less than one year but not more than three years and with a fine of not less than one lakh rupees but not more than five lakh rupees.

8.5 PROCESS OF TRANSFER OF SHARES

A company shall only register a transfer of securities or interest of members when a proper instrument of transfer duly stamped, dated and executed by or on behalf of the transferor and transferee and specifying the name, address and occupation has been delivered to the company by either party within sixty days of the date of execution, along with the certificate of security or the letter of allotment of securities. In cases where a transfer instrument has been lost or not delivered, the company may register the transfer on an indemnity bond.

Upon receiving notification, a company may register the transmission of any right to securities by operation of law from any person to whom the right has been transmitted.

Where an application is made by the transferor alone and pertains to partially paid shares, the transfer shall be registered by the company only after giving notice of the application to the transferee and the transferee gives no objection within two weeks of receiving notice.

The transfer of any security or other interest of a decedent in a company by his legal representative is valid as if the decedent had been the holder at the time of the execution of the instrument of transfer. 5. Every company shall, unless prohibited by any provision of law or any order of a court, tribunal, or other authority, deliver the certificate of all securities allotted, transferred, or transmitted as follows: Within a period of two months from the date of incorporation, in the case of subscribers to the memorandum; Within a period of two months from the date of allotment, in the case of any allotment of any of its shares; Within a period of one

However, if the securities are dealt with through a depository, the company must promptly notify the depository of the details of the securities' allocation.

8.6 BLANK TRANSFER

Blank transfer refers to a transfer form signed by the transferor of shares and completed in every way except for the transferee's name and signatures. It allows the transferee of shares to register the shares to himself or transfer the shares to another person without completing the formalities of transferring shares, such as submitting a new transfer form and paying stamp duty. A blank transfer can only remain in circulation and valid for 60 days after it is signed by the prescribed authority or until the company closes its register of members, whichever comes first.

8.7 TRANSMISSION OF SHARES

The legal term for the transfer of shares by operation of law is conveyance of shares.

Shares are transferred upon the demise, lunacy, or insolvency of an individual member, or, if the member is a limited liability company, upon its liquidation. In each of these instances, the legal representative, administrator, official assignee, or receiver shall be entitled to the shares. It also includes the transfer of share ownership due to constitutional amendments.

The individual asserting ownership of the shares must apply to the company for transfer of the shares into his name. There is no requirement for a formal instrument of transfer, but the company may request a probate, succession certificate, letter of administration, death certificate, etc.

The transfer of any security or other interest of a deceased person in a company by his legal representative is valid as if he had been the holder at the time of the execution of the instrument of transfer, even if the legal representative is not the holder.(article 56(5)). He is also entitled to dividends declared by the company, but has no voting rights at company meetings. However, if the company's articles permit it, the directors may withhold dividend payment to compel a legal representative to choose whether he will be a member or not.

A company may refuse to register a transmission if the Articles contain a provision to that effect. However, the directors must exercise their authority in good faith. The aggrieved party may seek relief from the Company Law Board (Tribunal).

8.8 DEPOSITORY SYSTEM

The process of physical certificate transfer has numerous drawbacks. In the absence of a depository:

Every share transfer must involve the tangible transfer of share certificates and registration with the respective company.

The process frequently results in lengthy settlement delays, and a significant proportion of transactions fail due to improper documentation.

Theft, forged documents, certificate alteration, and other irregularities.

The issuer has the authority to refuse a security's transfer. All of this increases settlement costs and delays, restricts liquidity, and makes investor complaint resolution time-consuming and, at times, impossible. Thus, the limitations of having tangible shares are as follows:

Expensive in terms of postal charges, stamp duty, and administrative costs, etc.

Depository system is a system in which the securities of investors are held in electronic form with the depository at the investors' request, and transmission of securities occurs via book entries on the depository's ledger. The system is also known as the "scripless trading system" because it does not involve physical securities or their transportation.

Characteristics of the Deposit System

Securities in Dematerialized Form – The depository system maintains ownership records of the investor's securities in book entry format. The system immobilizes tangible securities, eliminating the existence of physical certificates.

Fungibility - In the depository system, dematerialized securities are not distinguished by unique numbers or certificate numbers, as they are in the physical environment. Consequently, all securities within the same class are equivalent and interchangeable.

Parties Involved - The parties involved in a depository system are (i) the depository, (ii) the depository participant (DP), (iii) the beneficial proprietor, and (iv) the issuer. The depository provides services related to the recording of securities allotments and transfers of ownership in its records. A depository operates through depository participants, who serve as the depository's agents and through whom investors utilize the depository's services. In the depository system, dematerialized securities are owned by both the Registered Owner and the Beneficial Owner. For dematerialized securities, the depository is the Registered Owner in the issuer's (i.e. company's) records;

Freedom of Transfer of Shares: The electronic book-entry system enables the unfettered transfer of shares held in dematerialized form. The system dispenses with the transfer deed and other transfer of securities-related procedural requirements.

No Stamp Duty: No stamp duty is required for the transmission of securities in electronic form. Upon the transfer of tangible shares, a tax of 0.5 percent of the market value of the transferred shares is due.

Zero Risk: The depository system eliminates all risks associated with tangible certificates, such as delays, loss in transit, theft, and bad deliveries. Through the unrestricted transferability of securities with speed, accuracy, transparency, etc., depositories prevent capital market irregularities, safeguard the interests of investors, and pave the way for the orderly operation of the financial markets.

Performance of the Depository System

The depository system operates as follows:

The system envisions the establishment of one or more repositories to store investors' electronic securities.

The depository is operated by its agents, known as Depository Participants (DP).

An investor who wishes to utilize the Depository's services must establish a beneficiary account with the Depository via a DP. The account referred to as the "Demat" account can be established with multiple DPs.After establishing a demat account, the investor must dematerialize the physical securities in his possession. To dematerialize securities, the investor must submit the Dematerialisation Request Form (DRF) along with the security certificate to the DP. The DP will notify the company/issuer via the Depository and return the security certificate. The dematerialization process takes approximately 30 days.

The issuer/company, upon receiving the notification, shall cancel the security certificate and substitute the name of the Depository as the registered owner of the security. The Depository, upon receiving notification from the issuer/company, records the investor's name as the beneficial owner of the security.

Whenever a company announces rights, bonuses, or dividends for a particular security, the Depository would provide the complete list of investors holding electronic shares of that security on the record date. The company will distribute the rights, dividends, etc. according to the provided information.

In the event of a sale of the security under this mode, the investor/transferor (the client) must inform the DP by issuing a Delivery Instruction Slip (DIS) that is duly signed and contains the transaction details. In the event of a purchase, the client will notify the DP with information regarding the purchased security. Upon receiving the information through the DP, the Depository will record the transfer of securities in the name of the transferee.

DP will also make book entries in the investor's account to record the sale/purchase of securities. DP is required to transmit statement of accounts to clients at regular intervals and to update the account after each transaction. DP is also required to update the account after each transaction. The client/investor must pay fees to both the Depository and the DP in order to receive services.

Advantages of the Deposit System

The following benefits accrue to investors:

Bad deliveries are almost eliminated.

The hazards associated with physical certificates, including loss, theft, and tampering, are eliminated.

It eliminates the management of massive amounts of paper

There is immediate transfer and registration of the securities (at the end of each settlement cycle, which is four business days, i.e. T+3), and you are not subject to processing time-related delays.

This expedites the settlement cycle and the realization of sale proceeds so that the investor's funds are not held up unnecessarily.

The system expedites the distribution of shareholder benefits such as rights shares, bonus shares, etc.

The stamp duty on transfer of securities, which is 0.25 percent of the consideration for tangible transfer of shares, is not applicable.

The depository communicates to investors the availability of periodic status reports regarding their holdings and transactions.

Deposit Account Act

The Depositories Act, 1996, which came into effect on September 20, 1995, provides a legal framework for the establishment of depositories to facilitate the holding of securities, including shares, in demat (electronic) form and to facilitate the transfer of shares through book entry in accounts maintained by the depository.

Legal Obligations and Rights

Contract between the depository and the participant. A depository must engage into an agreement with one or more participants to serve as its agent. (section 4)

Services provided by a depository. Any person, through a participant, may engage into an agreement with any depository, in the form specified by the bylaws, to utilize its services. (5th Section)

Surrender of certificate of security. Any person who has entered into an agreement with the depository must surrender the certificate of security for which he seeks depository services to the issuer; The issuer, upon receipt of the certificate of security, shall cancel the certificate of security and substitute in its records the name of the depository as the registered owner of that security and notify the depository accordingly. (article 6)

Registration of securities transfer with the depository. Upon receiving notification from a participant, each depository must register the transfer of a security in the name of the transferee. In addition, if the beneficial owner or transferee of a security requests custody of that security, the depository must notify the issuer. (7th Section)

Alternatives to receiving security certificates or holding securities with a depository. Every person subscribing to an issuer's securities shall have the option of either receiving the security certificates or holding the securities with a depository. (article 8)

Securities in depositories that are fungible. All securities held by a depository are required to be dematerialized and fungible. (article 9)

Rights of depository institutions and beneficial owners. For the purposes of transferring ownership of a security on behalf of a beneficial owner, a depository shall be deemed to be the registered owner. As a registered proprietor, the depository has no voting or other rights with respect to the securities it holds. The beneficial proprietor of securities held by a depository is entitled to all rights and benefits and subject to all liabilities associated with those securities. (article 10)

Register beneficial ownership. Every depository must maintain a register and an index of beneficial proprietors in accordance with Sections 150, 151, and 152 of the Companies Act of 1956. (article 11)

Hypothecation or pledge of securities held in a depository. A beneficial owner of a security held through a depository may, with the prior approval of the depository, establish a pledge or hypothecation. The beneficial proprietor must notify the depository of the pledge or hypothecation, and the depository must then make the appropriate entries in its records. (article 12)

Disclosure of information and documents by the depository and issuer. Every depository is required to provide the issuer with information regarding the transfer of securities in the name of beneficial owners at the intervals and in the manner outlined in the bylaws. Every issuer must also provide the depository with copies of the relevant records pertaining to securities held by the depository. (article 13)

Option to decline participation in any security. If a beneficial proprietor wishes to withdraw a security from a depository, he must notify the depository, which will then make the appropriate entries in its records and notify the issuer. (Chapter 14)

Depositories must indemnify losses in specific circumstances. The depository shall indemnify the beneficial proprietor for any loss caused by its or the participant's negligence. When a participant's negligence causes the depository to indemnify a loss, the depository has the right to recover the amount from the participant.

Methodologies and procedures. Every depository must have systems and procedures that allow it to coordinate daily with the issuer or its agent and the participants in order to reconcile the records of ownership of securities with the issuer or its agent, as applicable, and with the participants. (Article 30 of the SEBI Regulations)

Monitoring, assessment, and evaluation of internal systems and controls. Every depository shall have adequate mechanisms for reviewing, monitoring, and evaluating the controls, systems, procedures, and safeguards of the depository.

8.9 SUMMARY

A public company's shares are freely transferable, whereas a private company is required to restrict the transferability of its members' shares.

A company shall register a transfer of shares when a proper instrument of transfer duly stamped, dated, and executed by or on behalf of the transferor and transferee is delivered to the company by either party within sixty days of the date of execution, along with the certificate of security or the letter of allotment of securities. Blank transfer means a transfer form signed by the transferor of shares and completed in all respects except for the transferee's name and address.

The legal term for the transfer of shares by operation of law is conveyance of shares.

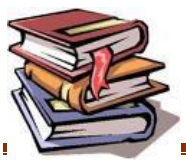
Depository system is a system in which the securities of investors are held in electronic form with the depository at the investors' request, and the transmission of securities occurs via book entries on the depository's ledger.

The Depositories Act, 1996, which came into effect on September 20, 1995, provides a legal framework for the establishment of depositories to facilitate the possession of securities, including shares, in demat (electronic) form and to facilitate the transfer of shares through book entry.

8.10 REFERENCES

- "Business Portal of India : Starting a Business : Regulatory Requirements : Companies Act". National Portal of India. Government of India. Archived from the original on 20 June 2008. Retrieved 17 March 2016.
- Patrick J. Cihon and James O. Castagnera, Employment and Labor Law, South- Western College.
- Richard Schaffer, Beverley Earle, and Filiberto Agusti, International Business Law and Its Environment, South-Western College, 2005.
- Keith-davis & William Frederick, BUSINESS AND SOCIETY, McGraw-Hill, Tokyo.
- M.M. Sulphey & Az-Har Basheer, LAWS FOR BUSINESS, Phi Learning Pvt. Ltd.Delhi, 2011

8.11 SUGGESTED READINGS



- "Business Portal of India : Starting a Business : Regulatory Requirements : Companies Act". National Portal of India. Government of India. Archived from the original on 20 June 2008. Retrieved 17 March 2016.

- Patrick J. Cihon and James O. Castagnera, Employment and Labor Law, South-Western College.
- Richard Schaffer, Beverley Earle, and Filiberto Agusti, International Business Law and Its Environment, South-Western College, 2005.
- Keith-davis & William Frederick, BUSINESS AND SOCIETY, McGraw-Hill, Tokyo.
- M.M. Sulphey & Az-Har Basheer, LAWS FOR BUSINESS, Phi Learning Pvt. Ltd.Delhi, 2011

8.12 TERMINAL QUESTIONS

1. Identify the need of Depository System
2. Explain the functions of depository systems
3. Discuss in detail the mechanism of transfer of securities
4. Write the process of transfer of shares.
5. State the difference between Transfer of Shares and Transmission of shares

UNIT 9 DECLARATION AND PAYMENT OF DIVIDEND

9.1 INTRODUCTION

The word dividend comes from the Latin word *dividendum*, which means "that which is to be divided." The dividend is the portion of a company's profits that is distributed to its shareholders. Two items are implied by dividend: (i) payment from profits, and (ii) actual release of some assets.

The issuance of bonus shares or right shares to existing shareholders is not considered a dividend because the former does not entail the release of assets and the latter has no bearing on the company's profits. Articles of association of a corporation may stipulate the manner of dividend payment.

9.2 OBJECTIVES

After reading this unit you will be able to understand:

- Learn the legal provisions regarding dividend declaration
- Identify the stages in dividend payment
- Investor Education and Protection Fund

9.3 LEGAL PROVISIONS REGARDING DIVIDEND

Declaration of Dividend

(a) Dividends for a fiscal year may only be declared when the company's Balance Sheet and Profit and Loss Statement are presented to shareholders at the annual general meeting.

(b) The board of directors has the authority to recommend the dividend rate to be distributed.

Members have the authority to approve or reject the proposal. However, shareholders cannot increase the dividend amount recommended by the Board.

d) Dividends are typically declared at the annual shareholder meeting. However, a company that did not declare dividends at its annual meeting may do so at a subsequent meeting.

(e) A corporation that has already declared dividends at a general meeting is not permitted to declare dividends again in the same year.

Declaration of Dividend from Profits In accordance with Section 123, a corporation can only pay or declare dividends for any fiscal year from:

(a) Profits of the company for that year after providing for depreciation in accordance with the provisions of the Act, (b) Profits of the company for any previous financial year or years after providing for depreciation in accordance with the provisions of the Act, (c) Both, or (d) Money provided by the Central or State Governments for the payment of dividends pursuant to the guarantee given by that Government.

Allowance for Depreciation A company must provide depreciation in accordance with the provisions of Schedule II of the Companies Act of 2013 before any dividends can be paid from the profits of any fiscal year.

Profit Transfer to Reserves Prior to the declaration of any dividend in any fiscal year, a company may transfer to its reserves whatever proportion of its profits for that fiscal year it deems appropriate.

Announcement of Dividend from Reserves A company can pay dividends from its "reserve funds," which are created from its undistributed profits from any prior fiscal year or years (after accounting for mandated depreciation). In accordance with the Companies (Payment and Declaration of Dividend) Rules 2014, a company may declare dividends out of unencumbered reserves in the event of inadequate or non-existent profits in any given year, provided the following conditions are met:

The dividend rate declared cannot exceed the average dividend rate declared during the three years immediately preceding the current year: This rule shall not apply to a corporation that has not declared a dividend in each of the preceding three fiscal years.

The total amount that may be withdrawn from accumulated profits shall not exceed one-tenth of the company's paid-in capital and unencumbered reserves as reported in its most recent audited financial statement.

The amount so drawn shall be used to offset losses incurred in the fiscal year in which the dividend is declared prior to the declaration of any dividend on equity shares.

The balance of reserves after such withdrawal shall not fall below 15% of the company's paid-in capital as reported in the most recent audited financial statement.

No company may proclaim dividends unless accumulated previous losses and unprovided depreciation from the previous year or years are subtracted from the current year's profit.

Dividend Payment from Capital Profits Capital profit is the profit derived from the sale or revaluation of capital assets. Capital profits may be used for dividend purposes if: (a) they have been realized in cash, (b) they remain as profits after revaluation of all assets and liabilities, and (c) there is nothing in the company's Articles of Association prohibiting their distribution to shareholders in the form of cash dividends.

9.4 REVOCATION OF DECLARED DIVIDEND

A dividend declared with shareholder sanction incurs a liability to the shareholders. In general, proclaimed dividends cannot be revoked unless approved by shareholders in the following circumstances:

• where a dividend has been declared illegally or in violation of legal requirements, the board of directors would be justified in revoking the dividend.

9.5 ENTITLEMENT OF DIVIDEND

Equity Stockholders

A corporation can only pay dividends to its own shareholders.

(i) In respect of shares held in electronic form, to those persons whose names appear as beneficial owners in the statement(s) furnished by the Depository(ies) as at the close of the market day prior to book closure or, in the case of Interim Dividend, on the record date; or (ii) In respect of shares held in physical form, to those shareholders whose names appear on the company's Register of Members after giving effect to all valid share transfers in physical form lodged with the company.

Preferred Stockholders:

Preference shares bear a preferential dividend right in accordance with the terms of the issue and the Articles of Incorporation; accordingly, preference shareholders are paid dividends prior to equity shareholders. (b) Preference shares can be either cumulative or noncumulative. Dividends in arrears on cumulative preference shares may be paid in a subsequent year if profits warrant such a payment. In the case of non-cumulative preference shares, if no dividend is payable in a given year, there is no entitlement to dividends in subsequent years. After paying the preference dividend and any dividend arrears on cumulative preference shares, the remaining profit can be used to pay dividends to equity shareholders. However, where participating preference shares have been issued, the proprietors of such shares have the right to share in the residual profit.

9.6 LEGAL PROVISIONS REGARDING PAYMENT OF DIVIDEND

A company that intends to declare and pay dividends should adhere to the procedures outlined below. In the event that the company's shares are listed on a stock exchange, additional Listing Agreement requirements must be met.

➢ Board of Director's Recommendation

Dividends can only be declared upon the recommendation of the company's board of directors. The shareholders have no authority to declare dividends. After reviewing and certifying the financial statements of the company, the Board of Directors determines the dividend rate and then recommends it to the shareholders. A Board Meeting shall be convened for the purpose of adopting resolutions pertaining to: – the rate of dividend and the amount of dividend to be paid; – the date of book closure for dividend; – the date of the annual general meeting; and – the bank with which an account shall be opened for the remittance of dividends.

Acceptance by Shareholders

The shareholders proclaim the dividend recommended by the Board of Directors through a resolution passed at the Annual General Meeting. The declaration of dividends should be included in the notice of the Annual General Meeting as a regular agenda item. While approving the dividend rate at the Annual General Meeting, shareholders have the ability to declare a lower dividend rate than what is recommended by the Board, but they cannot increase the quantity or dividend rate so recommended. When a dividend is declared, it becomes a liability for the company.

➢ Dividend includes Interim Dividend

[Section 2(35)] of the Companies Act of 2013 stipulates that dividends include interim dividends. The Board of Directors may declare interim dividends if they have the authority to do so. In addition, the provisions of Sections 123, 124, and 127 apply to interim dividends.

Dividends shall be deposited into a Separate Bank Account

The dividend amount (including interim dividends) must be deposited into a distinct bank account opened for this purpose within five days of its declaration. The interim dividend must be deposited within five days of the Board Meeting, while the final dividend must be deposited within five days of shareholder approval at the Annual General Meeting.

Dividends payable by check or warrant

Section 123(5) of the 2013 Companies Act specifies that the dividend payable in currency may be paid to a shareholder entitled to dividends by cheque, warrant, or any electronic means.

Timeframe for Dividend Payment

In accordance with Section 127 of the Companies Act of 2013, dividends must be paid or warrants issued within 30 days of the dividend declaration date.

Transfer of Dividends Due In accordance with Section 124 of the Act, if a dividend has been declared by a company but has not been paid (or claimed) within 30 days from the date of declaration, the company must transfer the total amount of dividend that remains unpaid or unclaimed to a special account to be opened by the company in that behalf with any Scheduled Bank. This account is referred to as the "Unpaid Dividend Account." The company must pay interest at the rate of 12% p.a. for the delay in making the above transfer.

Unpaid or unclaimed dividends are transferred to the Investor Education and Protection Fund.

The company shall transfer to the Investor Education and Protection Fund [Section 124(5)] any dividend amount that remains unpaid or unclaimed for a period of seven years from the date it became due for payment. When making a transfer to the Fund, the company must provide the prescribed information to the authority designated by the Central Government. The aforementioned fund shall be utilized for investor education and preservation of investor interests. In the event of noncompliance with these provisions, the company and every officer of the company in default shall be subject to the prescribed sanction.

Penalties for Dividends Not Paid Within 30 Days Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days of the date of declaration to any shareholder entitled to the dividend, every director of the company knowingly a party to the default shall be punished with simple imprisonment for a term which may extend to two years and shall also be liable to a fine of R 1,000 for every day during which such default continues. During the period in which the default continues, the company is also obligated to pay simple interest at an annual rate of 18% (Section 127). However, no violation shall be deemed to have occurred in the following instances:

where a dividend is not legally declared or a declaration of dividend is legally untenable); where dividends could not be paid due to the operation of any law; where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with; where there is a dispute regarding the right to receive the dividend; where the dividend has been lawfully adjusted by the company against any sum; where the dividend has been lawfully adjusted by the company against.

9.7 INVESTOR EDUCATION AND PROTECTION FUND

Under Section 125, the federal government has established the Investor Education and Protection Fund. The following sums are deposited into the account:

● the amount given by the Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilised for the purposes of the Fund; ●

donations given to the Fund by the Central Government, State Governments, companies or any other institution for the purposes of the Fund; ● the amount in the Unpaid Dividend Account of companies transferred to the Fund under sub-section (5) of section 124; ● the amount in the general revenue account of the Central Government which had been transferred to that account under sub-section (5) of section 205A of the Companies Act, 1956 (1 of 1956), as it stood immediately before the commencement of the Companies (Amendment) Act, 1999 (21 of 1999), and remaining unpaid or unclaimed on the commencement of this Act; ● the amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956 (1 of 1956); ● the interest or other income received out of investments made from the Fund; ● the amount received under sub-section (4) of section 38; ● the application money received by companies for allotment of any securities and due for refund which has remained unclaimed for a period of seven years from the date it became due for payment.

Utilization of Capital

The Fund may be utilized for investor promotion, investor education, and investor protection in accordance with the regulations. In accordance with Section 125(3) of the Companies Act, the Fund must be used for:

(a) the refund of unclaimed dividends, matured deposits, matured debentures, application money due for refund and interest thereon;

(b) the promotion of investor education, protection, and awareness.

(c) distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with orders made by the Court which had ordered disgorgement; (d) reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors, as may be sanctioned by the Tribunal.

9.8 INTERIM DIVIDEND

Interim dividends are those declared by a company's board of directors between annual general meetings. According to Section 2(35) of the Companies Act, dividend also encompasses interim dividends. Directors have the authority to declare interim dividends. The board may periodically distribute interim dividends to the members if it believes the company's profits warrant it. An interim dividend is merely a portion of the total dividend for the year. If the entire year's operations result in a loss, payment of interim dividend will be equivalent to payment of dividend from capital, and the directors will be personally liable to reimburse the company for the amount of interim dividend improperly paid.

It is prudent to prepare interim financial statements to determine the amount of profits earned and to determine whether the profits for the accounting period to date are sufficient to warrant an interim dividend payment. Before declaring interim dividends, a company must provide depreciation for the entire year and not proportionally for any fraction of the year. This is because depreciation provisions are a prerequisite for dividend declaration or payment. While the ultimate dividend may be paid from free reserves, no interim dividends should be paid from reserves. Before declaring an interim dividend, the Board of Directors should take into account the required transfer percentage to reserves. In accordance with Section 123(3) of the 2013 Companies Act, the Board of Directors of a company may declare an interim dividend during any financial year from the surplus in the profit and loss account and from the profits of the financial year for which the interim dividend is being declared:

Procedure to declare Interim Dividend

The Articles of Association must authorize the directors to declare interim dividends. A Board of Directors meeting must be convened to declare interim dividends and determine the record date.

The Board of Directors must adopt a resolution declaring the interim dividend at their meeting.

Open a distinct bank account and credit the dividend amount within five days of the dividend declaration date. Make the payment or issue dividend warrants within thirty days of the dividend declaration date.

Transfer the unpaid or unclaimed dividend to the 'Unpaid Dividend Account' within seven days of the expiration of the 30-day period from the declaration of the dividend.

9.9 SUMMARY

Dividend is the portion of a company's profits that is distributed to its shareholders. Dividend includes interim dividend.

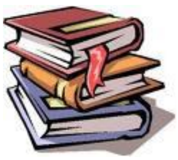
Dividend by a company for any financial year can be paid out of: Profits of that year after depreciation, Profits of any previous year or years after depreciation, or Money provided by the Central or State Governments for the payment of dividends pursuant to the guarantee given by that Government. Dividends can only be declared on the recommendation of the Board of Directors.

The company shall transfer to the Investor Education and Protection Fund any dividend amount that remains unpaid or unclaimed for a period of seven years from the date it became payable.

9.10 REFERENCES

- Pathak, LEGAL ASPECTS OF BUSINESS, Tata Mcgraw- Hill Publishing Company Limited, New Delhi, 2010.
- Keith-davis & William Frederick, BUSINESS AND SOCIETY, McGraw-Hill, Tokyo.
- M.M. Sulphey & Az-Har Basheer, LAWS FOR BUSINESS, Phi Learning Pvt. Ltd. Delhi 2011
- Maheshwari & Maheswari, MERCANTILE LAW, Himalaya Publishing House. Mumbai
- Rudder Dutt & Sundaram, INDIAN ECONOMY, Vikas Publishing House, New Delhi.
- Veena Keshav Pailwar, ECONOMIC ENVIRONMENT OF BUSINESS, Phi Learning Pvt. Ltd, New Delhi, 2010

9.11 SUGGESTED READINGS



- Pathak, LEGAL ASPECTS OF BUSINESS, Tata Mcgraw- Hill Publishing Company Limited, New Delhi, 2010.
- Keith-davis & William Frederick, BUSINESS AND SOCIETY, McGraw-Hill, Tokyo.
- M.M. Sulphey & Az-Har Basheer, LAWS FOR BUSINESS, Phi Learning Pvt. Ltd. Delhi, 2011
- Maheshwari & Maheswari, MERCANTILE LAW, Himalaya Publishing House. Mumbai
- Rudder Dutt & Sundaram, INDIAN ECONOMY, Vikas Publishing House, New Delhi.
- Veena Keshav Pailwar, ECONOMIC ENVIRONMENT OF BUSINESS, Phi Learning Pvt. Ltd, New Delhi, 2010

9.12 TERMINAL QUESTIONS

1. Write the meaning of Dividend
2. What are the steps in payment of dividend?
3. Discuss the legal provisions regarding declaration of dividend
4. Write Short Notes on
   - Utilisation Fund
   - Interim Dividend
   - Preference Shareholders
   - Equity Shareholders

UNIT 10 SHAREHOLDER'S MEETING

10.1 INTRODUCTION

The general meetings of a company guarantee the rights of its members to participate in fundamental corporate decision making and appoint their representatives as directors to run the company on their behalf. General meetings - meetings of the company's shareholders - must be conducted periodically.

10.2 OBJECTIVES

After reading this unit you will be able to understand:

- Learn the types of meetings,
- the requirements for a valid meeting, and
- the procedure for holding a meeting.

10.3 TYPES OF MEETINGS

There are two types of General Meetings:

(1) Annual General Meeting (AGM);

(2) Extraordinary General Meeting (EGM).

10.4 ANNUAL GENERAL MEETINGS

Meaning and Objective

Annual General Meeting is a meeting of a company's members that is conducted annually. This meeting affords members of the company the opportunity to evaluate the company's operations and voice their opinions on its management. The purpose of the meeting is to conduct routine business for the organization. Typical corporate operations consist of:

(a) the approval of the annual accounts, (b) the declaration of dividends, (c) the election of directors to replace those retiring by rotation, and (d) the appointment and setting of the remuneration of the company's auditors.

Statutory prerequisite

Every company is required by law to call and conduct an annual general meeting each year. The first annual general meeting of a company must be convened within nine months of the end of the company's first fiscal year. The company must hold subsequent annual general meetings each year within six months of the end of the fiscal year, and no more than fifteen months must pass between any two annual general meetings. Registrar may, for any special cause, extend the time within which any annual general meeting (other than the first annual general meeting) must be held by no more than three months.

There should be one annual general meeting per calendar year, and there must be the same number of general meetings as the number of calendar years that the company has been in operation.

Time and location of the meeting.

The annual general meeting must be held on a weekday between the hours of 9 a.m. and 6 p.m., either at the registered office of the company or another location within the city where the registered office is located.

Failure to convene the annual meeting of shareholders. If an annual general meeting is not held in accordance with section 96, the Tribunal (Company Law Board) may, on the application of any member of the company, call or direct the calling of a general meeting of the company and give such ancillary or consequential directions in relation to the calling, holding, and conduct of the meeting as it deems appropriate. If a default is made in holding a meeting of the company in accordance with section 96 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default are subject to a fine of up to Rs 1,000,000 and, in the case of a continuing default, a further fine of up to Rs 5,000 for each day after the first during which the default continues.

10.5 EXTRAORDINARY GENERAL MEETINGS

Extraordinary general meetings refer to all general meetings other than the annual general meeting.

When and who may convene the EGM

Extraordinary general meetings are possible under the following conditions:

By the Board: When the directors need to conduct urgent and urgent business that cannot wait until the next annual general meeting, i.e. the board of directors may convene this meeting whenever it deems it necessary.

The board of directors may also convene an extraordinary general meeting upon the request of a specified number of members. The number of members specified is-

(a) In the case of a company with a share capital, members or members holding at least 1/10 of the company's paid-up share capital are entitled to vote on the matter of requisition.

(b) In the case of a company without a share capital, a member or members holding at least one-tenth of the total voting power of all members as of the date of the deposit of the requisition regarding that matter. The issues for which the meeting is convened must be specified in the requisition, and only those issues shall be discussed at the meeting. Requisitions must be duly signed by the requisitions and submitted to the company's registered office. Within twenty-one days of the receipt of the requisition at the company's registered office, the Board of Directors must convene a meeting to consider the matters brought up by the requisitionists. In all cases, the directors must hold the meeting no later than 45 days after the date the requisition was submitted.

By the Requisitionists: If the directors fail to call the meeting within 45 days of depositing the requisition, the requisitionists may call the meeting and hold it within three months of the date of depositing the requisition. Requisitionists may not hold a meeting after the expiration of three months from the date of the requisition, with the exception of a meeting that was convened within three months of the requisition but adjourned to a date that falls after the expiration of the aforementioned three months.

Requisitionists are required to convene the meeting in a manner as similar as possible to how the Board of Directors calls its meetings. This meeting will be given notice in the same manner as regular meetings. If they are denied access to the registered office, they may conduct the meeting elsewhere. In the event that the company's directors fail to convene a meeting, the requisitionists are entitled to reimbursement for all costs incurred. The company has the right to indemnify itself and deduct any monies paid to the requisitionists to cover the costs of calling a meeting due to the failure of the directors to do so from the fees or remuneration of those directors who failed to call the meeting. A properly passed resolution at a meeting summoned by requisitionists is binding on the company.

As determined by the Tribunal (Company Law Board). The Tribunal may also call, hold, and conduct the meeting of a company when: (a) it is impractical to call a meeting of the company in the manner in which meetings of the company may be called; or (b) it is impossible to hold or conduct the meeting of the company in the manner prescribed by the Act or the Articles of Association of the company. The Tribunal may order the calling, holding, and conduct of such a meeting (a) on its own initiative, (b) on the application of any director of the company, or (c) on the application of any member of the company entitled to vote at the meeting.

10.6 PROCEDURE AND REQUISITE OF A VALID MEETING

The following requirements must be met to convene and conduct a valid general meeting:

A. Legal authority

The authority to convene a general meeting rests with the company's board of directors. The notice of the meeting should be issued under their authority, conferred at a properly convened board meeting or by circulation of a resolution. A solitary director lacks the authority to call a meeting. If the Board does not resolve and authorize the secretary to hold a general meeting, the secretary has no authority to do so. In certain circumstances, however, the requisitionists or the Tribunal may convene a general meeting if the directors are in default.

B. Observe

Every meeting should be announced to the following parties: (i) all company members. (ii) Any individual entitled to a share due to the demise or insolvency of a member. (iii) The company's auditor or auditors (iv) Each director of the organization A deliberate omission to notify a single member may render the meeting invalid. However, inadvertent omission or non-receipt of notice by a member will not render the meeting invalid.

Duration of notice.

By law, every valid meeting must be preceded by an appropriate written notice to every member of the corporation. Notice must be equitable and unambiguous. It must disclose the reason for calling the meeting. It must be delivered at least 21 days before the meeting date. The date of receipt of notice and the date of the meeting should be excluded from the calculation of 21 days. Articles may stipulate a notice period longer than 21 days, but not shorter than 21 days. A member will be presumed to have received the notice 48 hours after it has been posted. A general assembly can be convened with scant notice if,

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

Before or during a meeting, members' consent to a shortened notice period may be obtained in writing or electronically.

Notice of Service. Company may deliver notice to its members in person, by prepaid mail, electronically, or by newspaper advertisement. It must be addressed correctly. When the notice is published in a newspaper that is distributed to both resident and non-resident members, service by publication is deemed accomplished.

The contents of the notification. The notice must contain the following information: the meeting's name, location, date, and time. For the meeting to be legitimate, it must be held at the specified location and time. (ii) It should also specify the character of the business to be conducted at the meeting, i.e., what issues will be discussed.

a) General matters. In the case of an annual general meeting, all general business consists of (i) the consideration of annual accounts, (ii) the declaration of a dividend, (iii) the appointment of directors to replace those retiring, and (iv) the appointment and setting of remuneration for the auditors.

b) Unique business. All other business conducted at an annual general meeting and at any other meeting is considered special business. An 'explanatory statement' must be attached to the notice if special business is to be conducted. This statement must include all pertinent information about the item of special business, as well as the particulars of any director's or other managerial personnel's conflicts of interest.

C. Quorum

'Quorum' refers to the minimum number of members required to constitute a valid meeting and conduct legal business within it. Without quorum, meetings are invalid. Any resolution passed in the absence of a quorum is invalid.

1) Unless the articles of the company provide for a greater number,— a) in the case of a public company,— i) five members personally present if the number of members as of the date of the meeting is not more than one thousand; ii) fifteen members personally present if the number of members as of the date of the meeting is between one thousand and five thousand; iii) thirty members personally present if the number of members as of the date of the meeting is between five thousand and

b) In the case of a private company, the quorum for a company meeting is two genuinely present members.

2) If the quorum is not present within half an hour of the appointed time for a meeting of the company: a) the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other date and time as the Board may determine; or b) the meeting, if called by requisitionists pursuant to section 100, shall be canceled:

3) If, at the adjourned meeting, a quorum is not present within a half-hour of the scheduled meeting time, the present members shall constitute a quorum.

Chairman D.

A company's general meeting must be presided over by a chairman who regulates and oversees the meeting's correct conduct of business. He decides all concerns that arise incidentally during the meeting's proceedings. Chairman should act in good faith and in the company's best interest. Articles typically specify how the chairman of a meeting is appointed. In the absence of a contrary provision in the articles, the members physically present at the meeting shall elect one of their own to serve as its chairman by a show of hands. If a vote is requested for the election of the chairman, it must be conducted immediately, and the chairman elected by a show of hands will have full authority in this regard. If someone else is elected chairman through the vote, he will serve as chairman for the remainder of the meeting.

Authority of a Chairman

Primarily, the chairman has the authority to resolve all questions that arise during a meeting and require immediate action.

The entry of the chairman's decision in the minutes journal is evidence of the meeting's decision.

3. The chairman has the authority to determine the order of speakers, to demand a vote, to cast a tie-breaking vote, to expel a belligerent member, and, with the support of the majority, to close a discussion after it has been adequately debated.

He may also adjourn a meeting when it is impossible to conduct business and conduct the meeting due to disorder or other similar causes.

Articles of Association may grant the chairman of the company an additional or second vote, in addition to his ability to vote as an ordinary member. In the event of a deadlock, i.e., an equal number of votes, the chairman may use the casting vote to determine the outcome.

Duties of a Chairman The chairman is responsible for ensuring that proper discipline is maintained at the meeting, that the proceedings are conducted in a proper manner, that members are given ample opportunity to express their views, that voting is fair, and that the proceedings of the meeting are properly and accurately recorded in the minutes book.

The chairman is expected to act in good faith, to the best of his ability and judgment, and without bias. He must ensure that the meeting is appropriately convened and conducted.

E. Proxy

The term proxy has two meanings: (a) a personal representative of the member at a meeting, i.e. the person authorized 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, since a representative may only be appointed in writing.

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

The law permits each member of a corporation to appoint a proxy to attend and vote at company meetings on his behalf. A member of a company with no share capital does not have this privilege, unless the company's articles provide otherwise. A member of a private company may not appoint more than one proxy to attend the same meeting, unless the company's bylaws provide otherwise. A member of a public company may, however, appoint multiple proxies, i.e., he may appoint one proxy for certain shares he owns and another proxy for other shares he owns.

Any individual may be appointed as a proxy, regardless of membership status. If the proxy is not a company member, he has no right to speak at the general meeting, unless the articles provide otherwise. However, there is no provision prohibiting proxies from submitting written queries to the chairman for response. Typically, a proxy is only permitted to vote on a survey. However, he may vote on voting by show of hands if the constitution so provides. Moreover, he may demand or join the demand for a referendum. The member of the company must appoint a proxy in writing, with an official seal and signature.

A proxy that is vacant but stamped is valid and may be completed by the authorized individual. A proxy must be submitted to the company at least 48 hours prior to the start of the meeting. However, a company cannot legally require proxies to be submitted earlier than 48 hours prior to the meeting. After providing 3 days' notice to the company, members may scrutinize proxies deposited with the company during business hours beginning 24 hours before the meeting's scheduled start time and ending 24 hours after the meeting's conclusion. The proxy submitted for the initial meeting is also legitimate for the adjourned meeting. Every notice of a meeting must state that a member may appoint a proxy and that the proxy does not need to be a member.

A proxy can be revoked. It is revocable at any time. In the absence of provisions in the Articles, the proxy's authority is terminated upon the death of the shareholder who appointed it. A shareholder may attend and vote at the shareholder meeting. In such a scenario, the proxy's vote will not be accepted, as the need to exercise the proxy never arose. In this instance, proxy shall be deemed impliedly revoked.

Voting Procedure at General Meeting

Through the adoption of resolutions at the meetings, decisions are made. Every proposed resolution is debated by the company's members. Members may propose amendments to proposed resolutions so long as the proposed resolution is relevant to the amendments. A proposed resolution is submitted to a vote following discussion. Every member is entitled to vote on these resolutions. Shareholders are free to exercise their voting rights in their own best interests. They are permitted to vote even if their interests conflict with those of the business. A director may vote at the shareholders' meeting even if his personal interest in the affair conflicts with the company's. The preference shareholders only have the right to vote on resolutions that directly effect them and when their dividends have been in arrears for a predetermined number of years.

Voting is conducted by a display of hands. The initial method of voting at any general meeting is by a show of hands. On a show of hands, each participant has one vote. In the event of such a referendum, proxies do not have the right to vote unless the articles provide otherwise. The chairman's pronouncement regarding the outcome of a show of hands vote is conclusive.

Using a vote by survey

Polling according to the voting rights granted to members by the Articles of Association is referred to as a Poll. Typically, it refers to the exercise of voting rights by members in proportion to their share of the company's paid-up equity capital. As soon as a demand is made for voting by poll, all decisions made through a show of hands will be voided. It is the request for a vote, not its outcome, that will eliminate the decision by a show of hands. A vote can be requested either before or after the result of a show of hands is announced. One of the following parties may request a survey:

(a) Chairman, on his own initiative, or (b) In the case of a public company with share capital, any member or members present in person or by proxy holding shares carrying not less than 1/10 of the total voting power in respect of the resolution or having paid up share capital of not less than Rs 500,000, or (c) In the case of any other company, any member or members present in person or by proxy having not less than 1/10 of the total voting power. The demand for a vote may be revoked at any time by the individual or individuals who submitted it. A vote must be held in accordance with the Articles of Association.

10.7 RESOLUTION

A proposal, when passed and accepted by the members, becomes a resolution. The Companies Act provides for two types of resolutions:

1. Ordinary Resolution.
2. Special Resolution.

10.8 ORDINARY RESOLUTION

It is approved (i) by a simple majority of votes at a general meeting, and (ii) with the proper notice required by Section 114 (1) of the Companies Act. Simple majority indicates that the votes cast in favor of a particular proposal, including the chairman's tie-breaking vote, are greater than the votes cast against it. Ordinary resolutions are required to approve the annual accounts, declare dividends, conduct director elections, appoint auditors, issue discounted shares, etc.

10.9 SPECIAL RESOLUTION

It is approved by a vote of three-quarters of those present or represented by proxy. In other words, the number of votes cast in favor of the resolution must be at least three times greater than the number of votes cast against it. The intention to propose the resolution as a special resolution must be explicitly stated in the meeting's call notice. It is required to be accompanied by an explanation. It must be approved in the exact same manner as specified in the meeting's notice.

10.10 SUMMARY

Annual General Meeting (AGM) and Extraordinary General Meeting (EGM) are the two types of General Meetings.

Annual general meeting is a meeting of a company's shareholders conducted on an annual basis.

An Extraordinary General Meeting may be called at any time by the directors of the company on their own or on the requisition of a given number of members. A notice of at least 21 days is required to call a general meeting. Members of a company have the right to appoint a proxy to attend the meeting on his behalf. Voting at a meeting takes place first by a show of hands and then by poll.

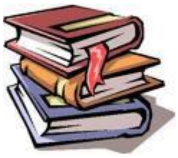
10.11 REFERENCES

- M.M. Sulphey & Az-Har Basheer, LAWS FOR BUSINESS, Phi Learning Pvt. Ltd. Delhi, 2011
- Maheshwari & Maheswari, MERCANTILE LAW, Himalaya

Publishing House. Mumbai

- Rudder dutt & Sundaram, INDIAN ECONOMY, Vikas Publishing House, New Delhi.
- Veena Keshav Pailwar, ECONOMIC ENVIRONMENT OF BUSINESS, Phi Learning Pvt. Ltd, New Delhi, 2010
- David Needle., Business In Context: An Introduction To Business And Its Environment (Revised Edition), Thomas Rennie, 2004.
- David P. Baron, Business And Its Environment, Pearson Education, 2006.
- Thomas Childs Cochran And Harold I. Sharlin, Business And Its Environment: Essays For Thomas C. Cochran, Greenwood Press, 1983

10.12 SUGGESTED READINGS



- M.M. Sulphey & Az-Har Basheer, LAWS FOR BUSINESS, Phi Learning Pvt. Ltd. Delhi, 2011
- Maheshwari & Maheswari, MERCANTILE LAW, Himalaya Publishing House. Mumbai
- Rudder dutt & Sundaram, INDIAN ECONOMY, Vikas Publishing House, New Delhi.
- Veena Keshav Pailwar, ECONOMIC ENVIRONMENT OF BUSINESS, Phi Learning Pvt. Ltd, New Delhi, 2010
- David Needle., Business In Context: An Introduction To Business And Its Environment (Revised Edition), Thomas Rennie, 2004.
- David P. Baron, Business And Its Environment, Pearson Education, 2006.
- Thomas Childs Cochran And Harold I. Sharlin, Business And Its Environment: Essays For Thomas C. Cochran, Greenwood Press, 1983

10.13 TERMINAL QUESTIONS

1. What are the requisites of a valid meeting ?
2. Explain different kinds of meeting in a company
3. What is the procedure of holding a meeting?
4. Write Short Notes on
   a) Proxy
   b) Quorum
   c) Chairman
5. Write about the Resolutions of the company.

Company Law
BBA(N)-406

Department of Management Studies
Uttarakhand Open University

University Road, Teenpani By pass, Behind Transport Nagar, Haldwani- 263 139
Phone No: (05946)-261122, 261123, 286055
Toll Free No.: 1800 180 4025
Fax No.: (05946)-264232, e-mail: info@uou.ac.in, som@uou.ac.in
Website:http://www.uou.ac.in
Blog Address: www.blogsomcuou.wordpress.com

ISBN: --