

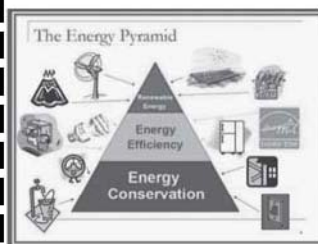
Technological Understanding

- Preference for Five-star Rated Appliances Saves Energy and Environment
- Use of LED and CFL Electricity Bulbs Saves Money and Energy
- Maximum Use of Solar Energy Operated Appliances



Slide Number : 13

Our Formula



- Saving amounts Production Energy
- If We Use Energy Judiciously, Energy will Protect Us

Slide Number : 14

We Will Shoulder Our Responsibility...



Definitely...

THANKS

We Welcome Your Queries...

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Slide Number : 15

6.7.4 Individual Report on a Visit to a Bank :

Visit to State Bank of India

As the Co-curricular and Extra-curricular Activity Secretary Vinavadini Vidyalaya, I submit the following report :

We have studied Bank Correspondence as part of our syllabus. In order to understand the various activities associated with Banking, we decided to pay a visit to a bank. We contacted the manager of State Bank of India, Gandhi Road Branch, availed his permission and decided to visit the bank on 18th January, 2017 in a group consisting of one teacher and fifteen students.

We reached the bank at 11am; during working hours. The Public Relations Officer of the branch Mr Mahendrabhai Joshi spent two hours with us, took us to various departments except the cash cabin and answered all the questions asked by us.

At the outset, he explained when and how, in times of mobile and net banking, the account holders need to visit the bank personally. Thereafter, he clarified when and in what matters correspondence between the bank and account holder is actually required. Checking the knowledge of students in the field of banking and bank correspondence, he clarified certain essential aspects and other facilities provided by banks :

- Opening and closing of bank accounts.
- The basic functions of various accounts like savings, current, term deposit, recurring deposit, provident fund, de-mat etc. and in what cases they are required.
- Crediting and debiting amount in current and savings accounts and clearing process of a cheque.
- Credit, Debit and ATM cards, advantages and limitations of their use.
- Details and comparative analysis of facilities like Loan, Overdraft and Cash credit that are frequently required by common people and businessmen.
- Safe Deposit Vault, Payment of Bills, Foreign Exchange, Status Inquiry and their replies.
- Significance of care, concern and regularity on part of employees in spite of computerization of banking activities.
- Advantages and limitations of mobile banking and net banking, use of alpha-numerical characters for the pin and password, care for changing them periodically and caution in not sharing the details with others.

We realised that the details of certain aspects, when taught and learnt as part of syllabus, are not understood in their holistic form. For that such visit becomes useful. When, in future, we have to operate with our individual accounts, information gathered during such visits is found valuable.

We are thankful to the principal Shri Chintanbhai Mistry, the Branch Manager Shri Kalyanbhai Saini and the Public Relations Officer of the branch Mr Mahendrabhai Joshi for making the programme successful and fruitful.

Report prepared by : Keshav Parmar, Co-curricular and Extra-curricular Activity Secretary, Vinavadini Vidyalaya, Shardagram.

What have you learnt in this chapter ?

- The popular word for putting forth ideas in any form is 'Presentation'.
- Presentation means the skill and ability to present, inform and explain one's belief, approach, opinion or plans to the other person or group in the most appropriate manner.
- The objectives and formats of presentation vary.
- The manner of presentation will vary in case of explanation of a principle, narration of a procedure or providing futuristic picture. Thus, by way of presentation an individual or group can easily explain their point by using his/their ability, skill and technology to the other individual or group.
- Presentation can be made orally, in writing and using audio-visual aid like computer. Presentation made with the use of technology creates a lasting impact.
- Presentations are of three types from the point of view of manifestations/mediums of expression : Oral, Written, Power Point Presentation.
- Using technology, with the amalgamation of oral and written forms, presentation can be made by way of power point presentation. This method, being the most practical and simple, has become synonymous to presentation.
- From the point of view of the presenter, presentations can be of two types: Individual and Group.
- From the point of view of the receiving party (attendees), presentations can be of two types: Face to face and Distant.
- From the point of view of objectives, presentations can be of five types: Informative, Instructional, Awakening, Persuasive and Decision making.
- Scrutinizing the subject matter, the presentation should be made to the point.
- Because of the convenience of examining pros and cons, presentation becomes impressive and effective.
- For oral presentation, in addition to the selection of words and language, clarity of pronunciation and intonation remain important.
- For written presentation, correctness of grammar and spelling is especially important.
- In case of power point presentation, application of the skills and practice in preparing a slide show and its impressive presentation brings desired result.
- Report writing becomes helpful for recounting events occurred in past and also for the narration of current happenings.
- Pre-decided format should be followed for preparing individual and committee reports.
- We have learnt and noted peculiarities of various types of presentations.

Self-study

1. Select appropriate options and write answers to the following :

- (1) Using technology and amalgamating oral and written methods, which of the following presentation modes are used ?
- | | |
|------------------------------|--------------|
| (A) Presentation | (B) Strategy |
| (C) Power point presentation | (D) Petition |

- (2) What type of slides should be prepared for making a slide show ?
 - (A) In maximum number
 - (B) Having maximum detailed write-up
 - (C) Having maximum graphics and animations
 - (D) Having proportionate necessary elements and in appropriate number
- (3) Who should be at the centre of presentation ?
 - (A) Attendees
 - (B) Officers
 - (C) Leaders
 - (D) Presenters
- (4) What among the following is not required for bringing desired results ?
 - (A) Money
 - (B) Time
 - (C) Articulation and pronunciation
 - (D) Apparatus

2. Answer the following questions in brief :

- (1) How does an appropriate presentation tend to inform all ?
- (2) What does presentation mean ?
- (3) For what matters is a presentation generally required ?
- (4) What peculiarities does a powerpoint presentation possess as compared to the other two methods of presentations ?
- (5) How should the write-up be arranged in the slides of a Powerpoint presentation ?
- (6) Give two examples of awakening type of presentation.
- (7) Suggest two peculiarities of persuasive type of presentation.

3. Answer the following questions to the point :

- (1) Write different types of forms of presentation from the point of view of objectives of presentation and write in detail about any two.
- (2) Write any five objectives of presentation.
- (3) Write any five points to be kept in mind during oral presentation.
- (4) Write any five points to be kept in mind for preparing slide show for presentation.
- (5) What is report writing? In what cases report can be prepared ?
- (6) Write five points for preparing committee reports.
- (7) Write five points to be remembered for presenting a powerpoint presentation.

4. Draft reports/presentations keeping in mind the following details :

- (1) Prepare a committee report for celebrating our Independence Day at your school.
- (2) Prepare an individual report after school students' visit to the Civil Hospital.
- (3) Prepare a committee report for celebrating the International Yoga Day at your school.
- (4) Prepare an individual report after school students' visit to a museum.
- (5) Prepare a powerpoint presentation demonstrating the skills and specifications of preparing and effectively presenting a power point presentation.
- (6) Prepare a powerpoint presentation giving explanation about 'Consumer Protection', the chapter you study in the subject of Business Administration.



PART : 2

SECRETARIAL PRACTICE

1

ISSUE OF SHARES

What will you learn in this chapter ?

- | | |
|--|--|
| 1.1 The Procedure for Share Application | 1.6 Statement of Share Allotment |
| 1.1.1 Opening of a Bank Account | 1.6.1 Meaning |
| 1.1.2 Receiving Share Applications | 1.6.2 Duties of Secretary Regarding Share Allotment |
| 1.1.3 Classification of Share Applications | 1.7 Share Call |
| 1.1.4 Share Application and Statement of Allotment | 1.7.1 Provisions of The Companies Act Regarding a Share Call |
| 1.2 The Procedure for Share Allotment | 1.7.2 Procedure of Making a Share Call |
| 1.2.1 Meaning of Share Allotment | 1.7.3 Duties of the Secretary Regarding Share Calls |
| 1.2.2 Procedure of Share Allotment | 1.8 Share Forfeiture |
| 1.3 Legal Restrictions and Provisions on Share Allotment | 1.8.1 Meaning |
| 1.4 Irregular and Illegal Share Allotment | 1.8.2 Procedure of Share Forfeiture |
| 1.4.1 Meaning and Circumstances of Irregular Share Allotment | 1.8.3 Duties of the Secretary Regarding Share Forfeiture |
| 1.4.2 Effect of Irregular Share Allotment | 1.8.4 Effects of Share Forfeiture |
| 1.4.3 Illegal Share Allotment | 1.9 Surrender of Share |
| 1.4.4 Difference between Irregular and Illegal share Allotment | 1.9.1 Circumstances of Share Surrender |
| 1.5 Renunciation of Share | 1.10 Share Lien |
| | 1.11 Share Dividend |

Introduction

A public company invites the general public to subscribe to its shares by an invitation through a prospectus. The Company also issues securities through private placement. In addition to this, shares are also issued by the company through Rights shares and Bonus shares. It is necessary for a company to fulfill the Provisions of Securities Contract (Regulation) Act, 1956, The Companies Act 2013 and guidelines issued by The Securities and Exchange Board of India (SEBI) under Securities and Exchange Board of India Act 1992 for public issue of shares and other securities in India. Thus, a public company raises share capital through - (1) Public Issue (2) Rights Issue (3) Bonus Issue and (4) Private Placement. Along with initial public offer, existing share holders can also offer part of their holdings to the general public through the prospectus by taking permission of the Board of Directors. This is called offer for sale. The prospectus is any kind of notice, circular, advertisement or any other document through which the company invites the public to subscribe to its securities.

The Company takes help of various intermediaries Like Lead Manager, Registrar and Transfer agent, Bankers to the issue, Underwriters, Depository, Credit Rating Agency, Stock Exchange etc. to

*** Changes made in companies Act, 2013, 15-5-2016 are included in this book.**

complete the entire process of a public issue. The company secretary initiates the process of issuing securities with the help of these intermediaries by fulfilling provision of prevailing laws. After obtaining sanction of prospectus from SEBI, the procedure of public issue can be divided into two parts :

(1) Procedure of share application and (2) Allotment of shares.

1.1 The Procedure for Share Application

The Procedure for share application can be divided into the following stages :

1.1.1 Opening of a Bank Account : Bankers to the issue are appointed by a company to make all transactions related to the issue of shares. The company can open a current account in any scheduled bank for making transactions regarding the issue of shares. For the purpose of public issue, the company opens a special bank account with the bankers to the issue which is known as Escrow Bank Account. This account is opened by presenting a copy of the resolution passed in the meeting of Board of Directors regarding opening of the account alongwith other documents. While opening this account company assures that the share application money will be deposited in this account and the total amount including share capital and premium (If shares are issued at a premium) will be transferred to the company's account, only after completion of the process for share allotment. This account is closed after the completion of the process for share allotment. As per latest guidelines of SEBI (01-01-2016), share application can be made only through ASBA (Application Supported by Blocked Amount). According to the ASBA procedure, the share application money is blocked by the bank where the applicant holds his account. The money remains blocked till the share allotment is done and the application money is transferred to the company's account. As soon as the allotment of shares is done, the amount of share allotted is transferred from the bank account of the applicant to the bank account of the company. Thus, the question of refunding, the application money on shares not allotted, does not arise.

1.1.2 Receiving Share Applications : Once the prospectus is sanctioned by SEBI, the company gives advertisement in newspapers and publically announces the period during which the public offer will remain open for public subscription. Generally this period is 3 to 5 days. All investors willing to apply for shares can obtain share application forms from share brokers, sub brokers, stock exchanges or banks recognised for the process of ASBA. Investor will deposit the duly filled in share application form alongwith all details, signature and copy of Permanent Account Number (PAN) to brokers, who manage to deposit the application forms to banks recognised for ASBA process so that the share application money can be blocked in the respective bank account of applicant. Applicants can directly approach banks recognised for ASBA process and deposit the share application for further process of blocking the application amount. No cheques are required for the process of ASBA. Under the ASBA process, it is compulsory to deposit the application form to any of the recognised branches of bank for ASBA process in which the applicant holds his bank account, because the bank requires to block the application money in the account. The process for allotment is carried out after verifying the specimen of signatures in bank account and demat account of applicant. After receiving the share applications and blocking the application money, the bank informs the same to Registrar of the Companies and only those applications, of which, the application amount is blocked are handed over to Lead manager of the company, by banks.

1.1.3 Classification of Share Applications : A statement of share application is prepared after receiving share applications. Applications with incomplete information are rejected. Applications qualifying for share allotment are classified into various categories of investors. As per SEBI guidelines, applicants are to be classified as (1) Retail Investors, (2) Non-Institutional High Networth Investors, (3) Institutional investors, (4) Employees of the Company (if shares are reserved for allotment to employees of the company.) As per SEBI guidelines, it is necessary to reserve 10 % of shares issued for retail investors.

Generally, a company discloses the reservation made for each class of investors for shares to be allotted, in its prospectus.

1.1.4 Share Application and Statement of Share Allotment : The number of applications received in each category is compared with number of shares to be allotted in their respective category. If the number of applications received in a category are more than the shares to be allotted then proportionate allotment is done. Allotment is finalised in consultation with the Company Secretary, Lead Manager to the issue and representatives of the recognised stock exchanges. A statement of allotment, containing details of the name of applicant to whom shares are allotted, number of shares allotted, demat account number, depository participant ID etc., is prepared. Depository and depository participants are informed about the shares allotted to respective applicants and shares allotted are credited to respective demat account of the applicant. The price of shares allotted is transferred from the amount blocked under ASBA to the Escrow Bank Account of the company. Applicants are informed about the shares allotted or not through SMS and email by the stock exchange and depository participant. The Company also informs about the allotment of shares to the Registrar of Companies and SEBI. The company is required to complete the entire process, from receiving share applications to allotment of shares and listing of shares on recognised stock exchange, within 15 days as per SEBI guidelines.

1.2 The Procedure of Share Allotment

1.2.1 Meaning of Share allotment : Allocation of shares issued among applications received from general public against shares offered for subscription and crediting the shares allotted to demat account of the respective applicant is called share allotment.

1.2.2 Procedure of Share Allotment : The Procedure for allotment of shares can be classified into the following stages :

(1) Receiving the share application and blocking the application amount in the bank account of the applicant by recognised bank branches for ASBA procedure and submitting the applications to syndicate members appointed by the company for the public issue.

(2) Uploading details of share applications received, like name of applicant, class of investor, number of shares applied for, bid amount or cut off price, application number, depository participant ID, demat account number, amount paid etc. by syndicate member on electronic bidding system of a recognised stock exchange.

(3) Details of applications received are sent by the syndicate member to the Registrar to the issue and recognised stock exchange.

(4) Applications received are classified into different categories of investors like Retail Investors, High Net Worth Investors, Institutional Investors and Employee of the company by the Registrar to the issue and a statement containing all details is prepared.

(5) Basis of allotment among applicants from various categories of investors is decided jointly by the Registrar to the issue, Lead manager, Syndicate member, Company Secretary and Board of Directors.

(6) Shares are allotted to various applicants on the basis of a predecided formula of the allotment.

(7) Statement of share allotment is prepared by the Registrar to the issue and sent to the recognised stock exchange, depository and SEBI.

(8) Shares are credited to demat account of applicants by depository and applicants are informed regarding shares allotted or not through SMS and e-mail by depository and recognised stock exchange. There after, lead manager takes further action to list the shares on recognised stock exchange.

1.3 Legal Restrictions and Provisions on Share Allotment

Certain restrictions are imposed on allotment of shares under The Companies Act, 2013 and guidelines issued by SEBI. Some of them are as under :

- (1) A company can not issue shares at a discount in a public issue.
- (2) A minimum of 10 % of shares issued, will be reserved for retail investors in a public issue.
- (3) All types of investors have to make applications through ASBA process only.
- (4) Entire process of public issue including opening of subscription, accepting applications, allotment of shares and listing of shares on recognised stock exchange is to be completed within 10 days. Thereafter trading of shares allotted will commence on a recognised stock exchange.
- (5) Demat account is compulsory for applying for shares and the shares will be credited into demat account of the applicant only.
- (6) Atleast 90 % of the shares issued which are not underwritten, must be subscribed. The company can not issue shares if applications received are less than 90 % of shares (minimum subscription) issued.
- (7) Company is required to issue shares through book building process if certain criteria laid down by SEBI are fulfilled by the company.
- (8) If shares are issued at fixed price; decided in advance, the company must get the prospectus sanctioned by SEBI and if shares are issued through book building process, the company must get the “Red Herring” prospectus sanctioned by SEBI.
- (9) A minimum of 5 % of the face value of a share or the amount decided by SEBI must be called up as share application money.
- (10) The company must enter into an agreement with a recognised stock exchange for the listing of shares.
- (11) The company must enter into an agreement with respective depository company to credit the shares allotted.
- (12) Minimum subscription and it's effect must be disclosed in the prospectus.
- (13) The company must have a minimum net worth as prescribed by SEBI, for making a public issue.
- (14) If promoters have also purchased shares in the public issue, they can not sell such shares for a certain of period as prescribed by SEBI. This period is known as “Lock-in-period.”

1.4 Irregular and Illegal Allotment of Shares

1.4.1 Meaning and Circumstances of Irregular Share Allotment :

Meaning : Irregular allotment of shares is when shares are allotted without fulfilling statutory provisions and restrictions.

A share allotment is known as irregular allotment under the following circumstances :

- (1) Shares are allotted without receiving minimum subscription.
- (2) A copy of prospectus is not filed with Registrar of Companies and SEBI.
- (3) The minimum 5 % of face value of share or the amount decided by SEBI is not received with application.

- (4) Escrow Bank account is not opened with a scheduled bank.
- (5) Listing agreement is not made with recognised stock exchange.
- (6) Agreement is not made with depository.
- (7) Shares are allotted without observing guidelines issued by SEBI and Provisions of Companies Act.
- (8) Information given in prospectus is misleading or incorrect.

1.4.2 Effect of Irregular Share Allotment : When allotment of shares is irregular, applicant can get the allotment cancelled at his option and can get the refund of the amount paid on shares. It is important to note that in case of irregular allotment, the applicant can get the allotment cancelled if any loss has been incurred by him due to this allotment. The time limit for the same is as under :

(1) Application for cancellation of share allotment can be made within two months of the first statutory meeting.

(2) Within two months of allotment of shares, if allotment was done after the first statutory meeting.

(3) A director is personally responsible to compensate the loss to the company or share holder if he willfully violates provisions of statutory allotment or allows others to violate them. The process of recovery of such a loss must be initiated within two years of allotment of shares.

1.4.3 Illegal Shares Allotment : Allotment of shares is considered illegal under the following circumstances :

(A) Share allotment is a contract between a share holder and the company. Such contract can be called a valid contract only, when all essential elements which are required for a valid contract are present. Any allotment made in absence of such elements is considered illegal.

Share allotment is considered illegal, from the beginning, if the following elements are absent :

- (1) **Offer :** The applicant who wants to become a share holder must have applied to the company for purchase of shares. Such application is called an offer.
- (2) **Acceptance of offer :** It is necessary that the company must accept the offer. When Directors pass a resolution for share allotment, the offer is said to be accepted by the company.
- (3) **Informing the Acceptance of Offer :** The company must inform shareholders about the acceptance of application. When an allotment letter is sent to the applicant by the company, it is said that acceptance of offer has been informed.
- (4) **Consideration :** Consideration is said to be paid when the amount specified against allotment is paid by the applicant.

(B) If shares are allotted against the provisions of Articles, the allotment is considered illegal.

(C) If shares are allotted by an individual director, it is said to be illegal. As per The Companies Act, shares can be allotted by Board of Directors only.

(D) If shares are allotted by violating essential provisions for listing of shares on stock exchange, the allotment is considered illegal.

Illegal share allotment is void from the beginning. No application is required to be made to consider it illegal. Share allotment is illegal when provisions under The Companies Act or other Acts have been violated.

1.4.4 Difference between Irregular and Illegal Allotment of Shares :

Sr. No.	Points	Irregular Share Allotment	Illegal Share Allotment
(1)	Meaning	Share allotment made by violating provisions of companies act regarding regular share allotment is called irregular share allotment.	Share allotment made by violating provisions of lawful contract under Indian Contract Act and Provisions of legal share allotment under companies act is called illegal share allotment.
(2)	Circumstances	Share allotment becomes irregular when allotment is made before registering prospectus, before receipt of minimum subscription and share allotment is made without receiving required application money on shares subscribed.	Share allotment is considered as illegal when offer is not made by an applicant, offer is not accepted, acceptance of offer is not informed by the company or there is absence of consideration.
(3)	Effect	Irregular allotment is voidable at the option of the shareholder and he is required to take certain steps within a time limit for the same.	The allottee of the shares is not required to take any step for cancellation of allotment because such allotment is void from the very beginning.
(4)	Effect on Membership	Membership ends by eliminating name of shareholder from the Register of Members if share allotment is considered void respect to irregular share allotment.	There is no question of cancellation of membership under illegal share allotment as membership has not been awarded.
(5)	Liability	Responsible officers of the company for irregular allotment are liable to compensate the loss occurred to the company and the share holders.	No such steps are required to be taken under illegal allotment of shares as there is no contract.

1.5 Renunciation of Share

A company can offer its existing shareholders additional shares called right shares. Renunciation is a process where an existing shareholder can give up, some or all shares, offered as Right Shares to him in favour of another person. The shareholder is expected to fill a form called the Letter of Renunciation for this. Companies make provisions for this in their Articles. A letter of Renunciation is enclosed with the allotment letter itself.

A letter of renunciation is divided into two parts :

(1) The first part is a letter of renunciation in which the original shareholder signs and states that he wants to renunciate some or all shares in favour of a certain persons.

(2) The second part is a request for allotment of shares. The person in whose favour shares are to be renunciated signs and requests the company to allot shares to him.

Company decides a time limit for sending the renunciation letter. If the letter is received from the original shareholders within the time limit decided by the company, the company makes appropriate notes in 'Statement of Application and Allotment' and when the list of membership is prepared the name of the other person is recorded as member.

1.6 Statement of Share Allotment

1.6.1 Meaning : Newly established companies invite the general public to subscribe to their shares, in a public issue through a prospectus. After receiving applications in response to this invitation, Board of Directors decide the basis of allotment of shares, according to prevailing rules and regulations and decides number of shares to be allotted to respective applicants. A statement, indicating number of shares allotted to each applicant, is called a share allotment statement. In such a statement, the name of applicant, address, number of shares applied for, number of shares allotted, demat account number, Depository ID, Permanent Account Number etc. are mentioned. Now a days such statements are prepared with the help of a computer software.

1.6.2 Duties of a Company Secretary with Respect to a Share Allotment : A company secretary is required to perform following duties in respect to share allotment, under the provisions of The Indian Contract Act and The Companies Act :

- (1) Opening an Escrow Bank Account with a scheduled bank by passing a resolution in the meeting of Board of Directors.
- (2) Drawing an agreement with a recognised stock exchange for the listing of shares.
- (3) Drawing an agreement with various intermediaries like Lead Manager, Registrar, Bankers to the issue, Depository, Brokers etc. for the public issue.
- (4) Fulfilling statutory provisions for withdrawal of share applications and closure of subscription list.
- (5) Preparing lists of applicants in different categories.
- (6) Arranging meetings of the Board of Directors for allotment of shares and preparing minutes of such meetings.
- (7) Informing applicants regarding share allotment (such information is given through SMS and e-mail in present times.)
- (8) Informing applicants regarding non-allotment of shares.
- (9) Filing the Share Allotment statement with Registrar of Companies.
- (10) Releasing payment of underwriting commissions, if underwriting agreement has been entered into.
- (11) Releasing payment of as agreed upon remuneration to Lead Manager, Depository, Brokers, Registrar to the issue etc.
- (12) Getting the shares listed on recognised stock exchanges after allotment.

1.7 Share Call

When a company issues shares, it may call the face value of the shares in instalments instead of a single payment of the total amount to be called, on application. Thus, call on shares means the amount payable for the shares called up by the company. When an person makes an application to purchase shares and pays the application money, he is responsible to pay the balance amount at the time of share allotment and on calls. Call on shares means the amount called up by the company from shareholders on shares not fully paid up.

It is the responsibility of shareholders to pay the amount of call on shares when called up by the company in accordance to the provisions of Articles. If such shares are on joint not individual name, the responsibility to pay the call is held jointly.

1.7.1 Provisions of The Companies Act regarding Share Call :

- (1) There should be a provision in the Articles of the company to make call on shares.

- (2) Call on the same class of shares must be uniform without any bias.
- (3) A resolution must be passed in the meetings of the Board of Directors before making a call.
- (4) Demand notice of share call must indicate the amount of call, time limit, place of payment of call, dates etc.
- (5) Share transfer and voting rights of the member can be suspended till the call money is paid.
- (6) Amount of call on shares received is deposited with a bank by opening a 'Share Call' account.
- (7) There should be an interval of atleast one month between the payment of two instalments.
- (8) The company can charge interest on call amount not received in prescribed time limit. However, Directors may waive such interest, partly or fully.

1.7.2 Procedure of Making Share Call : The Company can make call on shares by observing statutory provisions and provisions of Articles. For this purpose, the company is required to follow certain procedures, as under :

(1) Resolution Regarding Share call : A resolution for making calls is required to be passed in the meeting of Board of Directors. The resolution should contain information about amount of call per share and the last date of payment.

(2) Closure of Register of Members : The Register of Members and the Register of Share Transfer is kept closed for some days for the preparation of list of the members and for sending notice of call to shareholders. A notice should be given in newspapers 7 days before the closure of Register of Members and Register of Share Transfer.

(3) Preparation of List of Call on Shares : A call list is prepared after closing the Register of Members, which contains following details :

- | | |
|---|--|
| (a) Name and address of the member | (b) Number of shares |
| (c) Amount of call | (d) Amount of calls in advance, if any |
| (e) Amount payable by the member | |
| (f) Date by which the payment has to be made. | |

(4) Information to the Bank : Once the call list is ready, Secretary sends a copy of call list to the banker of the company. It is also intimated to the bank to collect the call money on behalf of the company and credit the same to the "Share call account".

(5) Sending Notice of Call : A letter informing the amount of call to be paid, is sent to every member by registered post after preparation of the list of call on shares. This letter is called notice for call. The notice must reach the member 14 days before the prescribed date of payment of call money.

(6) Payment of Call on Share : Shareholders pay the amount of call to the bank within 14 days of the receipt of notice of share call. Bank credits the call money received to the account of call on shares and retains the pay-in-slip and returns the notice and the receipt to the shareholder. Bank sends pay-in-slips to the company.

(7) Recording Call Money Received in Call List : The Secretary records the calls received in Register of Members on basis of pay-in-slips and prepares a list of calls not received. This list is then presented to the Board of Directors for further action.

1.7.3 Duties of the Secretary Regarding Share Call :

- (1) Verifying provisions in the articles of the company regarding making calls.
- (2) To get the resolution for making calls passed in the meeting of the Board of Directors.

- (3) Issuing notice in newspapers 7 days before closure of Register of Members and Register of Share Transfer before making calls.
- (4) Preparing list of the members whose calls are in arrears and sending notice to each such shareholder.
- (5) Opening a bank account for collecting amount of call on shares.
- (6) Making note of call money received in the Register of Members based on the pay in slips and preparing list of members from whom call money is not received and presenting the same before Board of Directors.

1.8 Share Forfeiture

Share on which call money is not received are forfeited by the company.

1.8.1 Meaning : Amount forfeited on shares on which call money not received is known as share forfeiture.

Definition : “Share forfeiture is the process by which the directors of a company cancel the membership of share holder and remove the name of share holder from the list of members on non receipt of call money as asked by the company in accordance with the statutory procedure laid down in the articles of the company.”

Share forfeiture is a disciplinary action taken by the directors against non payment. Articles of the company must authorise for forfeiture of shares.

1.8.2 Procedure of Share Forfeiture : Procedure of share forfeiture is given in the Articles of the company. The steps of the procedure are as under :

(1) Preparing List of Calls in Arrears : The Secretary prepares a list of calls on shares not paid by shareholders on the basis of pay in slips received from bank.

(2) Presenting List of Calls in Arrears before the Board of Directors : Once the list of calls in arrears is prepared, it is presented before the Board of Directors for further discussion and for taking decisions on share forfeiture.

(3) Sending Reminder to Members : Reminders are sent to those members who have not paid call money within the prescribed time limit and they are intimated to pay the amount of calls-in-arrears including interest within the time limit, now prescribed.

(4) Sending Final Reminder : If no response to first reminder is received, a final reminder is sent through registered post and such members are intimated to pay the due amount including interest within 14 days of receipt of the final reminder. They are also warned of forfeiture of shares on failure in paying the due amount.

(5) Resolution of Share Forfeiture : Shares of those members who do not pay the amount of call within 14 days are forfeited by passing a resolution in the meeting of Board of Directors.

(6) Sending notice of Share Forfeiture : The Secretary sends notices of share forfeiture on the basis of the resolution passed in the meeting of Board of Directors. A copy of resolution of share forfeiture is also enclosed the notice and members are intimated to surrender the share certificate to the company.

(7) Issuing Public Notice : The Secretary gives a public notice in the newspapers indicating serial numbers of shares forfeited so no transaction is carried out on such shares.

(8) Making Entries in the Register of Members : After giving a public notice, the secretary makes entries in the Register of Members regarding share forfeiture and names of members, whose shares are forfeited, are cancelled from the list.

1.8.3 Duties of the Secretary Regarding Share Forfeiture : Duties of the secretary regarding share forfeiture are as under :

- (1) Verifying provisions of Articles regarding share forfeiture.
- (2) Preparing list of members who have not paid call on shares.
- (3) Sending reminders to defaulter members as per resolution passed in the meeting of Board of Directors.
- (4) Sending final reminders to members who have not paid the calls in arrears even after sending the first reminder.
- (5) Holding meeting of the Board of Directors to pass a resolution of share forfeiture, on expiry of the time limit of the final reminder.
- (6) Sending notice to members regarding forfeiture of shares.
- (7) Giving notice in the newspaper regarding forfeiture of shares.
- (8) Making a note in the Register of Members cancelling the name of member.
- (9) Getting the resolution, regarding reissue of shares, passed in the meeting of board of directors and informing new shareholders regarding allotment of shares and entering their name in the Register of Members.

1.8.4 Effects of Share Forfeiture :

The effects of share forfeiture are as under :

- (1) Membership of the member comes to an end from the date of resolution of the share forfeiture.
- (2) Shareholder loses the amount, already paid, on the shares forfeited.
- (3) Shareholder also loses the right to receive dividend.
- (4) As soon as the shares are forfeited, the company becomes owner of the amount paid by shareholder on shares forfeited. The amount forfeited is credited by the company to a Forfeited Shares Account. After the reissue of shares, the Forfeited Shares Account is closed.
- (5) The company becomes owner of the shares forfeited and Board of Directors can deal with such shares as they deem fit.
- (6) On forfeiture of shares, share capital of the company is reduced and the company can reissue the shares forfeited.

1.9 Surrender of Share

Meaning : Surrender of share means, returning the share certificate to the company. This concept is applicable to physical certificates of shares only.

1.9.1 Circumstances of Share Surrender : Share certificates are returned to the company under following circumstances :

- (1) When share certificates are torn.
- (2) When share certificates become illegible.
- (3) When there is no space left to record an entry of share transfer.
- (4) When shares are to be consolidated.
- (5) When shares are to be subdivided.

1.10 Share Lien

Let us first understand the meaning of lien. When creditor receives the right to acquire possession of the property of the debtor and right to sell the same, in order to recover his dues, in case of the debtor failing to pay his liabilities, is called Lien.

Now let us understand the meaning of share lien.

As per the Companies Act, a company has a lien on only those shares issued, which are partly paid up for. By using a lien on share, a company can (1) restrict transfer of such shares, (2) restrict dividend, (3) restrict bonus shares, (4) restrict right to vote.

1.11 Share Dividend

A company pays tax at the end of the year out of profit earned for a year. The amount of profit left after the payment of tax is called divisible profit. A certain amount of the divisible profits is retained as a reserve by the company. The remaining profit is distributed among shareholders, and is called dividend. Thus dividend means, "The share of divisible profit distributed by the company among its shareholders on the basis of paid up share capital on shares held by them in form of cash or share or in any other form." Here it is important to note that as per the Indian Companies Act dividend can be paid only in cash. Dividend can be of two types : (i) Interim dividend and (ii) Final or Annual dividend. Interim dividend is paid semi-annually during the year. Final or annual dividend is paid at the end of the year, out of profit for the year. Dividend is paid to equity shareholders, as well as, to preference shareholders. Dividend paid on preference shares, at a fixed rate of dividend, before paying dividend on equity shares is called preference dividend. As per provisions of The Companies Act, preference shareholders have prior right over equity shareholders in terms of receiving dividend. Therefore preference dividend is paid first and then the Board of Directors recommends how much of the remaining divisible profit can be distributed as equity dividend. The equity dividend recommended by the Board of Directors is approved by shareholders in the Annual General Meeting of the company. After the approval of equity dividend in the Annual General Meeting of the company, it is paid within 60 days of such approval. Equity dividend is based on the profits of the company and need of funds for the company in future. The Board of Directors decides the rate of equity dividend by taking into consideration the need of funds for the company. Thus, it is not legally necessary for a company to declare and pay equity dividend every year and its rate may be changed year to year.

What you have learnt in this chapter

Procedure of Share Application and Share Allotment :

(1) Opening bank account (2) Receiving share applications (3) Classification of share application (4) Preparing share allotment statement

Share Allotment :

Meaning : Allocation of shares issued among share applications received and crediting the shares in demat account of applicants.

Legal Restrictions on Share Allotment :

(1) Shares can not be issued at a discount in a public issue. (2) Minimum 10 % reservation for retail investors in a public issue. (3) Share application is to be made through ASBA process only. (4) The procedure of receiving share applications, allotment of shares and listing of shares on recognised stock exchange is to be completed within 15 days. (5) Compulsory demat account required for share application. (6) 90 % of shares issued but not underwritten must be subscribed as a condition of minimum subscription. (7) For certain companies the process of book building is compulsory. (8) Prospectus is compulsory for fixed price while red-herring prospectus is compulsory for book building. (9) Minimum 5 % of face value of shares or the amount decided by SEBI must be called up with application. (10) Agreement with a recognised stock exchange. (11) Agreement with a depository. (12) Disclosure of minimum subscription in prospectus. (13) Minimum net worth necessary for public issue. (14) Share capital of promoters after the public issue must be minimum 20% of total paid up capital. (15) Shares purchased by promoters will remain in a lock in period for specified time.

Irregular Share Allotment

Meaning : When shares are allotted without fulfilling statutory provisions and restrictions, is called irregular allotment of shares.

Circumstances of Irregular Share Allotment :

(1) Allotment made without receiving minimum subscription. (2) A copy of prospectus is not filed with Registrar of Companies. (3) Minimum 5% of face value of share or the amount decided by SEBI is not received with application. (4) Escrow Bank Account is not opened with a scheduled bank. (5) Listing agreement is not made with recognised stock exchange. (6) Agreement is not made with depository. (7) Guidelines issued by SEBI and provisions of Companies Act are not observed. (8) Misleading or false information given in prospectus.

Effects of Irregular Allotment of Shares :

(1) Application for cancellation of share allotment within two months after holding of first statutory meeting. (2) Application for cancellation of share allotment within two months of allotment if first statutory meeting is held. (3) Director is personally responsible for the loss to shareholders arising due to irregular allotment.

Illegal Share Allotment

Meaning : Shares allotted in absence of essential elements of a contract is called as illegal share allotment.

Essential Elements : Proposal, Acceptance of proposal, Information of acceptance, Provision in Articles, share allotment by Board of Directors, Registration provisions

Difference between Irregular and Illegal Share Allotment :

(1) Meaning (2) Circumstances (3) Effects (4) Membership (5) Liability

Letter of Renunciation :

A letter of renunciation is presented to the company when a shareholder wants to renunciate some or all shares out of rights shares offered by the company to him in a rights issue.

Statement of Share Allotment Consists of Two Parts :

(1) Renunciation (2) Request for allotment of shares.

Statement of Share Allotment :

A statement of share allotted among share applications received in response to invitation made by the company to general public to subscribe to shares is known as share allotment statement.

Duties of Company Secretary Regarding Share Allotment :

(1) Opening Escrow Bank Account with a Scheduled bank. (2) Agreement with recognised stock exchange regarding listing of shares. (3) Agreement with various intermediaries. (4) Fulfilling statutory provisions for withdrawal of share applications and closure of subscription list. (5) Classification of share applicants. (6) Meeting of Board of Directors for allotment of shares. (7) Information to applicants regarding share allotment. (8) Information to applicants regarding non allotment of shares. (9) Filing share allotment statement with Registrar of Companies. (10) Payment of remuneration to underwriters. (11) Payment of remuneration to intermediaries. (12) Listing of shares on recognised stock exchange.

Call on Shares :

Amount called up by the company on partly paid up shares from share holders is called call on shares.

Provisions of the Companies Act Regarding Call on Shares :

- (1) Provisions in Articles (2) Making calls on justifiable and equitable basis.
- (3) Resolution in meeting of Board of Directors. (4) Details in demand notice of calls.
- (5) Restricting transfer of shares and voting right as a member till calls are not paid.
- (6) Depositing amount of call on shares received with a bank.

Procedure of Making Call on Shares :

- (1) Resolution for making call. (2) Closure of register of members. (3) Preparing list of calls to be made. (4) Informing the bank. (5) Sending notice of calls. (6) Payment of share calls. (7) Recording call money received in call list.

Duties of Secretary Regarding Call on Shares :

- (1) Verifying provisions in Articles. (2) Getting the resolution passed in the meeting of Board of Directors. (3) Issuing public notice regarding closure of Register of Members and Share Transfer Book. (4) Preparing list of members and giving notice for making calls. (5) Opening a bank account. (6) Making note of call money received in register of members. (7) To verify that amount of call does not exceed 25 % of face value of share.

Share Forfeiture :

Meaning : Share forfeiture is the process by which the directors of a company cancel the membership and the name of the shareholder from the list of members on non receipt of call money asked by the company to pay legally by observing statutory procedure laid down in Articles of the company.

Procedure of Share Forfeiture :

- (1) Preparing list of calls in arrears. (2) Presenting list of calls in arrears before Board of Directors. (3) Sending reminders to members. (4) Sending final reminders. (5) Resolution of share forfeiture. (6) Sending notice of share forfeiture. (7) Issuing public notice. (8) Entry in the Register of Members.

Duties of Secretary Regarding Share Forfeiture :

- (1) Verifying provisions in Articles. (2) Preparing list of calls-in-arrears. (3) Sending reminder notices to defaulting member. (4) Giving final notice. (5) Passing a resolution for share forfeiture. (6) Issuing notice of share forfeiture. (7) Giving public notice in newspaper. (8) Cancelling of name of member. (9) Preparing resolution of reissue of shares.

Effects of Share Forfeiture : (1) Compulsory end of membership. (2) Shareholder loses the amount paid. (3) Shareholder loses the right of dividend. (4) Ownership of amount forfeited lies with the company and forfeited shares account is closed after re-issue of shares forfeited. (5) Board of directors can deal with shares forfeited as they deem fit. (6) Share capital gets reduced. The company can re-issue the forfeited shares.

Share Surrender :

Meaning : Share surrender means returning share certificates to the company.

Circumstances of Share Surrender : (1) Share certificates are torn. (2) Share certificates become illegible. (3) There is no space left to record a share transfer entry. (4) Shares are to be consolidated. (5) Shares are to be subdivided.

Share Lien :

Meaning of Lien : When creditor receives right to acquire possession of property of the debtor and right to sell the same in order to recover his dues in case of the debtor fails to pay his liabilities to called as lien.

Meaning of Share Lien : By using lien on share a company can, (1) Restrict transfer of such shares. (2) Restrict dividend. (3) Restrict bonus shares. (4) Restrict right to vote.

Share Dividend :

The share of divisible profit distributed by the company among its shareholders on the basis of paid up share capital on shares held by them in the form of cash or kind is called as dividend. As per Indian Companies Act, 2013 dividend can be paid in cash only.

Types of Dividend :

(i) **Interim Dividend :** Interim dividend is paid during the year out of quarterly profit.

(ii) **Final Dividend :** The final dividend recommended by the Board of Directors is approved by shareholders in annual general meeting and it is paid within 60 days of the approval.

Exercise

1. Select the suitable option from the options given :

- (1) Which acts are required to be followed by a company, for issue of shares and other securities, in India ?
(A) Securities Contract Regulation Act 1956 (B) Companies Act 2013
(C) SEBI Act, 1992 (D) All of these
- (2) By which document can an invitation be made for public issue ?
(A) Memorandum of Association (B) Prospectus
(C) Articles of Association (D) Certificate of incorporation
- (3) Which allotment of share is void from the very beginning ?
(A) Irregular (B) Illegal (C) Before public issue (D) Private placement
- (4) Due to forfeiture of shares
(A) The company refunds the amount paid by the shareholder.
(B) The company does not refund the amount paid by the shareholder.
(C) Paid up share capital does not change.
(D) Authorised share capital reduces.
- (5) Minimum gap between two instalments should be
(A) 1 month (B) 2 months (C) 3 months (D) 4 months.
- (6) How is share application done in recent time ?
(A) By making application to SEBI (B) By depositing application and cheque
(C) By filling ASBA form and getting share application money blocked in the bank account of applicant.
(D) By making application to Registrar of Companies.
- (7) Right share means
(A) Shares to be allotted to employees (B) Shares to be allotted to promoters
(C) Shares to be allotted to existing shareholders
(D) Shares without consideration
- (8) What is returning of share certificates to the company by shareholder called ?
(A) Buy back of shares (B) Share surrender
(C) Share split (D) Offer for sale
- (9) Letter of renunciation is related to
(A) Share forfeiture (B) Resignation of promoters
(C) Rights share (D) Refund of share application money

2. Answer the following questions in one sentence only :

- (1) State the names of share issues.
- (2) A company takes help of which intermediaries for a public issue ?
- (3) What is offer for sale ?
- (4) What is letter of renunciation ?
- (5) What is share forfeiture ?
- (6) What is share surrender ?
- (7) What is lien on shares ?

3. Answer the following questions in short :

- (1) What is prospectus ?
- (2) What is irregular allotment of shares ?
- (3) What is illegal allotment of shares ?
- (4) State the effects of share forfeiture.
- (5) Explain, in brief, the process of share application by blocking share application amount in bank account of the applicant.
- (6) What are the reasons for share surrender ?
- (7) What is share dividend ?

4. Answer the following questions to the point :

- (1) How are share applications classified ?
- (2) State legal restrictions on allotment of shares.
- (3) Explain the effects of irregular allotment of shares.
- (4) State duties of a company secretary regarding share allotment.
- (5) State duties of the company secretary regarding share calls.
- (6) Explain the process of share forfeiture.
- (7) Under what circumstances can share allotment be considered irregular ?
- (8) Write a note on renunciation of right share.

5. Answer following questions, in detail :

- (1) Explain the process of share application.
- (2) Distinguish between irregular allotment of shares and illegal allotment of shares.
- (3) State various provisions regarding share calls.
- (4) Explain the process of making calls on shares.
- (5) Write a note on share dividend.



TRANSFER AND TRANSMISSION OF SHARE

What you will learn in this chapter ?

- 2.1 Meaning of Share Transfer
- 2.2 Importance of Share Transfer
- 2.3 Provisions Regarding Share Transfer
- 2.4 Procedure for Physical Share Transfer
 - 2.4.1 Procedure for Physical Share Transfer
 - 2.4.1.1 Procedure for Total Share Transfer
 - 2.4.1.2 Procedure for Partial Share Transfer
 - 2.4.2 Procedure for Demat Share Transfer
- 2.5 Duties of Secretary Regarding Share Transfer
- 2.6 Transmission of Share (Compulsory Transfer of Share)
 - 2.6.1 Meaning
 - 2.6.2 Circumstances
- 2.7 Procedure for Share Transmission
- 2.8 Difference between Share Transfer and Share Transmission

Introduction :

Partnership firm came into existence due to limitations of Sole Proprietorship and limitations of partnership firm have given birth to Company formation. When partners separate in a partnership firm the procedure is long and complex. In a company, no such procedure is required. In a public company if the shareholder, sells his share, his ownership ends. Shares can be freely sold or purchased just like any product. Free transferability of shares is an important characteristic of a company. Not only that, if a person wants to purchase shares of the same company, again he can purchase the share and he can be owner of that portion. This right is absolute right which cannot be prohibited by the company. A shareholder can voluntarily transfer his share as per provisions of the Companies Act.

Moreover, when shares are compulsorily transferred by operation of law, then such transfer of share is called 'Transmission of share'. In this chapter we will learn about share transfer and transmission.

2.1 Meaning of Share Transfer

In a general sense, share transfer is the act in which a shareholder voluntarily sells his share to another waiving his right to ownership and transferring the title of share in name of the other.

Definition : "When a shareholder, in anticipation of approval by company, voluntarily waives his title (ownership right) of shares in favour of other person/persons and when there is a transfer of title (ownership) to the shares, it is called Transfer of Shares."

When a shareholder sells his own share to others or waives his right then his ownership or membership is over and the person who has purchased, obtains membership/ownership. Here one thing should be noted that this procedure is treated to be complete only when transfer is approved by the company.

2.2 Importance of Share Transfer

Share transfer is an important procedure. Shareholders use their right to transfer shares with the consent of the company. Share is a part of capital of a company. It is a financial interest of a shareholder. It is a movable asset for shareholders. Shareholder has a right to sell, right to gift, and right to lease his shares. For this Lord Blackburn has said "Main objective to start Joint Stock Company is to provide

easy transfer of shares to their members.” Purchase and sales of share is conducted in the share market. This is a source of capital, so it is known as the barometer of the development of a country.

- (1) Share transfer generates income for the Government. Share transfers increase leads to increase in the Government’s income because the Government has imposed tax on it.
- (2) Shareholders get cash on sale of shares.
- (3) Purchaser of shares gets rights of ownership.
- (4) Shareholder is able to get benefit of market variation.
- (5) Invested funds of inefficient units flow to efficient units.
- (6) Share market and capital market grow as a result of share transfer.
- (7) Free share transfer leads to an increased span and scope of the development of a company.

Provisions for transfer is specified in the Articles of Association . Sometimes, there may be restriction (In private company). But the right of a shareholder cannot be taken away by imposing prohibition on it. A member can, when he wishes, sell or gift his share to others.

2.3 Provisions Regarding Transfer of Shares

Before learning this topic it is essential to know that the types of shares that can be held by shareholders. From the point of view of share transfer shares are of two types : (1) Physical shares (2) Demat shares.

(1) Physical shares : In this format, share certificate with the shareholder is issued by the company in physical form. This share certificate has the name of the company, shareholders’ name, share certificate number, number and value of the share, company seal and other necessary information on it. There are possibilities of it getting torn, stolen, getting destroyed in fire and of being physically destroyed.

(2) Demat shares : Dematerialized shares are known as demat shares. This type of share is not with shareholder physically, but is in a demat account opened by the shareholder. You have already studied in class XI regarding demat account. This type of share has no fear of getting lost, torn, being forged or being destroyed in fire.

The procedure for transfer is different for physical shares and demat shares.

A share transfer procedure for a physical share is as under. Company may refuse to transfer shares if procedure is not followed satisfactorily.

(1) Share Transfer Form : To transfer the share, a prescribed form has to be filled up properly. This form contains complete details of the seller and the purchaser, like name, address and signature. Such forms are usually available at the Company Registrar’s office, authorized share brokers, share market etc.

(2) Share Certificate : Share certificate or share allotment letter is to be enclosed along with share transfer form.

(3) Unpaid Calls : There should be no unpaid calls on shares that are to be transferred.

(4) Objection Application : There should be no objection by anybody for restricting transfer of shares. If any objection is raised by anybody share transfer will not be granted the by company.

(5) Satisfactory Evidence : If a share transfer form which is duly filled and signed is lost then application should be made, duly signed by both the parties, to the company. They have to make a satisfactory clarification to the directors of the company.

(6) Lien Rights : If the company has a lien right on transferee share can approved transfer to collect its debt.

(7) Stamp Duty : Proper stamp duty should be affixed on share transfer form as per the market value of the share. If the stamp duty affixed is as less value, directors of company may refuse to transfer the share.

(8) Share Certificate to the New Shareholder : On approval of share transfer, the company sends changed share certificate to the new shareholder within one month.

(9) Rejection of Share Transfer : Share transfer can be rejected in case Registrar of company has put a restriction or court of law has given a verdict of no transfer on those shares.

(10) Provision of Articles of Association : For the share transfer, provisions of the Companies Act, as well as, provisions of Articles of Association should be followed. If they are not followed share transfer is not granted.

(11) Register of Members : Original shareholder's name is continued up to the completion of share transfer procedure.

(12) Right of Dividend : In case transmission is not completed, expired member or insolvent member is entitled to get dividend.

(13) In Case of Single Person Company :

- (i) On the death of the sole member, the person nominated by such a member shall be the person recognized by the company as having title to all the share/shares of the member;
- (ii) The nominee should be informed of such an event by the Board of Directors of the company;
- (iii) Such a nominee shall be entitled to the same dividends and other rights and liabilities to which such sole member of the company was entitled or liable.
- (iv) On becoming member, such nominee can nominate any other person, subject to a written consent by that person.

2.4 Procedure of Physical Share Transfer

Share transfer procedure can be divided into two types according to the type of share -

(1) Transfer of physical shares, (2) Transfer of Dematerialized shares.

2.4.1 Procedure of Physical Share Transfer :

2.4.1.1. Procedure for Total Share Transfer : Where shareholder transfers all his shares in favour of an other person then the procedure to be followed is as under :

(1) Obtaining Share Transfer Form : The person who wants to transfer his share has to obtain a transfer form (Transfer instruments) duly signed and sealed by Company Registrar.

(2) Filling up the Details in the Transfer Forms : In a share transfer form full details regarding share buyer and share seller are to be mentioned such as name, address, name of the share holding company, market value of the share, share certificate number etc. According to the provisions, necessary stamp duty should be affixed and signed in presence of a witness. The witness has to fill his name, address, and business etc also.

(3) Submission of Transfer Instrument and Share Certificate : The purchaser of share himself, or through share brokers, delivers the completed transfer form along with share certificate to the registered office of the company. A letter of allotment is enclosed if no share has been issued. Transfer can also be executed in cases other than a sale, e.g., in case of a gift to someone. However, the procedure followed is the same.

(4) Sending the Transfer Receipt : On receiving the transfer instruments along with the share certificate, the company secretary issues a receipt for the same. This transfer receipt is the evidence of submission of documents of transfer.

(5) To Inform Regarding Transfer by Notice : After receiving share transfer form and share certificate, the company verifies transfer instruments and share certificate. After that the company informs both the parties through a notice. Blank or forged transfer can be avoided by such a notice. If any party has objection they are asked to inform within two weeks. If no objection is received from either party, it is assumed that the transfer is acceptable to both parties.

(6) Recording in the Share Transfer Register : After serving notice to both the parties if no application for an objection has been received from either the transferor or transferee, then it is assumed there is consent of both parties, and the transfer is registered by the secretary in the Share Transfer Register. The name of the transferee is entered into the Share Transfer Register.

(7) Resolution for Approval of Transfer of Shares : After receiving share transfer applications, a meeting of the Board of Director is convened by the secretary in which discussion are made regarding the applications received for transfer of shares. In this meeting, a resolution is passed approving the transfer of shares which are sanctioned.

(8) Entering in the Register of Members : After passing the resolution of transfer of shares, the names of the transferor is deleted from the Register of Members and that of the transferee is added.

(9) Sending Share Certificate to the New Share Holder : After passing the resolution of transfer of shares, the secretary writes the name of the new shareholder on the back of the share certificate, and sends the same, with the signature of responsible officer, to the new shareholder. If share certificate is too old or there is no space to enter the name, then a new certificate is prepared and delivered to him.

2.4.1.2. Procedure for Partial Share Transfer : When a shareholder wants to transfer some of his share, from his total holding then he has to split his share. For the split, shareholder has to send his share to the registered office of company. The Company secretary splits the share as per requirement of shareholder and sends it back. After that the shareholder sells his share according to his requirement as per the above procedure.

2.4.2. Procedure for Transfer of Dematerialized Shares : A shareholder may keep his share in physical form. But, according to new provision he cannot sell his share in physical form. If he wants to sell his share, he has to go for dematerialized process.

Demat share means to convert physical share in to electronic form in a specified way. The investor has to open a demat account with a depository participant. In India, as a depository participant, National Securities Depository Limited (NSDL) or Central Depository Services (India) Limited (CDSL) are functioning as an agent for deposit care taker. On behalf of these institutions, PSU Banks or Private Bank and other Financial Institutions open demat accounts. After opening this account, the said institution provides an instruction slip to account holder. It is used by the account holder for purchase or sale of Securities; (image of instruction slip is on next page). The company can observe its shareholders and their holdings on web site provided by NSDL/CDSL. However, the company cannot make any changes in it.

Image of Instruction Slip

XXX Limited

DP ID : 12345678 SEBI Regn No. : IN - DP - CDSL - 123 - 4567
JFL House, MIDC, Mumbai-400001.

Serial No. : 123456

Date : / / 20

Instruction Slip for Delivery / Receipt

I / We request you to **debit / credit** my / our account as under :

Branch / RM E-mail ID :

Client Contact / Mobile No. :

☐ Delivery ☐ Receipt

BO ID :

Sr. No.	ISIN	Security Name	Quantity		Instruction Ref No. (to be filled by DP)
			In figures	In words	
1	IN				
2	IN				
3	IN				
4	IN				
5	IN				

Total Instructions Issued (in words only) :

If transfers from BO (Investor) account to another BO (Investor) account and NOT RELATED to Stock Exchange

Execution Date ☐ D ☐ M ☐ Y ☐ M ☐ Y ☐ Y ☐ Y

Transactions : Please mention consideration amount in ₹ _____ OR Please specify reason (as given below) :
☐ Gift ☐ Transfer between two accounts of same holder ☐ Transfer between family members Others (explain) : _____

Fill the relevant columns :

Instruction Type	Account Transfer - With in CDSL (Transaction)			Account Transfer - Outside CDSL (Inter Depository) (CDSL to NSDL)		
	☐ BO-BO	☐ BO-CM	☐ CM-BO	☐ BO-BO	☐ BO-CM	☐ CM-BO
Settlement Details						
Exchange Name	OPTIONAL			OPTIONAL		
Settlement type/Market type	OPTIONAL			OPTIONAL		
Settlement No.						
Counter DP ID/CM BP ID						
Counter Client ID						
Counter BO/CM Name						
Counter Settlement Details				☐ CM-CM		☐ CM-CM
Exchange Name	NOT APPLICABLE			NOT APPLICABLE		
Settlement type/Market type	NOT APPLICABLE			NOT APPLICABLE		
Settlement No.						

Blank & Signed Delivery Instruction slips should not be left with your DP / Broker

Signature

Signature

Internal Ref. No.

Transaction Entered By :

As per the instruction slip Broker/Bank/Financial institution will purchase or sell the shares. Purchasing or selling process is done online on computer.

A person who wants to purchase share has to pay the price of the share and stamp duty along with brokerage. The total amount of purchase is debited from his account and purchased shares are credited into his account (Shares are increased in shareholder's account). Similarly, if shareholder sells his shares, the amount of the sale (after deducting brokerage, tax and other charges) is deposited to his bank account and the shares sold are debited to his demat account (shares are decreased in his account). Thus, shares are credited or debited to a person's demat account.

It is important to note that when shares are purchased or sold in this way the company has no control over it. Company has nothing to do with it.. The whole procedure is done by the institution which functions as agent of NSDL/CDSL. The Company can only observe, its newcomer shareholders and outgoing shareholders, on the web page.

2.5 Duties of the Secretary for Share Transfer

Transfer of share is a transfer of ownership. The secretary has to perform his duty properly. He has to look after the transfer of physical share. There should be no litigation in future nor should the provisions of the Company Act 2013 be ignored. If such provisions are ignored then secretary and other responsible persons found guilty, can be punished.

(1) To Verify Share Instruments/Transfer Form : Secretary has to verify share instruments carefully. He has to verify the number of shares, type of share, signature of shareholder and other essential details as per provisions.

(2) Stamp and Fees : Secretary has to verify market value of the share mentioned in share transfer form. He has also verify whether the stamp duty affixed by share holders is according to the value of the share.

(3) Signature of Witness : Signature of witness is essential. Secretary has to see and ensure the signature of witness.

(4) Receipt of Share Transfer : After receiving share transfer form/instrument at the company's registered office, a receipt shall be issued, provided all details are satisfactory.

(5) Resolution of Board of Directors : If information provided in the transfer form is found to be satisfactory and correct, then share transfer is approved. A resolution regarding approval of share transfer is passed in the Board of Directors' meeting.

(6) Entry in Share Transfer Register : After granting share transfer, necessary entry is to be made by secretary regarding share transfer.

(7) Registration in Register of Members : Share transfer is approved on the basis of the form of transfer presented by the shareholder. It is followed by the necessary entries in the Register of Members.

(8) To Issue Notice Regarding Approval of Share Transfer : After approval of share transfer, notice is issued to share purchaser and share buyer.

(9) To Prepare Share Certificate : After the approval of share transfer it is a duty of secretary to prepare new share certificate for the new shareholder.

(10) To Issue Share Certificate to New Shareholder : After the New Share Certificate is prepared, new shareholder is informed to collect the share certificate as per the receipt issued earlier. The share certificate can also be dispatched to the address as per the receipt.

(11) To Observe the Provisions of Articles of Association : The Secretary has to confirm himself, that no provisions of Articles of Association have been violated in this transfer.

2.6 Transmission of Share (Transfer of Share under the Operation of Law/Compulsory Transfer of Share)

When the ownership of share is transferred compulsorily, under any law, then such a transfer is known as Transmission of share (Compulsory transfer of shares).

2.6.1. Meaning : When the title in shares of a person is automatically transferred it is called “Transmission of shares”. Shares are to be transferred under the operation of law when the shareholders is declared to be of unsound mind or declared to be insolvent or in case of his death.

2.6.2. Circumstances for Transfer of Share under the Operation of Law :

(1) Will is not Prepared (Intestate) and there are Legal Successors : Sometimes shareholder has not prepared will (intestate) and he expires then the shares in his name are transferred to successor on the basis of the succession certificate.

(2) Will is not Prepared (Intestate) and there are no Legal Successors : Many a times, shareholder has not a prepared a will (intestate) and he has no successor and he expires. In this situation the court may appoint administrator (receiver) who, then has the right to conduct the court may appoint administrator (receiver). Then receiver may transfer the shares in his name.

(3) Shareholder Declared to be Insolvent : When shareholder is declared to be insolvent by court an official receiver or assignee is appointed by court. The shares are transferred the name of the official or receiver. For this, the receiver has to present an appointment letter given by the court.

(4) Shareholder Declared to be Lunatic : When a shareholder is declared to be lunatic (of unsound mind), a guardian or trustee is appointed by the court. Such a guardian or trustee presents the appointment letter issued by court to the company. After receiving such a letter the shares are transferred to the name of this administrator.

(5) Death of a Person, in Case of Single Person Company : On the death of the sole member, the person nominated by such member shall be the recognized by the company, and the company will transfer all the shares of that member.

A legal representative has the right to get dividend and other privileges. However such a representative cannot participate in meeting of the company. He cannot utilize rights which are given to shareholder.

2.7 Procedure of Transmission of Shares

Procedure for transmission is as below :

(1) Information to the Company :

(A) Intimation about Death : (i) Legal successor of the shareholder has to inform the Company about the death of shareholder. (ii) First shareholder is deceased : In case of joint shareholding, other shareholder/ shareholders have to inform the company and produce the death certificate.

(B) Intimation about Insolvency : When a shareholder is declared insolvent, the company has to be the informed by receiver appointed by court.

(C) Intimation Regarding Lunatics/Unsound Mind : Whenever a shareholder is declared a lunatic by court, his guardian or trustee is appointed by court. The guardian or trustee should inform the Company.

(2) Verification of Ownership Documents : Whenever a company is informed about death, insolvency, lunacy, all the legal documents and authenticity have to be verified by the Company.

(3) Notice issued by Company to the representative : If the company is satisfied with the documents, authority letter, verdict of the court received from the receiver/ trustee/ legal heirs, it issues a notice to such representatives.

(4) Resolution of Board of Directors : After receiving the reply of notice Board of Directors transfer the shares to the name of the legal representatives and pass a resolution. After passing such a resolution, necessary entry is made in the Share Transfer Register.

(5) To issue new Share Certificate and enter name in Register of Members : After the resolution of share transmission the new members name is entered into the Register of Members. The new shareholders (or representative) are informed to collect the new share Certificate.

2.8 Difference between Share Transfer and Share Transmission

No.	Points	Transfer of Share	Transmission of Share
(1)	Meaning	When a shareholder voluntarily passes ownership of share to another person, in accordance with the provisions of Companies Act and Articles of Association it is called Transfer of Share.	When a shareholder dies or he is declared by the court to be an insolvent or lunatic, then such compulsory transfer of share, under the law, is called Transmission of Share.
(2)	Circumstances	It is a voluntary transfer. Shareholder may transfer share/ shares at any time according to provisions of Companies Act.	In case of death, insolvency or person being declared lunatics death case of a, in single person company, transmission of share takes place.
(3)	Consent	In voluntary transfer, consent of both parties is essential.	In transmission of share consent of both parties is not necessary/ possible.
(4)	Consideration	Share transfer is arises due to a valid agreement of two parties so, consideration is essential.	In transmission of shares, shareholder loses ownership and ownership is shifted to legal representative. This is not selling so there is no consideration.
(5)	Stamp duty	In a share transfer, stamp duty is necessary according to prevailing law. If the stamp duty is not affixed as per law, share transfer is not valid in physical shares.	In a transmission of share there is no consideration. So stamp duty is not essential.

(6)	Membership	Membership is obtained by the transferee after the approval of the Board of Directors, and his name is entered into the Register of member.	Legal representative is entitled, to the rights of a member and can claim dividend.
(7)	Procedure	A procedure of the Board of Directors is required following the provisions of Articles of Association.	Legal representative sends evidences supporting his rights obtained through court to the company for getting his name registered as member.
(8)	Refusal	Board of Directors may refuse to transfer of shares, if such refusal is in the interest of the company.	Generally, the directors of the company cannot refuse transmission of shares.
(9)	Responsibility	The original shareholder does not have any responsibility after transfer of shares is complete.	In transmission of shares, there is no personal responsibility of the representative. However, he has to accept responsibility arising due to shares.
(10)	Right to go to a Tribunal	If a company refuses to transfer without valid reason, the shareholder has the right to go to a Tribunal.	The company can not refuse transmission and so the question of going to tribunal does not arise.

What you have learnt in this chapter

Limitations of one business formation has given birth to the other. Company formation is considered one of the best type of formation. A very important feature of this formation is that shareholders may sell or purchase their share freely. Shares can be sold or purchased partially or fully.

Meaning of Share Transfer :

When a shareholder in anticipation of approval of a company, voluntarily waives his ownership of shares, in favour of some other person/persons and when there is a transfer of shares it is called Transfer of Share.

Importance of Share Transfer :

Shareholder has full right to sell, gift or lease his shares : (1) Share transfer generates income for the Government by way of stamp duty. (2) Shareholder gets Cash by selling his shares. (3) Purchaser gets shares. (4) Cash flow moves from inefficient units to efficient units. (5) Shareholder is benefited by price variation of shares. (6) Share market is growing. (7) Free transaction boosts-up Company formation.

Provisions for Share Transfer :

Shares are of two types from the view point of transfer : Shares are of two types from the view point of transfer : (i) Physical shares (ii) Demat (dematerialized) shares.

Provisions for Physical Share Transfer : (1) Share transfer form is essential for the purchase or sale of share. (2) Attachment of share certificate is essential. (3) There shall be no dues of call money. (4) There shall be no objection by any applicant. (5) Satisfactory evidence shall be provided in case of loss of share transfer form filled and signed by both parties. (6) Company may utilize lien right to collect its debt. (7) Proper stamp duty shall be affixed. (8) New share certificate shall be issued to new shareholder. (9) If Registrar of company or court bans the transfer then share transfer will not be executed. (10) Share transfer shall be done according to the provisions of Articles of Association. (11) Name of the old shareholder is continued up to the completion of share transfer procedure. (12) Original shareholder enjoys all rights up to the Transfer of Shares. (13) In single person company on the death of the sole shareholder, a nominee is to be identified and share to be transferred on the name of nominee; a nominee can nominate another person.

Procedure for Share Transfer : Share transfer procedure can be divided in two types; (i) Transfer of Physical share and (ii) Transfer of Dematerialized shares

(A) Share Transfer Procedure for Physical Shares : (1) To register share transfer form (2) To fill up form- details of both parties (3) To submit instruments along with share certificate to registered office of the company (4) To receive a receipt for instruments and share certificate (5) To issue notice regarding share transfer (6) To pass resolution regarding approval of share transfer (7) To enter into Register of Members (8) To remit new share certificate to new shareholder.

If it is a partial share transfer of a physical share, then first of all share holder has to go for a split of share by applying to the company. After the split of share, the above procedure is to be followed.

(B) Transfer Procedure for Demat Share : According to the current provisions of law, share cannot be sold or purchased in physical form. These type of share have to be converted to demat form. After conversion, these shares are with the depository participant. Company can see these shares on a specified web site. While selling or purchasing such shares, the shareholder has to contact the depository agent with which he has opened demat account. He has to submit instruction slip, stating all details. According to instruction, slip shares are sold and purchased by the depository participant's agent, online. Shares are thus debited or credited in to shareholder's account.

Duties of Secretary Regarding Share Transfer :

Secretary has to see that in future no type of litigation should arise. He has to also see that provisions of Articles of Association are followed legally and properly : (1) To verify share transfer form/ instruments (2) To verify the proper stamp duty affixed on instruments (3) To verify signatures of witness (4) To issue receipt for share instruments (5) To pass resolution of Board of Directors for share transfer (6) To enter transfer in share Transfer register (7) To enter into Register of Members (8) To issue notice regarding share transfer (9) To prepare new share certificate (10) To send new share certificate to the new share holder (11) To follow provisions of Articles of Association.

Transmission of Shares / Compulsory Share Transfer :

In certain situations share transfer becomes compulsory like death, insolvency or unsound condition of mind etc. Circumstances - (1) When shareholder dies intestate and has successor (2) When shareholder dies intestate and has no successor (3) Shareholder become

insolvent (4) Shareholder is declared of unsound mind (5) In case of single person company sole shareholder dies.

Procedure for Transmission of Share :

(1) To inform company (2) To verify the documents for ownership (3) To issue notice by company (4) Resolution of Board of Directors (5) To issue new certificate and entry in to Register of Members.

Difference between Share Transfer and Share Transmission :

Points : (1) Meaning (2) Circumstances (3) Consent (4) Consideration (5) Stamp Duty (6) Membership (7) Procedure (8) Refusal (9) Responsibility (10) Right to go to tribunal.

Exercise

1. Select suitable option from the options given :

- (1) For a shareholder shares are
(A) movable assets (B) responsibility (C) cash asset. (D) an immovable asset
- (2) Share market
(A) is a market for speculators. (B) barometer of development of country.
(C) is a cash market. (D) is a product market.
- (3) In share transfer, if there is an application of objection,
(A) no problem arises. (B) transfer is done subsequently.
(C) objection is ignored. (D) company will not approve transfer.
- (4) If transmission process is not completed,
(A) dividend right can not be availed. (B) dividend is received afterwards.
(C) dividend right is available. (D) dividend is deposited in Company.
- (5) In transmission of shares
(A) stamp duty is to be affixed. (B) stamp duty is not necessary.
(C) stamp duty is to be affixed afterwards. (D) stamp duty will be exempted by Government.
- (6) If shareholder is declared insolvent by court,
(A) share transfer will be executed (B) share transmission will be executed.
(C) transfer will not be executed. (D) share transfer will be done in future.
- (7) In the Demat account of a shareholder
(A) company may make change. (B) Company may make change partial.
(C) Company cannot make change. (D) Company may make change afterwards.
- (8) If shareholder dies without making will and has no successor
(A) Government will forfeit the shares. (B) Company will forfeit the shares.
(C) Court will appoint administrator.
(D) shares will be transferred to a charitable trust.
- (9) If shareholder is declared insolvent
(A) compulsory transfer shall be done. (B) voluntary transfer shall be done.
(C) partial transfer shall be done. (D) no transfer shall be executed.
- (10) In voluntary transfer
(A) there is no requirement of consideration. (B) consideration is not given.
(C) consideration is there. (D) consideration is calculated-afterwards.
- (11) In case of compulsory transfer
(A) consent is essential. (B) consent is not required.
(C) consent may be given by anybody. (D) consent is given by Company Registrar.

2. Answer the following questions in one sentence :

- (1) How did companies come into existence ?
- (2) What are the important characteristics of a Company ?
- (3) When is the receipt for instrument dispatched ?
- (4) Where can a demat account be opened ?
- (5) When is an entry made in Register of Members ?
- (6) How can a company observe a shareholders' demat account ?
- (7) When will a court appoint trustee/guardian ?

3. Answer the following questions in short :

- (1) What is share transfer ?
- (2) State the types of share on the basis of transfer.
- (3) When is share transfer intimated by notice ?
- (4) When is an entry made in Share Transfer Register ?
- (5) When is a resolution of approval passed ?
- (6) Which institution works as depository participant ?
- (7) Which documents have to be verified by a company before share transfer ?
- (8) What steps are taken by the company to prevent fraud transfer ?
- (9) What details are provided in notice in case of share transmission ?

4. Answer the following questions to the point :

- (1) Explain the provisions regarding share transfer for a Single Person Company.
- (2) Explain the circumstances for share transmission.
- (3) When are shares deposited in Demat Account ?
- (4) When is ownership verified ?
- (5) Which details are to be provided in an instruction slip ?
- (6) What are the limitations of physical shares ?
- (7) What are demat shares ?
- (8) Which details are included in a Share Certificate ?

5. Answer the following questions in detail :

- (1) Explain the importance of share transfer.
- (2) Narrate the procedure of physical shares transfer.
- (3) Explain the procedure for total share transfer.
- (4) Explain the procedure for partial transfer of shares.
- (5) How are demat shares transferred ?
- (6) Narrate the duties of secretary regarding share transfer.
- (7) Explain the circumstances for compulsory transfer of shares.
- (8) What is the procedure to be followed in case of death of a sole member of Single Person Company ?
- (9) Narrate the procedure of share transmission.
- (10) Differentiate between share transfer and share transmission.



What will you learn in this chapter ?

- 3.1 Definition of Debenture
- 3.2 Types of Debentures
 - 3.2.1 Mortgage Debenture
 - 3.2.2 Fully Convertible Debenture (FCD)
 - 3.2.3 Partly Convertible Debenture (PCD)
 - 3.2.4 Non Convertible Debenture (NCD)
- 3.3 Procedure of Issuing Debentures
- 3.4 Rights of Debenture Holders
- 3.5 Debenture Trust Deed
- 3.6 Procedure of Transfer of Debentures
- 3.7 Difference between Shares and Debentures

Introduction

In today's modern times when Joint Stock Companies need capital for a long time period, they issue shares or debentures to raise capital. Debenture means borrowed capital. Debenture is a document issued under the common seal of the company for raising debt and acknowledging the debt. The interest on debt raised through debenture is paid at a pre-determined rate. For this, companies create a floating charge on the assets of the companies.

3.1 Definition of Debentures

The term "debenture" is derived from the latin word 'Deber' meaning debt. Thus, it can be said that debenture is a document denoting debt of the company.

"Debenture is a type of document issued under the common seal of the company acknowledging the debt."

-Sir Francis Parmer

Debenture is "A document containing an acknowledgement of indebtedness; issued by the company under its common seal, and giving an undertaking to repay the debt, at a specified rate or at the option of the company and in the meantime to pay interest, thereon at a fixed and at interval stated in debentures."

Debenture is a document, (i) issued under the common seal of the company (ii) acknowledging the debt of a specified amount (iii) in which till the principal amount is repaid (iv) interest at specified rate is payable under the contract (v) a charge is created on the assets of the company.

"Thus, joint stock companies established under the Companies Act issue debentures for long term capital requirement. The debenture can be redeemed after a fixed period. A relationship of debtor and creditor is created between the company and the debenture holder. The Debenture holder does not get a right to vote in the company and he cannot participate in the management of the company. But debenture holders can appoint debenture trustee to safeguard their interest. When the company goes into liquidation, the debenture holders are paid their money on priority basis by selling the assets of the company.

3.2 Types of Debentures

For the convenience of public, the company Management issues different types of Debenture. Debenture holders give utmost importance to the security of their money.

Types of Debentures : (1) Mortgage Debenture (2) Fully Convertible Debenture (FCD) (3) Partly convertible Debenture (PCD) (4) Non Convertible Debenture (NCD).

3.2.1 Mortgage Debenture : The company, by issuing such debentures, create a charge on the assets which can be fixed charge or floating charge. The company has to obtain the approval of the trustees of debenture holders, before taking any decision regarding these assets. At the time of liquidation, the debenture holders have the first right on the assets of the company.

3.2.2 Fully Convertible Debentures - FCD : In accordance with the agreement with debenture holders, on completion of the specified time period, these debentures are converted into equity shares. The Company gives two options to holders: (i) To redeem the debentures or (ii) To take equity shares of the same amount. If the debenture holder opts for Fully Convertible Debentures (FCD) then his rights as creditor come to an end and he gets rights as equity share holder.

3.2.3 Partly Convertible Debenture - PCD : Here the debenture is divided into two parts, where one part is fully convertible and the other part is non convertible. Equity shares are issued against the convertible part while the non convertible part is redeemed.

3.2.4 Non-Convertible Debenture - NCD : These debentures are not converted into equity shares. The holders are paid their money back by redemption at the end of the specified time period.

3.3 Procedure of Issue of Debentures

There are specific provisions in the Indian Companies Act for the issue of debentures. It is necessary to comply with all these provisions at the time of issuing debentures. If any of these provisions is not complied with, then the company / concerned officer of the company is liable for punishment. It is necessary to ensure that there should be no risk or danger to the interest of debenture holders. The procedure for the issue of debenture is as under :

(1) Resolution by Board of Directors : First of all, the provisions of debentures of the Articles of the company are studied, then a resolution is passed in the meeting of the Board of Director to issue debentures. At the meeting, a decision is taken regarding the amount of total issue, rate of interest, payment of interest, number of debenture certificates and conditions.

(2) Resolution by General Meeting of the Company : The sanction for issue of debentures is obtained in the General Meeting of the company. If, due to issue of debentures, the debt of company exceeds free reserves of the company or if the debentures are to be issued for an amount exceeding free reserve fund, then the approval of members is obtained by convening the General Meeting of members.

(3) Permission of SEBI : It is necessary to ensure that the provisions of the Companies Act and guidelines of SEBI are complied with and permission of SEBI is obtained.

(4) To Issue Prospectus : Public Limited companies invite general public to subscribe to the debenture by issuing prospects which describes contents of debentures. Investors study it and take decision to purchase the debenture.

(5) Appointment of Trustees for Debentures : In order to safeguard interests of debenture holders a trust deed / Debenture Trust Deed is prepared under the Trust Act. The Trustees for Debentures are appointed in the company.

(6) Agreement with Underwriters : If the Board of Directors decides to enter into an agreement with underwriters for the issue of debentures, it is done at this stage. The conditions are determined for both parties.

(7) To Open an Account with a Scheduled Bank : The company has to open an account with a Scheduled Bank to receive applications and money for debenture

(8) Registration in Stock Exchange : If it is so stated in the Prospectus, the company has to apply to a recognized stock exchange for the listing of debenture issue so that the debentures can be traded in the market. If the stock exchange refuses to register or cancels the registration of debenture issue, the company has to pay back the money to the debenture holders.

(9) To prepare Allotment Register for Debentures : After the closure of subscription, as specified in the prospectus, the Company Secretary has to prepare a register on basis of application

received. A decision regarding allotment of debentures is taken in the meeting of the Board of Directors. After deciding the allotment of debentures, the process of remittance of debenture certificate is commenced.

(10) Debenture Certificates : If the subscription to the debentures is to be made through part payment of debenture money, then after receiving the full amount towards the debentures allotted the company secretary prepares debenture certificates and in accordance with the provisions of the Companies Act dispatches the certificates to debenture holders.

3.4 Rights of Debenture Holders

Debenture holders are entitled to certain rights. Debenture holders are creditors of the company and therefore there is a relationship of debtor -creditor between the company and debenture holders. The various rights of debenture holders are as under :

- (1) Right to receive interest at the specified time and rate
- (2) Get back the money, invested, on the date of maturity
- (3) To examine and study documents at the registered office of the company
- (4) To obtain information by depositing the requisite fee
- (5) The company prepares a trust deed with debenture holders. Debenture holders have right to be informed that functioning is conducted according to provisions of the deed.
- (6) Right to appoint Debenture Trustee to safeguard the interests of debenture holders.
- (7) The Board of Directors have to take into confidence the debenture trustees before making any important decisions.
- (8) To ensure that the property mortgaged under the trust deed is adequately safeguarded.
- (9) Right to initiate legal action if the conditions / provisions of trust deed, in respect of property under security, are not complied with.
- (10) Right to receive report regarding the progress and development of the company at regular intervals.
- (11) Right to receive their money back on a priority basis at the time of liquidation of the company.

3.5 Debenture Trust Deed

Debenture is a debt for the company. The company mortgages / pledges its assets in favour of debenture holders against the debt raised . As per the Indian Companies Act, a contract / agreement is executed between the company and debenture holders and the said contract is registered with the Registrar of Companies. Thus, this contract / agreement that lays down the conditions of debenture issue, is also, known as Trust Deed / Trust Agreement.

The debenture holders of a company are scattered over different places and they are unorganized. In such circumstances, to safeguard the interests of debenture holders, their representatives are nominated as trustees of debenture holders and they represent the vast group of debenture holders. These debenture trustees earn the faith of debenture holders and work in a neutral manner to safeguard the interest of debenture holders.

When a situation arises about the fixed or floating charge, the action is taken in accordance with the Trust Deed.

Once a Trust Deed is registered with the Registrar, any amendment in the same can be made with the approval of the Debenture holders' General Meeting.

The following particulars are included in a Trust Deed :

- (1) Primary information of the company
- (2) Description of Debenture Issue
- (3) Information of Security / assets mortgaged:
- (4) Particulars of the appointment of Debenture Trustees
- (5) Events of Defaults
- (6) Obligations of Company
- (7) Miscellaneous :
 - Amendment made in any matter of Trust Deed
 - Company is liable for payment of stamp duty on Trust Deed
 - Provision for meeting of debenture holders and resolutions of grievances, objections and resolution thereof.

3.6 Procedure for Transfer of Debenture

Procedure for Transfer of Debenture is as under :

- (1) Obtain form specified by the company and fill in the requisite details in the same
- (2) Name and Addresses of the seller and the purchaser of the debenture, details of debentures, certificate serial numbers quantity of debentures and prices of debentures. Both parties are required to sign the form.
- (3) The seller of the debenture has to declare that he is selling the debenture voluntarily and he has to sign it a second time.
- (4) The debenture transfer form, along with debenture certificate, is submitted at the registered office of the company.
- (5) The company secretary will examine the form and compare the signature with the specimen signature.
- (6) It will be ensured whether the requisite stamp duty has been paid and endorsement will be done to that effect in the transfer register.
- (7) A meeting of the Board of Directors is held to discuss the transfer of Debentures and a resolution is passed for it.
- (8) On the basis of resolution of the Board of Directors, the Company Secretary enters the name of the purchaser or issues a new certificate and dispatches the same to the purchaser.

3.7 Difference between Share and Debenture

Sr. No.	Points	Share	Debenture
(1)	Meaning	A joint stock company divides its capital in small parts. Each part is called a share.	When a joint stock company borrows money from public is called a debenture
(2)	Capital	It is owner's capital	It is a borrowed capital
(3)	Return	The company pays dividend on a share from profit	Company pays interest on the debenture amount.

(4)	Rate of Return	The rate of dividend is unspecified.	The rate of interest is specified. Interest is payable whether there is any profit or not.
(5)	Ownership	Shareholders are owners of a company.	Debenture holders are creditors of a company.
(6)	Risk	The risk is higher in share.	The risk is less in debentures.
(7)	Right of Vote	Shareholders have voting right.	Debenture holders have no voting right.
(8)	Stamp Duty	The stamp duty on transfer of shares is payable at a lesser rate.	The stamp duty on transfer of debentures is payable on a higher rate.
(9)	Redemption	The share holders cannot get their money back as long as the company is in existence. At the time of liquidation, they get their money at the end.	The debenture can be redeemed as per its type. Debenture holders have the first right to receive their money in case of liquidation.
(10)	Charge on Assets	There are no charges of Assets.	Issue of debentures creates charge on assets of the company.
(11)	Payment out of Capital	Dividend on shares cannot be paid out of capital of the company.	Interest on debentures can be paid out of capital, as per provisions.
(12)	Control	Shareholders have control over the administration of the company.	Debenture holders have no control over the administration of the company. However they can appoint debenture trustees to safeguard their interests.
(13)	Demand for Liquidation	Shareholders cannot demand a liquidation of the company.	Debenture holders can demand a liquidation of the company.

What you have learnt in this chapter

In this modern period the efforts are made to collect money through debentures to get profit from the trading of equity.

Definition of Debenture : It is a document issued by the Company which bears the seal of the company informing about the acceptance of money as debt of the company. In this instance the company obtains a money as loan with a promise to return the specific amount after the stipulated period.

Types of Debentures : (1) Mortgage Debenture (2) Fully Convertible Debenture (FCD) (3) Partly convertible Debenture (PCD) (4) Non Convertible Debenture (NCD).

The Procedure to Issue Debentures : (1) Resolution by Board of Directors (2) Resolution by General Meeting of the Company (3) Permission from SEBI (4) Issue of Prospectus (5) Appointment of Trustees for Debentures (6) Agreement with underwriters (7) Opening an account with a Scheduled Bank (8) Registration with the Stock Exchange (9) Preparing Allotment Register for Debentures (10) Debenture Certificates

The Rights of the Debenture Holders : Debenture holders are creditors of the company, so there is the relation of debtor and creditor between the company and debenture holders. Their rights are; to obtain interest at the decided rates, to get money back on completion of the duration, to obtain copies of the documents of the company to obtain the information about how the company is functioning in compliance with the Trust Deed, to appoint the debenture trustees, to see that securities/properties mortgaged are properly maintained, to initiate legal proceedings if trust deed is violated, to obtain the information of the progress of the company at various times, to get the money at priority basis at the time of dissolution of the company.

Debenture Trust Deed : According to the provisions of the Indian Companies Act the agreement between debenture holders and company is executed and registered with the Registrar. An agreement is prepared with the consent of both the parties mentioning the terms and conditions. This deed is known as Trust Deed. The debenture holders appoint their representative to protect their interests and risk. People who represent the mass of debenture holders is known as debenture trustee.

The Procedure for the Transfer of Debentures : A form should be filled up with all details; the primary details of the purchaser and seller of the debentures, the details of the debenture if it is a voluntary sale the seller should declare and sign, the form. It should then be deposited with the Registered Office. The Secretary will verify the signatures. The required stamp duty should be paid after the resolution is passed at the meeting of directors. The secretary will add the name of the purchaser in the debenture and issue the new debenture certificate.

The difference between Share and Debenture : The points of differences : (1) Meaning (2) Capital (3) Return (4) the rate of return (5) ownership (6) Risk (7) Right of vote (8) Stamp (9) To get the money back (10) The charge over the property (11) The payment from the capital (12) Control (13) The demand for the dissolution.

Exercise

1. Select the suitable option from the options given :

- (1) Debentures means
(A) The Capital of the owner (B) The debt capital
(C) Property (D) Expenditure
- (2) At the time of dissolution of a company, the debenture holders acquire the right to get money back.
(A) Priority Right (B) The right of Last Payment
(C) Responsibility (D) No any right or zero rights
- (3) What is the fundamental right of the debenture holder ?
(A) The right to vote in the company
(B) To remain present at the meeting of the company
(C) The right as the member of company
(D) To get the interest and money back after a stipulated time

- (4) What is the name of the agreement between a company and debenture holders ?
 (A) Debenture Trust Deed (B) The Agreement of acquiring Trust
 (C) The Agreement of Guarantor (D) The Agreement of protection of Rights.
- (5) Who appoint the trustee of debenture ?
 (A) The company itself (B) The Assembly of Directors
 (C) General Assembly (D) The Assembly of debenture holder
- (6) Who represents the mass of debenture holders ?
 (A) Group of Director (B) Chairman of the Company
 (C) Debenture holders (D) Debenture Trustee
- (7) What is the status a debenture holder in the company ?
 (A) Creditor (B) Debtor (C) Creditor - Debtor (D) Share Holder
- (8) Who can the debenture holders appoint as their protector of rights ?
 (A) Debenture Trustee (B) Administrative Officer
 (C) Advocate (D) Share Holder

2. Answers the following questions in one sentence :

- (1) What is a debenture ?
- (2) Define the meaning of convertible debenture
- (3) What is the meaning of mortgage debenture ?
- (4) What is the meaning of certificate of debenture ?
- (5) What is a debenture Trust Deed ?
- (6) Who is known as a debenture trustee ?
- (7) Mention two rights of a debenture holder.

3. Answers the following questions in brief :

- (1) Give definition of debenture
- (2) What is partly convertible debenture ?
- (3) Mention the rights of the debenture trustee.

4. Answers the following question to the point :

- (1) State the concept of debentures.
- (2) Discuss any two types of debentures.
- (3) State the procedure of the issue of debentures.
- (4) Discuss Debenture Trust Deed.
- (5) Clarify the procedure of transfer of debenture.

5. Answers the following questions in detail :

- (1) State the meaning of debenture and explain its types
- (2) Discuss the procedure for the issue of the debentures, as per the provisions of the companies Act, 2013
- (3) Explain the difference between shares and debentures.



What will you learn in this chapter ?

- 4.1 Meaning and Definition of Membership
- 4.2 Member and Share Holder
 - 4.2.1 Person is Member but not a Share holder
 - 4.2.2 Person is Share Holder but not a Member
- 4.3 Difference between a Member and a Share Holder
- 4.4 Who can Acquire a Membership ?
 - 4.4.1 A Living Person
 - 4.4.2 Partnership Firm
 - 4.4.3 Hindu Undivided Family
 - 4.4.4 Trustee
 - 4.4.5 Foreigners
 - 4.4.6 Joint Share Holder
 - 4.4.7 Company
 - 4.4.8 Other Institutions
- 4.5 Methods of becoming a Member
 - 4.5.1 Subscribing to the Memorandum of Association
 - 4.5.2 By Allotment of Share
 - 4.5.3 By Transfer of Share
 - 4.5.4 By Transmission of Share
 - 4.5.5 By Share Acquired in Consideration other than Cash
 - 4.5.6 By Estoppel or Holding out
 - 4.5.7 By Execution of Letter of Renunciation
 - 4.5.8 By a Partly Convertible Debenture Holder
 - 4.5.9 By Sweat Equity Share
- 4.6 Termination of Membership
 - 4.6.1 By Transfer of Share
 - 4.6.2 By Transmission of Share
 - 4.6.3 By Forfeiture of Share
 - 4.6.4 By Exercise of Lien of Share
 - 4.6.5 On Redemption of Redeemable Preference Share
 - 4.6.6 By Making Share Allotment Void
 - 4.6.7 By Liquidation/Winding up of a Company
 - 4.6.8 By Amalgamation/Merger of Company

Introduction

A Company invites the Public to subscribe to its securities by issuing a prospectus. In response to that, potential investors apply to purchase shares. Company collects applications and classifies them. It also decides the allotment policy in consultation with representatives of the share market. After the completion of share allotment, allotted shareholders name is registered in Register of Members. Thus, they are considered member of the Company. Membership can be obtained in other ways also. Being a member of company certain rights are acquired in the same ways certain responsibility is also to be carried out.

4.1 Meaning and Definition of Membership

Meaning : A person is considered to be a member when his name is registered by written consent or through share application.

In short, to be a member a written consent and his name should be in Register of Members are required.

Definition : According to the The Companies Act "Member is a person who has subscribed to the Memorandum of Association of a Company and every other person who has agreed in writing to become a Member."

According to the Companies Act 2013 "Share holder may keep their share with Depository Participant. These share holders are registered as beneficiary owner in the register of Depository Participant, considered as Member of Company, though they are not registered in Company's Members' Register".

4.2 Member and Share holder

In common practice the terms 'Share holder' and 'Members' are used as substitutes of each other. However, from the legal point of view there is a difference between member and share holder.

4.2.1 Person may be a Member but not a Share Holder :

- (1) A person who has signed in Memorandum of Association becomes a member immediately even though he has not purchased shares.
- (2) In a company Limited by guarantee, member who has given guarantee for a certain amount, is considered as a member even if he has no shares.
- (3) The person who has transferred his shares to others name, is no longer a share holder. However he remains as member until his name is deleted from Register of Members.
- (4) A Company without Share Capital has no shareholder, but still there are members.

4.2.2 Person may be a Shareholder but not a Member :

- (1) Person who has purchased shares is a shareholder. But if he has not entered his name in register of members, he is not considered a member.
- (2) In case of death of a share holder, his legal representative becomes share holder, but is not member till he is not registered in register of members.

4.3 Difference between Member and Share Holder

No.	Points	Member	Share Holder
(1)	Meaning	The person is a member by written consent or his name is registered by share application in Members' Register.	The person who hold share is known share holder.
(2)	Signature	The person who has signed in Memorandum of Association is considering a Member.	Shareholder's Signature is not necessary in the Memorandum of Association.
(3)	Transmission of Shares	Legal representative becomes member after transfer of share and entry of his name Register of Members.	Legal representative became share holder after transmission of shares.

4.4 Who can Acquire a Membership ?

A Company that comes into existence by Law is an artificial person. It can exercise rights as a living person. According to law, any independent existence and personality unit can be member of the Company. For this, provisions of Articles of Association should be observed. The following persons or institutions can be made members.

4.4.1 A Living Person : Membership of a company is availed by a contract between person and company. According to the Indian Contract Act, any live individual person capable to do agreement can be a member of company. The person who is not capable to do agreement cannot be a member i.e. minor, insolvent, person of unsound mind.

Under certain circumstances the Indian Act has accepted minors also may be member.

4.4.2 Partners of the Firm : According to legal term, Partnership firm is not a person so it cannot be a member. But partners of a firm, individually or jointly, may become member of company.

4.4.3 Hindu Undivided Family : A Hindu Undivided Family cannot become a member in a Company but only the 'Karta' can purchase shares individually or jointly.

4.4.4 Trust : According to the new Companies Act a trust can purchase shares and become member.

4.4.5 Foreigners : Any foreigner can become member by holding shares of Indian company. However in the event of war or emergency with his native country a company may suspend the membership and rights of the particular person.

4.4.6 Joint Holder of Shares : When two or more persons hold shares in their joint names, then their names are jointly recorded in the Register of Members of the company. They are individually and jointly liable for the shares. For administrative simplicity the company corresponds with the shareholder, whose name appears first. Company sends notices, share certificates, dividend warrants, circulars, documents etc. in his name.

4.4.7 Company : As a company is a legal person having an artificial personality it can become a member in any other company. Company can be a member according to the Articles of Association. The following provisions shall have to be complied with :

- (1) Company may take membership of another company according to its own Articles of Association.
- (2) A Subsidiary company can not obtain membership of its holding company. However, in following circumstances, subsidiary company can become a member of the holding company.
 - (a) Representative of holding company passes away and subsidiary company holds shares as representative;
 - (b) Subsidiary company is a trustee of any member but has no personal interest in the trust;
 - (c) If the subsidiary company was already member before the execution of this law.

4.4.8 Other Institutions : Co-operative societies registered under the 'Co-operative Societies Act' can become member of a company by purchasing its shares, subject to the provisions of their constitutions and bye-laws.

4.5 Methods of becoming a Member

When a person holds shares of the company and when his name is entered in the Register of Members of the company, he becomes member of the company.

One can become a Member through the following ways :

4.5.1 Subscribing to the Memorandum of Association : A person who signs the subscription clause of the Memorandum of Association of a company automatically becomes a member of the company after getting Certificate of Incorporation. Generally, a written consent of the member is a precondition to become a member. However this condition does not apply to the signatories of the Memorandum of Association.

4.5.2 By Allotment of Shares : Company gives invitation to public to subscribe to its share by issuing prospectus. In response to such invitation, people apply to purchase shares. When the share applications are approved the name of the applicant to whom the shares are allotted is entered into Register of Members. As a result he becomes member of the company and acquires its membership.

4.5.3 By Transfer of Shares : When a shareholder sells his shares or transfer to some other person (transferee), then the transferee gets membership of the company. Such a transfer can be done be according to The Companies Act and Articles of Association.

4.5.4 By Transmission of Shares : When a shareholder dies or is declared insolvent or lunatic, transmission of share becomes inevitable through a legal procedure. Under such circumstances his successor or legal representative becomes the shareholder. As a result, his name is entered in Register of Members and he acquires membership. For the transmission of share he has to produce an authority letter to the company.

4.5.5 By Shares Acquired for Consideration other than Cash : Services of many persons are required until the company comes into existence and commence it's business. A Company gives fully paid up shares to the persons providing such services, as remuneration in consideration for their services. As a result, the names of such persons are entered in the Register of Members and they become member.

4.5.6 By Estoppel or Holding out : When a person sells his shares to others he loses his membership. In spite of not having membership : (1) he continues to be a member (2) holds out himself to be a member (3) utilizes his rights as member by fictitious behavior and as a result of which (4) any liability arises as a member, then he may deny that he is a member. Such behaviour is not acceptable as per law, he cannot enjoy any rights but he is a responsible as a member.

4.5.7 By Execution of Form of Renunciation : When the existing shareholder renounces his right of purchasing right shares, fully or partially in favour of some other person/persons, he executes the letter of renunciation. By virtue of the letter of renunciation, the other person becomes a shareholder, when shares are allotted to him, he requests for his name to be entered in the Register of Members. On the company's approval, his name is entered into the Register of Members and he acquires membership.

4.5.8 By Convertible Debenture Holder : If a debenture holder has convertible debentures, after a specific time period convertible debenture convert into Equity shares. Such a debenture holder becomes an equity shareholder and by virtue of that he becomes a member and his name is entered into the Register of Members.

4.5.9 By Acquiring Sweat Equity Share : A Company offers share on discount or without cash consideration to it's Directors, Employees having expertise. These shares are known as sweat equity shares. When such type of shareholders name is entered in the Register of Member becomes a member.

4.6 Termination of Membership

When a member's name is deleted from the Register of Members, membership comes to an end. Membership stands to be terminated under the following circumstances :

4.6.1 By Transfer of Shares : When an existing member sells all the shares held by him to another person/persons, then by share transfer process, membership is deleted from the Register of Members.

4.6.2 By Transmission of Shares : When a members passes away, or becomes insolvent or is declared of unsound mind then shares are transferred under the operation of law to the legal representatives. In this situation, the name of the original member is deleted.

4.6.3 By Forfeiture of Shares : When shareholder defaults in paying the amount of calls on his shares, his shares are forfeited after following legal procedure. On forfeiture of shares, his name is removed from the Register of Members and his membership comes to an end. There should be a provision in the Articles of Association for the procedure of forfeiture of share.

4.6.4 By Exercise of Lien on Shares : If there is a provision of lien on share in the Articles

of Association of the company and company exercise this to recover its dues from a member by selling his shares; his membership comes to an end when his shares are sold.

4.6.5 By Redemption of Redeemable Preference Shares : When a company has issued Preference share then it returns the amount of preference share on completion of redemption period. As a result the membership of preference shareholders came to an end.

4.6.6 By Making Share Allotment Void : When there is breach of provisions of the Companies Act for regular allotment of shares, then affected shareholder applies to make the irregular share allotment void. As a result his membership comes to an end.

4.6.7 By Liquidation/Winding up of Company : When Company winds up its business or goes into liquidation, then its business comes to an end, and memberships automatically come to an end.

4.6.8 By Amalgamation/Merger of Companies : When a Company is merged into some other company, or a new company is established to amalgamate two or more companies, then the members of the company lose their existence and their membership in such a company. Of course, they acquire membership to the new company, according to specified conditions.

What you have learnt in this chapter

The investor applies to invest in securities of a company on the basis of prospectus. The Company collects applications and allots shares to investors. Once share applications are approved the names of the applicants who have been allotted shares are entered into Register of the Members. Thus a person acquires membership.

Definition and Meaning of Membership :

Meaning : A person whose name is registered by a written consent or by share application is considered to be a member of Company.

Definition : According to The Companies Act "Member is a person who has subscribed to the Memorandum of Association of a Company and every other person who has agreed in writing, to become a Member."

In short, to be a member a written consent and his name should be in Register of Members. Shareholders who are registered as beneficiary owner in the Register of Depository Participant, are considered Member of Company.

Member and Shareholder : There is difference between member and shareholder. Person may be a member but not a shareholder : (1) A person subscribing to the Memorandum of Association (2) In a company, limited by guarantee, a person who has given guarantee for certain amount (3) One continues to be a member, until his name is removed from the Register of Members, as a result of transfer of shares. (4) the company does not have share capital.

Difference between Member and Shareholder : (1) Meaning (2) signature (3) transmission of share

Who can Acquire a Membership ? Companies come into existence by Law and are artificial persons. They can exercise rights as a living person. According to law any independent existence and personality unit can be member of Company as per the provisions of Articles of Association. (1) An Individual (2) Partners of the firm (3) 'Karta' of Hindu Undivided family (5) Trustee (6) Joint holder of shares (7) Foreigners (8) other institutions.

Methods of becoming a Member : (1) Subscribing to the Memorandum of Association (2) By allotment of shares (3) By transfer of shares (4) By transmission of shares (5) By shares acquired in consideration other than cash (6) By estoppel or holding out (7) By execution of letter of Renunciation (8) By partly convertible debentures (9) By sweat equity shares

Termination of Membership : (1) By transfer of shares (2) By transmission of shares (3) By forfeitures of shares (4) Exercise of Lien on shares (5) On redemption of preference share (6) By making share allotment void (7) By liquidation of company (8) By amalgamation / merger of companies

Exercise

1. Select the suitable options from the options given :

- (1) Which clause of Memorandum of Association is to be signed to be considered as member ?
(A) Capital clause (B) Objective clause (C) Subscription clause (D) Liability clause
- (2) Members of a partnership firm may acquire membership of company...
(A) can be member (B) firm and partners can be member jointly
(C) cannot be member (D) only firm can acquire
- (3) Sweat equity shareholders...
(A) do not get membership. (B) get membership
(C) get partial membership (D) membership is suspended
- (4) With whom will the company communicate in case of joint share holding ?
(A) with the first shareholder (B) with all the shareholders
(C) with the second holders (D) with the last holders
- (5) Which document is issued by the company to collect capital ?
(A) Memorandum of Association (B) Articles of Association
(C) Prospectus (D) Share certificate
- (6) Shares are given as consideration to the service provider to the company...
(A) do not acquiring membership (B) are offered post of the manager
(C) acquire membership (D) acquire partial membership

2. Answer the following questions in one sentence :

- (1) Who decides the allotment policy for share ?
- (2) Which element is essential to be a member ?
- (3) What is to be presented to a company in transmission of share ?
- (4) Where are the names of approved shares entered ?
- (5) Whose agreement creates Membership of company ?
- (6) Who can acquire membership in a Hindu Undivided Family by purchasing share ?
- (7) Whose membership is suspended in case of war ?
- (8) Which letter of a shareholder authorizes to an other person to become a member ?
- (9) Who can be allotted sweat share ?
- (10) Which type of share is redeemable ?

3. Answer the following questions in short :

- (1) Define membership and give its meaning.
- (2) "A person may be member but may not be a shareholder" - Explain.
- (3) "A person may be shareholder but may not be a member" - Explain.
- (4) Under what circumstances can a subsidiary company acquire membership of holding company ?
- (5) How can a convertible debenture holder become a member ?

4. Answer the following question point wise :

- (1) Differentiate between member and shareholders.
- (2) Give the information regarding joint shareholding.
- (3) Explain the methods to become member through share transfer and share transmission.
- (4) "A Member holds out himself to be a member is responsible as member." Explain this statement.

5. Answer the following question in details :

- (1) Who can acquire membership ?
- (2) Explain methods to obtain membership.
- (3) Explain circumstances for termination of membership.



What will you learn in this Chapter ?

5.1 Director and Board of Directors 5.2 Number of Directors and their Identification Number 5.2.1 Number of Directors 5.2.2 Identification Number of Directors 5.3 Appointment of Directors and Types of Directors 5.3.1 Appointment of Director 5.3.2 Types of Directors 5.3.2.1 Independent Director 5.3.2.2 Managing Director/Whole Time Director 5.3.2.3 Nominee Director 5.3.2.4 Additional Director 5.3.2.5 Alternative Director 5.3.2.6 Director Appointed before Completion of Term on Director's Vacant Position 5.3.2.7 Director Elected by Small Shareholders 5.3.2.8 Female Director 5.4 Qualifications and Disqualifications of Directors 5.5 Retirement of Director, Resignation of Director and Removal of Director 5.5.1 Retirement of Directors 5.5.2 Resignation of Director 5.5.3 Removal of Director	5.6 Vacation of Office of Director 5.7 Authority, Duties and Responsibilities of a Director 5.7.1 Authorities of a Director 5.7.1.1 Authority Assigned by the Companies Act 5.7.1.2 Authority Acquired by Memorandum of Association 5.7.1.3 Authority Acquired by Articles of Association 5.7.2 Duties of a Director 5.7.3 Liabilities of a Director 5.7.3.1 Civil Liability 5.7.3.2 Criminal Liability 5.8 Provisions the Companies Act for the Managing Director 5.8.1 Appointment of Managing Director 5.8.2 Qualification and Disqualifications of Managing Director 5.8.3 Remuneration of Managing Director 5.8.4 Authorities and Responsibilities of Managing Director 5.9 Difference between Managing Director and Director
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Introduction

A Company is a large business formation. It is formed in compliance with the provisions of the Companies Act. The personality of a company is artificial. It cannot work by itself. In Company formation the number of shareholders / owners is huge. They are spread over the whole country. More over, there is no restriction on share transfer. There is always change in it's ownership. A company is a large entity. Now-a-days special managerial skills are required due to compulsion of maintenance of international standard, production of quality product and increase in competition. In a company direct management by owners / share holders is not possible. So, Shareholders appoint their representatives. The functions of the company are carried out by a group of these representatives known as their Board of Directors. According to provisions made, the Board is required to meet within 30 days of the formation of the company and thereafter atleast four times in a year. Every Director should participate in meetings. If, for any reason he is not able to attend the meeting he can participate through video conference, according to the new Companies Law. According to the Companies Act 2013 minimum of $\frac{1}{3}$ or at least 2 Directors (whichever is more) should be present in a meeting. Every company shall have, at least, one director who has stayed in India for a total period of not less than 180 days in the previous calendar year.

Two elements are very important for the existence of the company : (1) Ownership and (2) Management. In a Company formation owners are the shareholders who have invested in the form of Equity shares. They take the risk of investment in shares. They have to bear whatever the result of the company is profit or loss. Good management leads to Name, Fame and Profit, while inefficient management invites losses. So now, in many companies Directors are owners of the company by holding shares and by their proper management policy, efficient administrative skill they lead the Company to success.

In India, the dynamics of managing a company change from time to time. At present, the management of a Company is conducted only by a Board of Directors. A Managing Director is appointed to assist the Board.

5.1 Directors and Board of Directors

(1) Meaning : According to The Companies Act 2013 “Director means a director appointed to the Board of a Company”. A director has been defined by many authors.

(i) “A Director is that person who formulates general policies for overall management, direction and control of the company”.

(ii) “A Director is that person who manages the company entirely, by formulating policies and strategies within the parameters of ‘Memorandum of Association’ and ‘Articles of Association’.

Here, we have to note that the company is managed collectively by a group of directors. This group is called the Board of Directors. The Board of Directors is the highest managing authority of a company. Board of Directors is the brain in the body of a company.

(2) Legal Position of Directors : According to various judgements passed by various courts in context of the role of Directors, the relationship between a director and the company can be understood as under :

(i) Director as a Representative : Directors are representatives of shareholders. They are elected by shareholders. They are given a remuneration for their services. However they are not paid employees of the company, as the specified company is managed by elected representative of shareholders. They act in accordance with the authority specified in the Memorandum of Association. They act within the limits of the authority granted to them. The directors are personally responsible for acts beyond their authority.

(ii) Director as an Administrative Partner : Shareholders are the owners of the company. They elect representatives from amongst themselves. These representatives manage the company. Thus, the status of a Director is that of an administrative partner. As administrative partners they, in capacity of owners, can collectively decide about allotment of shares and making calls on shares. They are not partners, because like a partner in the firm, a Director cannot make other Directors responsible for work done by him. Secondly relation among partners is of permanent nature while Directors have to retire by rotation.

(iii) Director as a Trustee : When Directors are elected by shareholders then they are automatically entrusted with the property and funds of the company. The Board of Directors manages these as trustee. It means that the Board of Directors has to manage such funds and property in the interest of company. They cannot derive any personal benefits or profit from the management of the company property. Thus directors are just managing trustees not real trustees. The property of the company

is not in the name of its Directors, but it is in the name of the company, whereas a trustee holds the property of a trust in his own name. Moreover, a trustee can file a suit in court in his own name, while in case of company legal proceedings are done in the name of the company and not in the name of its Directors.

(iv) Director as Employee : Directors of a company are not employee of the company. They are considered officers of the company in certain matters.

Therefore, it is evident that it is very difficult to decide legal status of Directors. In certain matters they are officers of company but they are not employee of the company. To certain extent, they are representative / agents of the company. To some extent, they also have characteristics of trustees. Thus, they possess the peculiarities of all these four fiduciary positions.

5.2 Number of Directors and their Identification Number

5.2.1 (i) Number of Directors :

For a Public Company : In a Public Limited Company there must be a minimum of three Directors.

For a Private Limited Company : In a Private Limited Company a Minimum of two Directors are required.

For a Single Person Company : In a single person company minimum one director is essential.

The maximum number of Directors in a company can be 15. However the number of directors can be increased to more than 15 by passing a resolution.

(ii) Number of Directorship : A person can hold the office of a Director for maximum 20 companies including Public Company and Private Company. A person can be appointed Director at not more than 10 public companies. A provision in the Companies Act specifies that this number can be reduced by the shareholders through a special resolution. Any one found accepting an appointment in violation of this rule, is liable to be punished.

5.2.2 Identification Number of Directors : A person who wants to be a Director has to apply through a specific application form for an identification number to the Central Government. The Central Government issues a Director's Identification Number within one month of receiving such an application. Nobody can apply for a second identification number. After receiving the identification number, a person has to inform the company where he is director.

The company has to inform this identification number of all Directors of the company to the Registrar of Companies within a specific time. If this is not informed within specific time period, officers responsible are liable to be punished.

5.3 Appointment of Directors and Types of Directors

5.3.1 Appointment of Directors : As per The Companies Act, management of a company is conducted by a Board of Directors, jointly. Each and every company has to appoint Directors mandatorily. Partnership firm, trusts, other companies or Associations can't be appointed as directors. Only a living individual can be appointed as a director in a company. As per the Companies Act, following provisions are specified for appointment of Directors.

(1) Appointment of First Directors : Where no provision has been made in the Articles of Association of a company for the appointment of the first Director, the subscriber to the Memorandum of Association shall be deemed to be the first director of the company. In case of a Single Person Company, an individual member, shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provision of the Companies Act.

As soon as Directors are duly appointed by the company, in a general meeting, the first director's post automatically falls vacant.

(2) Appointment of Directors after First Directors : The term of the first Director expires on the very day of the first general meeting. Directors are appointed by the shareholders in the first general meeting and then, in every subsequent Annual General Meeting to be held every year. The directors due for retirement can be reappointed by the company in the general meeting. Every person proposed to be appointed by the company in general meeting or otherwise, shall furnish his Director Identification Number and a declaration that he is not disqualified to become a director under this Act. A person proposed to be appointed as director by the company in general meeting or otherwise has to submit a consent within 30 days of his appointment which is to be further presented to the Company Registrar in a prescribed manner. Provisions regarding appointment of directors are prescribed in the Articles of Association. If the Articles of Association provides for retirement of all directors in every general meeting, then all directors will be retired in the meeting. However usually no such provision is made in the Article of Association. In that case 2/3 directors of the total directors are liable to retire by rotation. From 2/3 number of directors 1/3 directors will be retired as per their seniority. So, within the span of three years all 2/3 directors will be changed. The vacant post of Director can be filled by the reappointment of retired Director.

5.3.2. Types of Directors : A company is a large entity and appointment of Directors is mandatory. There are following types of directors in a company :

(1) Independent Director (2) Managing Director (3) Nominee Director (4) Additional Director (5) Alternative Director (6) Director's appointment before completion of term on Director's vacant position (7) Appointment of directors elected by small shareholders.

5.3.2.1 Independent Directors : This is a new provision of The Companies Act 2013. According to this provision at least 1/3 directors of the company will be independent directors. Central Government may decide a minimum number of independent directors for a specified public company. The Independent Director means, a person who is not a Managing Director or full time director or a nominee director. Independent director is appointed from a data bank. Such type of data bank containing names, addresses, and qualification of persons who are eligible and willing to act as independent director can be maintained by anybody, Institute or Association, as may be notified by The Central Government. A company has to select from this data bank. The Company should take proper care at the time of selection from such data bank and his appointment should be approved in the general meeting.

The term of an Independent director is for five years. The Independent director can be reappointed. For that, a special resolution should be passed in the company. It should be specified in a report of the Board of Directors. Proper reason should be given, as to why, the reappointment is essential. Any independent director would not be appointed for more than two terms (ten years). Independent director can be reappointed after the gap of three years. During these three years he should not be connected or appointed in any manner directly or indirectly to the company.

- (1) A person appointed as an Independent Director by a Board, should be experienced, skillful and an expert in his field.
- (2) Such person should not be a promoter of the company or its subsidiary companies.
- (3) The person should not be relative of any promoters or directors.
- (4) He should not have any economical or financial relations with company or subsidiary company or with its director or promoters in the last two financial years.
- (5) Independent director should not have any relation in with the Key Managerial Personnel (KMP) for 3 years before his appointment as an independent director.

5.3.2.2 Managing Director/Full time Director : A Managing director is also known as Executive Director. In the modern times a company is the best example of commercial organization. Management of a company requires business tactfulness, Ethics and Business strategy. It is managed by Board of Directors. Members

of the Board of Directors spread over in different cities of the country. So they are not able to do, day to day, management. To manage daily routine work of the company a Managing Director / fulltime director or Manager is appointed. Managing Director has to carry out the day to day functions of the company. Not only that, he has to carry out and execute policy decisions taken by the Board of Director. The Managing Director is appointed by Board of Directors.

5.3.2.3 Nominee Director : Board of Directors can appoint Nominee Director as per directives of Articles of Association under the following conditions :

- (1) The board may appoint any person as a director nominated by any institution, in pursuance of any agreement.
- (2) The board may appoint any person as nominee director nominated by an institution in pursuance of provision of any law.
- (3) The board of director appoints any person as director nominated by Central Government or State Government by virtue of his shareholding in a Government Company.

5.3.2.4 Additional Director : Sometimes experts or technocrats are essential for company but they are not included in the Board of Directors. At that time, according to the provisions of Articles of Association, such persons can be appointed as director at any time. But the person who fails to get appointment as a director in a general meeting would not be appointed. As an additional director, he/she shall hold office up to the date of the next Annual General Meeting.

5.3.2.5 Alternative Director : Directors are important for the management of a company. But due to some reason if a director goes out of the country for more than three months a person is appointed to act as director and is known as alternative director. An alternative can be appointed as per the provision of Articles of Association or by passing a resolution in the general meeting. The person shall be appointed as an alternative for an independent director unless he is qualified to be appointed as an independent director as per the provision of the Companies Act. A person holding an alternative directorship for any other director can not be appointed.

5.3.2.6 Director appointed before Completion of Term on Director's Vacant Position : As per the provision of the Companies Act, if a Director is removed from his post, before completion his term or is unable to complete term, Board or Central Government may appoint a director. Any person so appointed shall hold office only to the date up to which the director in whose place he is appointed, would have held office, if it had not been vacated. Director's post falls vacant under the following circumstances :

- (1) Director removed in general meeting or in the meeting of Board of Directors.
- (2) Director remain absent in the Board meeting for last 12 months without permission.
- (3) Director becomes insolvent, he expires or he is of unstable mind.
- (4) When he has been disqualified by court.
- (5) When he has been convicted by a court for an offence involving moral turpitude or any other offence.
- (6) When he has a direct or indirect financial interest or agreement in the company and he fails to disclose it.
- (7) Private company may include other restrictions in Articles of Association.

Directors are appointed on posts that fall vacant under these circumstances.

5.3.2.7 Appointment of Directors Elected by Small Shareholders : As per the Companies Act, 2013 a listed company may have one director elected by small shareholders. Small shareholder means a shareholder holding shares of nominal value of not more than ₹ 20000/- or such other sum as

may be prescribed. More over, as per the provisions of the Companies Act a minimum of 1000 shareholders should be there for appointment of the director.

5.3.2.8 Female Director : As per the Companies Act 2013, every listed company having a paid up share capital of ₹ 100 Crores or more such class or classes of companies as may be prescribed, shall have at least one female director.

5.4 Qualification and Disqualifications of Directors

(A) Qualifications : The Companies Act 2013 prescribes the following qualifications for independent directors.

- (1) Appropriate skill, experience and imagination,
- (2) Knowledge in Law, Management and field of Finance.
- (3) Knowledge of Administration and Research Aptitudes
- (4) Skill of corporate governance
- (5) Knowledge of technical operations related to company's business

(B) Disqualifications : The Companies Act prescribes the following provisions as disqualification for appointment of a director :

- (1) Person is of unsound mind.
- (2) Person is insolvent.
- (3) Person has been convicted by a court of law and sentenced for at least 6 months.
- (4) A Person who has been convicted for above offence and has been sentenced for more than seven years is disqualified for life.
- (5) An order, disqualifying him for appointment as a director, has been passed by a court and the order is in force.
- (6) Person has failed to pay calls on shares of the company on his name or held jointly and even after six months have elapsed after the due date.
- (7) Person convicted for fraudulent activities with relative parties in the last 5 years.
- (8) Appointed director does not present annual accounts for three continuous financial years.
- (9) A director who fails to pay interest, dividend declared and interest on debenture, for more than one year can't be appointed as director for five years from the date of the failure.

A Private company may amend these conditions in Articles of Association by changing the terms from 6 month to 30 days.

5.5 Retirement of Directors, Resignation of Directors and Removal of Director

5.5.1 Retirement of Director

- (1) The first directors of the company retire on the day of the first general meeting, as their term expires on that day.
- (2) An Independent director retires after completion of a term of five years. In case of reappointment, the independent director can be appointed for two terms i.e. maximum of ten years. He has to retire after that period.
- (3) At least 2/3rd of the directors of a public company retire by rotation, 1/3 of these are the senior most.
- (4) Person not qualified for appointment, is disqualified and retires.

(5) If retiring director informs the Board of Director, through written notice, his unwillingness for reappointment, he retires.

(6) Retiring director's reappointment resolution is not passed in general meeting, the director retires.

5.5.2 Resignation of Director : Any director who wants to vacate his office can give a notice of resignation in writing specifying reasons to the Board of Directors at any time.. He has to inform to Registrar of Company with a copy of resignation within 30 days of the resignation. Company also informs to Registrar of Company within the specified time. The Board of Directors also provides their information in their report at the Annual General Meeting. Such a resignation comes into force from the date of resignation or date specified in the notice. One thing should be noted here that director is responsible for his act during his tenure of his directorship.

5.5.3 Removal of Director : According to provision of the Companies Act, a director can be removed from his office before the expiry of his term by the following :

(1) **By Shareholders :** A company can remove any director before expiry of his term by general resolution. (Director appointed by Government or tribunal cannot removed by shareholder). When special notice is given, it is the duty of a company to give a copy of that special notice to the concerned director. Before removal, such a director should be given reasonable opportunity, to be heard and to be represented.

(2) **By Board of Directors :** Board of Directors can also remove a director. The procedure is to be followed is as above.

The person is removed in the above manner can not be reappointed.

5.6. Vacation of Office of Director

According to the provisions of Company Act director has to vacate his office in following circumstances :

- (1) Director incurs disqualifications as specified in the Companies Act;
 - (i) Court declares director unsound of mind;
 - (ii) Court declares director insolvent;
 - (iii) He has applied to be adjudicated as insolvent and his application is pending;
 - (iv) He has not paid any calls in respect of any shares of the company and six months have elapsed from the last day for the payment of call;
 - (v) Director has conducted misappropriation or fraudulent activities in the promotion or management of the company;
- (2) When a director remains absent for the last 12 month from a meeting of the board;
- (3) Director makes such a contract with the company in which his interests are manifested directly or indirectly;
- (4) When he fails to make a disclosure to the Board of Directors with regards to any contract with the company in which he is interested;
- (5) When he has been disqualified by a court of law;
- (6) Director has been convicted by court and sentenced for more than 6 months imprisonment for an offence involving moral turpitude;

If a person continues to act as a director even after being aware of his disqualification, he is liable to imprisonment and penalty.

5.7 Authorities, Duties and Responsibilities of Directors

5.7.1 Authorities of Directors : Shareholders elect representatives amongst themselves to manage the company. Directors enjoy special status in the management of company. As they are representative of shareholders, so a relationship of agent - principal is created. As per the provisions of the Companies Act it is essential for a Board of Directors to take consent for certain actions from the shareholders. Thus, shareholders are considered supreme authority. The Board of Directors takes of decision in form of a resolution through majority. As the directors are fewer in number generally dispute do not arise among them. For fundamental decisions unanimity is necessary. Company is an artificial person and it possesses all authority by the Companies Act. The Board of Directors acquire powers through three ways : (1) In accordance with the Companies Act (2) In accordance with Memorandum of Association of the Company (3) In accordance with the Articles of Association.

5.7.1.1 Power Assigned by the Companies Act to Directors

- (1) The Board of directors passes a resolution in the meeting and acquires the following powers :
 - (i) To issue and allot shares of the company;
 - (ii) To make calls on shareholders in respect to unpaid money
 - (iii) To authorize buy back of securities;
 - (iv) To issue debentures and other securities whether in India or outside India;
 - (v) To borrow money on behalf of the company;
 - (vi) To invest funds of the company;
 - (vii) To declare interim dividend;
 - (viii) To determine proportion of dividend on the basis of profit earned by company;
 - (ix) To appoint alternate directors and additional directors on temporary basis;
 - (x) To Grant loans, to give the guarantee for loan or to provide security for loan;
 - (xi) To approve financial statement and report of the board;
 - (xii) To expand business of the company;
 - (xiii) To approve amalgamation, reconstruction or merger;
 - (xiv) To take over a company or acquire a control on an other company;
 - (xv) Any other matter which may be prescribed.
- (2) For the following functions Board of Director has to take consent in general meeting by special resolutions :
 - (i) To sell or dispose off the whole company or to dispose off extra units of the company;
 - (ii) To lease the company;
 - (iii) To invest in trust securities, the amount of compensation received, by it as a result of any merger or amalgamation;
 - (iv) To borrow money from the bank in excess of the aggregate of its paid up share capital and free reserve;
 - (v) To give time for payment of any debt or write off debts of a director;

5.7.1.2 Authority Acquired by Memorandum of Association : Directors acquire some of their authority through the Memorandum of Association. They cannot function beyond this power. If the directors act beyond these powers, such acts are considered to be ultra-vires. Such acts cannot be subsequently rectified even by passing the resolution by all the shareholders unanimously. For such acts directors are held personally liable.

5.7.1.3 Authority Acquired by Articles of Association : There is a provision in the Companies Act, Articles of Association to manage a company. Most of the administrative powers of the directors is acquired through the Articles of Association. It is the responsibility of a director to function according to that. But if directors act beyond the limits of their powers such acts are considered to be ultra-vires. The shareholders can free the directors from such liability by rectifying such acts subsequently by passing resolution.

5.7.2 Duties of Directors : In a managerial hierarchy status of the Board of Director is most important. They have to observe their duties as below :

- (1) Director will act as per the provisions of Articles of Association.
- (2) A director of a company shall act in good faith in order to promote the objectives of the company for the benefits of shareholder.
- (3) A director of a company shall act in the interest of shareholders, employees and society and for the protection of environment.
- (4) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- (5) A director of a company shall not be in a conflict of interest with the company directly or indirectly.
- (6) Directors must attend every meeting of the Board of Directors. If, he can't, he must inform in advance.
- (7) He must not make any secret profit.
- (8) They must take due care of the financial as well as the immovable and movable assets of the company. They should not make any use of them for any personal benefits.
- (9) They must invest company's funds properly.
- (10) They must call a meeting of the Board of Director at least once in every quarter.
- (11) A director of a company shall not achieve or attempt to achieve any undue advantage for himself or for his relatives, partners or associates. If a director found guilty of making any undue gain, he shall be liable to pay an amount double to that gain to the company.
- (12) A director of a company shall not assign his office to another. Such assignment shall be void.
- (13) If a director of the company contravenes the provision, he shall be punishable with minimum ₹ One lakh, extendable to Five lakhs.
- (14) It is duty of every Board of Director to constitute an Audit committee.
- (15) The Board of Director has to constitute a Stakeholders Relationship Committee.
- (16) A director of a company cannot acquire assets for consideration. He can accept only cash.
- (17) Any director of a company cannot enter into insider trading.

5.7.3 Responsibilities of Directors : The directors acquire powers in accordance with Companies Act, Memorandum of Association and Articles of Association. When directors misuse their power or act beyond their authority or do not implement their duties properly, they are held personally liable towards the third parties or towards the company. Responsibilities of the directors are two types : (1) civil liability (2) criminal liability.

5.7.3.1 Civil Liability : Civil liability is that type of liability in which the loss suffered by the aggrieved party is required to be compensated. If the directors act within the limit of law in good faith, bonafide and take

reasonable care in discharge of their duties, they cannot be held liable for any damage caused. Civil liability arises towards two parties. (1) Liability towards company (2) Liability towards third parties.

(1) Liabilities towards Company : When directors perform their duty beyond the powers (ultra-vires) of Memorandum of Association they are responsible to the company.

- (i) When they willfully misappropriates the accounts of the company.
- (ii) When they declare dividend even when company has not earned enough profit.
- (iii) When they use company's funds or properties for their personal use and thus commit breach of trust.
- (iv) Directors behave dishonestly or carry out fraudulent transactions, purchasing property in their own name first and then selling it to the company at a profit.
- (v) When a director becomes habitually irregular and absents himself from meetings causing losses to the company.

(2) Liability towards third party

- (i) When directors give misleading information or false information in the prospectus or conceal some important information, as a result of which some share applicant has to suffer financial loss.
- (ii) When directors enter into any transaction in their own name without mentioning the name of the company.
- (iii) When they enter into fraudulent transactions with third parties.
- (iv) When directors liability is unlimited as per Memorandum of Association (Table D & E).
- (v) When director borrows money in excess of permitted limits.
- (vi) When the court holds directors liable to a third party, at the time of winding up of the company.

5.7.3.2 Criminal Liability : According to the provisions of the Companies Act, directors are held criminally liable in the following circumstances for which they are punishable with the fine or imprisonments or both.

- (1) When they commit cheating, fraud or breach of trust with the company.
- (2) When directors disobey various provisions of the Company Act.
- (3) When directors give misleading or false information in the prospectus or hide some important information.
- (4) When directors commit a criminal offence at the time of incorporation, management or winding up of the company.

5.8 Provisions of the Companies Act for the Managing Director

According to the Companies Act all the management power is empowered with the Board of Directors. However, Board of Directors may not be able to come to the company every day. Not only that, they may be staying in different cities so they may not be able to look after day to day problems. To resolve the problems and for management, a Managing Director or Manager is appointed. Thus the Managing Director manages day to day management of a company. He has to execute the policies decided by the Board of Directors. According to the Companies Act Managing Director is considered the Key Managerial Personnel (KMP) and a full time employee of the company. Following are the provisions of The Companies Act for a Managing Director :

5.8.1 Appointment :

- (1) Appointment of Managing Director can be done by :
 - (i) Articles of Association
 - (ii) Agreement with the company
 - (iii) Resolution passed in general meeting
 - (iv) In the meeting of Board of Directors
- (2) Only a living person can be appointed as Managing Director. A firm or institution cannot be appointed as Managing Director in a company.
- (3) According to the Companies Act, Managing Director and manager can't be appointed simultaneously.

- (4) The Managing director can be appointed for five years at a time.
- (5) Terms and condition are to be decided a in the meeting of Board of Directors.
- (6) Appointment should be approved in the general meeting.
- (7) Reappointment of Managing Director can't be done before the expiry of term of the Managing Director.
- (8) If Managing Director is appointed other than original terms then the approval of Central Government is necessary.
- (9) Company Registrar should be informed about the appointment of the Managing Director (Form MR 1), within 50 days of appointment.
- (10) Managing Director can work in maximum in two companies. (Resolution is essential to work in two companies).

5.8.2 Qualifications and Disqualifications of Managing Director : In the Companies Act there is no specification for the qualifications of Managing Director. The appointee should be experienced, creative, technocrat, subject expert and capable of takeing proper decision in critical times. However the Companies Act has mentioned disqualification of Managing Director as below :

- (1) Age of the appointee Managing Director should not be less than 21 years and more than 70 years.
- (2) He should not have been declared to be insolvent at any time.
- (3) He should not have suspended payment to his creditors.
- (4) If he has been convicted by a court of an offence for more than six months for breach of any law prevailing in India he is not qualified for appointment.

5.8.3 Remmuneration of Managing Director :

- (1) The remuneration payable to a Managing Director is up to 5 % of the net profit without consent of general meeting.
- (2) One percent of the net profits of the company is payable to part time Managing Director without consent of general meeting.
- (3) The remuneration payable to the Managing Director shall be determined in accordance with the provisions of the Companies Act or Articles of Association or the resolution of the company.
- (4) Where a company is required to restate its financial statement due to noncompliance with any requirement as per Act, the company shall recover from managing director, remuneration received in excess during that period.
- (5) Managing Director may be paid compensation for the termination of his office. (This type of remuneration cannot be paid to other directors.) He is not be entitled to any compensation in case of his rcsignation, or being found guilty in some legal procccdings, fraud, brcach of trust, mismanagement of company, or if he provokes others to initiate and expediate the termination of his office.

5.8.4 Authorities and Responsibilities of Managing Director :

(1) **Power :** Managing director enjoys highest authority in company management. Therefore, he enjoys a special status. A Managing Director enjoys wide powers in the company. One thing is to be noted here that managing director is empowered by Memorandum of Association, Articles of Association and resolution of general meeting and the resolution of Board of Directors.

A Managing Director utilizes his power under the supervision, direction and control of Board of Directors. Managing director cannot sign or put a seal on any documents without being assigned the power by the Board of Directors.

(2) **Responsibilities** : Managing Director is also a director. Therefore all the duties of a director also apply to Managing Director.

5.9 Difference between Managing Director and Director

Sr. No.	Points	Managing Director	Director
(1)	Appointment	Managing director is appointed by the Board of Directors and they decide the term and conditions.	Director is appointed in the Annual General Meeting. There are no terms and condition.
(2)	Term	Managing director is appointed for five years.	Director has to retire as per rotation.
(3)	Position	Managing director is one of the directors. He execute day to day work.	Director is elected by share holders. He manage the company.
(4)	Compulsion	Appointment of Managing Director is not compulsory.	Appointment of Director is compulsory.
(5)	Function	Managing Director carries on day to day administration. He has to execute policies of the Board of Director.	Board of Directors does not carry out day to day administration, but decides the policies of management.
(6)	Control	Managing Director functions under the control of Board of Director.	Board of directors is independent.
(7)	Compensation	Managing Director can be paid compensation on termination of his office.	Directors have no such rights.
(8)	Number	(A) A person can function as Managing Director in not more than two companies.	(A) Director can function maximum in 20 companies.
		(B) Generally only one Managing Director is appointed in a company.	(B) There must be at least 3 directors in public company and two in a private company.
(9)	Retirement	Managing director retires after 5 years. He is eligible for reappointment.	1/3 of the 2/3 directors retires by rotation every year. They are eligible for reappointment.

Introduction : Company is a large business organization. Shareholders are the owner of company. They are huge in number and spread over the country. So, to manage the company they elect representatives amongst them selves. These representatives are known as Board of Directors. A Company is managed by such an elected Board of Directors. In a company formation ownership and management is two different elements. Good directors provide proper guidance which leads the company to success. Inefficient directors can push a company in to the ditch of failure.

According to the Companies Act, the first meeting of directors should be conducted within 30 days of the formation of a company. Directors meeting should be conducted a minimum of 4 times in a year. In the meeting minimum 1/3 or 2 directors (whichever is more) should be remain present. At least one director should be a resident of India for a minimum period of 180 days.

Directors and Board of Directors : “A director is that person who formulates the policies for overall management, direction and control of the company”.

Directors collectively manage the company and are known as the ‘Board of Directors’.

Legal Status of Directors :

(1) **Directors as Representative :** Directors are elected representative of the shareholders and they function according to the Memorandum.

(2) **Directors as Administrative Partners :** Directors are elected representatives amongst shareholder so they become administrative partners and they carry out functions like share allotments, calls on share etc.

(3) **Director as a Trustee :** Directors are elected by shareholders and so become administrators of the assets and funds of the company.

(4) **Director as an Employee of a Company :** For certain functions directors act as an officer of a company but they are not paid employees of the company.

Number of Directors and their Identification Number :

Number of Directors : (1) A public company should have a minimum of 3 directors and maximum 15 directors. A private company should have of minimum 2 and maximum 15 directors. In a single person company minimum one director is essential. A special resolution is essential to increase the number. (2) A person can be a director at the most in 20 companies including public company and private company. A person can be director at the most in 10 public companies.

Identification Number : Every director has to obtain Director’s Identification Number (DIN). He has to inform this number to the company and company has to inform to the Registrar of Companies. Every director is allotted only one identity number.

Appointment of Director : It is compulsory for a company to appoint directors. Only a living person can be appointed as director not firm, trust or association.

Appointment of First Director : As per the provisions of Articles of Association, signatories of Memorandum of Association are considered as first director of the company.

Same way in a single person company, single person is treated as director. In company after appointment of other directors, term of first director automatically ends.

Appointment of Director after First Director : The term of first directors expires on the very day of the first general meeting. The appointment of directors is done in general meeting and then in every subsequent AGM. There are provisions in the Articles of Association for the appointment of Directors. In only company 2/3 of the directors retire by rotation out of that 1/3 retire every year.

Types of Director : (1) Independent director (2) Managing director (3) Nominee director (4) Additional director (5) Alternate director (6) Director appointed before completion of term on director's vacant position (7) Directors appointed by small shareholders. (8) Female director.

(1) Independent Director : An Independent director is appointed from a databank. This is prepared by institutes as directed by the Central Government. The term of an independent director is five years. The data bank has name, qualifications, experience, expertisation etc. of a person. The maximum tenure is 10 years (two terms). Such director should not have any economic interest with the company.

(2) Managing Director : Directors may not reside in the same city as the company so a managing director is appointed for day to day administration. His function is to carry out and implement the policy decisions taken by the Board of Directors. Usually he is appointed in the meeting of the Board.

(3) Nominee Director : Board of Directors appoints nominee director as per the provision of Articles of Association. He is appointed as per the agreements of institutions.

(4) Additional Director : Expert persons who are not included in the Board of Directors are appointed as additional director by Board of Director.

(5) Alternative Director : When any director is to be out of the country for more than three months then director is appointed in place and is known as alternative director.

(6) Director Appointed before Completion of Term on Director's Vacant Position : In any director is removed in general meeting before his term expires on that vacancy BOD appoints director.

(7) Director Elected by Small Shareholders : A director is appointed by small shareholders (small shareholder means face value of share not more than ₹ 20,000) in specified company. (A Minimum of 1000 small shareholders are needed).

(8) Female Director : Companies as may be prescribed shall have at least one woman director as per the provisions of Company Act.

Qualifications and Disqualifications of Director : Provisions as per the Companies Act regarding qualifications of independent director : (1) Proper skill and experience (2) Knowledge of finance-law-management (3) Administrative knowledge (4) Ability of corporate governance. (5) Knowledge of company business. **Disqualifications are :** (1) declared as unsound mind (2) declared as insolvent (3) convicted for offence involving moral turpitude (4) disqualified by court (5) unpaid of share call amount individually or jointly (6) accounts not submitted for last three years (7) failure to pay dividend and interest. (8) Person convicted for fraudulent activities.

Retirement of Director, Resignation of Director, Removal of Director :

Retirement of Director : (1) First directors retire in the first annual general meeting. (2) Independent directors retire after a term of 5 years, in case of reappointment after two terms. (3) In a public company, 1/3 of the 2/3 retires every year by rotation. (4) If he acquires disqualifications. (5) Unwillingness for reappointment. (6) Resolution for reappointment does not pass.

Resignation of Director : If Director wants to vacate his office he has to give details in writing to Board of Directors. It is informed to registrar of companies and in general meeting. Resignation enforced from the date specified.

Removal of Director : Any director can be removed at any time before his terms ends in general meeting, except director appointed by the Government or a tribunal.

Vacation of Office by Directors : Director has to vacate his office if he acquires disqualification, he is declared un sound of mind, declared insolvent, he has not paid calls on share, he remains absent in Board of Directors meeting since last 12 months without permission, court declares him disqualified, convicted by court for moral turpitude offence.

Director's Authority, Duties and Responsibilities :

Authority of Director : Board of directors take decisions by resolutions passed by a majority. Powers acquired in accordance with (1) Companies Act (2) Memorandum of Association and (3) Articles of Association.

(1) Accordance with the Companies Act : To issue share, to allot share, to call share money, to borrow money, to take loan, extension of business, amalgamation, merger, reconstruction are the powers of directors. They also have powers to declare dividends, to appoint alternative director, additional director etc. For certain functions special resolution in general meeting is required like - to sell, to lease the company, to take loan excess of capital and reserve, to write off debt of any director etc.

(2) Accordance with Memorandum of Association : Director cannot act ultra vires specified in Memorandum.

(3) Accordance with Articles of Association : Mostly administrative powers are acquired by Articles of Association. Ultra vires acts create personal liability of director but by resolution of shareholder personal liability can be avoided.

Duties of Director : In a company directors are Supreme authority, they carry out duties as per Articles of Association. They will act for the benefits of shareholders, society, employees, to protect environment. A director will not take undue economical advantage of for his own or his relatives. It is duty of director to remain present in BOD meeting, not to take secret profit, to take proper care of company's property, not to use such property for own purpose to invest company's fund in proper way and a meeting of the Board of Director must be called within atleast 3 months. He will not assign his office to any others; they have to constitute audit committee.

Responsibility of Director : It is of two type (1) Civil liability and (2) Criminal liability.

Civil Liability : Is that type of liability in which the loss suffered by the aggrieved party is to be compensated. Civil liability arises towards company and third party.

Liability towards Company : When misappropriates the accounts of the company, dividend declares without profit, liability arising out of dishonesty, remaining absent in the meeting of Board of Directors.

Liability towards Third Party : Directors provides misleading information in the prospectus; enter into contract in their own name, director borrowing money in excess of permitted limit, and court holding them liable at time of winding up of a company.

Criminal Liability : In this liability directors are punishable with fine or imprisonment or both. A Director is liable for the punishment cheating, fraud or breach of trust or providing misleading information in prospectus or he has been convicted of an offence at the time of incorporation or winding up of the company.

Provisions of Companies Act for Managing Director : All powers are concentrated in the hands of Board of Directors. Members of the board reside in different cities, to resolves day to day the problems and for management of company Managing Director is appointed. Managing director is considered full time employee of the company as KMP.

Appointment of Managing Director : Only a living person can be appointed as per the provisions of the Companies Act by the Board of Directors. Managing Director is appointed for five years. Terms and conditions are decided and approved in general meeting. Company Registrar should be informed within 60 days of appointment. Managing director can be appointed in a maximum of 2 companies.

Qualification and Disqualification of Managing Director : There is no specification regarding qualifications in company Act. He is appointed for day to day management he must be experienced, creative, subject expert and ability to take decision in critical position is expected. His age should not be less than 22 years and more than 70 years. He should not be insolvent, unstable mind, and not convicted by court for any offence under any law prevailing in India.

Remuneration of Managing Director : Remuneration can be given up to the 5 % of net profit, for a part time managing Director 1% of the net profit of the company.

Powers and Duties of the Managing Director : Managing Director possesses wide powers with respect of company. He is empowered by resolution of general meeting, resolution of Board of Directors, Memorandum of Association and Articles of Association. Managing director cannot sign any documents without empowered authority.

Difference between Managing Director and Director : Points : (1) Appointment (2) Term (3) Position (4) Compulsion (5) Function (6) Control (7) Remuneration (8) Number (9) Retirement.

Exercise

1. Select the suitable option from the given option :

- (1) In how many companies can a person become director ?
(A) 10 (B) 20 (C) 30 (D) 40
- (2) What is the minimum number required as directors in a Public company ?
(A) 2 (B) 4 (C) 3 (D) 5
- (3) What is the minimum number required as directors in a Private company ?
(A) 1 (B) 2 (C) 3 (D) 4
- (4) In how many public companies can a person be a director ?
(A) 10 (B) 20 (C) 30 (D) 5
- (5) How many identification numbers can be acquired by a director ?
(A) 4 (B) 3 (C) 2 (D) 1
- (6) Having a director identification number
(A) is not compulsory. (B) is compulsory.
(C) may be taken at ease.
(D) is depending upon the willingness of director.
- (7) How many independent directors can a company have ?
(A) 1/4 (B) 2/3 (C) 3/4 (D) 1/3
- (8) Approval of independent directors is
(A) to be taken in general meeting. (B) not necessary.
(C) to be taken from Government. (D) to be taken from data bank.

- (9) For certain functions, Board of Directors
- has to take approval from the shareholder.
 - has not to take approval of shareholder.
 - may take approval subsequently.
 - has not to take permission as per provision.
- (10) Who is responsible to constitute the stakeholder Relation Committee ?
- Shareholders
 - Secretary
 - Board of Directors
 - All combined
- (11) What type of assets can be taken by Directors ?
- Land
 - Machinery
 - Building
 - Only cash
- (12) Who can be appointed as Managing Director ?
- Private Ltd. Company
 - Partnership Firm
 - Living Person
 - Recognized Institutions
- (13) For how many years can a Managing Director be appointed ?
- 3 Years
 - 4 Years
 - 5 Years
 - 7 Years
- (14) In how many days should the company registrar be informed after the appointment of Managing Director ?
- 30 days
 - 60 days
 - 90 days
 - 120 days
- (15) What is the minimum of a person to be appointed as Managing Director ?
- 21 Years
 - 25 Years
 - 30 Years
 - 35 Years
- (16) How much can be paid as remuneration to all fulltime Managing Director ?
- 5 % of sales
 - 5 % of net profit
 - 5 % of share capital
 - 5 % of reserve
- (17) For Managing Director, for termination of office compensation
- can be paid.
 - can be decided later on.
 - approval of central Government is essential.
 - permission of Registrar of Companies is required.
- (18) Personality of the company
- is combined
 - is individual
 - is artificial
 - has no personality
- (19) What are the minimum numbers of meetings be held by the Board of Directors every year ?
- 4
 - 8
 - 2
 - 10
- (20) What is the quorum for Board of Directors meeting ?
- $\frac{1}{3}$
 - 2
 - $\frac{1}{3}$ or 2 (whichever is more)
 - Whatever it is

2. Answer the following questions in one sentence :

- Which two elements are essential for existence an institution ?
- Who manages the company in modern time ?
- Who is Director ?
- How many minimum Directors are required in a public company ?
- How many minimum Directors are required in a private company ?
- How many minimum Directors required in single person company ?
- What is the Board of Directors ?
- Who are the first directors of a company ?
- When does the term of the first director expire ?

- (10) What is the face value of share of small shareholder ?
- (11) How is the Managing director appointed ?
- (12) How many female directors should there be in a company ?
- (13) Who is responsible to constitute the Audit Committee ?
- (14) Who approves appointment of the Managing Director ?
- (15) What should be the maximum age of an appointee Managing Director ?
- (16) How much remuneration can be paid to a part time Managing Director ?

3. Answer the following questions in brief :

- (1) What is the status of director as a representative ?
- (2) What function is the director fulfilling as administrative partner ?
- (3) Who can be appointed as director ?
- (4) Who cannot be appointed as director ?
- (5) Who is an independent director ?
- (6) How is an independent director selected ?
- (7) What is the maximum term of an independent director ?
- (8) What is the function of a Managing Director ?
- (9) Who are small shareholders as per the Companies Act ?
- (10) How does the Board of Directors acquire power ?
- (11) How many types of liabilities can directors have ?
- (12) How is the Managing Director empowered ?
- (13) When is appointment of a female director essential ?

4. Answer the following questions point wise :

- (1) What type of legal status does a director have as a representative ?
- (2) "Directors are trustee - but they are not" Explain.
- (3) Explain the types of directors.
- (4) What are the provisions of an Independent Director.
- (5) Why is the managing director essential ?
- (6) When is a nominee director appointed ?
- (7) When alternative director is appointed ?
- (8) Explain civil liabilities of a director.
- (9) Explain civil liabilities of a director towards the company.
- (10) Explain criminal liabilities of a director.
- (11) Explain the provisions of the Companies Act for Managing Director.
- (12) How can a managing director be appointed ?
- (13) When can extra remuneration be recovered from a Managing director ?
- (14) When is a managing director not compensated ?

5. Answer the following question in detail :

- (1) Explain the legal status of directors.
- (2) "Directors have status of trustee." Explain the statement.
- (3) Write down notes on Directors' identification number.
- (4) Write down the provisions for appointment of Directors.
- (5) Give the meaning of Additional Director and state the provisions for his appointment.
- (6) Write down the provisions for the appointment of Alternative Director.
- (7) Under which circumstances is the office of a director to be vacated ?
- (8) Narrate the disqualification of the director.
- (9) In which circumstances is the director to be retired ?
- (10) How can a director resign from his office ? Explain.
- (11) How can a director be removed before the expiry of term?
- (12) Narrate the authority of a director.
- (13) Which powers are enjoyed by directors by passing a resolution in Board of Director's meeting ?
- (14) Narrate duties of directors.
- (15) Explain the civil liabilities of director towards third party.
- (16) State how a Managing Director can be disqualified.
- (17) Differentiate between Managing Director and Director.
- (18) Write down the qualification of Directors.
- (19) Write a note on Director appointed by small shareholders.



What will you learn in this chapter ?

- 6.1 Meaning
- 6.2 Types of Meetings of Company
 - 6.2.1 The Meeting of Shareholders
 - 6.2.2 The Meeting of Directors
 - 6.2.3 Special Meetings
- 6.3 Notice of the Meeting
- 6.4 Agenda
- 6.5 Quorum for the Meeting
- 6.6 Chairman of the Meeting
- 6.7 The Minutes book
- 6.8 Voting
- 6.9 Proxy
- 6.10 Motion and Resolution

Introduction

A company is an artificial person established under Law. The management and administration of the company is conducted in a democratic manner. Shareholders are authorised to take a decision for the smooth running of business in a company. All the members of a company maybe unable to remain present for routine functions of the company, so for management of the company Directors are appointed by the shareholders by majority decision.

It is mandatory to call the first general meeting as soon as a newly established company starts functioning. If the company has issued debentures then it is necessary to call the meeting of debenture holders for the safeguards of their

interests. Even at the time of dissolution of the company, it is necessary to call a meeting for discussion and taking decisions on various issues. Thus, after the establishment of company, meetings are very important for routine work, annual performance, strategic decision making etc.

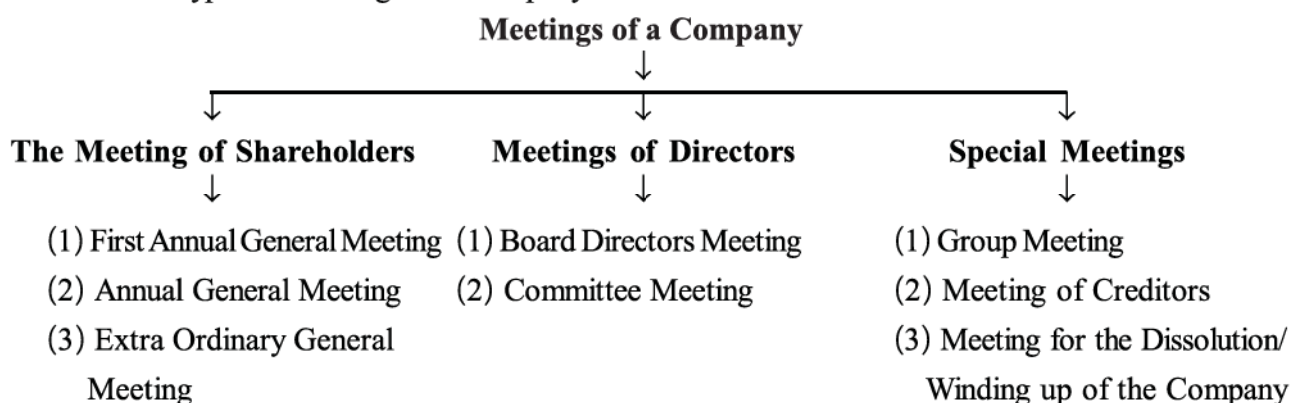
6.1 Meaning

Meeting means 'When two or more persons meet at one place together, discuss any issue and arrive at a common decision.'

Formal and informal meetings of members are called to discuss various issues and take decisions. Formal meetings are called at a particular date, time, place for issues / agendas for discussions and decisions.

6.2 Types of Company Meetings

Various types of meetings of a company which can be described as under :



6.2.1 The Meeting of Shareholders : Shareholders of a Company are the real owners of a company, so their meetings are important. Various provisions are prescribed for, in The Companies Act 2013. The various meeting of share holders are as below :

(1) First Annual General Meeting - (FAGM) : A public company limited, by shares, has to call this meeting after obtaining the certificate of incorporation of business. The company has to conduct the meeting within 9 months of the completion of its first financial year. If not, the concerned officer is liable for punishment.

(2) Annual General Meeting - (AGM) : According to the provisions of The Companies Act, it is mandatory for public and private companies to organize an Annual General Meeting once in a year. There should not be a gap of more than 15 months between two annual general meetings. The meeting should be convened during working hours at the Company's registered office.

The decisions regarding following matters are taken in an annual general meeting :

- (1) The annual accounts, the reports of the directors and the reports of the auditors should be presented.
- (2) To declare dividend
- (3) To appoint new directors in place of retiring directors.
- (4) To Appoint auditors and to fix their remuneration.
- (5) Other matters which are proposed by the Chairman.

(3) Extra-Ordinary General Meeting - (EGM) : There is a provision mentioned for this purpose in the Companies Act-2013. The Board of Directors can call this meeting in following circumstances :

(1) A demand by the shareholders of the company, holding, not less than 1/10 share capital of the company.

(2) For a company which does not have share capital, a demand not less 1/10 of the members having voting right.

6.2.2 Meetings of Directors : Meetings of the Directors are organized for the management of the company, which consists the meeting of Board of Directors and meetings of the committees constituted for the various functions of the company.

(1) Board Meetings : The Board of Directors, in the affairs of the company, means a united unit of the directors of the company. They manage the functions of the company and possess control over the administration of the company. The first meeting of the board of directors should be called within 30 days from the date of incorporation. Atleast four meetings should be organized in one year. The quorum for the meetings of the Board of Directors is considered 1/3rd of the total directors or two directors. (Whichever number is higher between these). In modern times, due to availability of technological devices the directors can attend the meeting through video conference or any audio-visual device and participate in the proceedings of the meeting. The directors discuss various issues and take decisions through resolutions passed by the majority.

(2) Committee Meetings : Various committees are constituted for various functions i.e. the committee for sale and purchase, financial committee, export committee, committee for legal matters, monitoring committee etc. Committees organize meetings as per the duties delegated to them and as per their convenience. Members of the committee discuss issues related to the matters and take decisions in the interest of the company.

6.2.3 Special Meetings : Special meetings are organized in the company for the specific functions of the company as under :

(1) The Class Meeting : The company issues the different types of shares. The rights and privileges of different share holders are prescribed in the Articles of Association. According to this provision the meetings of the different groups can be organized which comprise : (i) The meeting of Directors (ii) The meeting of debentures holders (iii) The meeting of the creditors for the settlement with them (iv) The meeting of the share holders of unpaid instalments and of other groups.

These meetings are organized for the safe guard of the interest of the concerned group, so that the strategic decisions can be taken with transparency.

(2) Creditors' Meeting : This type of meeting is organized for settlements with the creditors. Whenever a creditor applies to court for the settlement or, the court orders to organize a meeting of the creditors, then, this type of meeting is organized.

(3) The Meeting at the Time of Dissolution of the Company : At the time of compulsory dissolution of company, the competent officer for dissolution may organise a number of meetings as per his discretion. Meetings of the creditors and share holders whose instalment are due for payment, are organised decisions taken after discussion on various issues.

Specific Words Used at the Time of Organization of Meeting : Different kinds of words are used at the time of the organization of different types of meeting, which may be listed as under :

- Notice for the meeting
- Quorum for the meeting
- Minutes book of the meeting
- Proxy Voting
- Agenda for the meeting
- Chairman of the meeting
- Voting
- Proposals and Resolutions.

The above words can be discussed as under :

6.3 Notice of the Meeting

Meaning : A notice means a written circular provided to the members, Directors or any other person required to be present in the meeting.

Objectives :

- (1) To provide primary information regarding the meeting.
- (2) The members can decide whether they should remain present or not in the meeting.
- (3) To provide agenda.
- (4) The member can decide to vote in favour or against the resolution.
- (5) To provide reasonable time.

The Duration of Notice : It is necessary for a company to issue a notice to the members 21 days before organizing a meeting. A notice can be issued in writing or through any 'Electronic Media'.

The Details of the Notice : The company should mention the following details in the notice of meeting :

- (1) The date and day of the meeting
- (2) Venue of the meeting
- (3) Time of the meeting
- (4) Agenda of the meeting

The Powers to Issue Notice : The directors of the company have power to issue notice regarding a meeting. Whenever the Secretary of the Company issues a notice, he has to mention. By orders of Board of Directors. If the power are assigned to the managing director of the company then he himself can issue the notice. If the Company Law Board or the Central Government call the meeting then the concerned officer can issue notice on their behalf.

The Notice of the Meeting Should be Issued to Whom, Where and How ? :

Notice to Whom ? :

- (1) Every member of the meeting is solvent member or the legal representative of the deceased member.
- (2) The auditors of the company, every director and auditors of subsidiary company.
- (3) Any person who has right to receive such notice.
- (4) If the shares are owned in a joint name, then, the first member of the share.

Where is the Notice send to ?

- It is sent to the registered address of shareholder as mentioned in Company's Registered Office.

How is the notice served ?

- (1) By post
- (2) By advertisement as public notice in local newspaper.
- (3) Notice can be delivered by hand.

The duties of the Secretary regarding notice of the meeting :

- (1) To send the notice 21 days prior to the meeting to the eligible members.
- (2) To prepare a speciman of the notice of the meeting.
- (3) To send the report of the general meeting with the notice.
- (4) To enclose a copy of annual accounts, auditors' report, chairman's statement, directors' report, copy of the chairman's speech etc.
- (5) To send an explanatory statement with the notice for extraordinary general meeting.
- (6) To prepare the list of functions which are to be carried out with the approval of shareholders proposal of resolution.
- (7) Any other matter proposed by the chairman.

6.4 Agenda

Meaning : The list of the functions to be conducted at a meeting, is called the agenda. That means an agenda indicates the serial numbers of the proposed functions which are to be conducted at a meeting.

Objectives : The company sends a notice to the members for a meeting, along with agenda so that the members are aware of what the purpose of the meeting is. The members can discuss their opinions, so that the proceedings of the meeting can be completed easily. It also ensures that all topics are covered in the meeting and repetitions are avoided.

Importance :

- (1) Work should be conducted as per the scheduled agenda
- (2) Work should be conducted serialwise. Hence the associated works can be co-ordinated.
- (3) During the meeting the chairman and secretary record their notes in the agenda.

The Duties of the Secretary :

- (1) To prepare the agenda after a discussion with the Board of Directors of the company.
- (2) To decide the procedure of agenda.
- (3) To record the proceedings while the meeting is being conducted.
- (4) To draw the attention of the quorum regarding important issues.
- (5) To draw the attention of legal aspects for the meeting.
- (6) To make and arrange the seating arrangement for members. He has to provide the details of the agenda if asked by any member, and obtain the signatures of the present members. He has to draw the final resolution by making the necessary amendments in the contents and also obtain the approval of the house
- (7) Convey thanks to the members

6.5 Quorum for the Meeting

Meaning : The presence of a minimum numbers of members for a meeting is required for the legal validation of the meeting. The specified number of the members is considered as the quorum for the meeting and has a legal impact.

However, in the modern times due to advanced technology of computer, internet, the presence of the directors through the video conference or audio visual media is considered as their physical presence and treated as completion of the required quorum.

Importance : In every meeting, the presence of minimum members required is mandatory, falling which the meeting is not considered as legally held and the meeting should be adjourned immediately.

(i) For a Public Limited Company : If the number of the shareholders does not exceed 1000 then the presence of 5 members will be considered as quorum. If the number of shareholder is between 1001 to 5000, then the presence of 15 members will be considered as quorum. If the number of shareholders exceeds 5001 then the presence of 30 members will be considered as quorum.

(ii) For a Private Limited Company : The presence of two members will be considered as quorum

(iii) If an adjourned meeting is reconvened and the required quorum is not reached even after 30 minutes of the time specified in the notice, then present members can be considered as quorum and the meeting can be conducted with the approval of the Board of Directors.

(iv) The above provisions are not applicable to the company headed by only one person.

6.6 Chairman of Meetings

Meaning : The person selected by the members to conduct the proceedings and management of the meeting known as chairman.

The Appointment and importance of the Chairman for the Meeting : The chairman is appointed by the members to conduct the proceedings of the meeting. A meeting held without a chairman is considered to be illegal and hence it is mandatory to appoint one. Generally the head of the directors conduct work as chairman of the meeting. The chairman holds the management of the meeting.

The chairman has to ensure that the functions of agenda should be conducted properly according agenda and the decisions should be taken after proper discussion and debates and the resolutions should be passed in a proper manner.

If any director is not willing to work as chairman or any director does not appear within 15 minutes after prescribed time, then, present members may select any one amongst them as chairman.

Thus he has to play an important role. The above provisions however do not apply to the a single person company.

Qualifications : A chairman is the leader of the meeting. He has to conduct the meeting with due care, has to monitor that the proceedings should be conducted as per agenda and resolutions be passed accordingly. Therefore, he must possess sufficient experience of conducting of meeting. He must possess some basic qualities that are as under :

- (1) He should have knowledge of the rights and duties of the chairman
- (2) He should have practical experience of conducting the proceedings of the meeting
- (3) He should have sufficient legal knowledge of the company laws and Articles of Association of The Companies Act.
- (4) He should be able to handle the situation at times of conflict and tension which may arise at the meeting.
- (5) Effective personality.
- (6) The knowledge of Economics, Company, Progress, Development and Trade

The Powers of Chairman : The powers delegated to the chairman to conduct the proceedings of the meeting, are as under :

- (1) He is authorized to provide sufficient time to members for representation on important issues and has to make a schedule of this.

- (2) To expel any person who remains present in the meeting without proper authorisation.
- (3) Whenever a member represents the facts on any issue and if at that time other members object or criticise him or create disturbances, then the chairman has to find the truth and take final decision.
- (4) If any member uses non parliamentary language or behaves in an uncivilized manner, then the chairman will warn him and if the person does not change his behavior then the chairman can expel that person from the meeting.
- (5) He has authority to remove illegal, improper and false facts from the records.
- (6) If members behave in an improper manner, create obstacles in the meeting or create conflicts, then the chairman has the authority to adjourn the meeting.
- (7) If voting to be held on any issue and after the voting there are equal votes in the favour or against the chairman may use his casting vote.

The Duties of Chairman : There are certain duties of the chairman for conducting meetings fairly.

- (1) To monitor that the proceeding of the meeting should be conducted in a peaceful manner.
- (2) He has to verify the quorum of the meeting.
- (3) The proceedings of the meeting should be conducted as per agenda and the completion of work should be ensured.
- (4) It is the duty of the chairman to allow every member to speak without any bias.
- (5) To consider the opinion of the minority members.
- (6) It is his duty conduct voting in the meeting if necessary.
- (7) Chairman should use his casting vote very carefully and then declare the result.

6.7 The Minutes Book

Meaning : Minutes book means writing of proceeding, decisions in a proper and systematic manner.

According to The Companies Laws companies have to keep and maintain the details of every type of meeting (e.g. General meeting, Special meeting, meeting of the directors, meeting of the shareholder). The Minutes book is a written evidence of the discussion and resolutions passed in a meeting. The company secretary prepares the minute book as per the agenda of the meeting after the completion of the proceedings. The presence of the members is also evident from the Minutes book.

Objectives :

- (1) To obtain the information of the present members in the meeting.
- (2) To obtain the information regarding the proposals, discussion, decisions and resolutions passed during the meeting.
- (3) Written evidence for future reference
- (4) It highlights the presentations of the Chairman

Details to be Included in the Minutes Book :

- (1) The date, time type and venue of the meeting
- (2) The name and designations of the directors/ members who remained present at the meeting.
- (3) The appointment of any officer in the meeting.
- (4) The names of the members who had supported the resolution passed during the meeting.
- (5) Name of the members who have opposed the resolution in the meeting.
- (6) The proceeding of the meeting as stated by the chairman.

6.8 Voting

According to the Indian company law it is necessary that the decisions and resolutions be passed by a majority of the members, So it is necessary to know the opinions of the members on a particular issues. Voting is conducted to know the opinion of the members, so it can be sorted out that how many members favour and how many oppose the decision/resolutions. Chairman can take final decisions.

The Members who possess the right to vote are allowed to participate in the voting. Voting is conducted by the following methods :

- | | |
|----------------------------|--|
| (1) Voting by show of hand | (2) By vocal/voice |
| (3) Voting by Poll | (4) Voting by electronic machines |
| (5) Voting by postal votes | (6) The voting by division of the assembly |

Restriction on Voting Rights : The company may put a restriction on the voting right of any member, as per Articles of Association, under the following circumstances :

- (1) A shareholder who has not deposited instalment which is due to him.
- (2) If the company has a lien on the shares of the share holder in such circumstances the company can restrict the right of voting.

6.9 Proxy

Meaning : All the share holders of the company cannot remain present in every meeting of the company so they may delegate the right to vote, in writing, to a third person remaining present at the meeting to cast the vote. Such a person is called the representative or proxy.

It is not necessary that the person who is appointed as proxy should be a member of the company. The proxy has no right to speak anything in the meeting but participate in voting by poll.

Objective : If the member or shareholder is unable to remain present in the meeting then he can appoint any person as his representative who can cast the vote on his behalf.

The Important Provisions of the Companies Law : A member who is entitled to remain present in the meeting can appoint another person as a proxy under the following provisions :

- (1) The proxy has no right to speak in the meeting but can cast his vote by poll voting.
- (2) The person who is appointed as proxy can work on behalf of the members which should not be more than 50 members.
- (3) A shareholder has to appoint a proxy 48 hours before the time of meeting and submit the form with necessary documents.
- (4) A minor person cannot be appointed a proxy.
- (5) The above provisions are not applicable to as Single Person company.

The Duties of the Secretary Regarding Proxy :

- (1) To collect the forms of proxy and examine them.
- (2) The date of receipt, time, venue, stamp, signature and the legality of the member should be examined by him.
- (3) To prepare the list of proxies in which the details such as the name of the member, the name of the proxy, number of shares held, number of votes etc should be recorded in the list.
- (4) To cancel the form of proxy if it is not received within the prescribed time.
- (5) He has to monitor that the proxy utilizes his legal right according to the rules and Articles of Association.

6.10. Motion and Resolution

Meaning : A matter produced before a meeting for discussion between members, is known as proposal/motion.

When a proposal is presented before the meeting for discussion and debate then the members of the meeting express their opinion and views regarding that proposal. A thorough discussion is conducted on the proposal. The proposal is passed as it was presented or with amendment by the majority of the members is known as resolution. Thus, when members approve a proposal then it becomes a resolution.

Thus, a member can present a proposal and other members provide support to proposal.

There may be different proposals in the notice of the meeting. The chairman can present a proposal during the meeting. No prior intimation or notice is required for such proposal.

Amendments in Motion : The proposals that are presented in the meeting, can be amended. Changes, additions and amendments can be made in the proposal presented in a meeting. The changes can be : (1) a word can be added (2) a word or sentence can be removed (3) the serial number of word or sentence may be changed (4) a word may be rewritten (5) the place of words may be changed etc.

This can be done during the proceedings of the meeting. An amendment once made cannot be changed without the permission of the meeting. It is important that the amendments in the proposal should be consistent to the original proposal. It should not transform the original proposal completely or turn it complete opposite to the original.

Types of Resolutions :

(1) Ordinary Resolutions :

Meaning : The resolution which is passed by a simple majority during a meeting is known as ordinary resolution.

The Ordinary Resolution Means : (i) The Notice should be issued as per provisions of The Companies Laws. (ii) The resolution should be passed by show of hand, by vocal voting or by electronic machine voting. (iii) If it is necessary the decision is taken after the vote of the chairman is cast (iv) The ordinary resolution may be passed by the voting of absent members by proxy vote or postal vote. (v) A resolution that has more than 51% of votes in favour is known as ordinary resolution. It is not compulsory to register such resolution with a Registrar.

Objectives : The objectives of the ordinary resolutions are as under :

- (1) To approve the annual accounts and reports of the directors of the company.
- (2) For the change in the name of the company, with the prior permission from the Central Government.
- (3) For amendments in terms and conditions of the agreements as notified in the prospectus.
- (4) For the election of the members of the Directors of the company.
- (5) For the declaration of recommended dividend.
- (6) For the appointment of the auditor and to fix his remuneration.
- (7) Reappointment of the retired directors.
- (8) To select directors other than retired director.

(2) Special Resolution :

Special Resolution : (i) Notice should be issued to members as per the provisions of The Company Laws and Articles of Association. (ii) A notice for ordinary resolution may include a special resolution, converted from an ordinary resolution. However a clarification has to be enclosed. (iii) There should be a majority of 75% to pass a special resolution. (iv) It is mandatory to register special resolution with the Registrar of the Company, or the concerned officer may have to face penal consequences.

Objectives :

- (1) For the change in the name or the purpose of the company with the permission of the Central Government.
- (2) For the amendment in the Articles of Association of the company

- (3) For shifting the registered office of the company from one state to another.
- (4) For the amendment in the Memorandum of Association of the Company, subject to the approval of a Tribunal.
- (5) The company which conducts works of public benefits, public welfare and is authorized by the Central Government to conduct such works can delete the word private/limited from the name of the company.
- (6) For creation of reserve funds.
- (7) For reduction in the share capital and for the change in the right of the share holders.
- (8) To bestow a profitable post to a director of the company.
- (9) For the appointment of an officer to examine the management of the company.
- (10) To remove the Managing Director from the post.
- (11) For passing a resolution for the winding up of the company by the order of tribunal.

The Difference between Ordinary Resolution and Special Resolution :

Sr.	Points	Ordinary Resolution	Special Resolution
(1)	Meaning	Ordinary resolution is passed with a simple majority (51%) in the meeting.	75% majority is required to pass the special resolution.
(2)	Objectives	These resolution are passed for approval of annual accounts, recommendation for dividend, appointment of auditor and his remuneration and other works.	For the amendment in the Articles of Association/ Memorandum of Association for the winding up of the company, for the appointment of liquidator and other important matters.
(3)	Necessity	The ordinary resolution is passed for the daily routine work of the company.	A special resolution is passed for the specific policy matter/ important decisions.
(4)	Notice	It is not necessary to mention ordinary resolution.	It is necessary to mention in the notice regarding the special resolution.
(5)	Registration	It is not necessary to register with the Registrar of company.	It is mandatory to register with the Register of company.

(3) The Resolutions Passed by the Board of Directors : All resolutions passed during the meeting of the directors are deemed as ordinary resolutions. The attorney/ legal advisor of the company prepares the resolution in advance. These types of resolutions are passed with a simple majority. In addition, if it necessary to pass special resolutions with specific majority then the resolutions are passed accordingly.

What you have learnt in the chapter

The company is a artificial person having an existence according to law. It is necessary that the administration and the management should be conducted in the democratic manner. The secretary of the company arranges the meeting of Directors. The details regarding the meeting of the company are discussed in Section 96 to 122 in the Companies Law 2013

Meaning : A meeting means where two or more persons meet together at one place, discuss about any issue and decide on any issue with the unanimous consent. The legal or nonlegal meeting of the members is called for the members and the discussion is conducted between them and the decisions are taken. A meeting is organised at the proper place, date and time with a proper agenda for the discussion.

Types of the Meeting of a Company :

(A) The Meeting of the Share Holders : (1) First Annual General Meeting (2) Annual General Meeting (AGM) (3) Extra Ordinary General Meeting (EGM)

(B) The Meeting of Directors : (1) The Board of Directors meeting (2) Meeting of Committee.

(C) Special Meeting : (1) Group Meeting (2) Meeting of Creditors (3) The meeting for winding up of the Company.

Various Words Used in the Meeting : The notice of the meeting, the list of works of the meeting i.e. agenda, the quorum of the meeting the chairman of the meeting, minutes book, voting, proxy voting, proposal and resolution etc.

Notice of the Meeting : The information to remain present in the meeting to the member or director or any other person is known as notice of the meeting. This notice should be sent 21 days before the meeting, in writing.

Objectives : To provide the primary information of the meeting, the presence of the members, the agenda of the meeting, to vote in favour or in opposition, to provide time for the discussion on different issues.

Details : Information regarding the time, date, place, agenda, information for the examination of documents with time and place for examination.

The directors of the company have power to issue notice for meeting.

To Whom ? : To every member of the meeting, the heir of the deceased member, auditors of the company, all persons entitled to get the notice, in case of joint holding the notice should be sent to the first name holder.

Where ? : At the address of the members as is notified in the registered office of the company.

How it Should be Sent ? : By post, hand delivery, by publishing in the daily news paper under the head of 'Public Notice'.

The Duties of Secretary : To issue the notice 21 days before the meeting, to prepare the specimen of the notice and send enclosures, the content of the agenda should be sent, to conduct the proceeding as instructed by the chairman.

Agenda :

Meaning : The functions which are to be conducted in the meeting is called agenda, it states serial number of the proposed function.

Objectives : To inform the functions of the meeting. So the members discuss their opinions.

Importance : Work should be conducted as per the schedule agenda, conduct serial wise functions, co-ordinate functions, maintain record as per agenda.

Duties of the Secretary : Prepare agenda as per discussion with management, record the proceedings of the meeting, to draw attention to legal position in the meeting, seating arrangement and to obtain the signature of the present members.

Quorum :

Meaning : The presence of a certain number of members from the starting to the completion of a meeting to maintain the legal validity of the proceeding of the meeting is known as quorum. In today's advanced era of technology, the presence of Director by video conference or other audio visual devices is deemed as presence and considered as quorum.

Importance : The minimum number of members should be present in a meeting so the proceeding of the meeting can be deemed legal and valid.

With Respect to a Public Limited Company : If on the date of meeting the company has 1000 shareholders then the presence of 5 members should be considered as quorum, 15 members will constitute quorum if total shareholders is from 1001 to 5000, 39 members constitute quorum if the total shareholders exceed 5001.

With Respect to a Private Limited Company : The presence of 2 members will be considered a quorum. The above provisions do not apply to a single person company.

Chairman :

Meaning : The person appointed by the member for conducting of the proceedings of a meeting is known as chairman.

The Appointment and Importance : If no person is appointed as chairman then the meeting is not considered legal. The chairman conducts the proceeding of the meeting peacefully and impartially.

Qualifications : A person should be able to conduct a meeting in accordance with the agenda and ensure that proper discussions take place before proper resolutions are passed. He should have knowledge of the rights, duties and responsibilities of a Chairman; knowledge of law and the capability to handle stressful situations.

Qualities : He should possess a powerful personality, impartial, judicious, neutral, humble, firm enough to take decisions, excellent speech, passion, intelligence, humorous, able to take administrative decisions and other qualities of leadership.

The Powers of a Chairman : To provide opportunity for representation to every member, to expel any person from the meeting if he behaves improperly, find out the truth from objections, criticism, not allow to use bad language, to remove the illegal aspects from the records, abusive conduct, voting on any issue and at the instance of a tie during the voting, he should cast his conclusive vote with due care.

The Duties of a Chairman : To conduct the proceeding of meeting in a peaceful atmosphere, send notices as per the rules, observe the quorum, provide opportunity to every member for representation, consider the opinion of the majority members, produce the proposals in proper manner, notify the resolutions, obtain signatures over the minutes book, at the time of tie during the voting cast his conclusive vote with due care, conduct the proceeding impartially and neutrally.

Minutes Book :

Meaning : It is the written notes of the proceedings of a meeting. According to the provisions of the Companies Law every company has to maintain its minutes book in a proper manner, the minutes book is a written evidence of the proposals and resolutions of the meeting. The secretary of the company prepares the Minutes book.

Objectives : To record the details of members present in the meeting, the representations done in the meeting, information of the proposals, discussions, and resolutions. It is written evidence. Various legal provisions are described in the Companies Law regarding this.

Details Included in the Minute Book : Date, time, place, type and nature of the meeting, names and designations of the members who remained present, the names of the members who favoured or opposed any issue.

Voting :

Meaning : As per the Companies Law, all decisions and resolutions have to be passed by a majority. Voting is conducted to know the views of the members on any issue. The votes may be cast in favour or opposition the motion and after counting the result is declared.

Different Procedures of Voting : (1) By raising hands (2) by voice i.e. vocal voting (3) Voting by poll (4) Voting by electronic machine (5) Postal vote (6) voting by division of the assembly.

Restrictions for Voting : If a share holder has not paid the instalment of share to vote or the company holds any shares as lien of a share holder, then he may be restricted to vote.

Proxy (Representative of Share Holder) :

Meaning : Every share holder cannot remain present at every meeting. So sometimes, shareholders appoint any other person as their representative and delegate the authority for the presence and casting a vote, this person is known as proxy of the share holder. The proxy is not authorised to debate in the meeting but he has right to cast a vote.

Objectives : If a person is unable to remain present at the meeting, he can appoint another person as his representative who can participate in the voting. The above provisions do not apply to the company having only one person as member.

Duties of the Secretary : To collect the proxy forms, examine and notify the date , time and place of receipt, to examine the stamp, signature and legality of the share holder, prepare the list of the proxy.

Motion Proposal and Resolution :

Proposal Meaning : The issue which is produced for discussion in the meeting of company is known as a proposal. If the proposal is approved it becomes a resolution.

Any amendment, additions, alteration, deletion of any word sentence, change of serial number of word or sentence may be done in the proposal.

Types of Resolutions : (1) Ordinary resolution (2) Special Resolution (3) The resolution of the Board of Directors.

Ordinary Resolution : The resolution passed with a simple majority is known as ordinary resolution.

Special Resolution : It is specifically mentioned in the Companies Law and Articles of Association regarding the issues which needs to be passed through special resolution. There should be 75% votes in the favour of such resolution. Special resolutions should be registered with the Registrar of the Company within a specified period.

The Difference between Ordinary Resolution and Special Resolution : (1) Meaning (2) Objective (3) Necessity (4) Notice (5) Registration.

The Resolution of the Board of Directors :

Meaning : The resolutions passed by the Directors are treated as ordinary resolutions. These resolutions are passed by a simple majority. The attorney/legal advisor of the company prepare this resolution.

Exercise

1. Select the suitable option from options given :

- (1) Which meeting of the first financial year should be held within 9 months from the completion of the year ?
(A) Ordinary general meeting (B) Annual General Meeting
(C) The meeting of Board of Directors (D) The first Annual General Meeting
- (2) There should be a gap of months between two Annual General Meetings.
(A) 15 months (B) 12 months (C) 18 months (D) 24 months
- (3) How many meetings of the Board of Directors should be called by the company in a year ?
(A) Five (B) Three (C) Four (D) Two
- (4) Before how many days the notice is to be given, prior to the meeting ?
(A) 20 days (B) 31 days (C) 25 days (D) 21 days
- (5) The notification by which information of the meeting is communicated to the members is known as
(A) Agenda (B) Notice (C) Minutes book (D) Quorum
- (6) The list of works to be conducted during a meeting is known as
(A) Agenda (B) Minute book (C) Resolution (D) Proposal
- (7) The number of members present in a meeting from the starting up to end of the meeting is known as
(A) Voting (B) number of Debtors
(C) The total number of members (D) quorum
- (8) The person who is selected by the members to conduct the meeting is known as
(A) chairman (B) KMP
(C) secretary (D) director
- (9) Who can cast vote in case of equal votes ?
(A) Secretary (B) Creditors (C) Chairman (D) Director
- (10) The note book containing the decisions and the proceeding in the meeting, written point wise is known as
(A) quorum (B) notification (C) notice (D) minutes book
- (11) The member appointed by other person to be present and vote in the meeting on his behalf is known as
(A) proxy (B) chairman
(C) secretary (D) the member of company
- (12) The issues that are put forward for discussions in the meeting of a company are known as
(A) Resolution (B) Proposal
(C) Notice (D) Agenda
- (13) How many votes are essential for passing a special resolution ?
(A) 75% (B) 51% (C) 65% (D) 40%

2. Answer the following question in one sentence :

- (1) What is a meeting ?
- (2) List the types of company meeting.
- (3) Write down the types meetings of shareholders.
- (4) Write down the types of Directors' meetings.
- (5) Mention the duration the of notice of meeting.

- (6) What is meant by agenda ?
- (7) What is quorum ?
- (8) Who is known as chairman ?
- (9) What is a Minutes book ?
- (10) Define voting.
- (11) What is proxy ?
- (12) What is a proposal ?
- (13) What are resolutions ?

3. Answer the following questions in short :

- (1) What is a Annual General Meeting ?
- (2) Define notice of the meeting.
- (3) State the objectives of the notice of a meeting ?
- (4) Describe the contents of notice ?
- (5) Who are given notice ?
- (6) When can a restriction be imposed on voting ?
- (7) Which details are included in Minutes ?
- (8) What is the purpose of voting by proxy ?
- (9) Mention the types of Resolutions.
- (10) What is a Ordinary Resolution ?
- (11) What is Special Resolution ?

4. Answer the following questions to the point :

- (1) Explain the concept of Company's meeting.
- (2) State the types of Company's meeting.
- (3) Discuss the types of shareholders' meeting.
- (4) Give details of special meetings.
- (5) Write a note on company director's meeting.
- (6) Discuss the meaning and objectives of notice for meetings.
- (7) Discuss the duties of company secretary regarding notice of meetings.
- (8) Mention the duties of company secretary regarding agenda.
- (9) Write down the provisions of company law regarding quorum.
- (10) Mention the objectives of minutes.
- (11) State the provisions of the Companies Law regarding minutes.

5. Answer the following questions in detail :

- (1) Explain in detail, the notice of a meeting.
- (2) Write a note on quorum of the meeting.
- (3) Discuss the qualifications and qualities of a chairman.
- (4) Explain the powers and duties of the chairman.
- (5) Write a note : 'Minutes of the meeting'.
- (6) Discuss the types of resolutions.
- (7) Write note : Special Resolutions.
- (8) Differentiate between ordinary resolutions & special resolutions.



What will you learn in this chapter ?

- 7.1 Meaning and Definition of Winding up of a Company
 - 7.1.1 Meaning
 - 7.1.2 Definition
- 7.2 Modes of Winding up
 - 7.2.1 Compulsory Winding up by Court/Tribunal
 - 7.2.1.1 Meaning
 - 7.2.1.2 Ground of Compulsory Winding up by the Court/Tribunal
 - 7.2.2 Voluntary Winding up
 - 7.2.2.1 Meaning
 - 7.2.2.2 Grounds of Voluntary Winding up
 - 7.2.3 Voluntary Winding up by the Members
 - 7.2.3.1 Meaning
 - 7.2.3.2 Procedure of Voluntary Winding up by Members
 - 7.2.4 Voluntary Winding up by Creditors
 - 7.2.4.1 Meaning
 - 7.2.4.2 Procedure of Voluntary Winding up by Members

Introduction

A Company is an artificial personality which comes into existence by Law. It is a creation of Law. Company does not have a physical existence, so it cannot be ended naturally. Day to day administration of a Company is done according to Law. The company can be ended only by due process of Law. For the winding up of a company, a dissolution process has to be carried out. If company is insolvent, it cannot be ended. A Liquidation process and legal procedure is to be followed only then the dissolution of company can be achieved. Thus winding up precedes dissolution.

7.1 Meaning and Definition of Winding up of a Company

7.1.1 Meaning : In general terms, winding up is the process of bringing to an end the life of a company. Winding up of a company means to end the legal entity of a company. Creation of Company and End of a company can be done only through a legal process.

When a company is in liquidation its corporate status and powers continue. A legal existence is there. Its assets are realized by a liquidator, and its debts are paid out of the

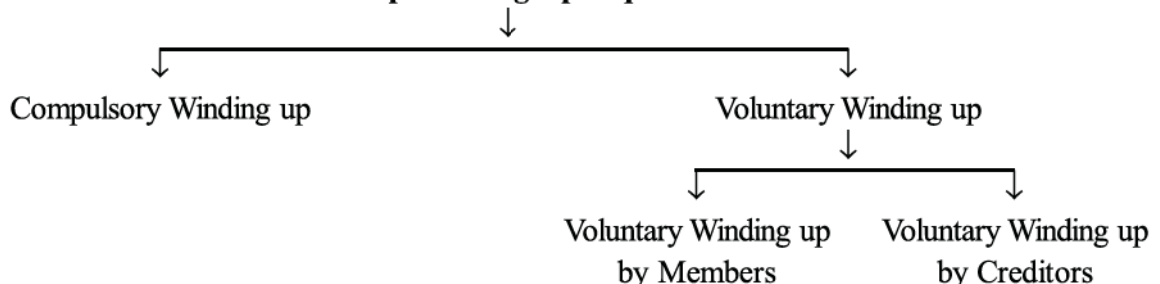
proceeds of this realization and any balance remaining, is returned to its members as per provisions of the Articles of Association.

7.1.2 Definition : As per Professor L.C.B.Gower “Winding up of a company is the process whereby its life is ended and its property administered for the benefit of its creditors and members.”

Thus, dissolution means bringing to an end the legal personality of a company. In a company winding up precedes dissolution.

7.2 Modes of Dissolution/Liquidation/Winding up of a Company

To dissolve a company a winding up process is followed. Generally, the economic condition of a company is poor and it is not in a condition to pay its debt then it is decided to close down its business or wind up. A company may be wound up under any of the following :

Modes up Winding Up/Liquidation

7.2.1 Compulsory Winding up by Court/Tribunal :

7.2.1.1 Meaning : Winding up of a company under an order of the Court/Tribunal is known as compulsory winding up.

7.2.1.2 Grounds of Compulsory Winding up by the Tribunal : A court may order for compulsory winding up of a company on the following grounds :

(1) Company Unable to Pay its Debts : If a company is unable to pay its debt, the court may order the company to be wound up. If the economic condition of the company is poor but it has no debts, in that case, court will not order for winding up. In most of the cases when Company is not able to pay its debts, then an application is made in court for compulsory winding up.

(2) By Special Resolution : If by any reason a company passes a special resolution to Windup Company by court than company may go for liquidation. Members of the company may pass special resolution in General Meeting for liquidation of company. Directors of the company are authorized to apply in court with copy of the special resolution. The Court, however, will pass an order for winding up only after it justifies the need for it.

(3) Statutory Meeting and Report of Company : As per the Companies Act it is compulsory to call a statutory meeting of the company and a report is to be submitted to the Company Registrar. If company does not fulfil this condition, then the Company Registrar or Shareholders may apply in tribunal. Company Registrar has to seek permission with the Central Government before applying for winding up. If statutory meeting is not called on a specified date, then after 14 days, shareholders and other contributors may apply for winding up.

(4) Incorporation Certificate : If a company does not commence business within one year from its incorporation or suspends its business for one year, the tribunal may order the company to be wound up. If the tribunal finds satisfactory reason for suspension, it will not order for winding up.

Under following circumstances the tribunal may find satisfactory reason for suspension and will not order for winding up.

(i) If the company has specified in the Memorandum of Association that business will be carried out in India as well as outside of India and business is suspended in India then, it cannot be wound up.

(ii) If there is a possibility to carry out business in future then winding up order will not be forced.

(5) Reduction in Number of Members : If the number of members falls below the statutory minimum, i.e. 7 in case of public company and 2 in case of a private company, the tribunal may order the company to be wound up. Usually members initiate the winding up of the company. If the company continues business after the reduction in numbers of members, for up to six months, and existing members are aware of this fact they are responsible, personally, for all debts arise.

(6) The Sovereignty and Integrity of India : If a company has acted against the interest of the sovereignty and integrity of India, or acted against the security of state, or acted against the friendly relations with foreign states, the tribunal may order to wind up company.

(7) Just and Equitable Reasons : The tribunal has wide powers on the ground of just and equitable reasons to winding up. The tribunal may order for winding up for the following reasons :

(i) If there is a total deadlock, and management of company is not possible;

- (ii) The substratum (main purpose) has been lost due to any reason;
- (iii) The company is making loss continuously;
- (iv) Where the company was formed to carry on a fraudulent or illegal business or the business of the company becomes illegal by a change in law.
- (v) If oppressions are done on minority in a company.

7.2.2 Voluntary Winding up : The Company, and the creditors or contributories, without going to the tribunal, may decide for winding up of a company. In voluntary winding up, the company and its creditors, company and its members, mutually decide on each other's rights.

7.2.2.1 Meaning : Voluntary winding up means winding up at the insistence of the members of the company, without any interference of the court.

7.2.2.2 Grounds of Voluntary Winding up/Dissolution/Liquidation :

(1) Duration of Company : A specific period has been ascribed in the Articles of Association for the formation of a company. A company may be wound up voluntarily by passing of a resolution in the General meeting on completion of this period.

(2) Occurrence : In the Articles of Association some events have been specified, on the occurrence, of such event by passing an ordinary resolution in general meeting, a company may be wound up.

(3) Special Resolution : A company can be wound up by passing a special resolution even if it is economically sound and capable of paying its debts.

7.2.3 Voluntary Winding up/Dissolution by Members :

7.2.3.1 Meaning : Where a company is solvent, it is able to pay its debts in full, the voluntary winding up takes the form of members' voluntary winding up. For this purpose 'Declaration of solvency' shall be made by Directors.

7.2.3.2 Procedure of Voluntary Winding up by Members :

(1) Declaration of Solvency : When a proposal of winding up is put forth by members, directors have to make declaration of solvency and it is to be registered with the Registrar. Majority of the directors have to make an affidavit for solvency. The declaration of solvency, not made in accordance with the law, will make all proceedings null and void.

(2) Resolution : Directors of the company calls a General Meeting to pass a resolution for winding up of a company.

(3) Announcement of Resolution : Where a company has passed a resolution for voluntary winding up, it shall, within fourteen days of the passing of the resolution, give a notice of the resolution by advertisement in the Official Gazette and also in a newspaper which is in circulation in the district where the registered office of the company is situated.

(4) Appointment of Liquidator : A liquidator is appointed to follow the whole process of liquidation. He administers the financial matters of the company.

(5) Cessation of Powers : On the appointment of Company Liquidator, all the powers of the Board of Directors, Managing Director and Managers shall cease.

(6) Notice to Registrar : The Company shall give notice to the Registrar of the appointment of a Company Liquidator with the name and other required particulars within a specified time.

(7) To Inform the Income Tax Officer : The Company shall inform the Income Tax Officer of the appointment of a company Liquidator within 30 days of appointment.

(8) Re-Appointment of Liquidator : If, due to any reason, the post of the appointed Liquidator is vacant then another person is appointed as Liquidator. Company Registrar shall be informed of new appointment.

(9) Sale of Assets : The Company Liquidator by virtue of authority vested in him, collects the assets and may sell them to facilitate smooth winding up.

(10) General Meeting of Members : Where the winding up proceedings continue for more than one year the liquidator shall call a General Meeting of the company every year.

(11) Winding up of a Company : The company Liquidator calls the General Meeting. He presents financial statements and reports of winding up. Report of the meeting is sent to the official liquidator. Official Liquidator gives report to Tribunal. The tribunal may then take proper decision for winding up.

7.2.4 Voluntary Winding Up by Creditors :

7.2.4.1 Meaning : When a company is insolvent and the directors are unable to make the declaration of solvency, voluntary winding up is carried out by the creditors. This is called Creditors' Voluntary Winding up.

7.2.4.2 Procedure of Voluntary Winding up / Dissolution by Creditors :

(1) Meeting of Members and Creditors : A company may be wound up voluntarily, the notice to the creditors and members shall be sent, at the same time by post.

(2) Appointment of Chairman : One of the directors shall be appointed as chairman to preside over the meeting of creditors.

(3) Resolution : A resolution shall be passed in the meeting of Creditors.

(4) Notice to Registrar : Notice of the resolution passed at the creditors' meeting shall be given by the company to the Registrar within a specific time.

(5) Appointment of Liquidator : The members and creditors may appoint liquidators in their meeting. The person appointed by the creditors shall carry out the winding up process. If no person is nominated by the creditors, the members' nominee shall be the Liquidator.

(6) Remuneration of Liquidator : Remuneration of the liquidator is decided by the tribunal or Committee of Inspection or in the meeting of creditors.

(7) Committee of Inspection : The creditors may appoint a committee of inspection to observe the procedure of liquidation.

(8) Cessation of Powers : On the appointment of the Company Liquidator, all the powers of the Board of Directors, Managing Director and Managers shall cease.

(9) Re-Appointment of Liquidator : If, due to any reason, post of the appointed Liquidator is vacant then another person is appointed as Liquidator. Company Registrar shall be informed of new appointment.

(10) Meeting of Creditors : Where the winding up proceedings continue for more than one year the liquidator shall call general meeting of the creditors.

(11) Winding up : When the affairs of a company are fully wound up, the liquidator shall call a meeting of the creditors and members. The liquidator shall present the report of the proceedings of winding up. Such a meeting is called by an advertisement in newspapers and Official Gazette. The liquidator shall send conclusion of the meeting to Official Liquidator. The Official Liquidator submits a report to the Court. The Court may order for dissolution from the date of report.

What you have learnt in this chapter ?

Company is an artificial personality come into existence by law. Company is created and ended only by law. To wind up company has to go through a process of winding up. In this process liquidator is appointed and management is assigned to him. The liquidation process and by the completion of procedures of law, a company is wound up.

Meaning and definition of liquidation process :

Meaning : With the completion of the Liquidation process in accordance with the procedures of law a company is wound up.

Definition : As per Professor L.C.B.Gower “Winding up of a company is the process whereby its life is ended and its property administered for the benefit of its creditors and members.”

Thus dissolution means bringing to an end the legal personality of a company.

Modes of liquidation/ winding up of a company :

(A) Compulsory winding up by the Court/Tribunal :

Meaning : Winding up of a company under an order of the Court is known as compulsory winding up.

Grounds of compulsory winding up by the court : (1) Company unable to pay its debt (2) By special resolution (3) Statutory meeting and report of company. (4) Incorporation certificate (5) Reduction in number of members (6) The sovereignty and integrity of India is violated (7) Just and equitable reasons- (i) total deadlock (ii) Main purpose has lost (iii) Making loss continuously (iv) Illegal business. (v) oppressions are done on minority.

(B) Voluntary winding up by members :

Meaning : Voluntary winding up means winding up at the insistence of the members of the company, without any interference by the tribunal.

Grounds of voluntary winding up/liquidation : (1) Completion of duration of the Company (2) Untowards occurrences (3) Special resolution

(i) Voluntary winding up by members :

Meaning : Where a company is solvent, it is able to pay its debts in full, the voluntary winding up takes the form of members' voluntary winding up.

Procedure of voluntary winding up by members : (1) Declaration of solvency (2) Resolution (3) Announcement of Resolution (4) Appointment of liquidator (5) Cessation of powers (6) Notice to Registrar (7) To inform Income Tax Officer (8) Re-appointment of liquidator (9) Sale of assets (10) General meeting of members (11) Winding up of a company

(ii) Voluntary winding up by Creditors :

Meaning : Where a Company is insolvent and the declaration of solvency is not made by the directors the voluntary winding up is decided to be carry out by creditors, this is called as creditors' voluntary winding up.

Procedure of voluntary winding up by Creditors : (1) Meeting of members and creditors (2) Appointment of president (3) Resolution (4) Notice to Registrar (5) Appointment of Liquidator (6) Remuneration of liquidator (7) Committee of Inspection (8) Cessation of powers (9) Re-appointment of liquidator (10) Meeting of creditors (11) Winding up.

Exercise

1. Select a suitable option from the options given :

- (1) Process prior to winding up means...
(A) process of amalgamation of company. (B) process of liquidation of company.
(C) process of merger of company. (D) process of incorporation of company.
- (2) Who is authorized to apply for winding up of a company with a special resolution ?
(A) Creditors (B) Contributors (C) Directors (D) Members
- (3) Which meeting is mandatory to be called as per the Companies Act ?
(A) Annual general meeting (B) Statutory meeting
(C) Extra ordinary meeting (D) Board of directors' meeting
- (4) Within how many years does a company have to start business after getting incorporated ?
(A) 1 (B) 2 (C) 3 (D) 4
- (5) For winding up, what is the minimum number of members for public company ?
(A) Less than 7 (B) Less than 2 (C) Less than 4 (D) Less than 10
- (6) For winding up, what is the minimum number of members for private company ?
(A) Less than 7 (B) Less than 3 (C) Less than 2 (D) Less than 10
- (7) Where is it mentioned that a company is incorporated for a specific period ?
(A) Memorandum of Association (B) Prospectus
(C) Articles of Association (D) Share certificate
- (8) Who is prepares the declaration of insolvency ?
(A) Directors (B) Creditors (C) Member (D) Court
- (9) Within how may days should an advertisement be given after passing resolution for liquidation ?
(A) 7 days (B) 10 days (C) 15 days (D) 14 days
- (10) To whom does the official liquidator have to report ?
(A) Director (B) Tribunal (C) Members (D) Creditors
- (11) Within how many days should the appointment of a liquidator be informed to the Income Tax Officer ?
(A) 15 days (B) 30 days (C) 7 days (D) 14 days

2. Answer the following question in one sentence :

- (1) How is a company created and how does it come to an end ?
- (2) Give the meaning of compulsory liquidation by tribunal ?
- (3) When does a company decide to close business ?
- (4) Who has the right to apply for liquidation ?
- (5) When does the management of a company becomes difficult ?
- (6) What is voluntary liquidation ?
- (7) Give the meaning of voluntary liquidation by members.
- (8) How and where has the advertisement to be given for liquidation ?
- (9) Why is an investigation committee appointed ?
- (10) Whose power is ceased after appointment of liquidator ?

3. Answer the following questions briefly :

- (1) Give the meaning and definition of liquidation by members of company ?
- (2) Write down the modes of liquidation.
- (3) Explain statutory meeting and report of company.
- (4) Write down just and equitable reasons for compulsory liquidation.
- (5) Explain advertisement of resolution in the process of voluntary winding up.

4. Answer the following questions point wise :

- (1) Discuss, in detail, the circumstances for voluntary liquidation.
- (2) Discuss, in detail, the circumstances for compulsory liquidation by tribunal.
- (3) Discuss, in detail, the procedure for voluntary liquidation.
- (4) Give the meaning and procedure of voluntary liquidation by creditors.

ABBREVIATIONS

1. ISSUE OF SHARES

ASBA	: Application Supported by Blocked Amount
SEBI	: Securities and Exchange Board of India
OFS	: Offer For Sale
IPO	: Initial Public Offer
FPO	: Follow on Public Offer
Retail Investor	: Investors whose share application money does not exceed ₹ 2,00,000
High Net Worth Inve.	: Individual investor whose share application money exceeds ₹ 2,00,000
Institutional Investor	: Institutions like Bank, Mutual Fund, Financial Institutions etc. who apply for shares and other securities.
Demat	: Dematerialised form of physical shares.
Escrow Bank Account	: Bank account opened by a bank for a specific purpose. e.g. for distribution of dividend, for issue of shares
Depository	: Institution or company which is authorised to open demat account and maintain securities in dematerised form.
Depository Participant	: Representatives of depository who are recognised by depository to open demat accounts. Generally they are recognised share brokers and financial institutions.
Lead Manager	: Intermediary who completes all legal procedures for issue of shares on behalf of the company.
Book Building	: It is a process of share issue, under which the price of shares issued is not decided in advance but bids are invited between floor price and cap price decided by the company. The price, for which highest number of bids are received, is decided as issue price of shares.
Lock-in-period	: The period during which there is restriction on free trade of shares issued.
Bid	: The issue price of shares is not decided in advance before issue of shares in a public issue made under book building process. However, the company decides the floor price and the cap price of shares. Bid is the price of share offered by bidders except retail investor at which they are willing to buy the shares is called as bid.

Syndicate members : They are members of recognised stock exchange on which the shares are proposed to be listed. They are important intermediaries in a public issue. Company appoints them for public issue of shares.

2. TRANSFER AND TRANSMISSION OF SHARE

Demat Share : Dematerialized share where physical shares are converted to electronic formation

PSU : Public Sector Unit

NSDL : National Securities Depository Limited

CDSL : Central Depository Services (India) Limited

Instruction Slip : A booklet issued by DP's agent to Demat Holder to authorize selling and purchasing of shares.

Transfer : To voluntarily waive rights of share to others.

Receiver / Administrator : In case of death, insolvency, lunacy of share holder, court appoints representative known as Receiver or Administrator.

Transmission : Compulsory transfer of share of Share

4. MEMBERSHIP

HUF : Hindu Undivided Family

5. DIRECTORS OF A COMPANY

BOD : Board of Directors

DIN : Directors Identification Number

MD : Managing Director

SHRC : Stake Holders Relation Committee

MA : Memorandum of Association

AA : Articles of Association

Listed Company : A Company registered in recognized share market

Insider Trading : Transactions are done on secret information of company

6. THE MEETINGS OF THE COMPANY

FAGM : First Annual General Meeting

AGM : Annual General Meeting

EGM : Extra Ordinary General Meeting