

Chapter 01:- Introduction to Company

INTRODUCTION

Proprietary and partnership form of business were the prominent forms of business before industrial revolution. But after industrial revolution factory system of production came into existence. Joint Stock Company is a large form of business organisation which is capable of mobilising large amount of capital with a provision of limited liability and efficient management. The Act which governs the establishment, operation and expansion of companies in India is Companies Act of 1956.

MEANING

Joint Stock Company is an association of persons formed for carrying out business activities and has a legal status independent of its members and governed by the Companies Act of 1956. A Joint stock company can be described as a artificial person having a separate legal entity, perpetual succession and common seal.

DEFINITION

Sec-566 of Companies Act of 1956, defines "A company is an artificial person created by law having a separate legal entity with a perpetual succession and a common seal".

Prof.L.H. Haney defines-"Joint Stock Company is a voluntary association of individuals for profit having a capital divided into transferable shares, the ownership of which is condition of membership".

Chief justice Marshall of USA defines "A corporation or company is an artificial being invisible and existing only in law, it possesses only the properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence"

FEATURES

The following are the features of Joint stock company:

1. **ARTIFICIAL PERSON** A Joint stock company is an artificial person created by law having independent existence of its members. Like a natural person a company can own property, incur debts, borrow money, enter into contracts, can sue (legal action against others) and be sued in its own name. it cannot run, talk or breath hence it is called artificial person.

2. **SEPARATE LEGAL ENTITY** After incorporation a company acquires an identity, distinct from that of its members. Its assets and liabilities are separate from that of its owners. The law does not consider owner and the members to be the same.
3. **FORMATION** The formation of the company is time consuming, expensive and complicated process. It involves preparation of several documents and complex functioning. Registration is compulsory as per the Companies Act, 1956.
4. **PERPETUAL SUCCESSION** A company being a creation of law, can only be brought to an end by the law. It only cease(come to end) to exist when a specific procedure for its closure called 'winding up' is completed.
5. **CONTROL (MANAGEMENT)** The management and control of the affairs of the company is undertaken by the 'Board of Directors', which appoints the top level management officials for running the business. They have a significant role to play in company as they are directly accountable to the shareholders for the working of the company.
6. **LIABILITY** The liability of the members is limited to the extent of the capital contributed by them in a company. This means that creditors can use only the assets of the company to settle their claims (debts) because the company is liable not its members. The members may be asked to contribute to the loss only to the extent of the unpaid amount of the share held by them beyond this they are not liable for anything towards losses of the company.
7. **COMMON SEAL** It refers to the seal on which name of the company is engraved. The company being a artificial person acts through its 'Board of Directors'. The Board of Directors enters into an agreement with others indicating the company's approval through a common seal. any agreement which does not have the company seal put on it is not legally binding (not legally obligated) on the company.
8. **RISK BEARING** The risk of losses in a company is borne by all the shareholders. In case of financial difficulties all shareholders have to contribute to the extent of their shares in company's capital. The risk of loss thus gets spread over a large number of shareholders.

MERITS

1. **LIMITED LIABILITY** The shareholders are liable to the extent of the amount unpaid on the shares held by them. Also, only the assets of the company can be used to settle the

debts, leaving the owner's personal property free from any charge. This reduces the degree of risk borne by an investor.

2. **TRANSFER OF INTEREST** The ease of transfer of ownership adds to the advantage of investing in a company as the share of a public limited company can be sold in the market and as such can be easily converted into cash in case the need arises. This avoids blockage of investment and presents the company as a favourable avenue for investment purposes.
3. **PERPETUAL EXISTENCE** Existence of a company is not affected by the death, retirement, resignation, insolvency or insanity of its members as it has a separate entity from its members. A company will continue to exist even if all the members die. It can be liquidated only as per the provisions of the Companies Act.
4. **SCOPE FOR EXPANSION** As compared to the sole proprietorship and partnership forms of organisation, a company has large financial resources. Further, capital can be attracted from the public as well as through loans from banks and financial institutions. Thus there is greater scope for expansion.
5. **PROFESSIONAL MANAGEMENT** A company can afford to pay higher salaries to specialists and professionals. It can, therefore, employ people who are experts in their area of specialisations. The scale of operations in a company leads to division of work. Each department deals with a particular activity and is headed by an expert.

LIMITATIONS

1. **COMPLEXITY IN FORMATION** The formation of a company requires greater time, effort and extensive knowledge of legal requirements and the procedures involved. As compared to sole proprietorship and partnership form of organisations, formation of a company is more complex.
2. **LACK OF SECRECY** The Companies Act requires each public company to provide from time-to-time a lot of information to the office of the registrar of companies. Such information is available to the general public also. It is, therefore, difficult to maintain complete secrecy about the operations of company.
3. **IMPERSONAL WORK ENVIRONMENT** Separation of ownership and management leads to situations in which there is lack of effort as well as personal involvement on the part of the officers of a company. The large size of a company further makes it difficult

for the owners and top management to maintain personal contact with the employees, customers and creditors.

4. **NUMEROUS REGULATIONS** The functioning of a company is subject to many legal provisions and compulsions. A company is burdened with numerous restrictions in respect of aspects including audit, voting, filing of reports and preparation of documents, and is required to obtain various certificates from different agencies, viz., registrar, SEBI, etc. This reduces the freedom of operations of a company and takes away a lot of time, effort and money.
5. **DELAY IN DECISION MAKING** Companies are democratically managed through the Board of Directors which is followed by the top management, middle management and lower level management. Communication as well as approval of various proposals may cause delays not only in taking decisions but also in acting upon them.
6. **OLIGARCHIC MANAGEMENT** In theory, a company is a democratic institution wherein the Board of Directors are representatives of the shareholders who are the owners. In practice, however, in most large sized organisations having a multitude of shareholders; the owners have minimal influence in terms of controlling or running the business. It is so because the shareholders are spread all over the country and a very small percentage attend the general meetings.
7. **CONFLICT IN INTERESTS** There may be conflict of interest amongst various stakeholders of a company. The employees, for example, may be interested in higher salaries, consumers desire higher quality products at lower prices, and the shareholders want higher returns in the form of dividends and increase in the intrinsic value of their shares. These demands pose problems in managing the company as it often becomes difficult to satisfy such diverse interests.

TYPES OF COMPANIES

Companies can be mainly classified into two types:

1. PRIVATE COMPANY

2. PUBLIC COMPANY

1. PRIVATE COMPANY

A private company means a company which:

- (a) Restricts the right of members to transfer its shares;
- (b) Has a minimum of 2 and a maximum of 50 members, excluding the present and past employees;
- (c) Does not invite public to subscribe to its share capital; and
- (d) Must have a minimum paid up capital of Rs.1 lakh or such higher amount which may be prescribed from time-to-time.

It is necessary for a private company to use the word private limited after its name.

THE FOLLOWING ARE SOME OF THE PRIVILEGES OF A PRIVATE LIMITED COMPANY AS AGAINST A PUBLIC LIMITED COMPANY

1. A private company can be formed by only two members whereas seven people are needed to form a public company.
2. There is no need to issue a prospectus as public is not invited to subscribe to the shares of a private company.
3. Allotment of shares can be done without receiving the minimum subscription.
4. A private company can start business as soon as it receives the certificate of incorporation. The public company, on the other hand, has to wait for the receipt of certificate of commencement before it can start a business.
5. A private company needs to have only two directors as against the minimum of three directors in the case of a public company.
6. A private company is not required to keep an index of members while the same is necessary in the case of a public company.
7. There is no restriction on the amount of loans to directors in a private company. Therefore, there is no need to take permission from the government for granting the same, as is required in the case of a public company.

PUBLIC COMPANY

A public company means a company which is not a private company. As per the Indian Companies Act, a public company is one which

- (a) Has a minimum paid-up capital of Rs. 5 lakhs or a higher amount which may be prescribed from time-to-time;
- (b) Has a minimum of 7 members and no limit on maximum members;
- (c) Has no restriction on transfer of shares; and
- (d) Is not prohibited from inviting the public to subscribe to its share capital or public deposits.

A private company which is a subsidiary of a public company is also treated as a public company.

DIFFERENCES BETWEEN PUBLIC AND PRIVATE LIMITED COMPANY

| Sl.no | Public Company | Private Company |
|-------|---|---|
| 01 | Formation of a Public Company is difficult. | Formation of a Private Company is easy. |
| 02 | A Public company requires two certificates they are Incorporation certificate and Business commencement certificate | A Private company requires one certificate that is Incorporation certificate. |
| 03 | A Public company has minimum 'seven' members and maximum 'unlimited' members. | A Private company has minimum 'two' members and maximum 'fifty' members. |
| 04 | The name of the Public company should end with the word 'Limited'. | The name of the Private company should end with the word 'Private Limited'. |
| 05 | A Public company can invite the Public to subscribe for its shares. | A Private company cannot invite the Public to subscribe for its shares. |
| 06 | The shares of Public company are freely transferable. | The shares of Private company are not freely transferable. |
| 07 | The minimum number of Directors in a Public company is 'three' | The minimum number of Directors in a Private company is 'two' |

| | | |
|----|--|--|
| 08 | Public company must maintain a separate index(list) of its members. | Private company need not maintain a separate index(list) of its members. |
| 09 | Public company cannot allot shares until minimum subscription is received. | Private company can allot shares without receiving minimum subscription. |
| 10 | A Public company is allowed to issue Share warrants. | A Private company is not allowed to issue Share warrants. |

Kinds of Companies

1. One Person Company:-

The Companies Act, 2013 completely revolutionized corporate laws in India by introducing several new concepts that did not exist previously. On such game-changer was the introduction of One Person Company concept. This led to the recognition of a completely new way of starting businesses that accorded flexibility which a company form of entity can offer, while also providing the protection of limited liability that sole proprietorship or partnerships lacked.

Section 2(62) of the companies act, 2013 defines OPC has a company which has only one person as a member. Furthermore, members of a company are nothing but subscribers to its memorandum of association, or its shareholders. So, an OPC is effectively a company that has only one shareholder as its member.

Features of a One Person Company

- a. **Private company:** Section 3(1)(c) of the Companies Act says that a single person can form a company for any lawful purpose. It further describes OPCs as private companies.
- b. **Single-member:** OPCs can have only one member or shareholder, unlike other private companies.
- c. **Nominee:** A unique feature of OPCs that separates it from other kinds of companies is that the sole member of the company has to mention a nominee while registering the company.

d. **No perpetual succession:** Since there is only one member in an OPC, his death will result in the nominee choosing or rejecting to become its sole member. This does not happen in other companies as they follow the concept of perpetual succession.

e. **Minimum one director:** OPCs need to have minimum one person (the member) as director. They can have a maximum of 15 directors.

f. **No minimum paid-up share capital:** Companies Act, 2013 has not prescribed any amount as minimum paid-up capital for OPCs.

g. **Special privileges:** OPCs enjoy several privileges and exemptions under the Companies Act that other kinds of companies do not possess.

2. Companies limited by Guarantee:-

A Company that has the liability of its members limited to such amount as the members may respectively undertake, by the memorandum, to contribute to the assets of the company in the event of its being wound-up, is known as a company limited by guarantee.

3. Company Limited by Shares:-

A Company that has the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them is termed as a company limited by shares.

4. Holding Company:-

A holding company is a company whose primary business is holding a controlling interest in the securities of other companies. A holding company usually does not produce goods or services itself. Its purpose is to own shares of other companies to form a corporate group.

5. Subsidiary Company:-

A subsidiary is a company that belongs to another company, which is usually referred to as the parent company or the holding company. The parent holds a controlling interest in the subsidiary company, meaning it has or controls more than half of its stock.

6. Government Companies:-

According to Sec (45) “Government Company” means any company in which not less than 51% of the paid-up share capital is held by the Central Government, or by State Government or Governments, or partly by Central Government and partly by one or more

State Governments and includes a Company which is a subsidiary company of such a Government Company.

7. Associate Company:-

Under Sec2 (6) “Associate Company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

8. Foreign Company:-

According to sec. 2(42) a foreign Company is a Company which is incorporated in any country outside India under the law of that country and has a place of business in India.

9. Global Company:-

Global business generally refers to international trade. A company which is doing business all over the world, that business are called global enterprises. Global enterprises are those enterprises which has its headquarters in one country but operate their business in many countries. Global enterprises are also called as multinational companies or transnational corporation.

10. Body Corporate:-

Body corporate broadly means a corporate entity which has a legal existence. The term "body corporate" is defined in Section 2(11) of the Companies Act, 2013. This includes a private company, public company, one personal company, small company, Limited Liability Partnerships, foreign company etc.

11. Listed Companies:-

Section 2(52) defines a listed company as a company which has any of its securities listed on any recognized stock exchange.

Chapter 2:- Formation of Company

Modern day business requires large amount of money. Also, due to increasing competition and fast changing technological environment, the element of risk is increasing. As a result, the company form of organisation is being preferred by more and more business firms, particularly for setting up Medium and large sized organisations.

The steps which are required from the time a business idea originates to the time, a company is legally ready to commence business are referred to as **stages in the formation of a company**.

The people who are taking the steps for the formation of a company and the associated risks and who are promoting a company and are called its **Promoters**.

Formation of a company

Formation of a company is a complex activity involving completion of legal formalities and procedures. To fully understand the process one can divide the formalities into 4 distinct stages, namely:

1. Promotion
2. Incorporation
3. Subscription of capital; and
4. Commencement of business

A private company can commence business immediately after incorporation. That means, only the first two stages are relevant for a private company as it is prohibited to raise funds from public. Therefore private company need not issue prospectus and complete the formality of minimum subscription.

STEPS IN FORMATION OF A COMPANY

STEP 1: PROMOTION OF A COMPANY:

Promotion is the first stage in the formation of a company. It involves conceiving a business opportunity and taking an initiative to form a company so that practical shape can be given by exploiting the available business opportunity.

It begins with somebody having discovered a potential business opportunity. If such a person or a group of persons or a company proceeds to form a company, then, they are said to be the promoters of the company.

Meaning and Definition of a Promoter:

There is no statutory definition of a promoter. A promoter is said to be the one who undertakes to form a company with reference to a given project and to set it going and who takes the necessary steps to accomplish that purpose.

Thus, apart from conceiving a business opportunity the promoters analyse its prospects and bring together the men, materials, machinery, managerial abilities and financial resources and set the organisation going.

Functions of a Promoter:

The important functions of a promoter may be listed as below:

- i. **Identification of business opportunity:** The first and foremost activity of a promoter is to identify a business opportunity. The opportunity may be in respect of producing a new product or service or making some product available through a different channel or any other opportunity having an investment potential. Such opportunity is then analysed to see its technical and economic feasibility.
- ii. **Feasibility studies:** It may not be feasible or profitable to convert all identified business opportunities into real projects. The promoters, therefore, undertake detailed feasibility studies to investigate all aspects of the business they intend to start. Depending upon the nature of the project, the following feasibility studies may be undertaken, with the help of the specialists like engineers, chartered accountants etc., to examine whether the perceived business opportunity can be profitably exploited.
 - a. **Technical feasibility:** Sometimes an idea may be good but technically not possible to execute. It may be so because the required raw material or technology is not easily available.
 - b. **Financial feasibility :** Every business activity requires funds. The promoter have to Estimate the fund requirements for the identified business opportunity. If the required outlay for the project is so large that it cannot easily be arranged within the available means, the project has to be given up.
 - c. **Economic feasibility:** Sometimes a project maybe technically viable and financially feasible but the chance of its being profitable is very little. In such cases the idea may have to be given up. Promoters usually take the help of experts to conduct these studies.
- iii. **Name Approval:** Having decided to incorporate a company, the promoters have to select a name for it and submit an application to the Registrar of companies of the state in which the company is to be situated, for its approval. It may be possible that another company may exist

with the same or similar name or the name maybe misleading, the name may suggest the company is in a particular business when it is not so. In such cases the proposed names is not accepted but some alternative name may be approved. Therefore 3 names are given in order of their priority is given in the application to the Registrar of companies.

- iv. **Fixing up Signatories to the Memorandum of Association:** Promoters have to decide about the members who will be signing the Memorandum of Association of the proposed company. Usually the people signing memorandum are also the first Directors of the Company. Their written consent to act as Directors and to take up the qualification shares in the company is necessary.
- v. **Appointment of professionals:** Certain professionals such as mercantile bankers, auditors etc., are appointed by the promoters to assist them in the preparation of necessary documents which are required to be with the Registrar of Companies. The names and addresses of shareholders and the number of shares allotted to each is submitted to the Registrar in a statement called return of allotment.
- vi. **Preparation of necessary documents:** The promoter takes up steps to prepare certain legal documents, which have to be submitted under the law, to the Registrar of the Companies for getting the company registered. These documents are Memorandum of Association, Articles of Association and Consent of Directors.

Documents required to be submitted

- A. **MEMORANDUM OF ASSOCIATION:** Memorandum of Association is the most important document as it defines the objectives of the company. No company can legally undertake activities that are not contained in its Memorandum of Association. The Memorandum of Association contains different clauses which are given as follows:
 - i. **The name clause:** This clause contains the name of the company with which the company will be known, which has already been approved by the Registrar of Companies.
 - ii. **Registered office clause:** This clause contains the name of the state, in which the registered office of the company is proposed to be situated. The exact address of the registered office is not required at this stage but the same must be notified to the Registrar within thirty days of the incorporation of the company
 - iii. **Objects clause:** This is probably the most important clause of the memorandum. It defines the purpose for which the company is formed. A company is not legally entitled to undertake an activity, which is beyond the objects stated in this clause. The *main objects* for which the company is formed are listed in this sub-clause. It must be observed that an act which is either

essential or incidental for the attainment of the main objects of the company is deemed to be valid, although it may not have been stated explicitly in the sub-clause.

- iv. **Liability clause:** This clause limits the liability of the members to the amount unpaid on the shares owned by them. For example, if a shareholder has purchased 1000 shares of Rs.10 each and has already paid Rs. 6 per share, his/her liability is limited to Rs. 4 per share. Thus, even in the worst case, he/she may be called upon to pay Rs. 4,000 only.
- v. **Capital clause:** This clause specifies the maximum capital which the company will be authorized to raise through the issue of shares. The authorized share capital of the proposed company along with its division into the number of shares having a fixed face value is specified in this clause. The company cannot issue share capital in excess of the amount specified in this capital.

For example: The authorized capital of a company is 50 lakhs with a face value of Rs 100 per share. Therefore the capital is divided into 5000 shares of Rs 100 each.

- vi. **Association clause:** In this clause, the signatories to the Memorandum of Association state their intention to be associated with the company and also give their consent to purchase qualification shares.

The Memorandum of Association must be signed by at least **seven** persons in case of a public company and by **two** persons in case of a private company.

B. ARTICLES OF ASSOCIATION

Articles of Association are the rules regarding internal management of a company. These rules are subsidiary to the Memorandum of Association and hence, should not contradict or exceed anything stated in the Memorandum of Association.

A public limited company may adopt Table A which is a model set of articles given in the Companies Act.

Table A is a document containing rules and regulations for the internal management of a company. If a company adopts Table A, there is no need to prepare separate Articles of Association.

For companies not adopting Table A, a copy of the Articles of Association, stamped and duly signed by signatories to the Memorandum of Association is required for registration.

C. CONSENT OF PROPOSED DIRECTORS:

Apart from the Memorandum and Articles of Association, a written consent of each person named as a director is required confirming that they agree to act in that capacity and undertake to buy and pay for qualification shares, as mentioned in the Articles of Association.

Qualification shares: The number of shares that a member of the board needs to own to qualify to be on the board of directors of a company.

D. AGREEMENT:

The agreement, if any, which the company proposes to enter with any individual for appointment as its Managing Director or a whole time Director or Manager is another document which is required to be submitted to the Registrar for getting the company registered under the Act.

E. STATUTORY DECLARATION:

A declaration stating that all the legal requirements pertaining to registration have been complied with is to be submitted to the Registrar with the above mentioned documents for getting the company registered under the law.

This statement can be signed by an advocate of High Court or Supreme Court or by a Chartered Accountant in full time practice or by a person named in the articles as a director manager or secretary of the company.

F. PAYMENT OF FEES:

Along with the above-mentioned documents, necessary fees has to be paid for the registration of the company. The amount of such fees shall depend on the authorized share capital of the company.

STEP 2: INCORPORATION

After completing the formalities of Promotion, promoters should apply for the incorporation of a company.

The application is to be filed with the Registrar of Companies of the state within which they plan to establish the registered office of the company.

The application for registration must be accompanied by the following documents.

1. The Memorandum of Association duly stamped, signed and witnessed.
2. The Articles of Association
3. Written consent of proposed directors to act as directors of the company.
4. 4 Agreement if any with the proposed Managing Director, Manager or Full-time Director.
5. A copy of the Registrar's letter approving the name of the company.
6. Statutory declaration duly signed, affirming that all the legal requirements for registration have been complied with,
7. A notice about the exact address of the registered office. The same can also be submitted within 30 days of the receipt of Certificate of Incorporation.
8. Documentary evidence of payment of registration fees.

When the Registrar is satisfied about the completion of formalities for registration, a **CERTIFICATE OF INCORPORATION** is issued to the company which signifies birth of the company. The company becomes entitled to enter into valid contracts.

Example: With effect from January 1, 2018 the Registrar of company allots a CIN (Corporate Identity Number) to the Company.

On the issue of the Certificate of Incorporation, a Private company can immediately commence its business

STEP 3: CAPITAL SUBSCRIPTION

A public company can raise the required funds from the public by means of issue of shares and debentures.

For doing the same, it has to issue a prospectus which is an invitation to the public to subscribe to the capital of the company and undergo various other formalities.

STEPS REQUIRED FOR RAISING THE FUNDS FROM THE PUBLIC:

1. SEBI Approval: SEBI (SECURITIES AND EXCHANGE BOARD OF INDIA)

According to the guidelines issued by SEBI, a Company inviting funds from the general public must make adequate disclosure of all relevant information and must not conceal any material information from the potential investors. This is necessary for protecting the interest of the investors. Therefore approval of SEBI is required.

2.Filing of Prospectus:

A copy of the prospectus or statement in lieu of prospectus is filed with the Registrar of Companies. Investors make up their minds about investment in a company primarily on the basis of the information contained in this document. Therefore, there must not be a mis-statement in the prospectus and all significant information must be fully disclosed.

PROSPECTUS: It is an invitation to the public to apply for shares or debentures of the company or to make deposits in the company.

A prospectus is ‘any document described or issued as a prospectus including any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares or debentures of, a body corporate’.

3. Appointment of Bankers, Brokers, Underwriters:

Raising funds from the public is a stupendous task. The application money is to be received by the **bankers** of the company. The **brokers** try to sell the shares by distributing the forms and encouraging the public to apply for the shares. If the company is not reasonably assured of a good public response to the issue, it may appoint underwriters to the issue. **Underwriters** undertake to buy the shares if these are not subscribed by the public. They receive a commission for underwriting the issue. Appointment of underwriters is not necessary.

4. Minimum Subscription:

If applications received for the shares are for an amount less than 90 per cent of the issue size, the allotment cannot be made and the application money received must be returned to the applicants.

5. Application to Stock Exchange:

An application is made to at least one stock exchange for permission to deal in its shares or debentures. If such permission is not granted before the expiry of ten weeks from the date of closure of subscription list, the allotment shall become void and all money received from the applicants will have to be returned to them within eight days.

6. Allotment of Shares:

In case the number of shares allotted is less than the number applied for, or where no shares are allotted to the applicant, the excess application money, if any, is to be returned to applicants or adjusted towards allotment money due from them. Allotment letters are issued to the successful allottees. Return of allotment, signed by a director or secretary is filed with the Registrar of

Companies within 30 days of allotment.

A public company may not invite public to subscribe to its shares or debentures. Instead, it can raise the funds through friends, relatives or some private arrangements as done by a private company. In such cases, there is no need to issue a prospectus. A 'Statement in Lieu of Prospectus' is filed with the Registrar at least three days before making the allotment.

Meaning of Prospectus

A prospectus is a formal document required by and filed with the Securities and Exchange Commission (SEC) that provides details about an investment offering to the public. A prospectus is filed for offerings of stocks, bonds, and mutual funds.

The prospectus can help investors make more informed investment decisions because it contains a host of relevant information about the investment or security. In areas other than investing, a prospectus is a printed document that advertises or describes an offering such as a school, commercial enterprise, forthcoming book, etc. All forms of prospectus exist to attract or inform clients, members, buyers, or investors.

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

Contents of Prospectus

- The Name of the company.
- The nominal share capital of the company divided into number of ordinary share and par value per share .
- Description of the business to be undertaken and its prospectus.
- Name, addresses, description and occupations of the proposed or appointed directors, chief executive, managing agent and secretary of the company.
- Provisions regarding the appointment and the remuneration of the above officers of the company.

Voting rights in the meetings of company.

- Numbers and the amount of shares and debentures agreed to be issued.
- Names , occupation and addresses of vendors of property purchased or proposed to be purchased by the company.
- Amount payable in cash, shares or debentures, to each vendor of the property.

Book Building

Book building is the process by which an underwriter attempts to determine the price at which an initial public offering (IPO) will be offered. An underwriter, normally an investment bank, builds a book by inviting institutional investors (such as fund managers and others) to submit bids for the number of shares and the price(s) they would be willing to pay for them.

STEP 4: COMMENCEMENT OF BUSINESS:

If the amount of minimum subscription is raised through new issue of shares, a public company applies to the Registrar of Companies for the issue of Certificate of Commencement of Business. The following documents are required:

1. A declaration that shares payable in cash have been subscribed for and allotted up to the minimum subscription mentioned in the prospectus;
2. A declaration that every director has paid in cash, the application and allotment money on his shares in the same proportion as others;
3. A declaration that no money is payable or liable to become payable to the applicants because of the failure of the company to either apply for or obtain permission to deal in its securities on a stock exchange; and
4. A statutory declaration that the above requirements have been complied with. This declaration can be signed by a director or secretary of the company. The Registrar shall examine these documents. If these are found satisfactory, a 'Certificate of Commencement of Business' will be issued. This certificate is conclusive evidence that the company is entitled to do business. With the grant of this certificate the formation of a public company is complete and the company can legally start doing business.

Global Enterprises (or) Multi National Companies:

Global Enterprises or Multi National Company is an organisation doing business in more than one country. They are huge industrial organisations which extend their industrial and marketing operations through a network of their branches in several countries. These enterprises operate in several areas producing multiple products with their business strategy extending over a number of countries.

Definition of Global Company:-

Global Company is defined as an international company that centralizes management and other decisions in the home country.

Example: Hindustan Liver Ltd., Suzuki, Coco Cola, Sony, Ponds, Philips etc.

FEATURES of Global Companies

- a) **Large Size:** The Global Enterprises operates in more than one country for this it requires huge finance, advanced technology, sophisticated management techniques etc. Hence they operate big in size.
- b) **Huge Capital Resources:** These enterprises are characterized by possessing huge financial resources and ability to raise funds from various resources like equity shares, debentures, bonds, financial institutions and international banks.
- c) **Credibility:** They enjoy credibility in the capital market. Even the investors and banks of the host country are willing to invest in them. Because of their financial strength, they are able to survive under all circumstances.
- d) **Foreign Collaboration:** Global enterprises usually enter into agreements with Indian companies pertaining to the sale of technology, production of goods, use of brand names for the final products, etc.
- e) **Advanced Technology:** These enterprises possess technological superiorities in the methods of production. So that they are able to conform to international standards and quality specifications.
- f) **Product Innovation:** These enterprises are characterised by having highly sophisticated research and development departments engaged in the task of developing new products and superior designs of existing products.
- g) **Marketing Strategies:** The global companies use aggressive marketing strategies in order to increase their sales in a short period.
- h) **Expansion of Market territory:** Their operations and activities extend beyond the physical boundaries of the own countries. Their International image also builds up and their market territory expands enabling them to become international brands.
- i) **Centralised Control:** The global companies have their headquarters in their home country. From headquarters they exercise control over all branches and subsidiaries.

ADVANTAGES OF THE GROWING GLOBAL COMPANIES TO INDIA

There are certain advantages that the underdeveloped countries and the developing countries like India derive from the foreign companies that establish. They are as under:

1. Initiating a higher level of investment
2. Reducing the technological gap
3. The natural resources are utilized in true sense.
4. The foreign exchange gap is reduced Boosts up the basic economic structure.

Difference between Memorandum of Association and Articles of Association

| Basis of Difference | Memorandum of Association | Articles of Association |
|----------------------------|--|--|
| Objectives | Memorandum of Association defines the objects for which the company is formed. | Articles of Association are rules of internal management of the company. They indicate how the objectives of the company are to be achieved. |
| Position | This is the main document of the company and is subordinate to the Companies Act. | This is a subsidiary document and is subordinate to both the Memorandum of Association and the Companies Act. |
| Relationship | Memorandum of Association defines the relationship of the company with outsiders. | Articles define the relationship of the members and the company. |
| Validity | Acts beyond the Memorandum of Association are invalid and cannot be ratified even by a unanimous vote of the members. | Acts which are beyond Articles can be ratified by the members, provided they do not violate the Memorandum. |
| Necessity | Every company has to file a Memorandum of Association. | It is not compulsory for a public ltd. company to file Articles of Association. It may adopt Table A of the Companies Act. |
| Alteration | Alteration of Memorandum of Association is quite difficult and in many cases, approval of certain statutory authority is required. | Articles can be altered by passing a special resolution by the members. |

Chapter 03 :- Company Administration

INTRODUCTION TO KEY MANAGERIAL

PERSONNEL

The term key management personnel includes those people having authority & responsibility for planning, directing, and controlling the activities of an entity, either directly or indirectly.

“key managerial personnel”, in relation to a company, means—

- (i) the Chief Executive Officer or the managing director or the manager;*
- (ii) the company secretary;*
- (iii) the whole-time director;*
- (iv) the Chief Financial Officer; and*
- (v) such other officer as may be prescribed;*

1. MANAGING DIRECTOR

A managing director or MD is a director of a company given special powers by its articles of association. MD is the person at the head of the executive structure of an undertaking by virtue of his membership of the BOD or by virtue of powers delegated to him by that body.

2. WHOLE TIME DIRECTORS

A whole time director is a director who is in the whole-time employment of the company, devotes his whole time of working hours to the company in question & has a significant personal interest in the company as his source of income.

3. THE COMPANIES SECRETARY

CS is a person who is a member of the institute of the company secretaries of India or any other individual possessing the prescribed qualification, appointed to perform the duties imposed on him by the companies Act, the ministerial or administrative duties & managerial functions that are delegated to him by the board.

4. CHIEF FINANCIAL OFFICER

The CFO is a corporate officer primarily responsible for managing the financial risks of the corporation. This officer is also responsible for financial planning & record keeping, as well as financial reporting to higher management.

5. RESIDENT DIRECTOR

A resident director is a specially trained full time employee generally responsible for the management & daily operations of the organization

6. INDEPENDENT DIRECTOR

An independent director is a director of a board of directors who does not have a material relationship with the company or related persons, except sitting fees. Independent director do not own shares in the company.

7. AUDITOR

Auditor is an official whose job is to carefully check the accuracy of business records. An auditor can be either an independent auditor unaffiliated with the company being audited or a captive auditor, and some are elected public officials

DIFFERENCE BETWEEN MD & WTD

MANAGING DIRECTOR

- The appointment of a MD need not necessarily be made with the consent of the member
- A MD can be appointed for a max period of 5 yrs
- MD can be MD for 2 companies
- MD is provided with substantial powers of the management to take decisions of the policy matters
- MD & manager cannot exist simultaneously

WHOLE-TIME DIRECTOR

- Appointment of a WTD requires the sanction of the shareholders, by means of a special resolution
- There is restriction for the appointment of WTD
- A WTD, cannot be a WTD in more than one company
- WTD is like an ordinary employee & is not entrusted with powers to take policy decision
- WTD can be appointed together with the MD or manager

COMPANY DIRECTOR

If it is a public company it must have atleast 3 directors, if it is a private company, it must have atleast 2 directors.

- A director may be defined as a person having control over the affairs, conduct, and management or of a company.
- Directors are the brain of company, which is the body & the company can and does act only through them.
- The representative elected by a shareholder to manage day today affairs of the company is individually known as director.

APPOINTMENT OF A DIRECTOR

A director may be appointed in the following ways:

- 1) **BY THE PROMOTERS OF THE COMPANY**: At the time of formation of a company, promoters generally name the first directors of the company and mention their names in the articles of association.
- 2) **BY SUBSCRIBERS MEMORANDUM**: If the first directors of the company are not appointed by the promoters of the company as per the powers conferred on them by Articles of Association, the subscribers to memorandum who are the original members of the company can appoint the first directors by passing a resolution to the effect.
- 3) **BY THE COMPANY IN THE GENERAL MEETING**: Under section 255 of the companies act, the subsequent directors of the company are elected by shareholders at the annual general meeting.
- 4) **BY THE BOARD OF DIRECTORS**: a) As additional directors (260) under section (260) of the companies act 1956 the board may appoint the directors if the articles of association provides for such an appointment.

POWERS OF DIRECTORS

- 1) Power to make calls on shares
- 2) Power to forfeit the shares
- 3) Power to issue debentures
- 4) Power to borrow money
- 5) Power to invest the funds of the company
- 6) Power to grant the loans
- 7) Power to fill up casual vacancy in the office of directors
- 8) Power to appoint an alternative director
- 9) Power to appoint additional director
- 10) Power to appoint first auditor of the company
- 11) Right to fill up casual vacancy in the office of the auditors
- 12) Power to appoint M.D, Manager, Secretary etc.
- 13) Power to enter into contract with the third parties on behalf of the company 14) Power to recommend the rate of dividend
- 15) Power to frame the major policies of the company
- 16) Power to determine administrative setup of the company
- 17) Power to supervise the work of M.D, Managers, Secretary etc.
- 18) Power to contribute amount to National Defense fund (NDF)

DUTIES OF COMPANY DIRECTOR

- 1) To determine minimum subscription
- 2) To see that shares are not allotted until the minimum subscription has been subscribed for.
- 3) To see that all the money received from applicants is deposited in a schedule bank until the certificate to commence obtained.
- 4) To hold statutory meeting.
- 5) To prepare and file a copy of statutory report, with the registrar companies
- 6) To forward a copy of statutory report to every member of the company_s at least 21days before the statutory meeting is held
- 7) To call an extra-ordinary of the company on the requisition of specified number of members
- 8) To approve the balance sheet and P*L A/C before they are submitted to the auditors for their report.
- 9) To prepare and place annual report along with the balance sheet and P*L A/C.
- 10) To paid dividend only out of divisible profits
- 11) To keep the register of members
- 12) To see that share certificates & debenture certificates kept for delivery
- 13) To exercise only such powers which they are empowered to execute under MOA & AOA.
- 14) To submit the statement of affairs or liquidators final statement during the winding up of the company.

- 15) To sign the prospectus before it is filed with the registrar of companies
- 16) To purchase and pay for Qualification shares within the specified time.
- 17) To see that board meeting is held at least once in three months or four times in a Calendar year.
- 18) To manage the offence affairs of the company
- 19) They must attend all the board meetings unless physically impossible.

MANAGING DIRECTOR

MEANING

A person who is appointed by the board of directors to look after the day to day Affairs of the company is called a managing director.

He is entrusted with substantial Powers of the management to implement the policies framed by the board of directors.

APPOINTMENT OF M.D

•An M.D may be appointed by

- a) An agreement with the company or
- b) The board of directors or
- c) A resolution of the company in a general meeting
- d) Under memorandum of association or
- e) Under AOA

POWERS OF MD

- 1) To supervise & control work of employees
- 2) To conduct, negotiate & make arrangement for the purchase & sale of goods & their proper storage etc., as may be entrusted to him by the board
- 3) To perform such other functions that may be delegated by the board from time to time
- 4) To purchase furniture, fixtures & equipment to the office up to a limit of Rs 20,000 in each case subject to the budget allotment
- 5) To move the government & other competent authorities for disciplinary action against officials lent by government.

DUTIES OF M.D

- 1) **AS A DIRECTOR:** As a director he attends the board meeting and takes part in the formulation of policies.
- 2) **AS A MANAGER:**
 - a) Executes policies framed by the board of directors
 - b) Attends day-to-day administration of the company
 - c) Investment of funds, buying and selling on behalf of the company, appointment of employees of the company, entering into contract with third parties.

OTHER DUTIES

- 1) **BRINGS IN NEW BUSINESS**: He brings new clients to the business and sets meetings with potential clients [off site at dinner] or [on site of the customer business] & presents proposal in order to win clients business.
- 2) **RECRUITMENT AND RETENTION OF EMPLOYEES**: He oversees the recruitment and retention of employees. He is responsible for finding best talent and bringing new team members.
- 3) **KEEPS CLIENTS HAPPY**: Once a new client comes on aboard, the managing director nurtures this new business relationship and also he addresses the clients major concerns.
- 4) **REPORT TO BOARD OF DIRECTORS**: One of the most important functions of M.D, He meets with and report information about the company's overall performance to the B.O.D of the company.
- 5) **MOTIVATION AND DEVELOPMENT**: He motivates managers and develops the members of the management team.
- 6) **MANAGEMENT OF RESOURCES**: He makes the arrangement to utilize the resources of the company efficiently & effectively to achieve the company's objective.
- 7) **LEADERSHIP ROLE**: He should take a leadership role in establishing or developing the company's culture and value.

RESPONSIBILITIES OF MD

- Implement the board's policies & strategies
- Develop & present the strategic & annual business plans to the board for approval
- Manage day to day operations of the company
- Manage, motivate, develop & lead members of the management team
- Manage resources efficiently & effectively to achieve the company's objectives
- Chair management team meeting
- Develop & implement a risk management plan

RIGHTS OF M.D

- Right to enter into contract with third parties
- Right to recruit the employees
- Right to exercise the powers within the limit of MOA & AOA
- Right to receive salary and remuneration regularly.
- Right to supervise this subordinates say general manager, different departmental heads

COMPANY SECRETARY

MEANING OF SECRETARY

The word secretary is derived from a Latin word “Secretaries which means Confidential officer. A person employed to handle correspondence, to keep files and do clerical work. For another person or an organization is called a secretary.

In other words, an officer who keeps records takes minutes of meeting and answers correspondence is called a secretary.

Directors are the brain of the company, the secretary is its eyes, ears & hands

TYPES OF SECRETARY

1. **PRIVATE SECRETARY**: He is usually appointed by an important person such as minister in government. Member of parliament manager, business magnate or professional men like doctor, lawyers etc. His main work is to attend the personal correspondence and other personal work of the employer.
2. **SECRETARY OF A CLUB OR AN ASSOCIATION**: A full time secretary appointed by business association, cultural association, professional association and sports club to conduct day to day activities of the association or club is called a secretary of a club or an association.
3. **SECRETARY OF CO-OPERATIVE SOCIETY**: Generally the full time secretaries are appointed in co-operative society. In some cases, one of the members of managing committee may be elected to act as secretary.
4. **SECRETARY OF A GOVERNMENT COMPANY**: Each department of the government is under the control of a secretary. For E.g.: - Secretary Finance dept, secretary education dept etc. He is also executive head and advisor to the minister who is concerned with a particular department.
5. **SECRETARY OF LOCAL BODY**: Usually, municipal corporations and Panchayat appoint a paid secretary who will function as an office executive.

6. **SECRETARY OF TRADE UNION:** He is to hold the meetings of the union, to record their proceedings to maintain accounts and statutory books and to conduct correspondence on behalf of the union.
7. **COMPANY SECRETARY:** The secretary of a company guides the management the day to day work of company law, mercantile law and of accounts, taxation, holding meetings, drafting of reports, resolutions

APPOINTMENT OF SECRETARY

The board of directors has power to appoint a regular secretary by passing a resolution in its meeting. The first secretary appointed by the promoters. The procedure for appointing the company secretary other than the

first secretary is as follows:

- 1) A resolution has to be passed the board of directors meeting regarding the appointment of a secretary on certain conditions & terms.
- 2) The particulars of appointment must be filled in duplicate with the registrar within 30 days of the appointment.
- 3) If the person appointed as secretary functions as a secretary in any other company, he should inform the other company within 20 days of his appointment.
- 4) Any director interested in the appointment of secretary must give his intention.
- 5) If any director or the relative of the director, he is appointed as a secretary of the company. A special resolution has to be passed at the general body meeting for such appointment.

DUTIES AND FUNCTIONS OF A COMPANY SECRETARY

1) STATUTORY DUTIES

- (a) Maintenance of books & registers of the company.
- (b) Filing returns
- (c) Supervising issue, allotment, transfer of shares, forfeiture of shares etc.
- (d) Attending the meetings and recording proceedings

2) DUTIES IN RELATION TO DIRECTORS

- (a) To conduct board meeting, under the direction of managing director.
- (b) To prepare minutes and execute the orders and instructions of the board.
- (c) To advice the directors on various provisions of the act.
- (d) To act as an agent of company
- (e) To act as mouthpiece of the board of director
- (f) To look after correspondence with directors

3) DUTIES IN RELATION TO SHAREHOLDERS

The secretary has to organize and supervise correspondence with the shareholders with regard to follows

- (a) Application and allotment of shares
- (b) Calls on shares
- (c) Forfeiture of shares
- (d) Transfer and transmission of shares
- (e) Distribution of dividend
- (f) Notices and circulars to members
- (g) Meetings of the shareholders
- (h) Enquires and complaints from shareholders

4) DUTIES TOWARDS ORGANIZATION AND OFFICE

- (a) To supervise the various activities of the office
- (b) To co-ordinate the activities of various departments
- (c) To select organize and guide the personnel
- (d) To maintain good relationship with the members.

5) DUTIES IN RELATION WITH PUBLIC

- (a) To act as a medium of communication between the directors and general public consisting of debenture holders, bankers, creditors, solicitors etc.
- (b) To be in constant touch with the above persons
- (c) To see that no confidential information is disclosed to the public.

6) DUTIES BEFORE INCORPORATION

- (a) To attend preliminary meetings of the promoters and prepare the minutes of meeting
- (b) To guide the promoters regarding the provisions of the companies act relating to incorporation of a company
- (c) To assist the promoters in preparation of various documents such as memorandum of association, articles of association etc

7) DUTIES AFTER INCORPORATION

- (a) To arrange for 1st board meeting and get the necessary resolution passed.
- (b) To take necessary steps to get the business commencement certificate by filing necessary documents with the registrar of the companies.
- (c) To arrange for statutory meeting after obtaining business commencement certificate.
- (d) To look after the work-in-connection with application, allotment, calls on shares, transfer and forfeiture of shares etc.

DUTIES OF SECRETARY WHILE CONVERTING A PUBLIC CO INTO A PRIVATE CO

- 1) **BOARD MEETING**: CS organizes board & board committees meetings to facilitate smooth operation of co's formal decision making
- 2) **GENERAL MEETING**: He ensures that an AGM is held in accordance with requirement of CA & AOA
- 3) **MEMORANDUM & AOA**: He ensures that co complies with its MOA & AOA, drafting & incorporating amendments & filing it with ROC
- 4) **SHARE REGISTRATION**: He maintains co's register of members, deals with transfer & other matters
- 5) **SHAREHOLDER COMMUNICATION**: He communicates with shareholders through circular, arranging payment of dividends & interest etc

RIGHTS OF CS

- 1) **RIGHT TO SUPERVISE THE SECRETARIAL DEPARTMENT**: He has rights to control & supervise the secretarial department. He has the right to control & supervise the activities of the department
- 2) **RIGHT TO SIGN DOCUMENTS**: He has the right to sign documents requiring permission of the company
- 3) **RIGHT TO CLAIM REMUNERATION**: Since he is employee of the company, he has the right to claim his salary.

POSITION OF CS

I. LEGAL POSITION OF THE SECRETARY

- a) The companies act has recognized the secretary as the principal officer of the company & he is responsible for the secretarial & other purely ministerial & administrative work of the company
- b) He has to file various returns & statement with the registrar of companies
- c) He has to act in accordance with the order or directions of the BOD.
- d) He derives his authority from the board & cannot exercise independent discretion in the work

II. ACTUAL POSITION OR STATUS OF A CS

- a) A CS occupies a position of importance in the administrative set up of the company
- b) The responsibility of the actual execution of the policies lies with the CS
- c) It is secretary who carries out the orders of the BOD

THE LIABILITIES OF THE SECRETARY

1) **STATUTORY LIABILITIES:** As the principle executive officer of the company, the secretary has certain statutory obligations under companies act, income tax act, stamp act, sales tax act, MRTP act, factories act etc. Hence, he may be held liable for various acts of omission and commission in the administration and management of the company if he fails to comply legal requirements. He may be held liable for the following:

- 1) If he fails to hold a statutory meeting
- 2) If he doesn't circulate the statutory report
- 3) If he fails to hold annual general meeting
- 4) If he fails to give notice of board meeting
- 5) If he fails to record the minutes of board and general meeting
- 6) If he fails to submit the registrar of companies of annual account and other statements
- 7) If he fails to maintain minutes at the registered office.
- 8) If he fails to make ready share certificates and debenture certificates within the specified period.
- 9) If he fails to maintain registrar of directors, share holders and debenture holders.
- 10) If he fails to comply with the provisions of the act regarding the appointment of auditors report.
- 11) If he fails to rectify mistakes within 2 months in case the company registered by name, which is identical with the name of existing company.
- 12) If he fails to file with the registrar of the companies, the relevant documents.
- 13) If he fails to have the name and the address of the registered office painted outside the every office.
- 14) If he fails to have name of the company engraved on the seal.

2) CONTRACTUAL LIABILITIES

Apart from statutory liabilities the company secretary has certain liabilities to the company arising out of his contract of service with the company. These liabilities are known as contractual liabilities.

- a) He is liable to the company for damage caused by his willful misconduct.
- b) He should not do anything beyond the authority
- c) He is under obligation not to disclose any secret information relating to the affairs of the company
- d) If he makes only secret profit on account of his position as a secretary of the company, he will be liable for that fault.
- e) If he commits any fraud, he is held liable for that.

QUALIFICATIONS OF A COMPANY SECRETARY

- (a) Membership of Institute of company secretaries of India [ICSI]
- (b) Pass in intermediate examination conducted by institute of company secretary of India
- (c) Post graduate degree in commerce or corporate secretary ship awarded by any university in India.
- (d) Degree in law awarded by any university.
- (e) Membership of institute of chartered accountants of India.
- (f) Post graduate in company law and secretarial practice granted by the University of Udaipur.
- (g) Membership of association of secretaries and managers Kolkata.
- (h) Diploma in corporate law and management granted by the Indian law institute New Delhi.
- (i) Post graduate or Diploma in management sciences granted by any university
- (j) Post graduate degree or diploma granted by IIM, Bangalore, Kolkata, Lucknow, Ahmedabad etc.

2) OTHER QUALIFICATION

- a) Sound general education
- b) Command over language
- c) Knowledge of industry
- d) General knowledge
- e) Knowledge of various acts relating to staff
- f) Knowledge of Company law
- g) Knowledge of mercantile law
- h) Knowledge of accounting and taxation
- i) Knowledge of office organization
- j) Impressive personality

DISMISSAL OF A COMPANY SECRETARY

- **By Whom:** The secretary may be removed from the office by the board of directors under the powers expressively given in the articles.
- **How:** Secretary being a servant of a company his suspension and dismissal are governed by the normal law applicable to the employer and employee he may be terminated by giving him a notice as per the terms of the service agreement. Sometimes he may be terminated without giving any notice when his frauds are at large scale. Reason: The secretary may be terminated for the following reasons.
 - a) When he makes the profit secretly
 - b) Willful disobedience, misconduct, negligence, incompetence, disability etc

AUDIT COMMITTEE

Audit committee is an operating committee of the BOD charged with oversight of financial reporting & disclosure

MEETING OF AUDIT COMMITTEE

The committee should meet at least 4 times in a year & not more than 4 months shall lapse between 2 meeting

POWERS OF COMMITTEE

1. To investigate any activity within its terms of reference
2. To seek information from employees
3. To obtain outside legal or other professional advice
4. To secure attendance of outsiders with relevant expertise
5. Recommending the appointment & removal of external auditors, fixation of audit fees

CORPORATE SOCIAL RESPONSIBILITY (CSR)

MEANING OF CSR

- It is defined as the voluntary activities undertaken by a company to operate in an economic, social & environmentally sustainable manner.
- Through their waste & pollution reduction processes
- By contributing educational & social programmes
- By earning adequate returns on the employed resources

CSR COMMITTEE

- Corporate social responsibility is a form of corporate self-regulation integrated into business model whereby a business monitors & ensures its active compliance with the spirit of the law, ethical standards & international norms
- Private companies having 2 directors on the BOD may establish the CSR committee with 2 such directors
- Public company having 3 or more directors & 1 must be independent director
- Foreign company's CSR committee will comprise of at least 2 persons of which 1 person shall be authorized representative in India

AUDITING

- The term is originated from the Latin word 'Audire' which means to hear.
- Auditing is the work of checking accuracy of the books of account.
- It is described as an examination of the books & vouchers, balance sheet & p/l a/c of an organization

records & statements.

AUDITOR

- Auditors are used to ensure that organisation are

maintaining accurate &

honest financial

APPOINTMENT OF AN AUDITOR

1. APPOINTMENT OF FIRST AUDITOR

- a) A BOD meeting should be conveyed within one month of the date of registration of the company.
- b) Then a resolution should be passed appointing & fixing remuneration of the first auditor who shall hold office until the conclusion of first annual general meeting (AGM)
- c) The person being appointed as the first auditor of the company should not hold any security carrying voting right of that company.

2. APPOINTMENT OF RETIRING AUDITOR

- a) An auditor is normally being reappointed at the AGM. Therefore, the company should obtain a written certificate from the auditor that the re-appointment, if made, will be in accordance with the limits specified in section 224(1B)
- b) The company convening the AGM, (after issuing notices in writing at least 21 days before the meeting along with the explanatory statement), should pass ordinary resolution in the AGM appointing the retiring auditor as auditor of the company.
- C) He shall be holding the office till the conclusion of next AGM & next resolution should also contain details of his remuneration

3. APPOINTMENT OF BRANCH AUDITOR

- a) The accounts of the branch office of a company, if any, is required to be audited by the company's auditor.
- b) Where the branch office is situated outside India the accounts to be audited either by the company's auditor or by an accountant duly qualified to act as an auditor in accordance with the laws of that country.
- c) The shareholders may authorize the board to appoint the branch auditors in consultation with the company's auditors.
- d) However the central government is empowered to make such rules as it may deem fit for the matters specified in relation to the branch auditors

POWERS OF AN AUDITOR

1. Every auditor of a company shall have a right of access at all times to the books & accounts of the company, whether kept at the head office of the company or elsewhere.
2. He shall be entitled to require from the officers of the company such information & explanations as the auditor may think necessary for the performance of his duties as auditor.
3. Section 228 (2) provides that where the accounts of any branch office are audited by a person other than the company's auditor, the company's auditor
 - a. Shall be Entitled to visit the branch office, if he deems it necessary to do so for the performance of his duties as auditor, and
 - b. Have a right to access at all times to the books & accounts of the company maintained at the branch office
4. He has the right to attend any general meeting of the company & be heard on matters that concerns him as an auditor.
5. The auditor shall make a report to the members of the company on the accounts examined by him & on every balance sheet & profit & loss account.

DUTIES & RESPONSIBILITIES OF AN AUDITOR

The duties of an auditor are as follows

1. To give report on the accounts which are audited by him
2. To give audit report of balance sheet & P&L account
3. To audit the document those are attached with balance sheet & P&L account of company
4. He should express his true opinion in his report
5. To ensure & exercise his true opinion in his report
6. To give information in the prescribed manner
7. Auditor must have sufficient base to believe
8. He should see whether company fulfills all legal compliance Responsibility of an auditor are:
 1. To make certain inquiries
 2. To make report of the company on the accounts examined
 3. To make a proclamation in terms of the provision set
 4. Detection & prevention of fraud
 5. To report fraud
 6. Ensure substantial precision
 7. Oversight of company's financial reporting process
 8. To review quarterly & annual financial statement
 9. Evaluating & understanding the internal control system.

Chapter 04:- Corporate Meetings

INTRODUCTION

A meeting is a gathering of two or more people that has been convened for the pose of achieving a common goal through verbal interaction, such as sharing information or reaching agreement. Meeting may occur face to face or virtually, as mediated by communications technology, such as a telephone conference call, a skipped conference call or a video conference.

MEANING OF MEETING

Meeting refers to a formal or informal deliberative assembly of individual called to debate certain issues and problems and to take decisions.

DEFINITION OF MEETING

• Meeting can be defined as, " an official gathering to concerned person who come together in required number, in order to discuss and arrive at decisions, required for the functioning of an organisation" There must be at least two persons to constitute a meeting.

REQUISITES & ESSENTIALS OF VALID MEETING

1. NOTICE

Notice is a legal communication about the day, date, time and venue of meeting. Under company law, there should 21 days clear notice to hold a meeting of company, where as a seven-day notice is required to hold a meeting of board of directors.

2. AGENDA

The term agenda means things to be done. It means a statement of the business to be discussed & transacted at a meeting. It is prepared by secretary in consultation with the chairman of the company & sent to every person along with the notice.

3. QUORUM

It refers to the minimum number of members who must be present at a meeting in order to constitute a valid meeting.

4. PROXY

Where a member is not able to personally attend a meeting, he can deputy another person to attend the meeting on his behalf.

TYPES OF PROXY

SPECIAL PROXY: Who is authorised to vote only on a particular motion or proposal.

GENERAL PROXY: Who is authorised to vote on all motions or proposal in a meeting

5. CHAIRMAN

He is the head of the meeting. The chairman of the BOD is the chairman of the meeting.

DUTIES & POWERS

He must ensure that the meeting is properly convened and constituted, that proper notice has been given, that the required quorum is present

6. VOTING & DEMAND FOR POLL

Matters are decided at a general meeting by a show of hands. One member on vote. If the majority of the hands raise their hands in favour of a particular resolution, then unless a poll is demanded, it is taken as passed.

1) **BY SHOW OF HANDS**: Chairman's declaration of result of voting by show of hands conclusive

2) **BY TAKING POLL**: If the members are dissatisfied with the result of voting by show of hands, they may demand a poll.

7. AMENDMENT

It means any modification to a motion before it is put to vote for adoption.

8. ADJOURNMENT

It means suspending the proceedings of a meeting for the time being so that the meeting may be continued at a later date and time fixed in that meeting itself at the time of such adjournment or to decide later on.

MINUTES OF THE MEETING

- Minutes refers to a note to preserve the memory.
- They are concise & accurate official record of the proceedings & decisions reached at a meeting
- It is written by the secretary with the help of notes of proceedings.
- It should be written within 30 days of conclusion of meeting & must be signed by chairman.

CHAIRMAN

He is the head of the meeting and he has been designated or elected to act as a guide and to preside over the meeting. He is elected by members in the meeting by show of hands. If he is not present within 15 minutes after the election or he not willing to act as chairman, then directors present in the meeting may elect one among themselves to be the chairman of the meeting.

APPOINTMENT

Promoters nominate the first chairman. And his name is mentioned in the article. The board decides to elect a new chairman every year in the board meeting. The company may have deputy/vice chairman.

According to regulation 51, if chairman is not present within 15 minutes after the election or he not willing to act as chairman, then directors present in the meeting may elect one among themselves to be the chairman of the meeting.

DUTIES OF THE CHAIRMAN

- He should ensure that the meeting is properly constituted.
- Ensure that the provision of the Act is observed.
- Ensuring proper information for the board
- Planning and conducting board meetings effectively
- Getting all directors involved in the board's work
- Maintain discipline
- Exercise his power to order a poll
- Exercise power of adjournment of the meeting should be in good faith

- Exercise his casting vote in the interest of the company



TYPES OF MEETINGS

STATUTORY MEETING

“Every company limited by shares, and every company limited by guarantee and having share capital, shall, within a period of not less than one month nor more than 6 months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company which shall be called the Statutory Meeting.”

OBJECTS OR PURPOSES OF STATUTORY MEETING

- To enable the members, as early as possible, to know the progress of the company since its incorporation and also its present position and future prospects.
- To provide an opportunity to the members to discuss finances of the company.
- To provide an opportunity to the members to discuss any matter arising out of the statutory report or relating to the formation of the company.
- To help members to know one another.

PROVISIONS OF COMPANIES ACT

1. Every company limited by shares & guarantee & having share capital must hold statutory meeting
2. A notice of meeting along with statutory report must be sent 21 days before the day of meeting
3. A certified copy of statutory report must be filed with registrar
4. The board must place a list of members details regarding names, addresses, occupation & shares held by them
5. Members shall have right to discuss any matter
6. In case of default in holding the meeting, the directors are liable to a fine of up to Rs 5000 and court may order winding up of company

STATUTORY REPORT

- The Board of directors shall, at least 21 day before the day on which the meeting is held, forward a report to every member of the company.

CONTENTS OF STATUTORY REPORT

- Total Shares allotted
- Cash received
- Preliminary expenses
- Names, addresses and occupation of directors, auditors, managers and secretary and changes if any, since incorporation
- Particulars of contract or modifications thereof, if any, proposed to be submitted to the meeting for its approval.
- The extent, if any, to which each underwriting contract, if any, has not been carried out and the reasons therefore
- Calls, if any, unpaid by the directors and manager
- Particulars of commission and brokerage paid or payable to the directors or the manager.

PROCEDURE FOR HOLDING STATUTORY MEETING

1. Secretary prepares the draft of statutory report & notice of meeting
2. Report should be certified by atleast 2 directors, one of whom should be MD
3. Get auditors certificate as to the correctness of shares allotted & receipts & payment of cash
4. Notice & report must be sent to members 21 days prior to meeting
5. One certified statutory report to be filed with registrar
6. Prepare agenda for the meeting
7. Make necessary arrangement for holding of the meetings
8. To ascertain quorum of the meeting
9. To produce list of members at the meeting
10. The chairman explains purpose of meeting & invites discussion & question on statutory report
11. The resolution may be moved and after discussion meeting will end with vote of thanks
12. Secretary prepares the minutes of the meeting and gets it approved by chairman
13. To implement decision arrived at the meeting.

ANNUAL GENERAL MEETING

A meeting known as an Annual General Meeting is required to be held every year by every company whether, public or private, limited by shares or by guarantee, with or without share capital or unlimited company.

BUSINESS TRANSACTED AT AN ANNUAL GENERAL MEETING

- The consideration of the accounts, balance sheet and the reports of the board of directors and auditors.
- The declaration of dividend.
- The appointment of directors in the place of those retiring
- The appointment of the auditors and the fixing of remuneration.

PROVISIONS OF THE COMPANIES ACT

1. The first AGM must be held within 18 months from the date of incorporation of company
2. It should be held each year and not more than 15 months gap between 2 AGM
3. It must be within 6 months after closing financial year of the company
4. Notice must be sent to every members at least 21 days before date of meeting
5. The meeting should be held within business hours at registered office
6. A copy of audited balance sheet & P&L account & annual report must be sent with notice
7. For company fails to hold AGM for any special reason, the registrar may extend the time for holding meeting upto 3 months.

ANNUAL REPORT OF DIRECTORS

- 1) A brief statement on the trading results of the company in the past year
- 2) The amount proposed to be carried to the reserve fund
- 3) The amount proposed to be paid as dividend
- 4) Material changes & commitments, if any, affecting the financial position
- 5) Fulllest information & explanation on remarks contained in auditor's report
- 6) Statement indicating the name of every employee of the company

PROCEDURE FOR HOLDING AGM

a) BEFORE THE MEETING

- **APPROVAL OF FINANCIAL STATEMENTS**: To get the finance statements by the based and further. They have to get audited by coordinators and his report must be recorded.
- **PREPARATION OF ANNUAL REPORTS**: The secretary has to prepare the annual reports in consultation with chairman.
- **CONDUCT OF BOARD MEETING**: To convene a board meeting before the annual general meeting to consider the matter such as disposal of profits, to determine the rate of dividend, to fix up the date, time and venue of the meeting etc.
- Arrangement for printing of important documents such as notice, annual a/c's, reports of the directors etc.
- **NOTICE TO MEMBERS**: The notice of annual general meeting along with the relevant documents is sent by post to the members.
- **PUBLIC NOTICE IN NEWSPAPER**: The secretary has to make an arrangements to publish a public notice of the meeting in newspapers.
 - Copies of notice and directors report to stock exchange.
 - Copies of notice and annual a/c's to registrar of the companies
 - Preparation of agenda
 - Securing of proxy forms.

b) DURING THE MEETING

- 1) COLLECTION OF ADMISSION CARD: The secretary has to collect admission card from the members at the gate and also record their attendance
- 2) ASCERTAINMENT OF QUORUM: The secretary should ascertain the quorum for general meeting. If no provisions the quorum for public company is 5 members and for private company 2 members
- 3) PRESENTATION OF DIRECTOR'S REPORT TO MEMBERS: The secretary has to present the directors report to the members who attend the meeting.
- 4) AUDITORS TO READ OUT THE REPORT: The secretary has to help the auditors to readout the report.
- 5) DISCUSSION OF MATTERS: To help the members to take up the matters for discussion.

c) AFTER THE MEETING

- 1) Preparation of minutes of meeting
- 2) Implementation of directions and instructions of annual general meeting
- 3) Filing of annual a/c's and balance sheet with the registrar of the companies.

EXTRAORDINARY GENERAL MEETING (EGM)

- “All general meetings of a company, with the exception of Statutory Meeting and Annual General Meetings are called Extra Ordinary General Meetings.”
- These meetings are conducted for discussing some special or urgent business.

For example:

- Alteration of MOA & AOA
- Alteration of share capital
- Removal of a director from office before expiry of his term.

AN EGM IS CONVENED BY

- a) **BY BOARD THEMSELVES**: The BOD, if the articles of the company so provide, shall call an EGM whenever, it thinks fit, by passing a resolution to that effect at a board meeting
- b) **ON REQUISITION BY MEMBERS (SHAREHOLDERS)**: Members are empowered to demand the convening of an EGM. The requisition must clearly state the object for which the meeting is called and must be deposited at the registered office of the company. The board must call for an EGM within 21 days of the date of requisition. The meeting must be held within 45 days from the date of requisition.
- c) **BY REQUISITIONISTS**: If board fails to hold the meeting within 45 days of the deposit of the requisition, the Requisitionists themselves may call the meeting within 3 months from the date of requisition.
- d) **BY COMPANY LAW BOARD**: The company law board may order the holding of EGM either on its own initiative or on the application made by a director or any member entitled to vote at the meeting. In the order the company law board may specify the terms and manner in which the meeting should be conducted.

PROCEDURE FOR HOLDING EGM

1. If meeting is held at the requisition of directors, the secretary sends 21 days notice
2. If meeting is held at requisition of shareholders, the meeting should be held within 45 days of the deposit of the requisition
3. The chairman ascertain whether meeting is duly convened & constituted & asks secretary to read out the notice
4. The chairman proceeds with business as per agenda
5. A thorough discussion is made & resolution is put to vote & results are declared
6. After the meeting the secretary must file a duly certified copy of the resolution with registrar within 30 days of its passing
7. Minutes of meeting should be prepared & must be approved by chairman

BOARD MEETING

MEANING

The directors are the representative of shareholders and are responsible for overall supervision of management of the company. The directors need to exercise the powers; conferred on them by the articles or the act, only at the duly constituted meetings of the directors and such a meeting is called board meeting.

FREQUENCY OF BOARD MEETING

Section 285 of the companies act has laid down that board meeting must be held at least once in every three months and four times in a year.

NOTICE OF BOARD MEETINGS (Sec 286)

- “Notice of the board of directors of the company shall be given in writing to every director for time being in India, and at usual address in India to every other director.”
- “Every officer of the company shall whose duty is to give notice as aforesaid and who fails to do so shall be punishable with fine which may extend to one thousand rupees ”
- Time and Place of Board Meetings:

The meeting of Board of Directors may be held at any place convenient to the directors outside the business hours and even on a public holiday unless the articles provide otherwise.

POWERS EXERCISED AT BOARD MEETING

- To fill a casual vacancy among directors
- To make call on share or issue debentures
- To appoint MD
- To invest company's fund in shares & debentures of another company
- To give approval to the appointment of a manager in more than 2 companies
- To obtain sanction to any contract

SECRETARIAL WORK RELATING TO A BOARD MEETING/PROCEDURE OF BOARD MEETING

BEFORE MEETING

- A) Fix the date, time & place of the board meeting
- B) Prepare agenda in consultation with chairman
- C) Send notice along with agenda to all directors
- D) Issue invitation letters to auditors who are required to attend meeting
- E) To keep documents like cheques contracts etc for sealing & signature by the directors
- F) He should keep ready the bank pass book, minutes book, company seal etc

AT THE MEETING

- a) Obtain the signatures of the directors in the director's attendance book
- b) Ascertain whether the quorum is present or not
- c) Read notice when requested by chairman
- d) He has to get minutes of the previous meeting approved & signed by directors
- e) He has to assist chairman in conducting meeting
- f) Take down notes of the proceedings of the meeting

AFTER THE MEETING

- A) He has to prepare the minutes of the meeting from the notes & record it in minutes book
- B) He has to carry out the resolution & the instructions issued to him by the board.

CLASS MEETING

Class meeting are those meeting which are held by the shareholders of a particular class of share e.g. Preference shareholders. Class meeting are held to pass resolution which will bind only the members of the class concerned, and only members of that class can attend and vote.

CREDITORS MEETING

Sometimes a company, either as a running or in the event of winding up, has to make certain arrangement with its creditors. Meeting of creditors may be called for this purpose.

MEETING OF DEBENTURE HOLDER

The meeting of debenture holders is called by the company to consider the matters which affects their interest e.g. to vary the rate of interest or the terms of security or to modify the rights of debenture holders

MEETING OF CREDITORS OTHER THAN IN WINDING UP

The meeting of creditors other than debenture holders of the company may be held when the company proposes to make a scheme of arrangement or to affect a compromise in a dispute with its creditors.

MEETINGS OF CREDITORS & CONTRIBUTORS IN CASE OF WINDING UP

when a company is in liquidation, a meeting of creditors and contributories may be held to decide certain matters relating to the liquidation of the company such as appointment of liquidator, or a committee of inspector to wind up the affairs of the company.

COMMITTEE MEETING

- When such committee are appointed they meet at regular intervals to discuss the matters referred to them.
- Since it is not possible for BOD to attend every work so they form committee of few members to do routine work and report to BOD.

MOTIONS

A motion is a definite proposition or proposal placed before a meeting for discussion & decision. It is a question placed or put before the meeting for discussion.

THE ESSENTIALS OF A MOTION ARE

- It must be in writing
- It must be signed by mover
- It should be drafted in clear, definite & unambiguous terms
- It should be in an affirmative form unless a motion in a negative form is desired
- A motion must be within the scope of the business of the meeting
- It must be formally moved by a person & seconded by another person
- After the debate or discussion on the motion is completed, it is put to voting, and if it is passed it becomes a resolution.

RESOLUTION

It is a decision of meeting on a motion or proposal. Essential of resolution:

- A resolution should be in writing
- Every resolution must be recorded in the minutes book (word by word)
- A resolution passed at a meeting cannot be revoked at the same meeting, it may be revoked at a subsequent meeting.

RESOLUTIONS UNDER PRESENT ACT ARE OF 3 KINDS

- a) Ordinary Resolution
- b) Special Resolution,
- c) Resolutions requiring special notice.

- a) **ORDINARY RESOLUTION**: A resolution, which is passed by *simple majority of the members entitled to vote or by proxy (where proxies are allowed), is called an ordinary resolution.

Example

- To approve accounts
- To declare dividends
- To appoint directors in place of those retiring
- To appoint auditors & fix their remuneration

* **SIMPLE MAJORITY**- Votes cast in favour of resolution must exceed votes cast against the resolution

- b) **SPECIAL RESOLUTION**: A special resolution is one passed at a general meeting of a company when

- 1) Notice of the meeting (21 days) specifying the intention to propose the resolution as special resolution has been duly given as required under the act.
- 2) Required to be passed by a three-fourth (75% of members should be in favour of resolution) majority for transacting special business.

SOME SPECIAL RESOLUTIONS EXAMPLES

- Alteration of object clause of memorandum
- Change of name of a company with consent of central govt.
- Alteration of the articles of a company.
- Payment of interest out of capital.
- To fix remuneration of directors

c) RESOLUTION REQUIRING SPECIAL NOTICE: Notice of the intension to move the resolution shall be given to the company not less than 14 days before the meeting Advertisement in a newspaper or any other mode specified in articles.

Example:

- To appoint auditor other than retiring auditor
- To remove director before expiry of his terms
- To appoint another director on place of director so removed

DIFFERENCE BETWEEN MOTIONS & RESOLUTIONS

MOTION

1. A motion is a proposition or a question put before the meeting for discussion or for decision
2. A motion is formally moved by one member seconded by another member
3. A motion must be in written form and signed by the mover
4. A motion may be changed at any time before it is put for voting
5. A motion may be withdrawn if all the members agree to that
6. There may be three types
7. A motion initiates discussion on an agenda item

RESOLUTION

1. A resolution is the decision of a meeting on a matter placed before. It is the final outcome of a motion, which is carried
2. No such formalities are required for its adoption
3. A resolution being a final decision of the Meeting is recorded in the minutes.
4. A resolution once adopted cannot be amended, save by passing a repealing resolution at some subsequent motions, i.e., main motion, formal motion and substantive motions
5. It cannot be withdrawn as it becomes a part of the minutes
6. Resolutions of two types, viz., Ordinary and Special Resolutions passed at General meeting
7. A resolution includes discussion on an agenda item

Chapter 5: - Winding Up

Meaning of Liquidation

Liquidation is a process in which the company is brought to an end. Also, the assets and property of the company are redistributed to the creditors and owners. Liquidation is also referred to as winding-up or dissolution, although dissolution technically refers to the last stage of liquidation.

Features of Liquidation

- Any company whether solvent or insolvent can be liquidated.
- When the liquidation is over, the company will be closed down forever.
- Liquidator has to be appointed for the purpose of liquidation.
- The liquidator will realize the assets and pay off company debts.
- Sometimes individuals are restricted to be company director in future.

Types of Liquidation

- 1) Voluntary Liquidation
- 2) Compulsory Liquidation

1) Voluntary Liquidation:-

- **Member's Voluntary Winding Up:** Directors of the company shall call for a Board of Directors meeting and make a declaration of winding up, accompanied by an affidavit, stating that;
 - a) The company has no debts to pay
 - b) The company will repay its debts, if any, within 3 years from commencement of winding up, as specified in declaration
- **Creditor's Voluntary winding up:** Where the resolution for winding up has been passed, but the Board of Directors are not in a position to give a declaration on the liability of company, they may call a meeting of creditors, for the purpose of winding up.
 - a) It is the duty of Board of Directors, to present a full statement of company's affairs, and list of creditors along with their dues, before the meeting of creditors.
 - b) Whatever resolution, the company passes in creditor's meeting, shall be given to the registrar within ten days of its passing.

2) Compulsory Liquidation:-

- If the company, by special resolution, resolved to be wound up by the court.
- If the company does not commence its business within a year from its incorporation, or suspends its business for a whole year.

- If the company is unable to pay its debts.
- If the court is of the opinion that it is just and equitable that the company should wound up.
- If the number of members is reduced below 7 in case of a public company and below 2 in case of a private company.

Consequences of Winding Up

The most important consequences of the winding up of a company are as follows –

As Regards the Company Itself

- Winding up doesn't take away the existence of the company completely.
- The company continues to exist as a corporate entity till its dissolution.
- All the ongoing business of the company is administered by the liquidator during the phase of liquidation.

As Regards the Shareholders

- Contributors – a new statutory liability comes into existence.
- Every transaction of share during the liquefaction done without the approval of the liquidator is termed void.

As Regards the Creditors

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

As Regards the Management

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

As Regards the Disposition of the Company's Property

All the dispositions of the company's properties are void if the dispositions are not approved by the court or the liquidator.

Official Liquidator

A person assigned to supervise the liquidation of a business concern and whose legal authorization, rights, and duties differ according to whether the liquidation is compulsory or voluntary.

A liquidator is a person or entity that liquidates something—generally assets. When assets are liquidated, they are sold on the open market for cash or other equivalents. The liquidator is legally empowered to act on behalf of the company in various capacities.

- Liquidator might be appointed by the shareholders or unsecured creditors, or on a court of order, to manage the winding up of a firm by selling off its assets. It is also his duty to pay the debts and distribute the balance amongst contributors.

Voluntary Liquidator:- Who is appointed by resolution in general meeting of the company and/or of the creditors and his remuneration is fixed.

Duties of Liquidators

- To realize the value of the assets of the company.
- To pay off the debts
- To distribute the balance money due to contributors
- To keep proper books of accounts and minutes book.
- He must keep all the funds of the company in public account of India in RBI.

Duty to provide notice

The first duty which a liquidator has to fulfil is that of providing notice of his appointment. Section 178 (b) of the Income Tax Act clearly conveys that who has been appointed as the liquidator shall, within thirty days give notice of his appointment to the Assessing Officer who is authorized to assess the income of the company.

Duty to investigate into the affairs of a company from its inception

The liquidator may obtain all the necessary information regarding financial management and affairs of the company which he reasonably requires in the course of winding up under Section 277 (5) (ii) of Companies Act, 2013.

Duty to recover and realize the company's assets

Duty of recovery of the assets of the company. All his powers are designed to ensure the effective discharge of this duty under Section 277(5) (iii) of companies act, 2013.

Duty to form winding-up committee and to make reports

It is a duty of liquidator to make an application to the tribunal for the constitution of a winding-up committee under Section 277(4) of Companies Act, 2013.

Role of a liquidator

A role of a liquidator is to investigate the financial management of the insolvent company. The liquidator will secure and recover all the assets of the company, pay creditors, conduct all relevant investigations into the financial management of the company.

A liquidator must

- Investigate the financial flow of a company.
- Act impartially
- Act with skill
- Avoid placing themselves in a position where personal interests could conflict with professional duties.

Defunct Company

A defunct company means a company which never commenced business or which is not carrying on business and has either no assets or has such assets as shall not be sufficient to meet the cost of liquidation.

Insolvency Code

The Insolvency and Bankruptcy Code, 2016 is an Indian law which creates a consolidated framework that governs insolvency and bankruptcy proceedings for companies, partnership firms, and individuals.