# THE COMPANIES ACT, 1956

## MEANING

- ✓ Section 3(1)(i) of The Companies Act, 1956 states that "company" means a company formed and registered under this Act or an existing company as defined in clause (ii);
- ✓ According to Section 3(1)(ii) "existing company" means a company formed and registered under any of the previous companies laws

Some of the important definitions of company given by different authorities are as under:

Lord Justice Lindley: "A company is an association of many persons who contribute money or money's worth to a common stock and employ it in some trade or business and who share the profit and loss arising there from."

- The common stock so contributed is denoted in money and is 'the capital' of the company.
- The people who contribute to it or to whom it belongs are the 'members'.
- The proportion of capital to which each member is entitled to is his 'share'.

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

The above definitions clearly bring out the meaning of company. A company comes into existence only when it is registered under the Act. When it is registered it has a legal personality of its own, separate and distinct from its members. An unregistered company has no such separate legal existence. A company is created by law and law alone can dissolve it.

## Characteristics of Company

1. **Legal formation**
2. **Artificial person**
3. **Separate legal entity**
4. **Common seal**
5. **Perpetual Succession**
6. **Limited liability**
7. **Transferability of Shares**
8. **Separate property**
9. **Capacity to sue**
10. **Separation of ownership and management**

## LIFTING OF CORPORATE VEIL

From the juristic point of view, a company is a legal person distinct from its members. This principle may be referred to as 'the veil of incorporation'.

The effect of this principle is that there is a fictional veil (and not a wall) between the company and its members.

However, where this veil of corporate personality is used as a cloak for fraud or improper conduct, the courts breakthrough or lift the corporate veil and look at the persons behind the company who are the real beneficiaries of the corporate fiction.

The various cases in which corporate veil has been lifted are as follows:

1. **Protection Of Revenue**: The courts may ignore the corporate entity of a company where it is used for tax evasion. Case: ***Sir Dinshaw Maneckjee Petit, Re***
2. **Prevention Of Fraud And Improper Conduct:** The legal personality of the company may also be disregarded in the interest of justice where the machinery of incorporation has been used for some fraudulent purpose like defrauding creditors or defeating or circumventing law. Case: ***Jones v Lipman***
3. **Determination Of Character Of A Company Whether It Is Enemy:** A company may assume an enemy character when persons in de facto control of its affairs are residents in and enemy country. In such a case, the court may examine the character of persons in real control of the company and declare the company to be an enemy company. Case: ***Daimler Company Ltd. v Continental Tyre and rubber Co. Ltd***
4. **Where The Company Is A Sham:** the courts also lift the veil where the company is a mere cloak or sham(hoax). Case: ***Gilford Motor Co. Ltd. v Horne***
5. **Company Avoiding Legal Obligations:** Where the use of an incorporated company is being made to avoid legal obligations, the court may disregard the legal personality of the company and proceed on the assumption as if no company existed.
6. **Company Acting As An Or Trustee Of The Shareholders:** Where a company is acting as an agent for its shareholders, the shareholders will be liable for the acts of the company.
7. **Avoidance Of Welfare Legislation:** The approach of the courts in considering problems arising out of such avoidance is generally the same as avoidance of taxation. It is the duty of the courts in every case where ingenuity is expended to avoid welfare legislation to get behind the smoke screen and discover the true state of affairs.
8. **Protecting Public Policy:** The courts invariably lift the corporate veil to protect the public policy and prevent transactions contrary to public policy.

**KINDS OF COMPANIES**

| On basis of Incorporation | On basis of Liability of members | On basis of Number of Members | On Basis of Ownership | On basis of Inter-company relationship | On basis of Nationality |
|---|---|---|---|---|---|
| i) Chartered<br>ii)Statutory<br>iii)Registered | i)Unlimited<br>ii)Limited by shares | i)Public<br>ii)Private | i)Govt.<br>ii)Non-Govt. | i)Holding<br>ii)Subsidiary | i) Indian<br>ii)Foreign |

| | | | | | |
|---|---|---|---|---|---|
| | iii)Limited by guarantee | | | | |

**On Basis of Incorporation:**

On basis of incorporation, there are three types of companies:

1. **Chartered Company**: Companies, which are established by the Royal Charter or under a special order granted by a king or queen are known as chartered companies.
2. **Statutory Company**: A company established under a special Act passed by the Parliament or State Legislature as the case may be.Eg., Reserve Bank of India, Life Insurance Corporation of India, Unit Trust of India, etc.
3. **Registered or Incorporated company**: A company registered under the Indian Companies Act, 1956 or under any of the previous Companies Acts is called registered or incorporated company.

**On the Basis of Liability of Members:**

1. **Unlimited Company**: A company not having any limit on the liability of its members is termed as unlimited company. The members are personally liable for the debts of the company.
2. **Company Limited by Shares**: Where the liability of members of a company is limited to the amount, if any, unpaid on the shares, such a company is known as company limited by shares. If the shares are fully paid the liability is nil. This is the most common type of company found in India.
3. **Company Limited by Guarantee**: Where the liability of the members of the company is limited to a fixed amount which the members undertake to contribute to the assets of the company in the event of its being wound up, the company is called company limited by guarantee. This amount is known as guarantee.

**On Basis of Number of Members:**

**(1) Private Limited Company**

According to Section 3(1)(iii) of the Companies Act, private company means a company which has a minimum paid up capital of one lakh rupees or such higher paid-up capital, as may be prescribed, and by its Articles –

(i) Restricts the right to transfer its shares, if any;

(ii) Limits the number of its members to fifty (excluding the present or past employee members of the company);

(iii) Prohibits any invitation to public to subscribe for any shares or debentures of the company; and

(iv) Prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives

- Section 12(1) provides that a private company may be formed with a minimum of two members.
- Section 13(1)(a) provides that in the case of private limited company, the name of the company must end with the words "Private Limited"

**(2) Public Limited Company**

A public company is defined under Section 3(1)(iv) of the companies Act, 1956, to mean a company which –

(i) Is not a private company;

(ii) Has a minimum paid-up capital of five lakh rupees or such higher paid-up capital, as may be prescribed;

(iii)Is a private company, which is a subsidiary of a company, which is not a private company

- Minimum seven members are required to form a public limited company.
- There is no restriction on maximum number of members.
- The shares allotted to the members are freely transferable.
- These companies can raise funds from general public through open invitations by selling its shares or accepting fixed deposits.
- These companies are required to write either 'public limited' or 'limited' after their names.

**<u>On the Basis of Ownership</u>**

1. **Government Company**

   According to Section 617, a government company is one in which 51% or more of the paid-up share capital is held by the Central Government, or by any one or more State Governments, or partly by Central Government or partly by one or more State Governments. A subsidiary of a Government company is also treated as a Government company. The government company is not a department of the State. The provisions of the Act are applicable to Government companies as they apply to any other company.

   Companies having less than 51% share holding by the government can also be called Government companies provided control and management lies with the government. Eg., of government companies are: Mahanagar Telephone Nigam Limited, etc.

2. **Non-Government Company**

   Companies other than government companies are covered hereunder.

**<u>On Basis of Inter-company Relationship:</u>**

1. **Holding Company**: A holding company is one, which has control over another company.
2. **Subsidiary Company**: Company over which control is exercised is called subsidiary company

**On Basis of Nationality**

1. **Indian Company:** A company having business operations in India and registered under the Indian Companies Act, 1956 is called Indian Company. An Indian company may be formed as a public limited, private limited or government company.
2. **Foreign Company: A** foreign company is a company incorporated outside India but having a place of business in India. A company has a place of business in India if it carries on business at some specified or identified place such as an office, godown or a storehouse.

**FORMATION OF COMPANY**

The whole process of formation of a company can be divided into four parts:-

1. Promotion
2. Registration
3. Floatation
4. Commencement of Business

1. **Promotion**:

Promotion is a term of wide import denoting the preliminary steps taken for the purpose of registration and floatation of the company. The persons who assume the task of promotion are called promoters. The promoter may be an individual, syndicate, association, partnership or company.

Promoter is a person who does necessary preliminary work incidental to formation of company. Promoter originates the scheme for formation of company, has memorandum and Articles prepared, executed, registered and finds the first directors, settles the terms of preliminary contracts and prospectus and makes arrangement for advertising and circulating the prospectus and placing the capital.

Functions of the Promoter:

- The promoter of the company decides the name and ascertains that it will be accepted by Registrar of companies.
- He settles details of company's Memorandum and Articles for the registration of company.
- He also settles the details for the issue of prospectus where public issue is necessary.
- He is infact responsible for bringing company into existence.

2. **Incorporation or Registration**:

According to Section 12 of the Companies Act 1956, any seven or more persons, or where company to be formed will be a private company, two or more persons, associated for lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this act in respect of registration, form an incorporated company, with or without limited liability.

Before approaching the registrar for the incorporation of the company, the memorandum and articles of association should be got prepared and printed and the approval of the registrar for

the proposed name of the company should be obtained. Thereafter, an application may be made in prescribed form to the Registrar of Companies of the State in which the registered office of the company is to be situated, for registration of the company.

According to the Companies Act, 1956, the following documents are required to be presented to the Registrar of Companies along with the application:

(i) Memorandum of Association duly signed and stamped
(ii) Articles of Association, if any, duly signed and stamped
(iii) The agreement, if any, which the company proposes to enter into with any individual for appointment as its managing or whole time director or manager
(iv) A Statutory Declaration made by advocate of Supreme Court or of a High Court or a Company Secretary or a Chartered Accountant in wholetime practice in India who is engaged in the formation of the company, or by a person named in the articles as director, manager or secretary of the company, stating that all the requirements of the Companies Act with regard to incorporation have been complied with
(v) In case of Public company having share capital,
    (a) written consent of persons who have agreed to act as first directors of the company
    (b) a written undertaking by each such director to take up and pay for his qualification shares, if any prescribed in the articles.
(vi) A copy of the letter from the registrar in which the name of the company was approved
(vii) Notice of the address of registered office of the Company
(viii) Particulars of directors, manager and secretary, if any

When the aforesaid documents have been filed with the Registrar and the necessary fees paid, the registrar will, if he is satisfied, enter the name of the company on the Register of Companies maintained by him and then issue a Certificate of Incorporation.

On registration, the company comes into existence as a legal person distinct from its members.

3. **Floatation**: When a company has been registered and has received its certificate of incorporation, it is ready for 'floatation'; that is to say, it can go ahead with raising capital sufficient to commence business and to carry it on satisfactory.

In case of private company they are prohibited from inviting public to subscribe to its share capital. Therefore when a private company is formed, the necessary capital is obtained from friends and relatives by private arrangement.

In the case of a public company also, the promoters may not invite public to subscribe to its share capital and may arrange the capital privately as in the case of a private company.

However by far the largest number of public companies raises their capital in the very first instance by inviting public to subscribe to its share capital

Section 70 it makes it obligatory for every public company to take either of the following two steps:-

1) Issue a prospectus in case public is to be invited to subscribe to its capital
2) Submit a 'statement in lieu of prospectus' in case capital has been arranged privately. It must be done at least 3 days before allotment

**4. Commencement of Business:**

- A Private Company can commence business immediately after the Certificate of Incorporation has been obtained (Section 149). It has neither to issue a prospectus nor to submit a statement in lieu of prospectus with the Registrar. It can go ahead without these formalities.
- In case of Public company having share capital, it is necessary to obtain a 'Certificate of Commencement of Business'. This certificate can be obtained only after floatation of company. The procedure for obtaining the certificate varies with the fact whether the company has issued a prospectus or not.

(i) Where the company has issued a prospectus, it shall not commence business or exercise any borrowing powers unless:

a) Shares upto amount of minimum subscription have been allotted by the company
b) Every director has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, amount in proportion to the application and allotment money payable on the shares offered to public.
c) No money is or liable to be repaid to the applicants for failure to apply for, or to obtain permission for the shares to be dealt in any recognized stock exchange
d) The company has filed with the Registrar a duly verified declaration by one of the directors or the secretary that clauses (a), (b) and (c) have been complied with

(ii) Where the company has not issued a prospectus, it shall not commence business unless:

i. It has filed with the Registrar a statement in lieu of prospectus
ii. Every director has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, amount in proportion to the application and allotment money payable on the shares offered to public
iii. The company has filed with the Registrar a duly verified declaration by one of the directors or the secretary that clauses (b) have been complied with

When the company has complied with these conditions, the Registrar will issue a certificate to commence business.
If a public company having share capital commences business or exercises borrowing powers without obtaining certificate to commence business then every person at fault is liable to a fine which may extend to Rs. 5000 for every day of default.

Certificate to commence business entitles company to commence business given in "main objects" clause of Memorandum of Association. No business given in "other objects" clause of Memorandum of Association can be commenced without obtaining prior approval of shareholders by way of special resolution.

## DOCUMENTS RELATED TO FORMATION OF COMPANY

1. **MEMORANDUM OF ASSOCIATION:**
   - The Memorandum of Association is the most important document of the company.
   - It is the charter of the company which contains the fundamental conditions upon which alone the company can be incorporated.
   - It regulates the relationship of the company with the outside world.
   - It lays down the powers and objects of the company and the scope of operations of the company beyond which the company cannot go. Any action outside the scope of Memorandum of Association will be *ultra vires* (beyond powers of ) the company and so void.
   - The object of Memorandum of Association is
     i) to enable the shareholders to know for what purposes their investment is going to be utilized and the risk involved in making the investment
     ii) to give protection to the persons dealing with the company, so that anyone dealing with the company knows whether the contractual relation into which he contemplates entering with the company is relating to matter within its corporate objects.

   - **Contents Of Memorandum Of Association**
     1. The Name Clause:
        i) Ordinarily a company is free to choose any name but it must not be undesirable or must not resemble the name of any other registered company.
        ii) The Memorandum of Association must state the name of the company with 'Limited' as the last words in the name in the case of a public limited company and with ' Private Limited' as the last words of the name in case of private limited company. This will enable the persons dealing with the company that their liability is limited.
     2. The Registered Office Clause:

Every company must have its registered office to which all communications and notices be addressed. The Memorandum of Association must mention the name of the State in which the registered office of the company is to be situated.

3. The Objects Clause:

   This is the most important clause in the memorandum. It defines the sphere of the companies activities, the specific objectives for the formation of the company. The company cannot do anything, which is not mentioned in the objects clause. This clause is divided into two parts:

   i) (a) Main Objects – this sub-clause contains the main objects of the company to be pursued on its incorporation; and

      (b) Objects Incidental or Ancillary to Main Objects - It covers the objects which are incidental or ancillary to the attainment of the main object.

   ii) Other Objects – This sub-clause will cover any objects, which are not included in the 'main objects'.

   While framing the objects clause it should be seen that the objects must not be unlawful, or against the provisions of the Companies Act, or against the public policy.

4. The Liability Clause:

   This clause states the nature of liability of the members of the company. In case of a company limited by shares or by guarantee, the fact that the liability of its members is limited must be made absolutely clear.

5. The Capital Clause:

   This clause states the amount of capital with which the company is to be registered. This clause should also state the number and value of shares into which the capital of the company is divided. The capital with which the company is registered is variously described as 'registered', or 'nominal' or 'authorised'. The effect of this clause is that the a company cannot issue more shares than are authorized by the Memorandum.

6. The Association or Subscription Clause:

   In this clause, the subscribers declare that they desire to be formed into a company and agree to take shares stated against their names. The names, addresses and occupations of the subscribers must be given. Each subscriber must sign in the presence of atleast one witness who shall attest his signature. Every subscriber must take atleast one sharein case of public company, the Memorandum of Association must be signed by atleast seven subscribers, while in private company atleast two subscribers must sign.

**Doctrine Of *Ultra Vires***:

The word 'ultra' means beyond and the word 'vires' means powers. Thus, ultra vires means doing an act beyond the powers. Any activity done contrary to or in excess of the scope of activity of directors, articles, memorandum or companies act will be ultra vires.

## 2. ARTICLES OF ASSOCIATION:

Articles of association are bye laws or rules or regulations that govern the management of the internal affairs of the company and conduct of its business. Articles are like partnership deed in partnership, they set out the provisions for he manner in which the company is to be administered.

Articles determine how the objects of Memorandum of Association shall be achieved and how the powers are exercised.

Articles of Association are subordinate and controlled by Memorandum of Association, which is dominant and contains general constitution of the company. Care has to be taken that regulation provided in articles do not exceed powers of the company laid down by its Memorandum of Association. Memorandum prevails in event of conflict.

However, Memorandum of Association and Articles of Association being contemporaneous documents must be read together and ambiguity and uncertainty in one may be removed by reference to another. If Memorandum of Association is absolutely clear, a doubt as to its meaning cannot be created by reference to articles, in such case articles are inconsistent with the memorandum and need to be disregarded.

Contents of Articles of Association – Articles contain provision relating to

- Share Capital
- Right of shareholders
- Lien on shares
- Calls on shares
- Transfer of shares
- Transmission of shares
- Forfeiture of shares
- Surrender of shares
- Conversion of share into stock
- Share warrants
- Alteration of capital
- General meeting and proceedings thereat
- Voting of members, etc.

Companies required to have Articles of Association may either

i) adopt the model form of Articles of Association given in Companies Act or
ii) frame its own Articles of Association or

iii) partly adopt the model form of Articles of Association and partly frame its own Articles of Association

**Doctrine of Constructive Notice**

The Memorandum of Association and Articles of Association when registered with the Registrar of Companies become public documents and can be inspected by any one on payment of nominal fee. Therefore, every person who contemplates entering into contract with company or otherwise dealing with company is presumed to have read these documents and understood them in their true perspective (even if he does not have actual notice). This is known as 'doctrine of constructive notice'.

**Doctrine Of Indoor Management**

This doctrine constitutes an exception to rule of constructive notice.

According to this doctrine, the outsiders dealing with the company are entitled to assume that as far as the internal proceedings are concerned everything has been regularly done. This means that even if there is an irregularity in the internal proceedings the transaction made by him with company is enforceable by him on basis of doctrine of indoor management.

While doctrine of constructive notice seeks to protect company against outsiders, doctrine of indoor management operates to protect outsiders against the company.

As this doctrine was propagated by court in case of Royal British Bank vs. Turquand, it is also known as Turquand rule.

Exception to Doctrine of Indoor Management:

i) Knowledge of irregularity
ii) Negligence i.e., an irregularity which could have been discovered on due inquiry
iii) Forgery i.e., when person relies on a document that turns out to be forged, it is void *ab initio* (void from the beginning)
iv) Acts outside the scope of apparent authority by officer of company, company not bound

## 3. PROSPECTUS

According to Section 2(36) of the Companies Act, 1956, prospectus means any document described or issued as prospectus and includes any notice, circular, advertisement or other document inviting deposits from public or inviting offers from public for subscription or purchase of any shares or debentures of any body corporate.

A document shall be called prospectus if it satisfies 2 things:

i) It invites subscription to shares or debentures or invites deposits
ii) The aforesaid invitation is made to public.

## SHARE AND SHARE CAPITAL

**Share:** Share is the interest of the shareholder in the company. The capital of the company is divided into certain indivisible units of a fixed amount. These units are called shares.

- '**Share**' means a share in the share capital of the company. It includes stock except where a distinction between stock and share is expressed or implied.
- A share has also been defined as " an interest having money value and made up of diverse rights specified under the "Articles of Association". It carries with it certain rights and liabilities while the company is a going concern or while the company is being wound up.
- A share is evidenced by a share certificate.
- Each share to be distinguished by appropriate number. Each share in a company having share capital is distinguished by its appropriate number.
- **Stock**: Stock is the aggregate of the fully paid up shares, consolidated and divided, for the purpose of convenient holding into different parts. It may also be transferred or split up into fractions of any amount, without regard to the original face value of the share.

### Types of Shares;

Under the Companies Act, 1956, a company can issue two types of shares, viz.,

(1) Preference shares
(2) Equity shares

1) **Preference Shares**: preference shares, with reference to any company limited by shares, are those which have two characteristics:
   (a) They have a preferential right to be paid dividend during the lifetime of the company and
   (b) They have a preferential right to the return of capital when the company goes into liquidation.

### Kinds of Preference Shares:

Preference shares are o following kinds:

1. **Cumulative Preference Shares**: These are the shares on which dividend goes on accumulating till it is fully paid off. The arrears of any year's dividend are carried forward as the charge upon the subsequent year's profit.
2. **Non-Cumulative Preference Shares**: These are the shares on which the dividend does not go on accumulating.
3. **Participating Preference Shares:** These shares are not only entitled to a fixed rate of dividend but also to a share in the surplus profits which remain after the claims of the equity shareholders (upto a limit, say 15%) have been met. The surplus profits are distributed in

a certain agreed ratio between the holders of the participating preference shares and the holders of the equity shares.

4. **Non-participating Preference Shares**: These shares are entitled to only a fixed rate of dividend. The holders of these shares do not share in the surplus profits which go to the equity shareholders.
5. **Convertible Preference Shares**: These are the shares which entitle their holder to convert them into equity shares within a certain period.
6. **Non-convertible Preference Shares:** These are the shares which do not confer on their holder a right of conversion into equity shares.
7. **Redeemable Preference Shares:** A company limited by shares may, if so authorized by its articles, issue preference shares which are to be redeemed.

2) **Equity Shares:** Equity shares, with reference to any company limited by shares, are those which are not preference shares.

3) **Sweat Equity Shares:** The expression 'sweat equity shares' means equity shares issued at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called. All restrictions and provisions relating to equity shares shall be applicable to sweat equity shares also .

**Issue of shares at Premium**:

A company can issue shares at premium, which means issue of shares at more than face value. For eg., a share of the face value of Rs. 10 may be issued at Rs. 15, which means there is a premium of Rs. 5 per share.

**Shares issued at discount**:

A company can issue shares at discount, which means receiving of less amount as compared to the face value of the shares. For eg., if the face value of the shares is Rs. 10 and if it is issued at a discount of 10%, it means that the amount receivable on each share will be Rs. 9.

**Share Certificate**

A share certificate is issued by a company under its common seal. It specifies the shares held by a member and is *prima facie* evidence of the title of the member to the shares.

Every person whose name is entered as a member in the register of members of a company has a right to receive a certificate of his shares. A share certificate shall specify-

(i) the shares to which it relates
(ii) the amount paid up thereon
(iii) the name of the holder of the shares.

The share certificate shall be signed by atleast 2 directors and the secretary.

**Share Warrant**

A share warrant is a document issued by a public company stating that its bearer is entitled to the shares specified therein. It is transferable by mere delivery and is a substitute for the share cerificate.

A public company limited by shares may convert its fully paid up shares into share warrants. One great advantage of issuing warrants is that shares can be transferred by mere delivery of the warrant. The registration of the transfer of shares in such a case with the company is not necessary

Conditions for issue of share warrants:

(1) The share shall be fully paid up
(2) The articles shall authorize the issue of share warrants
(3) Prior approval of the Central Government shall be obtained.
(4) The share warrants shall be issued under the common seal of the company

The holder of the share warrant is entitled to the shares specified therein and the shares may be transferred by mere delivery of the share warrant.

**Transfer of Shares:**

One of the features of a company is the transferability of its shares. Shares of a public limited company are transferable freely, while in case of private limited companies, there can be restrictions on the same. The procedure for share transfer is mentioned in the Companies Act and the Articles of Association of the company.

For registering transfer of shares or debentures, a proper instrument of transfer, which is duly stamped and executed by or on behalf of transferor and by or on behalf of transferee, should be delivered to the company.

**Transmission of Shares;**

Transmission of shares means transfer of title of shares to a nominee on the death of the original owner of the shares. There is a difference between transfer of shares and transmission of shares. While result of both of them is same, transfer is for value, transmission is by virtue of nomination by deceased person.

**Forfeiture of Shares:**

If a shareholder defaults in the payment of the installments in the issue price of a share called by the company, the Board of Directors may decide to forfeit the shares held by the defaulting shareholders by following the procedure as laid down in the Articles of Association of the company. As a result of the forfeiture, the shares are cancelled and the name of the concerned shareholder is struck off the register of members. Forfeited shares can be re-issued by the company if they are not cancelled.

**Surrender of Shares:**

When a shareholder of a company voluntarily gives up his shares in favour of the company, he is said to have surrendered them to the company. The surrender of shares by a member to company is valid in following cases:

(i) In case of partly-paid shares where forfeiture is called for. Surrender of partly–paid shares not liable to surrender is not valid.

(ii) In case of fully paid shares, where they are exchanged for new shares

**Lien on Shares**:

Lien means right to retain possession of some property of another until some claim attaching to it is settled. A company has first and paramount lien on all shares( not being fully paid up shares) for amounts payable on the shares or for any amounts due from any shareholder or his estate to the company. The company's lien on shares operates even for debts due by a shareholder to the company in his capacity as a customer of the company. It also extends to all the dividends payable thereon and the assets receivable by the shareholders upon winding up. The right of lien on shares is not conferred on a company by the statute. It must be clearly provided for in the Articles.

**Dividend**: Dividend is the share of the company profits distributed among the members. It includes interim dividend.

**Rules regarding dividend**:

1. The dividend is declared by a company by a resolution passed at the annual general meeting.
2. payment of dividend in proportion to paid up capital
3. Dividend is to be paid only out of profits. Normally dividends are paid out of the current year's profit but in event of inadequacy or absence of profits in any year, the company can declare dividend out of the accumulated profits earned by it in previous years.
4. After the dividend has been declared by the company it shall be paid , or the warrant in respect thereof shall be posted within 30 days from the date of declaration of the dividend to every shareholder entitled to payment of the dividend. If this is not done, every director, who is knowingly party to default is punishable with simple imprisonment up to three years and liable to a fine of Rs. 1000 for every day during which such default continues and the company shall be liable to pay interest @18% p.a. during the period of default.

**Interim Dividend:** Interim dividend means dividend between two annual general meetings of the company.

## SHARE CAPITAL

'Share Capital' means the capital raised by a company by the issue of shares. The word capital may be used in connection with a company is used in several senses. It may mean:

(2) **Authorised or Nominal Capital**: This is the nominal value of the shares which a company is authorized to issue by its Memorandum of Association. This is the maximum capital which the company will have during its lifetime unless it is increased.

(3) **Issued and Subscribed Capital**: Issued capital is the nominal value of the shares which are offered to public for subscription. The issued capital can never eceed the authorized capital.

(4) **Called up Capital**: That part of the issued capital which has been called up on the shares.

**(5) Paid –up Capital:** That part of the issued capital which has been paid up by the shareholders or which is credited as paid up on shares.

**(6) Uncalled Capital:** This is the remainder of the issued capital which has not been called up

**(7) Reserve Capital:** That part of the uncalled capital of the company which can be called in the event of its winding up.

**Kinds of Share Capital:** The share capital of the company shall be of two kinds, only, namely –

(a) **Equity Share Capital** –

(iii) with voting rights, or

(iv) with differential rights as to dividend, voting or otherwise in accordance with such rules and subject to such conditions as may be prescribed

(b) **Preference Share Capital**

**Alteration of Capital:**

A limited company having share capital may, if so authorized by its articles, alter its share capital as follows, that is to say, it may –

(i) Increase nominal share capital by issuing new shares

(ii) Consolidate and divide all or any part of its share capital into shares of large amount

(iii) Convert fully paid up shares into stock or vice versa

(iv) Sub-divide its shares, or any of them, into shares of smaller amount; and

(v) Cancel shares which have not been taken up and diminish the amount of its authorized capital by the amount of the shares so cancelled

The power of alteration shall be exercised by the company in general meeting by ordinary resolution and shall not require to be confirmed by the tribunal.

**Reduction of Capital:**

Share capital of a company is an extremely important component and is looked upon as a security for the creditors as well as for the shareholders. Therefore, reduction of share capital shall not be permitted unless it is as a result of ,

(i) Forfeiture of shares or under statutory authority

(ii) Strictly as per the procedure laid down in the Articles of Association. Any reduction of capital contrary to the principle is illegal and *ultra vires*.

**Procedure for reduction of share capital**:

1. A company shall first **pass a special resolution** for reduction of capital under section 100 of the Act. Power to reduce capital must be given in the Articles of the company.
2. The company shall then **apply to the court** by petition for an order confirming the reduction.
3. The order of the court confirming the reduction shall be produced before the registrar and a certified copy thereof shall be filed with him for registration. The resolution for reducing capital as confirmed by the **order of the court shall take effect on its registration by the registrar**. Notice of the registration shall be published in such manner as the court may direct.

**Reduction of capital without sanction of the court**, can take place by –

(1) Forfeiture of shares
(2) Surrender of shares
(3) Cancellation of shares
(4) Purchase of shares of any members of the company by the company by order of court u/s402(b)
(5) Redemption of redeemable preference shares
(6) Buy back of shares.

**Variation of Shareholder's Rights**

According to **Section 106** of the Companies Act, the rights attached to any class of shares may be varied with consent in writing of the holders of not less than $3/4^{th}$ of the issued shares of that class or with the sanction of the special resolution passed at a separate meeting of the holders of the issued shares of that class provided that such a provision exists in the Memorandum or Articles of Association of that company. If such provision does not exist, a company can effect such changes provided the terms of issue of the particular class of shares do not prohibit such variation. Section 106 is applicable where a company has issued shares of different class.

**Rights of Dissentient Shareholders**:

**Section 107** gives the following rights to the dissentient shareholder if any,

(i) the shareholders of atleast 10% of the issued shares of that class, who has not consented to such variation, may apply to the tribunal for cancellation of the variation and till the tribunal confirms the variation, it shall have no effect.

(ii) An application this effect shall be made to the tribunal within 21 days of passing the resolution, and may be made on the behalf of the shareholders who want to apply, by any one of them duly authorized in writing by them.

(iii) After receipt of such an application and hearing of the same, if the tribunal is satisfied that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation, otherwise it shall confirm the variation.

(iv) The decision of the Tribunal on such an application shall be final.

(v) The company shall within 30 days after the receipt of the order, make an application alongwith the order to the registrar. In case of any default, the company and every officer of the company, who is in default shall be punishable with a fine, which may extend to Rs. 500.

**Further Issue of Capital**

Further issue of capital of a company may take place –

1. By allotment of new shares (known as rights shares)
2. By conversion of debentures or loans into shares.

**ALLOTMENT OF SHARES**

An application for shares is an offer by a prospective shareholder of a company to take share. 'Allotment' is the acceptance by the company of that offer. Allotment results in a binding contract between the company and the applicant.

The term allotment is not defined in the Act. Broadly speaking, allotment is the appropriation to an applicant by a resolution of the directors of a company of a certain number of shares in the company in response to an application.

The following provisions of the Act are applicable to application for , and allotment of, shares:

1. **Minimum Subscription**: No allotment shall be made of any share capital of the company offered to the public for subscription unless –
   (c) the amount stated in the prospectus as the minimum amount has been subscribed
   (d) the sum payable on application for such amount has been paid to and received by the company

   A company making any rights or public issue of shares, debentures, etc. must receive a minimum of 90% subscription against the entire issue before making an allotment of shares or debentures to the public.

2. **Application Money**: The amount payable on application on each share shall not be less than 5% of the nominal amount of the share.

3. All moneys received from applicants for shares shall be deposited and kept deposited in a Scheduled Bank till the certificate to commence business is obtained under section 149 or if the certificate is already obtained till the amount of minimum subscription has been received by the company.

4. **Opening of Subscription List**: When shares or debentures of a company are offered in pursuance of a prospectus, allotment can be made only after the beginning of the 5th day from the date of the issue of the prospectus or on such later day as may be specified by the in the prospectus. The 5th day is to be counted from the date when the prospectus was published in the newspaper or was otherwise notified by the public. The beginning of the 5th day or such later time as aforementioned is known as 'the time of opening of the subscription'

5. **Shares and debentures to be listed in on a stock exchange:** Every company, intending to offer shares or debentures to the public for subscription by the issue of a prospectus, shall before such issue, make an application to one or more recognized stock exchanges for permission for the listing of its shares or debentures.
   **Return of money on refusal of permission:** Where the permission has not been applied or such permission having been applied for, has not been granted, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus.
   **Right of appeal**
   Where a stock exchange refuses to grant an application or fails to dispose it off within 10 weeks (in which case it will deemed to have been rejected), the company may, appeal to the Central Government against the refusal.

6. **Return of excess money where permission granted**: Where the permission has been granted by the recognized stock exchange or stock exchanges for dealing in any shares or debentures amount in excess of the application money on shares or debentures allotted, shall be repaid, forthwith without interest.

7. **All moneys to be kept in the separate bank account**: All moneys received from the applicants for shares shall be kept in a separate bank account maintained with a scheduled bank until the permission for listing of shares has been granted. Where an appeal has been preferred against the refusal to grant such permission, the money shall be so kept till the disposal of the appeal.

8. **Return as to allotments**: Within 30 days of the allotment of shares by a company the company shall file with the registrar a statement known as the 'return to allotments'.

**Irregular Allotment:**

Allotment of shares is irregular when it has been made by company in violation of Section 60 or 70. Thus-

(a) where the company has issued a prospectus, the allotment is irregular if it –

(i) has not been able to raise the amount of minimum subscription

(ii) has not collected application money (which shall not be less than 5% of the nominal amount of the share); and

(iii) has not kept the money so received in a scheduled bank.

(b) Where the company has not issued a prospectus, the allotment is irregular if it does not file with the registrar for registration, a stetment in lieu of prospectus atleast 3 days before the first allotment of shares

**Effect of Irregular Allotment**:

An allotment made by a company in contravention of the above-mentioned provisions shall be voidable at the instance of the applicant, within 2 months after the holding of the statutory meeting of the company and not later or, in any case, where the company is not required to hold a statutory meeting or where the allotment is made after the holding of the statutory meeting, within 2 months after the date of the allotment and not later.

## MEMBERSHIP:

The terms 'member' and 'shareholders' of a company are used interchangeably.
However, in certain cases there is a **distinction between the member and shareholder** of the company, such as-

(i) A registered shareholder is a member but a registered member may not be a shareholder because the company may not have share capital

(ii) A person who owns a bearer share warrant is a shareholder but he is not a member as his name struck off the register of members. This means the person can be holder of shares without being a member.

(iii) A legal representative of a deceased member is not a member until he applies for registration. He is, however, a shareholder even though his name does not appear in the register of members.

**Who can become a member?**

Any person who is competent to contract may become a member of a company, subject to provisions of the Memorandum and Articles of Association of the company.

**Minor**: A minor is not competent to become a member of the company because an agreement with minor is absolutely void.

**Insolvent**: An insolvent may be a member of the company. So long as his name appears in the register of members, he is a member and is entitled to vote even though his shares vest in the official assignee or receiver.

**Partnership Firm**: A partnership firm may hold shares in a company in the individual name of its partners as joint shareholders. As an unincorporated association, a firm is

not a person and as such cannot be entered as a member in the register of members.

**Foreigner**: A foreigner may become a member of the company, but if at any time he becomes an alien enemy, his rights as the member of a company are suspended.

**Company**:

(1) A company may, if so authorized by its articles, become a member of another company.

(2) A company cannot become a member of itself i.e., it cannot purchase its own shares.

(3) A company cannot lend money to anyone for the purpose of purchasing its own shares.

**How to become member?**

A person may become a member of a company in the following ways:

1. Membership by subscription.
2. Membership by application and registration
   Registration of the name of a person as member of a company may result from any of the following ways:
   (i) By application and allotment
   (ii) By transfer
   (ii) By succession
   (iii)Agreement to be in writing
3. Membership by Beneficial Ownership
3. Membership by Qualification Shares

**Cessation of membership:**

A person may cease to be a member of the company by –

1. **Act of the parties**: A person may cease to be a member of the company -
   (i) If he transfers his shares to another person
   (ii) If his shares are forfeited
   (iii) If the company sells his shares under some provision in its Articles (e.g., to enforce a lien)
   (iv) If he rescinds the contract to take shares on the ground of mis-representation in the prospectus or on the ground of irregular allotment.
   (v) If redeemable preference shares are redeemed
   (vi) If he surrenders his shares, where surrender is permitted.
   (vii) If share warrants are issued to him in exchange of fully paid shares.

2. **Operation of Law**: This covers the following cases:
   (1) **Insolvency**: The shares of an insolvent vest in the official receiver or assignee. When the official receiver or assignee transfers his shares to another person, the insolvent ceases to be a member on the registration of the transferee as a member.

But the insolvent remains a member as long as his name is not removed from the register of the company.

(2) **Death**: The deceased member's estate, however, remains liable until the shares are registered in the name of his legal representatives.

(3) **Sale of shares** in execution of decree of tribunal

(4) **Winding up of the company**: However, during the winding up of the company, a member continues to remain liable as a contributory and is also entitled to share in the surplus assets, if any.

## BORROWING POWERS

A company needs money to finance its activities from time to time. A part of its requirement is met by issue of shares; for the rest, the company has to resort to borrowing.

Every **trading company**, unless prohibited by its Memorandum or Articles, has implied power to borrow money for the purposes of its business. It has also power to give security for the loan by creating a mortgage or charge on its property.

A **non-trading company** has no implied power to borrow. It requires express power to do so. This power, in case of such a company, must be taken in the Memorandum or the Articles.

When a company has express or implied power to borrow, it can borrow subject to the limits set by the Memorandum or the Articles.

A public company having a share capital cannot exercise borrowing power unless certificate of commencement of business is obtained by it.

***Ultra Vires* Borrowing;** As long as borrowings are within limits, there are no legal problems as such. However, if the company borrows more amounts than permitted by its memorandum or articles, it is called as *ultra vires* borrowings.

Borrowing by a company may be-

3. a borrowing which is *ultra vires* the company, or
4. a borrowing which is *intra vires* the company but *ultra vires* the directors.

4. **Borrowing which is *ultra vires* the company**:

   If a company borrows money beyond its express or implied powers, the borrowing is ultra vires the company and is void. No debt is created and the securities given in respect thereof are inoperative and void, and no ratification can render the debt valid.

   Thus, in other words, the lenders have no right to recover the debt against the company. Therefore, it is always advisable for the lenders to make sure that the loans given by them are

within the powers of the company, otherwise they will lose the amount of loan given to the company.

However in case of *ultra vires* borrowings, the lenders have some rights. These rights are as follows:

1. **Injunction:** If the money lent to the company has not been spent, the lender may get injunction from the court to restrain the company from parting with the money. However, if the company has spent the money, the remedy is lost.
2. **Subrogation:** If the money borrowed has been used by the company in paying off its lawful debts, the lender will rank as a creditor upto the amount so used, and can recover it from the company.
3. **Identification and Tracing:** If the lender can identify his money (this will be the case when the money is still in the hands of the company in its original form) or, any property purchased with it, he can claim the money or the property purchased with the money borrowed provided he can trace and identify the money or property purchased with it.
4. **Recovery of damages:** The lender under a transaction *ultra vires* the directors may recover damages from the directors for breach of their warranty of authority. But if the fact that the borrowing was *ultra vires* could have been discovered from the public documents of the company, the lender cannot recover.

**2. Borrowing which is *intra vires* the company but *ultra vires* the directors:**

If the borrowing is in excess merely of the powers of the directors but not of the company, it can be ratified and rendered valid by the company. In such case the loan binds both the lender and the company as if it had been made with the company's authority in the first place. If the company refuses to ratify the director's act, the normal principles of agency apply i.e., if the third party knows that the agent has exceeded the authority, there is no remedy available to the third party. Thus the lender cannot recover the amount, however, if the directors have not followed some of the internal procedures, the rule laid down in Doctrine of indoor management becomes applicable.

**Debentures:**

According to Section 2(12), debenture includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not.

In simple words, Debenture means a document, which either creates a debt or acknowledges it.

**Kinds of Debentures:** Debentures may be of following kinds:

(1) **Bearer Debentures**: These debentures are also called as 'unregistered debentures' and are payable to the bearer. These debentures are freely transferable from one person to another and the bearer is entitled to the interest as well as to the principal amount of the same.

(2) **Registered Debentures**: The holders of these debentures are registered with the company and hence they are called as registered debentures. The registered holders of debentures can

transfer these debentures to other persons in the similar fashion of transfer of shares. Registered debentures are not negotiable instruments while the bearer debentures are negotiable instruments.

(3) **Secured Debentures**; Debentures which create some charge on the property of the company are known as secured debentures. The charge may be a fixed charge or a floating charge.

(4) **Unsecured Debentures**: These debentures have no charge, either fixed or floating on the assets of the company. In other words, no asset is offered as security to them and hence they are called as unsecured debentures.

(5) **Redeemable Debentures**: These debentures are redeemable after the particular period for which they are issued is over. These debentures may be re-issued after their redemption.

(6) **Irredeemable Debentures**: A debenture is irredeemable if either there is not fixed period for the redemption or the repayment of it is made conditional on the happening of an event which may not happen for an indefinite period or may happen only in certain specified and contingent events, for e.g., the winding up of the company.

(7) **Convertible debentures**: These debentures give an option to the holders to convert them into preference or equity shares at the stated rates of exchange after a certain period. If the holders exercise the option, the debentures get converted , otherwise they can accept cash.

(8) **Non-Convertible Debentures**: These debentures do not give an option to the holders of conversion. They are to be duly paid as when they mature.

**Debentures with voting rights not to be issued:** A company cannot issue any debentures carrying voting rights at the meeting of the company, whether generally or in respect of particular classes of business.

**Fixed Charge and Floating Charge**

## MANAGEMENT

**DIRECTORS**:

According to Section 2(13) of the Act, Director includes any person occupying the position of director, by whatever name called.. It does not matter by what name he is called. If he performs the functions of a director, he would be termed a director in the eyes of law even though he may be named differently.

A director may therefore be defined as a person having control over the direction, conduct, management or superintendence of the affairs of the company

**Only individuals can be directors.** : No body corporate, association or firm can be appointed director of a company.

**Number of Directors**: Every public company shall have atleast three directors and every other company (e.g., private company) at least two directors.

However a public company having –

(a) a paid up capital of Rs. 5 crore or more;

(b) one thousand or more small shareholders;

may have one director elected by such small shareholders in the manner as may be prescribed. 'Small shareholder' means a shareholder holding shares of nominal value of Rs. 20,000 or less in a public company.

**Increase or reduction in the number of directors:** Subject to the statutory minimum limit, the Articles may prescribe the maximum and minimum number of directors for the Board of directors. The no. so fixed may be increased or reduced within the limits prescribed by the Articles by an ordinary resolution of the company in a general meeting. If the number falls below the minimum, *prima facie* the Board cannot act.

**Sanction by the Central Government**: Any increase in the number of directors beyond the maximum permitted by the Articles shall be approved by the Central government. But where the increase in number does not make the total number of directors more than 12, no approval of the Central Government is needed.

**Appointment of Directors:**

1. **First Directors:**
   (a) The articles of a company usually name the first directors by their respective names or prescribe the method of appointing them.
   (b) If the first directors are not named in the Articles, the number of directors and the names of the directors shall be determined in writing by the subscribers of the memorandum or a majority of them.
   (c) If the first directors are not appointed in the above manner, the subscribers of the Memorandum who are individuals become directors of the company. They shall not hold office until directors are duly appointed in the first annual general meeting.

2. **Appointment of directors by the company**: In the case of a public company or private company which is a subsidiary of a public company, atleast 2/3rds of the total number of directors shall be liable to retire by rotation. Such directors are called rotational directors and shall be appointed b the shareholders in a meeting.
   At each AGM, 1/3$^{rd}$ of these two thirds of directors are however eligible for reappointment. Those who have been longest in the office retire first. The vacancies thus created by retirement of directors are filled up by shareholders by appointment in the same AGM by means of a majority vote. The shareholders either choose to appoint the retiring directors or some other persons who have given a notice to the company intimating their desire to stand for directorship.

3. **Appointment of directors by directors:**
   The Board of directors of a company may appoint directors –
   (i) **As additional directors**: Any additional directors appointed by the directors shall hold office only upto the date of the next annual general meeting of the company. The number of directors and additional directors must not exceed the maximum strength fixed for the Board by the Articles. If the AGM is not held or cannot be held, the additional director shall vacate his office on the day on which the AGM should have been held.
   (ii) **In a Casual Vacancy**: In the case of a public company, or a private company which is a subsidiary of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may be filled by the Board of Directors at a meeting of the Board. ' Casual vacancy means any vacancy which occurs by reason of death, resignation, disqualification, or failure of an elected director to accept the office for any reason other than retirement by rotation.
   (iii) **As Alternate Director**: An alternate director can be appointed by the Board if it is so authorized by (i) the Articles of the company or (ii) a resolution passed by the company in the general meeting.he shall act for a director, called the 'Original Director' during his absence for a period of atleast 3 months from the State in which the Board meetings are ordinarily held.
4. **Appointment of directors by third parties:** The articles under certain circumstances give power to the debenture-holders or other creditors, e.g., a banking company or financial corporation, who have advanced loans to the company to appoint their nominees to the Board. The number of directors so appointed shall not exceed 1/3$^{rd}$ of the total number of directors, and they are not liable to retire by rotation.
5. **Appoitnment by Proportional representation:** The Articles of a company may provide for the appointment of not less than 2/3rds of the total number of directors of a public company or of a private company according to the principle of proportional representation. The proportional representation may be by a single transferable vote or by a system of cumulative voting or otherwise. The appointment shall be made once in 3 yearsand interim casual vacancies shall be filled in the manner as provide in the articles.
6. **Appointment of Directors by Central Government:** The Central Government has the power to appoint the directors for the purpose of safeguarding the interest of the company, or its shareholders or the public interest. The number of directors to be appointed has to be specified by the Company Law Board/ National Company Law Tribunal if it is satisfied on making a reference to it by the Central Government or on an application of not less than 100 members of the company or of the members holding 1/10 of the total voting power, that th affairs of the company are being conducted either in a manner which is oppressive

to any member of the company or in a manner which is prejudicial to the interests of the company or to the interest of the public. The directors so appointed hold office for a period of 3 years but can be reappointed by the Central Government for further period of 3 years of each.

**Number of Directorships:**

1. No person to be a director of more than 15 companies.
2. In calculating the number of companies of which a person may be a director, the following companies shall be excluded, viz.
   (a) a private company which is neither a subsidiary nor a holding company of a public company.
   (b) An unlimited company;
   (c) An association not carrying on business for profit or which prohibits the payment of a dividend; and
   (d) A company in which such person is only an alternate director.

**Removal of Directors**:

The removal of director rests with following authorities:

(a) The company in general meeting
(b) The central government
(c) The company law board

(a) **Removal by the Company**; Section 284 states that a company may, by ordinary resolution passed in general meeting after special notice, remove a director before the expiry of his period of office. This does not, however,
   (i) apply to the case of a director appointed by the Central Government
   (ii) authorize, in the case of a private company, removal of a director holding office for life on April 1, 1952.
   (iii) Apply to the case of a company which has adopted the system of electing 2/3rds of its directors by the principle of proportional representation.

(b) **Removal By The Central Government**: A director may also be removed at the initiative of the Central Government. The Central Government may remove managerial personnel from office on the recommendations of Company Law board/ National Company Law tribunal.

(c) **Removal By Company Law Board/ National Company Law Tribunal**: When the Company Law Board/ National Company Law Tribunal finds on an application made to it for the prevention of oppression and mismanagement that a relief ought to be granted, it may terminate or set aside any agreement of the company with a director or managing director or other managerial personnel. When the appointment of a director is so terminated he cannot except with the leave of the Board/ tribunal, serve any company in a managerial capacity for a period of five years.

## MANAGING DIRECTOR

A managing director, as defined in Section 2(26) of the Act, means "a director who is entrusted with substantial powers of management which would not otherwise be exercisable by him"
The term includes a director, by whatever name called. The substantial powers of management may be conferred upon him by virtue of an agreement with the company or a resolution of the company in a general meeting or by virtue of its memorandum or articles.
A managing director exercises such powers, performs such functions and discharges such duties involving substantial powers of management as are assigned to him by the Board of Directors and he is required to exercise his powers subject to the superintendence, control and direction of its board of directors.
A managing director being essentially a director must be an individual.

**Disqualifications Of A Managing Director**:
According to section 267 of the Act, no company should appoint or continue the appointment or employment of any person as its managing director or whole time director, who

(a) is an undischarged insolvent or has at any time been adjudged an insolvent;
(b) suspends or has at any time suspended, payment to his creditors or makes or has at any time suspended, payment to his creditors or makes or has made a composition with them; or
(c) is, or has been convicted by a court of an offence involving moral turpitude.

## MANAGER:

As per Section 2(24) of the Act, a manger means " an individual who has the mangement of the whole or substantially the whole of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called". To be deemed as the manger of the company, the individual must be incharge of the whole business of the company. A mere head of a department or a branch manager is not a manager.
Only an individual can be appointed a manager of a company, whether public or private.

**Disqualifications of Manager**
Section 385 of the Act prescribes the following disqualifications for a manager:

(a) is an undischarged insolvent or has at any time within the preceeding five years been adjudged an insolvent; or
**(b)** suspends or has at any time within the preceeding five years suspended payment to his creditors; or
**(c)** is, or has at any time within the preceeding five years been convicted of an offence involving moral turpitude.

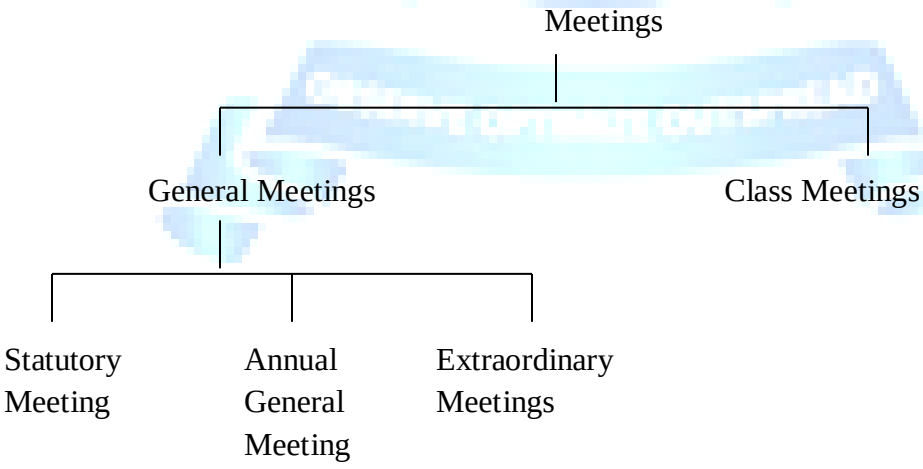
# MEETINGS (BOARD AND GENERAL MEETING)

## BOARD MEETING:

1. **Number of Meetings – once in every 3 months**: In the case of every company whether public or private a meeting of its Board of Directors shall be held atleast once in every quarter and atleast 4 such meetings shall be held in every year. The Central Government may, by notification in official gazette, direct that this provision shall not apply in relation to any class of companies.
2. **Notice of meetings:** Notice of every meeting of the board of directors of a company shall be given in writing to every director for the time being in India and at his usual address in India.
3. **Quorum for meetings:** The quorum for a meeting of the board shall be 1/3$^{rd}$ of its total strength (any fraction in that 1/3$^{rd}$ being rounded off as 1), or 2 directors, whichever is higher.
4. **Powers to be exercised at board meetings**: The board of directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at the meetings of the board, viz., the power to –
   a) make calls on shareholders in respect of money unpaid on their shares
   b) issue debentures
   c) borrow moneys otherwise than on debentures
   d) invest the funds of the company and
   e) make loans

The board may by resolution passed at the meeting, delegate the last three powers to a committee of directors or the manager or any other principal officer of the company, but the board shall specify the limits of such delegation.

## MEETINGS OF SHAREHOLDERS



**Statutory General Meeting:**

- Every company **limited** by shares and every company limited by guarantee and having a share capital shall within a period of **not less than one month nor more than six months** from the date at which the company is entitled to commence business, hold a general meeting of he members of a company. This meeting is called he statutory meeting. This meeting is called the 'statutory meeting'.
- This is the first meeting of the shareholders of a public company and is held only **once n the lifetime** of a company.
- **Statutory Report:** The Board of directors shall, atleast 21 days before the day on which the meeting is to be held, forward a report, called the 'statutory report' to every member of the company. If the report is forwarded later than 21 days before the day of the meeting, it shall be deemed to have been duly forwarded if it is so agreed to by all the members entitled to attend and vote at the meeting. The notice of the meeting shall mention that it is a statutory meeting.
- **Contents of the Statutory report:** The statutory report contains all the necessary information relating to the formational aspect of the company such as total shares allotted, cash received, abstract of receipts and payments, directors and auditor as, contracts, underwriting contracts, commission and brokerage etc.
- **Certification Of Report**: The statutory report shall be certified as correct by not less than 2 directors of the company. One of these directors shall be managing director, if there is one. After the statutory report has been certified, the auditors of the company shall also certify it as correct as regards its first 3 contents.
- **A copy of the report to be sent to the registrar:** The Board shall deliver a copy of the certified statutory report to the Registrar for registration forthwith, after the copies thereof have been sent to the members of the company.

**Default in holding Statutory Meeting**: If default is made in complying with provisions of section 165 for holding statutory meeting, every director or any other officer of the company who is in default shall be punishable with fine which may extend to Rs. 5000.

**Annual General Meeting:**

- Every company shall in each year hold in addition to any other meetings a general meeting as its annual general meeting (AGM) and shall specify the meeting as such in the notice calling it.
- There shall **not be an interval of more than 15 months** between one AGM of the company and the next.
- A company may hold its first AGM within a period of 18 months from the date of its incorporation. In that event it is not necessary for the company to hold any AGM in the year of its incorporation or in the next year.
- The registrar may for any special reason, extend the time for holding any AGM by a period not exceeding 3 months. But no extension of time is granted for holding the first AGM.

- There should be **atleast one AGM per year** and as many meetings as there are years
- **Time and Place of Meeting**: Every AGM shall be called within business hours on a day that is not a public holiday. It shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.
- **21 day's notice**: A general meeting of a company may be called by giving not less than 21 days notice in writing. It may be called with a shorter notice if it is agreed to by all the members entitled to vote at the meeting.
- **Consequences of failure to hold AGM**: If a company fails to hold an AGM –
  a) Any member can apply to the Company Law Board for calling the meeting
  b) The company and every officer who is in default shall be punishable with fine

**Extraordinary General Meeting:**

A statutory meeting and an AGM of the company are called ordinary meeting. Any meeting other than these meetings is called extra-ordinary general meeting. It is called for transacting some urgent or special business which cannot be postponed till the next AGM. It may be convened –

b) by the Board of Directors on its own
c) by the Board of Directors on the requisition of the members
d) by the requisitionists themselves on the failure of the Board of Directors to call the meeting

(I) Extra-ordinary meeting convened by Board of Directors

The Board of Directors may call an extra-ordinary general meeting –

a) **On its Own** – when some special business is to be transacted, which in the opinion of the Board of Directors cannot be postponed till the next AGM
b) **On requisition of the members** – The requisite number of members of a company may also ask for an extra-ordinary general meeting to be held. In such a case the Board of Directors shall duly proceed to call such a meeting of the company. The requisition for such a meeting by the members shall be signed –
   **i)** In the case of a company having share capital, by holders of not less than $1/10^{th}$ of the paid up capital of the company having the right of voting in regard to the matter of requisition; or
   **ii)** In the case of a company not having share capital, by members representing not less than $1/10^{th}$ of the total voting power in regard to the matter of requisition

   A requisition shall set out the matters for the consideration of which the meeting is to be called. It shall be deposited at the registered office of the company.

   The Board shall proceed to call a meeting within 21 days from the deposit of a valid requisition. The meeting shall be held within 45 days from the date of the deposit of the requisition.

(II) Extra-ordinary meeting convened by the requisitionists

If the Board of Directors fail to call a meeting as required by the requisition, the meeting may be called by the requisitionists themselves to be held on a date fixed within 3 months of the date of the requisition.–

a) in the case of a company having share capital, by such of the requisitionists as represent either a majority in value of the paid up share capital held by all of them or not less than $1/10^{th}$ of the paid up share capital of the company having the right of voting whichever is less;
b) in the case of a company not having share capital, by the requisitionists representing not less than $1/10^{th}$ of the total voting power of all the members of the company

**Requisites of a Valid Meeting;**

1. **Proper Authority:** The meeting must be convened by the proper authority. The Board of Directors is the proper authority to convene a meeting by passing a resolution in their meeting, about convening a shareholder meeting.
2. **Notice**:

   Notice of every meeting must be given to

   a) all members entitled to vote on the matters which are proposed to be dealt with in the meeting

   b) the person on whom the share of any deceased or insolvent members may have devolved and

   c) auditor or auditors of the company.

   If the notice of the meeting is not given to every person entitled to receive notice, any resolution passed in the meeting shall be invalid.

   Length of Notice: Notice of the general meeting should be given atleast 21 days before the date of the meeting and in writing. However, shorter notice may be given in the following cases:

   i) In the Case of an AGM, if all the members entitled to vote agree to that effect and
   ii) In case of any other meeting, if the members of the company who are holding 95% of the paid up share capital, where the company has share capital and where the company does not have share capital, holders of 95% of the total voting power of the company agree to that effect.

   Contents of Notice: Every notice of the meeting of the company shall specify the place and the day and hour of the meeting and shall contain a statement of the business to be transacted at the meeting. The business may be ordinary business or special business

   **Ordinary Business**: In the case of AGM, the following business is deemed as ordinary business, viz business relating to –

   a) The consideration of the accounts, balance sheet and the reports of the board of directors and auditors
   b) The declaration of a dividend
   c) The appointment of directors in place of those retiring
   d) The appointment of auditors and the fixing of their remuneration

   **Special Business**: In the case of an AGM, any business other than the ordinary business, and in case of any other meeting, all business is deemed special. For every special business, an

explanatory statement setting out all the material facts concerning each such item of business should be included in the notice.

If the notice does not specify the nature of the business to be special, it is bad in law.

3. **Quorum for Meeting:** Quorum is the minimum number of members, which must be present in the meeting to make a meeting a valid one. Some of the provisions regarding quorum given in section 174 of the Act are:
   i) Unless the articles provide otherwise, in case of public limited company, the quorum shall be five members present and in case of a private limited company, the quorum shall be two members present personally.
   ii) If within half an hour from the time appointed for holding a meeting of the company, a quorum is not present, the meeting if called upon the requisition of the members, shall stand dissolved.
   iii) In any other case, the meeting shall adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the board may decide
   iv) If at the adjourned meeting also, a quorum is not present, within half an hour from the time appointed for holding the meeting, the members present shall be quorum.

   The above points ii, iii and iv shall be subject to the provisions of the articles of the company.
4. **Chairman:** Unless the articles of association provide otherwise, the members personally present at the meeting shall elect one of themselves to be the chairman thereof by the show of hands.
5. **Minutes:** Minutes are records of the business transacted at the meeting.
   i) Minutes of proceedings of meetings: Every company shall prepare minutes of all proceedings of every general meeting and of all proceedings of every meeting of its board of directors and of every committee of the board within 30 days of the date of such meeting.
   ii) Minute Book: The book in which the records of the proceedings of a meeting is kept is known as minute book.
   iii) Numbering of Pages: The pages of every minute book shall be consecutively numbered. In no case is the attaching or pasting of papers of proceedings of a meeting allowed in minute books.
   iv) Signing of minutes: Each page of the minute book shall be initialed or signed by the chairman of the same meeting or the next succeeding meeting. The last page of the record of the proceedings of each meeting in the minute book shall be dated and signed.
   v) Evidentiary value of minutes; Minutes of meetings kept in accordance with the provisions of Sec. 193 shall be evidence of the proceedings contained therein and shall be conclusive of the facts stated therein.

**Other Aspects:**

1. **Proxies**: A member entitled to attend and vote either in person or by proxy. A proxy is an authority to represent and vote for another person at a meeting. It is also an instrument appointing a person as proxy. The person so appointed is also called a proxy.

   If the articles do not other wise provide –

   i) the proxy can vote only on a poll

   ii) a member of private company cannot appoint more than one proxy to attend on the same occasion

   iii) a member of a company not having a share capital cannot appoint a proxy

   **Proxy to be in Writing**: The instrument appointing a proxy shall be in writing and signed by the appointer or his attorney duly authorized in writing

   **Proxy to be deposited 48 hours before the meeting**: A proxy, in order to be effective, shall be deposited with the company 48 hours before the meeting.

2. **Voting and Poll**: There are several occasions, when a voting is to be arranged at a meeting. The following methods of voting are used for this purpose:

   i) Voting by show of hands: At any general meeting, a resolution put to vote at a meeting shall unless a poll is demanded, be decided by show of hands. Declaration given by the chairman regarding the declaration of result of voting by show of hands shall be conclusive.

   ii) Voting by Poll: Before or on declaration of the result of voting on any motion by show of hands, a poll may be taken by the chairman of the meeting either on his own accord or on the demand made to that effect by the persons specified below:

      a) In case of a public company having share capital, a poll shall be taken on a demand by any member or members present in person or by proxy and holding atleast $1/10^{th}$ of the total voting power in the respect of the resolution or on which an aggregate sum of Rs. 50,000 has been paid up

      b) In the case of a private company having share capital, by one member having the right to vote on the resolution and present in person or by proxy if not more than 7 such members are personally present and by 2 such members present in person or by proxy if more than 7 members are present personally

      c) In the case of any other company, by any member or members present in person or by proxy and having not less than one tenth of the total voting power in respect of the resolution.

      d) Demand for poll can be withdrawn at any time by the person or persons who made the demand

   A poll demanded on a question or adjournment or the appointment of a chairman shall be taken forthwith. In any other case it shall be taken within 48 hours of the demand for poll.

A poll is complete when its result is ascertained and not an earlier day when the votes were cast. Where a poll is taken, the meeting is regarded as continuing until the ascertainment of the result of the poll.

**3. Resolutions:**

(i) **Ordinary Resolutions:** An ordinary resolution is a resolution passed at a general meeting of a company by a simple majority of votes (i.e., votes cast in favour of the resolution exceed votes cast against it) including the casting of vote of the chairman, if any. The votes may be cast by the members in person or by proxy, where proxies are allowed. In ascertaining the simple majority of the members, only the votes cast, including the casting vote of the chairman, if any, have to be taken into account.

(ii) **Special Resolutions:** A special resolution is the resolution, which has the following features:

a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting
b) the votes cast in favour in the resolution are atleast 75% of the total votes cast in connection with the resolution
c) the notice and agenda include an explanatory statement setting out all material facts concerning the subject matter of the special resolution including the nature of concern or interest of every director and the manger if any shall be annexed to the notice of the meeting
d) A copy of every special resolution together with the copy of the explanatory statement should be filed with the registrar within 30 days of passing of the resolution.

(iii) **Resolution requiring special notice**: A resolution requiring a special notice is not an independent class of resolutions. It is actually an ordinary resolution for which a special notice is required to be given.

**Section 190(1)** provides that where the Act or articles provides so, a special notice of not less than 14 days should be given for certain resolutions 14 days before the meeting in which a resolution is moved, exclusive of the day on which the notice is served or deemed to be served and the day of the meeting.

**Section 190(2)** provides that on receipt of the notice, the company shall give its members notice of the resolution in the same manner as it gives notice of the of the meeting or if that is not possible, shall give them notice thereof , either by advertisement in newspaper having an appropriate circulation or any other mode allowed by the articles not less than 7 days before the meeting.

A special notice is required for resolution in the following cases :

a) Appointment of an auditor other than the retiring auditor
b) Provision that a retiring auditor shall not be re-appointed
c) Removal of a director before the expiry of his period

d) Appointment of a director i.e, place of one who is removed

**Passing Of Resolution By Postal Ballot:**

Where a company decided to pass any resolution by resorting to postal ballot, it shall send a notice to all the shareholders, alongwith the draft resolution explaining the reasons therefore, and requesting them to send their assent or dissent in writing on a postal ballot within a period of 30 days from the date of posting of the ballot. The notice shall be sent by registered post acknowledgement due, or by any other method as may be prescribed by the Central Government on this behalf, and shall include with the notice, a postage pre-paid envelope for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period.

If a resolution as assented to by a majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

## WINDING UP

Winding up means the proceeding by which the company is dissolved.

The assets of the company are disposed off, debts are paid off out of the realized assets(or from contribution from its members), and the surplus , if any, is then distributed among the members in proportion to their holdings in the company.

**Modes of Winding up**:

There are three modes of winding up of a company:

1. Winding up by the court, i.e., compulsory winding up
2. Voluntary Winding up. This may be –
    i. Member's Voluntary Winding Up
    ii. Creditor's Voluntary Winding Up
3. Winding up subject to supervision of the court.

5. **Winding Up by the Court:** Winding up of a company under the order of a court is also known as 'compulsory winding up'

   Grounds for compulsory winding up: A company may be wound up by the court in following cases:

   1. **Special Resolution of the Company**
   2. **Default in delivering the statutory report to the registrar or in holding statutory meeting**
   3. **Failure to commence business within a year from its incorporation, or suspension of business for a whole year:** The court exercises this power only if company has no intention of carrying on its business or if it is not possible for it to carry on its business. The Court will not wind it up if –
      (a) there are reasonable prospects of the company starting business within a reasonable time, and

(b) there are good reasons for the delay, i.e., the suspension of business is satisfactorily accounted for and appears to be due to temporary causes.

4. **Reduction of membership**: if, at any time, the number of members of a company is reduced in case of a public company, below 7 or in case of a private company, below 2, the company may be ordered to be wound up by the court. If the company carries on business for more than 6 months while the number is so reduced every member who is cognizant of the fact that it is carrying on business with members fewer than the statutory minimum, will be severally liable for the payment of the whole of the debts of the company contracted after those six months.
5. **Inability to pay its debts**: A company may be wound up by the court if it is unable to pay its debts. The test is whether the company has reached a stage where it is commercially insolvent i.e., to say, that its existing and probable assets would be insufficient to meet the existing liabilities.
6. **Any other Just and Equitable cause:** As to what is just and equitable cause depends upon facts of each case. The court may order winding up under the 'just and equitable' clause in the following cases:
   (1) **When the substratum of the company is gone**
   (2) Where there is a deadlock in the management of the company.
   (3) When the substratum was formed to carry out fraudulent or illegal business or when the business of the company becomes illegal

2. **<u>Voluntary Winding Up:</u>**

Voluntary winding up means winding up by the members or the creditors of the company without interference by the court.

**Circumstances in which a company may be wound up voluntarily:** A company may be wound up voluntarily-

(i) **By passing an Ordinary Resolution**: When the period, if any, fixed for the duration of a company by the articles has expired, the company in general meeting may pass an ordinary resolution for its voluntary winding up. The company may also do so when the event, if any, on the occurrence of which the articles provide that the company is to be dissolved, has occurred.

(ii) **By passing a Special Resolution**; A company may at times pass a special resolution that it be wound up voluntarily.

**Types of Voluntary Winding Up;**

A voluntary winding up may be a –

1. Member's Voluntary Winding Up, or
2. Creditor's Voluntary Winding Up

1. **Member's Voluntary Winding Up**: In a voluntary winding up of a company if a declaration of its solvency is made in accordance with the provisions of section 488, it is a member's voluntary winding up. The declaration shall be made by the majority of the

director's at a meeting of the Board that the company has no debts or that it will be able to pay its debts in full within 3 years from the commencement of the winding up. The declaration shall be verified by an affidavit.

The declaration shall have effect only when it is –

(a) Made within 5 weeks immediately before the date of the resolution, and delivered to the Registrar for registration before that date; and

(b) Accompanied by a copy of the report of the auditors of the company on

(i) The profit and loss account of the company from the date of the last profit and loss account to the latest practicable date immediately before the declaration of solvency,

(ii) The balance sheet of the company, and

(iii) A statement of the company's assets and liabilities a on the last mentioned date.

2. **Creditor's Voluntary Winding Up**: A voluntary winding up of a company in which a declaration of its solvency is not made is referred to as a creditor's voluntary winding up.

**Member's and Creditor's Voluntary Winding Up Compared:**

| | Member's Voluntary Winding Up | Creditor's Voluntary Winding Up |
|---|---|---|
| Declaration of Solvency | There is declaration of solvency | No such declaration |
| Control of winding Up | The members control the winding up of the company and creditors do not participate directly as the company makes a declaration of solvency | The creditors control the winding up of the company as the company is deemed to be insolvent |
| Meetings | There is no meeting of creditors | Whenever there is meeting of contributories there is meeting of creditors |
| Appointment of Liquidator | The liquidator is appointed by the company and his remuneration is fixed by the company | The liquidator is appointed by the creditors and his remuneration is fixed by the committee of inspection or, if there is no such committee, by the creditors. |
| Committee of Inspection | There is no committee of inspection | Creditors may appoint a committee of inspection |
| Powers of Liquidator | The liquidator can exercise certain powers with the sanction of special resolution of the company | The liquidator can exercise such powers with the sanction of the court or the committee of inspection or of a meeting of the creditors. |