



SECRETARIAL PRACTICE

STANDARD XI



The Coordination Committee formed by GR No. Abhyas - 2116/(Pra.Kra.43/16) SD - 4 Dated 25.4.2016 has given approval to prescribe this textbook in its meeting held on 20.06.2019 and it has been decided to implement it from the academic year 2019-20.

Secretarial Practice

STANDARD XI



2019

**Maharashtra State Bureau of Textbook Production and Curriculum Research,
Pune - 411 004**



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First Edition : 2019

First Reprint : 2020

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70 GSM Cream wove

Printer

ELEGANT OFFSET PRINTERS PVT. LTD.,
KOLHAPUR

Print Order No.

N/PB/2020-21/1,00,000

Publisher

Vivek Uttam Gosavi, Controller

Maharashtra State Textbook Bureau,
Prabhadevi, Mumbai- 400 025



The Constitution of India

Preamble

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens :

JUSTICE, social, economic and political ;

LIBERTY of thought, expression, belief, faith and worship ;

EQUALITY of status and of opportunity ;
and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation ;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

NATIONAL ANTHEM

Jana-gana-mana-adhināyaka jaya hē
Bhārata-bhāgya-vidhātā,

Panjāba-Sindhu-Gujarāta-Marāthā
Drāvīda-Utkala-Banga

Vindhya-Himāchala-Yamunā-Gangā
uchchala-jaladhi-taranga

Tava subha nāmē jāgē, tava subha āsisa māgē,
gāhē tava jaya-gāthā,

Jana-gana-mangala-dāyaka jaya hē
Bhārata-bhāgya-vidhātā,

Jaya hē, Jaya hē, Jaya hē,
Jaya jaya jaya, jaya hē.

PLEDGE

India is my country. All Indians
are my brothers and sisters.

I love my country, and I am proud
of its rich and varied heritage. I shall
always strive to be worthy of it.

I shall give my parents, teachers
and all elders respect, and treat
everyone with courtesy.

To my country and my people,
I pledge my devotion. In their
well-being and prosperity alone lies
my happiness.

PREFACE

We have pleasure in introducing the text book based on revised syllabus for Std-XI. from the academic year 2019-2020.

A student in the commerce stream studies various subjects which covers topics like business, commercial organisations, management of business, economics, financial accounting etc. Secretarial Practice is one of the subjects in commerce which deals exclusively with one of the largest and most popular forms of business organisation viz. the Joint Stock Company. In this subject, a student is introduced not only to Joint Stock Company, its working, management etc., but also to the role and importance of Company Secretary as compliance officer and also introduced to the communication skills of company secretary.

Due care has been taken to put the subject matter in a simple manner so that students can easily grasp the legal and technical aspects of the Companies Act, 2013. The contents are supported with charts and diagrams wherever necessary. The terms and difficult words are explained then and there. The book contains interesting additional information, activities etc. The exercise given at the end of the topic contains different types of questions to test conceptual clarity. Students are given opportunity to analyse, express opinion and justify their answer through application based questions. At the end of the chapter, QR code is given which will be helpful to the reader as it contains forms, documents, links, proformas etc. to get more knowledge and clarity about the contents.

The Companies Act, 2013 has brought in drastic changes and has also introduced new concepts. There have been frequent amendments made to the Act. This book includes all changes and amendments made in the Act and in Rules and Regulations upto December, 2018. It does not cover each and every provision of Companies Act, 2013 considering the syllabus covered for std XI. Students are introduced to the legal provisions of Companies Act, 2013 in simple way keeping in view the practice of Company Secretary.

We are grateful to the subject committee members, study group members, translators, reviewers and all those who have taken efforts in designing this textbook.

We hope the textbook will be well received by academicians and students.



(Dr. Sunil Magar)
Director

Pune

Date : 20 June 2019

Indian Solar Date : 30 Jyestha 1941

Maharashtra State Bureau of Textbook
Production and Curriculum Research, Pune.

Competency Statements

Unit No.	Topic	Competency Statements
1	Secretary	<p>The Students will be able to -</p> <ul style="list-style-type: none"> ● Understand the concept of Secretary ● Understand importance of Secretary, types of secretary ● Know about qualities and qualification of Secretary
2	Joint stock company	<p>The Students will be able to -</p> <ul style="list-style-type: none"> ● Understand Evolution of Business organisations ● Understand Meaning, Features and types of Joint Stock Companies ● Compare Various Forms of Business Organisation
3	Formation of company and Documents related to Formation of company	<p>The Students will be able to -</p> <ul style="list-style-type: none"> ● Understand the Procedure of Formation of a company ● Understand different documents of the company namely MOA, AOA, Prospectus etc. ● Compare MOA and AOA.
4	Members, Directors and Key Managerial Personnel	<p>The Students will be able to -</p> <ul style="list-style-type: none"> ● Understand the concept of shareholder and member, rights of members ● Explain ways and reasons of acquisition and termination of membership. ● Understand role, importance, duties of Board of Director, M.D., CEO, CFO, C.S.

5	Company Meeting	<p>The student will be able to -</p> <ul style="list-style-type: none"> ● Understand the meaning, need, provisions of Company Meetings ● Understand the types of company meeting and legal provisions. ● State the functions of secretary related to annual general meeting.
6	Business Communication skills of secretary	<p>The student will be able to -</p> <ul style="list-style-type: none"> ● Understand different types of Business Communication, importance, layout and essentials of Business letters. ● State role of secretary in preparing letters, notices, reports, returns and minutes <p>The student will be able to -</p> <ul style="list-style-type: none"> ● Understand circumstances under which secretary communicates with directors and drafting of letters. ● Understand circumstances under which secretary communicates with banks and drafting of letters. ● Circumstance under which secretary communicates with statutory authorities and drafting of letters.

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1.1 Origin of Secretary**1.2 Meaning and Definition****1.3 Features****1.4 Importance****1.5 Types**

1.5.1 Personal Secretary

1.5.2 Institutional Secretary

- Secretary of Non-profit Association
- Secretary of Co-operative society
- Secretary of Joint Stock Company
- Secretary of Government Department

1.6 Functions of Secretary**1.7 Qualities of Secretary****1.8 Distinction****INTRODUCTION:**

The Indian economy is fast developing and has fastest growing service sector in the world. Various forms of organizations have emerged in the present economic situation.

Finance is needed to establish a business, run it, to modernize it, expand it and diversify it. The role of financial management has become important to the corporate world. Expert individuals having special capabilities and knowledge to grow business have now become important for our present Indian business scenario. The profession of Secretary is one such profession which caters to the changing demands of businessmen and organizations.

The subject 'Secretarial Practice' deals with the origin, importance, features, types, appointment, qualities, qualifications, functions, duties of different types of secretaries, the functioning of joint stock company etc.

1.1 ORIGIN OF SECRETARY

Until the late 19th century, persons involved in the daily correspondence and the activities related to finance had assumed the title 'Secretary'.

The Latin words 'secretum' or 'secretus' which means the secrets. The word Secretary is derived from the Latin word 'Secretarius' which means someone who works for a person of great importance.

In the Roman times, ‘Scribae’ was a professional letter writer or one who maintains confidential records.

In ancient Indian history, Secretary was referred to as Amatya, Sachiva or Chitnis, which means a person who does secretarial work.

Today, the State and Central Governments also have secretaries for various departments functioning under the control of ministries in the Sachivalaya.

Origin	Former names for Secretary	Meaning
Latin language	Secretarius	A confidential writer or officer with whom secrets are entrusted by employer.
Roman Empire	Scribae	A professional letter writer or one who maintains confidential records.
Indian history	Amatya/Sachiva/Chitnis	A person who does secretarial work.

Additional information:

In 1870 Sir Isaac Pitman founded a school where students could qualify as professional writers. In 1888, with the invention of typewriters, the role of secretary increased. In an effort to promote professionalism, the National Secretaries Association was created in 1942 in the USA. Later a special Secretaries Day was created which would be in the last week of April. This week is now known as Administrative Professional’s Week.

1.2 MEANING AND DEFINITION

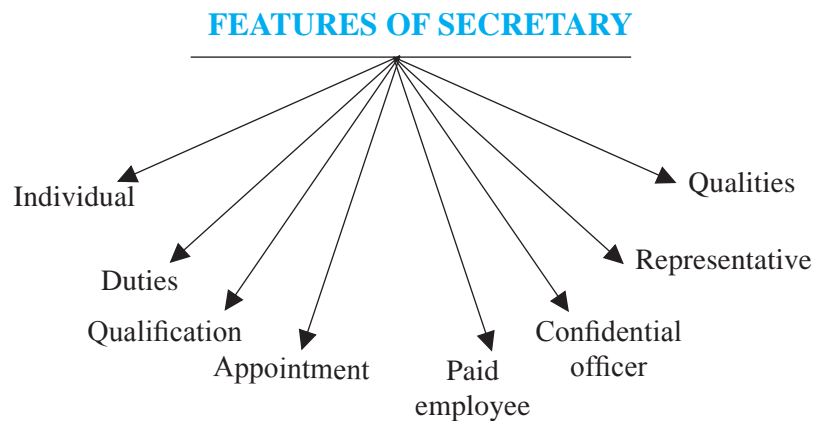
There are various definitions of Secretary some of them are as follows :

- 1) The Oxford Dictionary defines a Secretary as ‘A person whose work is to write for others, especially one who is employed to conduct correspondence, keep records and to transact various other businesses for another person or for a society, corporation or public body.’
- 2) According to Companies Act 2013 Section 2(24) “Company Secretary or Secretary means a Company Secretary as defined in Clause (c) of Sub-section (i) of Section 2 of the Company Secretaries Act 1980 who is appointed by a company to perform the function of a Company Secretary under this Act.”

The Company Secretaries Act, 1980 defines Company Secretary as - “a person who is a member of Institute of Company Secretaries of India.”

From the above definitions it can be stated that Secretary is appointed to ensure the smooth functioning of the organization and assists in various functions related to correspondence, meetings, record keeping and any such administrative work.

1.3 FEATURES OF SECRETARY



- 1) **Individual** : Only an individual alone can be appointed as a Secretary. A firm, an institution or a corporate body cannot be appointed as a Secretary. A Secretary has to be an individual as per the provisions of the Company Law and also due to the skills required to fulfill the duties and responsibilities towards the employers.
- 2) **Duties** : A Secretary has to perform routine and administrative duties such as correspondence, conducting meetings, maintaining records and providing information. Secretary also has to fulfill the day to day routine duties related towards the employer or organization such as clerical work, recording, fixing appointments, giving reminders, replying to other employees queries etc. These duties vary according to the nature of work of the organization or employer. In recent time, Secretary has to ensure legal compliances.
- 3) **Qualification** : Every Secretary must possess certain qualities and qualifications as per the organization. However, a person who is appointed as a Company Secretary in a public or private limited company needs to have certain prescribed qualifications according to Companies Act 2013. Similarly a Secretary of a Government Department needs to have the qualifications as per the Government rules and regulations.
- 4) **Appointment** : A Secretary can be appointed by individuals, professionals, society, corporation, government, public organization, Joint stock companies etc. In other words a Secretary can be a personal or institutional Secretary.
- 5) **Paid employee** : A Secretary is a paid employee of the organization. Secretary is either given a salary or paid an honorarium. Although Secretary is a paid employee, yet the Secretary holds an important position in the organization.

Honorarium :

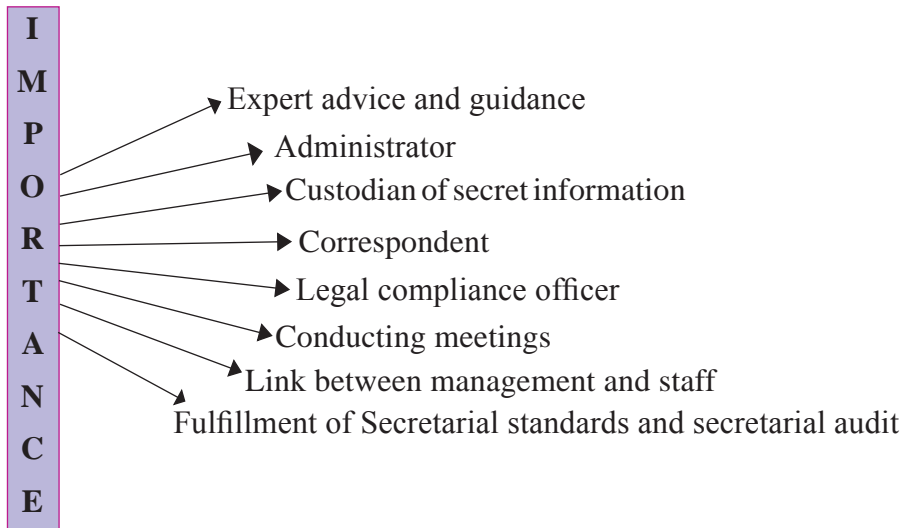
A fee or a payment given to a professional person for services rendered.

- 6) **Confidential officer** : A Secretary is a custodian of secret and confidential information of the organization. Secretary is closely connected to the top management and can be involved in policy decisions.
- 7) **Representative** : A Secretary acts as a representative of the organization. Generally secretaries are of two types: (a) Personal (b) Institutional. Secretaries appointed by individuals are known as personal secretaries. These secretaries represent their employers.

Institutional secretaries are appointed by societies, companies, government departments and represent their organizations.

- 8) **Qualities :** A Secretary should possess certain qualities so as to conduct the secretarial duties smoothly. The qualities like concentration, intelligence, tact, loyalty, co-operation, courtesy, leadership, orderliness and knowledge seeker assist in smooth and efficient working of the organization.

1.4 IMPORTANCE OF A SECRETARY



In modern times a Secretary has greater status and importance in an organization. This is because of the ever changing and never ending demands of today's business world.

The need and importance of a Secretary can be highlighted with the following points :

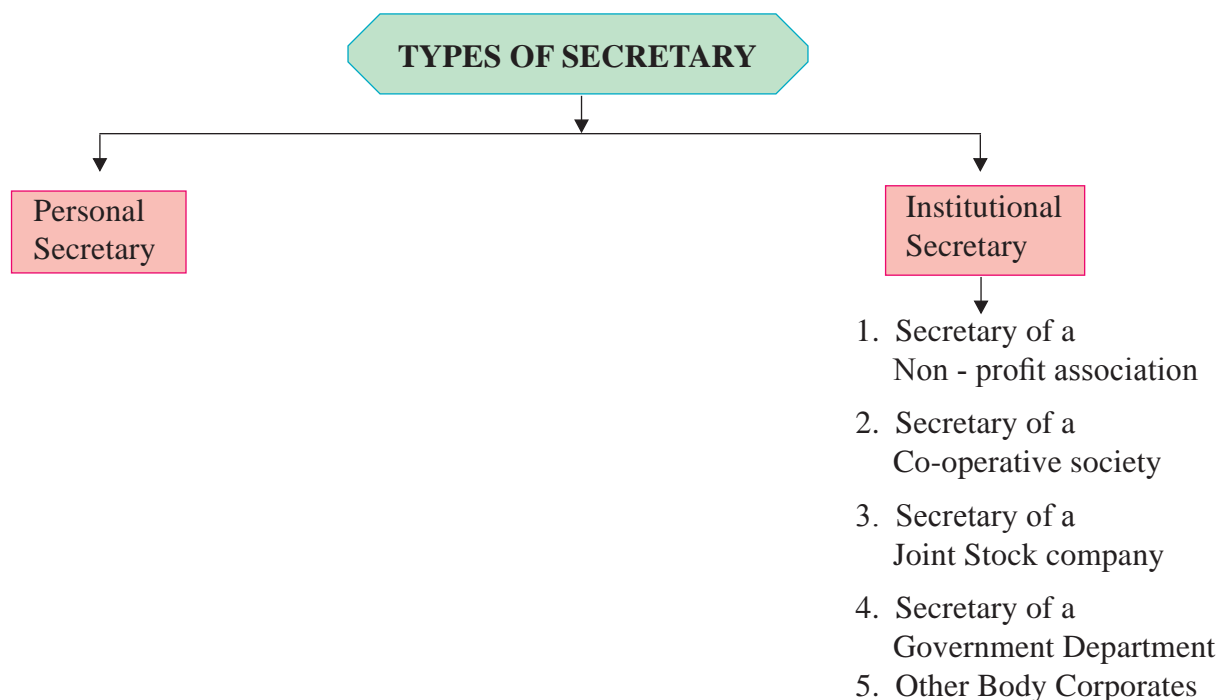
- 1) **Expert advice and guidance :** The Secretary advises the superiors on various important issues and assists in finalizing decisions on various issues. The views, observations and opinions of the Secretary are always considered valuable while taking appropriate policy decisions. The Secretary provides able guidance to the management and helps to achieve expected growth of the business.
- 2) **Administrator :** A Secretary looks after the routine office administration of the organization. Secretary handles efficiently routine as well as executive duties of the organization. Routine duties like office management, documentation of important issues, attending visitors etc. are handled by the Secretary efficiently. Secretary also handles the executive duties like assisting policy formulation, preparation of plans, supervision on execution of plans, etc.
- 3) **Custodian of secret information :** Secretary is an important person of the organization. Secretary has access to confidential and crucial information related to the organization. Secretary is also involved in making and executing important decisions. All such important decisions regarding business activities are required to be maintained confidential. Secretary guards the secrets of the organization and does not disclose it to anyone unless required and authorized to do so. Therefore, Secretary is often referred to as 'confidential officer'.
- 4) **Correspondent :** The Secretary is a correspondent of the organization and is therefore responsible for inward and outward correspondence. Secretary conducts correspondence with members, directors, banks, insurance companies, Registrar, Government authorities, customers, etc.

- 5) **Legal compliance officer :** The Secretary has to ensure proper and timely legal compliances in all activities of the organization. Secretary has to perform various statutory duties. Secretary has to maintain books, registers etc. as prescribed by Companies Act. 2013. Secretary has to file returns, documents with proper authorities within the stipulated time.
- 6) **Conducting Meetings :** Every business organization has to conduct meetings where the persons meet and finalize important decisions. The Secretary carries out formalities which are required to be undertaken before, during and after the meeting which includes preparation of agenda, sending notices, preparing minutes etc.
- 7) **Link between management and staff :** A Secretary acts as a link between management and staff of the organization and helps in effective communication. It is important that these decisions are co-ordinated effectively at all levels of the organization.
- 8) **Fulfillment of Secretarial Standards and Secretarial Audit :** Secretarial Standards and Audit aim at checking whether the company is adhering to the legal and procedural requirements. **(Secretarial Standards and Secretarial Audit (SS and SA) are discussed in Chapter 6)**

1.5 TYPES OF SECRETARY

The growth of industrialization and modernization has lead to an increase in various types of organizations. Every organization therefore, requires one such person on whom the individuals or organizations can entrust the person with responsibilities. The concept of Secretary has expanded and is required by almost all types of organizations. Each Secretary performs the duties and responsibilities of the organization or employer.

Followings are the various types of secretaries :



1.5.1 Personal Secretary

The personal Secretary or Personal Assistant is the oldest type of Secretary. A personal Secretary is one who is appointed by busy individuals like industrialists, businessmen or professionals to conduct the correspondence and the day to day routine duties.

Appointment : Busy individuals appoint secretaries to look after other work so as to enable them to concentrate on their primary work. e.g.: Doctors, Lawyers, Engineers, CA, actors, politicians, leaders, ministers etc.

Qualifications : A personal Secretary as such has no specific qualifications. Yet a graduation degree, good command over language, is required. Knowledge of computers and internet skills have now become a necessity. The qualification depends on the requirement of employer's profession.

1.5.2 Institutional Secretary :

A Secretary appointed by an institution or organization is called Institutional Secretary. Some institutional secretaries are -

- 1) **Secretary of a Non-profit Association :** A non - profit association means the organizations formed to promote social, educational, cultural, arts, sports activities, with the intention of providing services and not to earn profits.

Appointment : A non-profit association is looked after by management committee which is elected by the members. The Secretary may be a full time or part time person working on salary basis or honorarium basis. e.g.: Rotary Club, Lions Club, Sports club, Cultural clubs, Chamber of Commerce, etc.

Qualification : There is no prescribed qualification for this type of Secretary. The Secretary should be acquainted with the objects and basic functioning of the organization. Knowledge of filing, computers, correspondence are the basic requirements for this type of organization.

- 2) **Secretary of a Co-operative society :** A co-operative society is an association formed voluntarily by minimum 10 members or more. In Maharashtra these societies are registered under the Maharashtra State Co-operative Societies Act 1960. Its main objective is to provide services to its members. e.g.: Co-operative banks, Co-operative Housing society, Consumer co-operative stores etc.

Appointment : The members elect their representatives called management committee. One of the members of the managing committee is appointed as Secretary. Generally such Secretary works on honorary basis. For large scale co-operative organization, Secretary may be appointed as a full time employee on salary basis.

Qualification : The Secretary of a co-operative society as such does not have specific qualification. Secretary should have a good knowledge of the Co-operative Societies Act and should be at least graduate.

- 3) **Secretary of a Joint Stock Company :** A Joint stock company is a form of organization which is considered to be the most suitable one for organizing business activities on a large scale.

A company Secretary is considered to be one of the key officers of the company. Secretary is of vital importance in modern business organization.

Appointment : The Company Secretary is appointed right from the time the company is formed to look after the various aspects of business. Secretary works under the control of the Board of Directors.

Appointment of Company Secretary is as per the Companies Act 2013, Company Secretary is included in the definition of KMPs. The concept of Key Managerial Personnel (KMP) has been introduced in the Companies Act 2013. The Board of Directors cannot look after the day to day affairs of the company, therefore the task is given to certain managers and executives of the company. **(KMP is discussed in Chapter 6)**

Qualification : As per Section 203 of Companies Act 2013 the Company Secretary must be a member of the Institute of Company Secretaries of India (ICSI).

- 4) **Secretary of Government Department :** Government departments are those departments working under the various ministers of the State and Central Government.

Appointment : In the functioning of Government of India and State Government, a Secretary is the administrative head of a Ministry or Department.

In the Union and State Governments, secretaries hold positions as heads of the departments like Finance Secretary, Defence Secretary, Home Secretary etc.

Qualification : The Secretary of a Government needs to possess a graduation degree. The Secretary should pass the Civil Services Examination conducted by the Public Service Commission and be in Indian Administrative Services (IAS).

Additional information:

For Ministry of External Affairs, Government of India; an IFS (Indian Foreign Services) is appointed as Secretary.

1.6 FUNCTIONS OF A SECRETARY

Secretary performs basic clerical functions and office responsibilities of a company, department or individual. The functions of a Secretary are vital for helping an employer or organization to function efficiently.

- 1) **Correspondence :** One of the important functions of a Secretary is correspondence. Secretary looks after the inward and outward mail, replying to inquiries from outsiders, government department and other stake holders. Secretary also looks after the various records of the organization.
- 2) **Office management :** Secretary is responsible for the efficiency of the entire office routine. Secretary supervises and controls the staff and looks after the activities of the association. Secretary has to guide supervise and control the office staff for the smooth functioning of the company. The Secretary also has to look after training, promotion and transfer of the office staff.

- 3) **Reception function :** A personal Secretary attends to telephone calls and visitors, attends to inquiries, fixing appointments, etc.
- 4) **Financial functions :** Secretary handles the banking transactions and maintains proper books of accounts. Secretary has to keep a watch on receipts and payments. Secretary provides the necessary information to employer, management, banks and government.
- 5) **Arranging meetings :** The Secretary arranges meeting between the employer and any other parties. The Secretary also arranges general meetings, meetings of the board and managing committee meetings as per the provisions of the Acts. The Secretary drafts notices, agenda and also minutes of the meeting.
- 6) **Statutory functions :** The Secretary has to comply with all the provisions of the Acts applicable to his organization. Secretary also has to comply with the Income Tax Act, Stamp Act, Shop Act, Goods and Services Tax etc.

Statutory: Required, permitted, enacted as per law

- 7) **Assistance in formulating policies :** The Secretary has to collect statistical data and information. This information assists the management in formulating policies.
- 8) **Providing information :** The Secretary provides accurate information related to various departments in the organization. Secretary provides relevant information to management, banks, government departments, shareholders and employees.
- 9) **Administrative functions :** The Secretary performs administrative functions like assisting in appointing employees, distribution of office work, supervision, training, promotion. Secretary maintains all statutory books under proper custody.

1.7 QUALITIES OF A SECRETARY

The Secretary should possess certain qualities apart from academic qualification. A Secretary requires certain qualities to enable him to fulfill the employer's or organization's goals.

- 1) **Accuracy :** Accuracy means correctness. A Secretary must be accurate in his work like drafting letters, recording minutes and maintaining records. 'Accuracy' is one of the quality of Ideal Secretary.
- 2) **Adaptability :** Adaptability means ability to adjust oneself to the changing situation. The situation changes due to government policies, management policies etc.
- 3) **Co-operativeness :** Co-operativeness refers to the willingness on the part of the Secretary to assist others in achieving the objectives of the organization. It helps in developing team spirit and a sense of togetherness.
- 4) **Courtesy :** It implies politeness and kindness. A Secretary should be courteous while dealing with the people. This approach creates a positive impression about the employer and the organization.
- 5) **Initiative :** Initiativeness means a person's tendency to take efforts voluntarily to accomplish a task. The Secretary should take the initiative to take decisions on behalf of the employers if they are not present.
- 6) **Leadership :** A Secretary should have the ability to guide, advise, inspire, and motivate the sub-ordinates. The leadership skills of a Secretary helps to create team spirit.

- 7) **Loyalty** : Loyalty means faithfulness. Secretarial work is of a confidential nature. The Secretary being a confidential officer, should not disclose matters of secrecy to anyone. The Secretary should give priority only to organizational goals.
- 8) **Orderliness** : It means doing the work in a systematic manner. It helps the Secretary to complete the work in proper order and in time.
- 9) **Pleasing personality** : A Secretary should have a pleasing personality. This implies his way of talking, mannerism, good temper, confidential approach and willingness to accept challenges and situation in a calm way.
- 10) **Knowledge seeker** : A Secretary should update his knowledge as required to enable him to perform statutory functions.
- 11) **Punctuality** : It is related to the time sense and refers to doing things at the appropriate time. Lack of punctuality creates a bad impression about the organization. The Secretary should have a good time management.
- 12) **Sound judgment** : A Secretary should be able to judge the situation and accordingly take correct decisions. The Secretary should be able to judge the effectiveness and performance of his sub-ordinates.
- 13) **Tactfulness** : It means ability of a person to handle a situation in a right manner. As Secretary has to deal with different persons and situations; this quality will help Secretary in acting and reacting in a wise and sensible way.



Activity 1:

Find out the following-

1. Company Secretary of Mahindra & Mahindra Ltd.
2. Principal Secretary of Prime Minister of India
3. Chief Secretary, Maharashtra State
4. Secretary, School Education Department, Government of Maharashtra.



Activity 2:

Atmaram Bendre is a Secretary of Gokulghar Housing Society. Enlist his duties.

1.8 DISTINCTION:

Comparative study of different types of Secretary:

Sr. No.	Points	Personal Secretary	Secretary of Non-profit organization	Secretary of Co-operative society	Secretary of Joint Stock Company	Secretary of Government Department
1	Meaning	Personal Secretary is an individual appointed by professionals or busy persons to assist them in their work	Secretary of non - profit Organization is a person appointed to look after the working and conduct specified activities of the organization.	Secretary of a co-operative society is one such member from managing committee. appointed to look after the working of the society.	Secretary of a Joint stock company is appointed by business organization to ensure legal compliance.	A Secretary of a Government department is an officer to work under the guidance of the ministers or department.
2	Purpose	To assist the busy individuals in their day to day work	To assist in promoting the activities of the organization	To assist in safeguarding the common interest of the members.	To assist the Board of Directors in taking decisions and executive functions.	To assist in carrying out administrative work under the control of ministers of their respective departments.
3	Appointment	Appointed by busy persons like doctors, lawyers, actors, political leaders, businessman etc.	Appointed by managing committee of association.	Appointed by managing committee of the co-operative society.	Appointed by the Board of Directors of company.	Appointed by the State or Central Government.
4	Legal Status	The Secretary has no legal status.	The Secretary has no legal status.	Secretary has legal status as per the Co-operative Societies Act.	Company Secretary possess legal status as per the Companies Act.	The Secretary is appointed by the government and has a legal status.

Sr. No.	Points	Personal Secretary	Secretary of Non-profit organization	Secretary of Co-operative society	Secretary of Joint Stock Company	Secretary of Government Department
5	Qualification	There is no prescribed qualification for appointment.	There is no prescribed qualification for this type of Secretary.	There is no prescribed qualification	The Secretary must be a member of ICSI.	The Secretary must be in Indian Administrative Services (IAS)
6	Position	The Secretary is a personal assistant of the employer.	Usually a member of managing committee.	The Secretary is a member of the society and voted to become a Secretary.	The company Secretary is one of the members of Key Managerial Personnel (KMP).	The Secretary is the administrative head as per the department or ministry.
7	Powers	Powers are stated by the employer.	Has limited powers for conducting the activities of the organization.	Has the power as per Co-operative Societies Act.	Has statutory and managerial powers as per the Companies Act.	Has statutory powers as per the ministry or department.
8	Duties	The duties are according to the work of the employer.	The rights and duties are governed by the managing committee of the Association.	The rights and duties are laid down in the Co-operative Societies Act	The duties are as mentioned in the Companies Act and is one of the key compliance officers.	Looks after the work of his concerned departments / ministry.

Sr. No.	Points	Personal Secretary	Secretary of Non-profit organization	Secretary of Co-operative society	Secretary of Joint Stock Company	Secretary of Government Department
9	Compulsion to appoint	There is no compulsion.	Appointment is based on the nature and size of the organization.	It is compulsory to appoint as per the Act.	Every listed company and all other companies having a paid up capital of ₹ 5 crore or more should have a full time Secretary.	Appointment of Secretary for every Government department is compulsory.
10	Remuneration	The Secretary is a salaried person.	The Secretary may get a salary or work on honorarium.	The Secretary may get a salary or work on honorarium.	The Secretary is a full time employee and gets a salary determined by the Board.	The Secretary is a full time employee and gets salary and perks as per the Government rules.



SUMMARY

- The word Secretary is derived from the Latin word 'Secretarius'. In Roman empire Secretary was known as 'scribae' and in Indian ancient history as 'Amatya', 'Chitnis', 'Sachiva'.
- The Secretary has to be an individual and is a paid employee. Secretary is considered as a confidential officer of the employer.
- The Secretary is considered as an expert advisor and a correspondent. The Secretary plays an important role in conducting meetings.
- Types of Secretaries: Personal Secretary is one of the oldest type of secretaries. Institutional secretaries are individuals appointed by non - profit association, co-operative societies, joint stock companies and government departments.
- The Secretary should have various qualities like accuracy, adaptability, co-operation, courteousness, punctuality, loyalty, initiative etc that assist in attaining organizational goals.

EXCERCISE

Q.1 A. Select the correct answer from the options given below and rewrite the statements.

- 1) The word Secretary is derived from the Latin word which means a confidential writer.
a) Amatya b) Scribae c) Secretarius
- 2) Only can be appointed as a Secretary.
a) an Individual b) a Partnership firm c) a Joint stock company
- 3) A Secretary is a custodian of information.
a) confidential b) individual c) investigative
- 4) The Secretary of a Joint stock company should be a member of
a) IPS b) ICSI c) IAS
- 5) is the oldest type of Secretary.
a) Company Secretary b) Personal Secretary c) Secretary of Government Department
- 6) The main objective of a co-operative society is to the interest of its members.
a) neglect b) takeover c) protect
- 7) Secretary of Government department must be a member of the
a) ICSI b) IAS c) ICWA
- 8) means correctness in doing a work.
a) Accuracy b) Loyalty c) Courteous

B. Match the pairs:

Group 'A'		Group 'B'	
a)	Amatya	1)	Government department
b)	Ministry of Finance	2)	Paid employee
c)	Personal Secretary	3)	Appointed by busy persons
d)	Loyalty	4)	Roman empire
e)	Financial duties	5)	Maintainence of books of accounts
f)	Secretary	6)	Faithfulness
		7)	Reveals information
		8)	Appointed by co-operative societies
		9)	Ancient Indian history
		10)	Correspondence
		11)	Free service
		12)	Joint stock company

C. Write a word or a term or a phrase which can substitute each of the following statements.

- 1) The term used in the Roman empire for a person who was a professional letter writer.
- 2) Sports club is an example of this type of organization.

- 3) A Secretary appointed by an individual.
- 4) The quality that a Secretary should possess to be faithful to his organization.
- 5) Latin word for Secretary.
- 6) The company Secretary must be a member of this organization.
- 7) The Secretary of a co-operative organization in Maharashtra must have knowledge of this Act.
- 8) An association that aims to protect the interest of its members.

D. State whether the following statements are True or False.

- 1) A Secretary is responsible only for typing letters.
- 2) The Secretary of a Government department is the oldest type of Secretary.
- 3) The Secretary should remain confidential about his organization.
- 4) A Secretary also looks after routine and administrative duties.
- 5) A Secretary is a paid employee.
- 6) Chitnis is a term used in the ancient Roman period.
- 7) A Secretary need not have knowledge of computers.
- 8) Cultural Association is an example of Government department.

E) Find the odd one.

- 1) Secretarius, Scribae, ICSI, Chitnis
- 2) Leadership, IAS, Tactfulness

F) Complete the sentences.

- 1) In Latin language a confidential writer was called as
- 2) The oldest type of Secretary is secretary.
- 3) A company secretary must be a member of

G) Select the correct option form the bracket.

Group 'A'	Group 'B'
1) -----	Personal Secretary
2) Secretary of Government Department	-----
3) I C S I	-----
4) -----	Scribae

(IAS, Appointed by busy individuals, Roman Empire, Company Secretary)

H) Answer in one sentence.

- 1) Who can appoint a personal Secretary?
- 2) Which company should appoint a full time company secretary?
- 3) A Cultural Club is an example of which type of organisaiton?
- 4) The knowledge of which Act is must for a secretary of co - operative Society?

I) Correct the underlined word and rewrite the following sentences.

- 1) Personal Secretary is appointed by a Joint Stock Company.
- 2) Busy individuals appoint company secretary.

- 3) Secretary of a Government Department must be a member of ICSI.
- 4) The term chitnis was used in Roman Empire.

Q.2 Explain the following terms/concepts:

- | | | |
|----------------|-------------------------|-----------------------|
| 1) Secretary | 2) Confidential officer | 3) Compliance officer |
| 4) Tactfulness | 5) Loyalty | |

Q.3 Study the following case/situation and express your opinion.

- 1) Rajiv and Sanjiv have applied for the post of Company Secretary at Pharma India Pvt. Ltd. Rajiv has an experience of 10 years as a personal Secretary. He later worked as a Secretary at Venus Co-operative bank for 2 years. Sanjiv has passed his CS examination and is a member of ICSI. He has no working experience. Rajiv is only a commerce graduate.

Questions:

- a) Who is better suited for the above post? Justify your answer.
- b) Can Rajiv be selected as a Personal Assistant for one of the Directors?
- c) Can Rajiv be appointed as Secretary to Pharma India Pvt. Ltd.?
- 2) Harshada has cleared her CS examination and intends to make her career as a Secretary at the Government department.
 - a) Can she apply for the post of a Secretary at Government Department?
 - b) Can she be appointed as the Secretary of ABC Ltd.?
 - c) As a Company Secretary will Harshada be considered as an employee?

Q.4 Distinguish between the following:

- 1) Personal Secretary and Company Secretary
- 2) Secretary of Co-operative society and Secretary of Government department
- 3) Company Secretary and Secretary of a Government department.
- 4) Secretary of Non-profit association and Secretary of Co-operative society

Q.5 Answer in brief.

- 1) Describe any four qualities of a Secretary.
- 2) State any four functions of a Secretary.
- 3) Mention any four features of a Secretary.

Q.6 Justify the following statements.

- 1) A secretary should be courteous and have a pleasing personality.
- 2) A secretary is considered as a paid employee.
- 3) Only individuals can be secretaries.
- 4) A secretary is a link between the staff and management.
- 5) A personal secretary is appointed by busy individuals.

Q.7 Answer the following questions:

- 1) Define a Secretary and explain importance of secretary.
- 2) Explain the features of a secretary.
- 3) Describe the qualities of a secretary.
- 4) Explain briefly the various types of Institutional secretaries.



2.1 Evolution of Business Organization

- A. Sole Trading Concern
- B. Joint Hindu Family Business
- C. Partnership Firm
- D. Limited Liability Partnership
- E. Co-operative Society
- F. Joint Stock Company

2.2 Meaning, Definition and Features of Joint Stock Company

2.3 Types of Companies

2.4 Distinction between

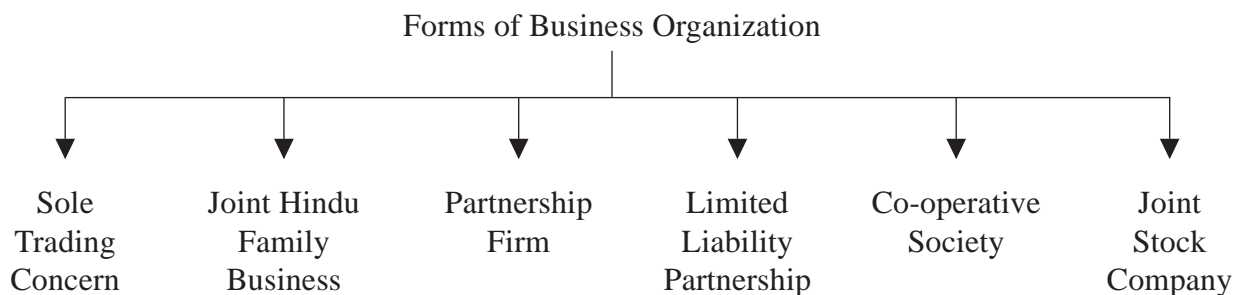
INTRODUCTION:

Industrial revolution took place in England in 1760. Before industrial revolution, production was done manually using local resources. Limited capital was needed and often production was done at home. The industrial revolution brought about radical change in the field of industry and commerce. Production was now on a large scale with the help of machines and that too, in anticipation of demand. Local markets turned into regional, national and international markets. Revolution in transport and other commercial activities were the major effects of Industrial revolution. To meet the new challenges of business, Joint Stock Company form of business organization evolved.

2.1 EVOLUTION OF BUSINESS ORGANIZATION:

In view of above given developments the Sole Trading Concern, Joint Hindu Family Business and Partnership Firm proved inadequate to face the challenges posed by changing needs of commerce and industry. Thus a new form of business organization namely, the Joint Stock Company emerged.

Different types of business organizations are discussed below:



A) SOLE TRADING CONCERN:

A Sole Trading Concern is a form of business organization. It is owned, managed and controlled by one person. It is also called as 'One Man Business'. A person who conducts the business is called 'Sole Trader'.

- **Features:**

- 1) There is no separate Law or Act governing Sole Trading Concern, but it has to follow all the laws of Land.
- 2) Sole Trading Concern has only one owner.
- 3) Capital contributed by sole trader is very small.
- 4) There is no division of profit or loss as there is a single owner.
- 5) All decisions of business are taken by sole trader.
- 6) The proprietor (sole trader) can ensure maximum business secrecy.
- 7) The liability of sole trader is unlimited.
- 8) This business does not enjoy a separate legal status.
- 9) Sole Trading Concern is not suitable for large scale business operations.

B) JOINT HINDU FAMILY BUSINESS:

When a Hindu Undivided Family conducts business, inherited by it as per Hindu Law, it is called a Joint Hindu Family Business. It exists only in India. It is governed by Hindu Succession Act 1956.

- **Features:**

- 1) Membership in the Joint Hindu Family Business is by birth only. Every child born in the family becomes a member.
- 2) The Head of the Family is known as 'Karta'.
- 3) Other members of the family are called as 'Co-parceners'.
- 4) Number of members - There is no limit on minimum and maximum number of members.
- 5) All Family members are engaged in the business.
- 6) The Liability of Karta is unlimited.
- 7) The Liability of co-parceners is limited.
- 8) Karta is the manager, controller and co-ordinator of the business.
- 9) Karta being the sole decision maker, can take quick decisions.
- 10) The profit sharing ratio keeps on changing depending upon the births and deaths in the family.

C) PARTNERSHIP FIRM:

The business organization which is owned, managed and controlled by two or more persons is called Partnership Firm. The owners are called Partners and the organization is called a Firm. Registration of Partnership firm is compulsory in Maharashtra state. This form of organization is governed by Indian Partnership Act 1932.

- **Features:**

- 1) This business is started by an agreement between two or more persons.
- 2) Number of partners- Minimum- Two
Maximum- Fifty for general business.
- 3) The liability of partners is Unlimited and it is joint and several.
- 4) Capital is contributed by partners.
- 5) Partnership firm does not enjoy separate legal status.
- 6) In Partnership Firm partners, cannot transfer their shares without the permission of other partners.
- 7) All partners are joint owners as well joint managers of business.
- 8) No separation of ownership and management in Partnership firm.
- 9) Partners share profit and losses in the agreed ratio as mentioned in partnership deed.

D) LIMITED LIABILITY PARTNERSHIP (LLP):

Limited Liability Partnership has a combination of features of both partnership and Joint Stock Company. As the name suggests partners have limited liability which means that personal assets of the partners are not attached for paying off the debts of LLP.

Now a days it has become very popular form of business. All limited liability partnerships are governed by the Limited Liability Partnership Act of 2008.

- **Features:**

- 1) The Limited liability partnership is a separate legal entity i.e. a body corporate. The LLP and the partners are distinct from each other.
- 2) Number of partners- Minimum- two.
Maximum- unlimited.
- 3) No requirements of minimum capital contribution.
- 4) It is simple to form and easy to operate.
- 5) The liability of each partner is limited to his share as written in the agreement.
- 6) It has a low cost of formation.
- 7) There is no restriction on joining and leaving the LLP except as stated in the partnership agreement.
- 8) Double taxation is avoided. There is no tax on share in profit.

E) CO-OPERATIVE SOCIETY:

A Co-operative Society is a voluntary association of persons formed to achieve certain economic objectives. The nature of co-operative organization is service oriented. The registration of a co-operative society is compulsory in the state of Maharashtra, under the Maharashtra State Co-operative Societies Act 1960.

- **Features:**

- 1) Registration is compulsory.
- 2) The membership of co-operative society is open to all.
- 3) Number of members- Minimum- ten
Maximum- no limit.
- 4) The liability of a member in a co-operative society is limited.
- 5) It differs from other forms of organization as its aim is not maximization of profit but to provide services to its members.
- 6) The organization enjoys independent legal status different from its members.
- 7) The management of co-operative organization is democratic in nature. There is equality in voting right. They follow the principle of 'One member one vote'.
- 8) There is control and supervision by the state government on the working of co-operative organization.

A Sole Trading Concern, Joint Hindu Family Business and Partnership Firm could not meet the requirements of large scale business organization. All of them have limited funds, no stability, unlimited liability and lack of managerial ability, so the Joint stock Company was established.

F) JOINT STOCK COMPANY:

A Joint Stock Company is a more formal form of business organization. It is capable of satisfying requirement of modern industry. It is most convenient form of business organization for the conduct of large scale business activity.

This form of organization started in India in the 18th century. At present, in India we come across different types of Joint Stock Companies such as public, private, government, statutory etc.

2.2. MEANING DEFINITION AND FEATURES OF JOINT STOCK COMPANY:

Company means a group of individuals who are associated for a lawful common purpose or goal. The goal may include economic as well as non-economic objectives such as business, charity, research, sports, art, entertainment etc. Capital is invested by a large number of persons. In simple words:- (A company is a voluntary association of persons for carrying some business and sharing the profit therefrom.)

Joint Stock Company can collect huge capital for the business. The capital of company is divided into small number of indivisible units of fixed amount. These units are known as 'shares'. A person who purchases shares is called a 'shareholder'. Shareholder is a part 'owner' of the company. The ownership of the company is with shareholders while its day to day administration is in the hands of directors who are the elected representatives of shareholders. The directors are collectively known as 'Board of Directors'. The portion of profit of the company, distributed among the shareholders is known as 'Dividend'.

□ Definitions of Joint Stock Company:

- i) According to Section 2(20) of the Companies Act 2013

“Company means a company incorporated under this Act or under any previous company law.”

It means every organization would get the status of a company if it is incorporated under the relevant law as a company before or after the enactment of the Companies Act 2013.

ii) According to Prof. H. L. Haney

“A Joint stock company is a voluntary association of individuals for profit, having its capital divided into transferable shares, the ownership of which is the condition of membership.”

The above definitions reveal some of the most important features of the company.

Thus to conclude we can say that-

A joint stock company is an incorporated association, which is an artificial person created by law, having a separate name, a separate legal entity and perpetual succession. The liability of its member is limited. A joint stock company may have common seal.

□ Features of Joint Stock Company

Features of Joint Stock Company



- 1) Voluntary Association
- 2) Incorporated Association
- 3) Separate Legal Entity
- 4) Artificial Person
- 5) Perpetual Succession
- 6) Common Seal
- 7) Limited Liability
- 8) Separation of Ownership and Management
- 9) Transferability of shares
- 10) Number of Members
- 11) Capital
- 12) Government Control

- 1) **Voluntary association** : A Joint Stock Company is a voluntary association of persons. Membership of the company is open to all. A person at his own wish can become or leave membership of the company subject to the provisions of Articles of Association of the company.

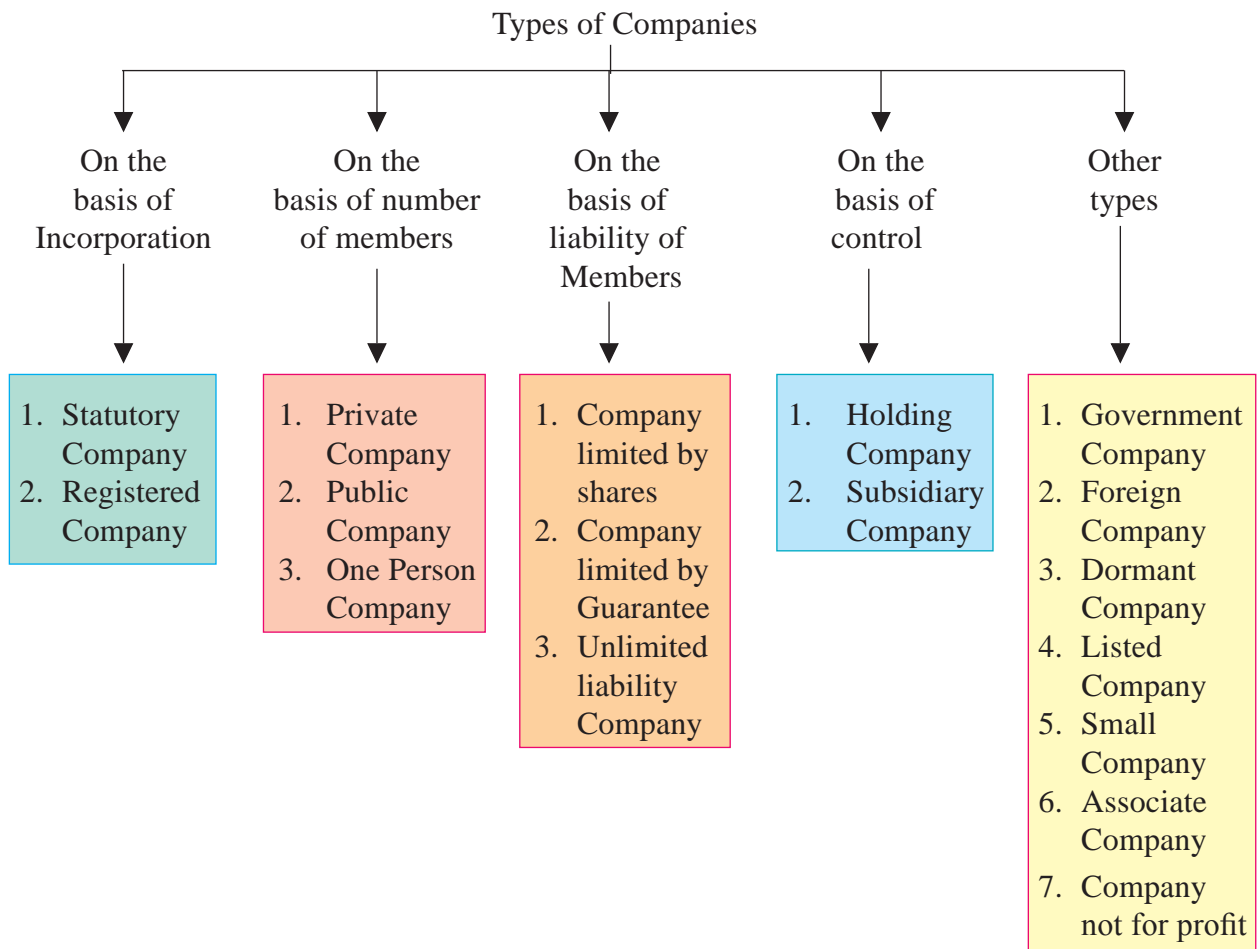
Articles of Association: It is the document which describes the rules related to internal management of company.

- 2) **Incorporated association** : A Joint Stock Company is an association of persons formed and registered under the Companies Act. Registration or incorporation is compulsory. An association obtains the status of a Joint Stock Company only after its registration under the Companies Act.

- 3) **Separate legal entity :** A Joint Stock Company is a legal entity i.e. it enjoys separate legal status. Its existence is different from its members and directors. The members are the owners and are liable in limited way for the acts of their company and are conferred with rights and duties.
- 4) **Artificial person :** A Joint Stock Company is an artificial person created by law. It is created by a legal process and has its own independent personality. It enjoys certain legal rights like a person for e.g. enter into contracts, purchase and sell assets and property, appoint persons as employees etc. But it cannot act on its own like a natural person as it is an artificial person.
- 5) **Perpetual succession :** A Joint Stock Company has perpetual succession i.e. continuous existence. Its existence is not affected by death, insolvency or retirement of any of its members. A Joint Stock Company enjoys a very long and stable life unless it is wound up by following legal procedure.
- 6) **Common seal :** A Joint Stock Company is an artificial person without physical existence like a natural person. Hence, it is not in a position to sign its name. However, it has a device in the form of common seal. This common seal acts as its signature. It is affixed on all the important documents and contracts of the company. Usually two directors and the Secretary sign the documents as witness after the seal is affixed.
- 7) **Limited liability :** The liability of shareholders of a joint stock company is limited. It is limited up to the unpaid part of face value of shares held by a shareholder. Shareholder is liable to pay only the unpaid amount on his shares, if any. Shareholder is not concerned with debts and liabilities of the company. Personal property of the shareholders cannot be used for repayment of debts of a company.
- 8) **Separation of ownership and management :** In a company, ownership is separated from management. Shareholders are real owners of the company, however they are unable to manage the day to day affairs of the company because
 - a) They are large in number.
 - b) They are scattered and
 - c) They keep changing because shares are transferable. So they elect the Board of Directors to look after the management of the company. All policy decisions are taken by the Board of Directors.
- 9) **Transferability of shares :** The shares of public company are freely transferable. A shareholder can sell shares as and when he desires. Membership comes to an end once the shares are sold. Shares of private company are not freely transferable.
- 10) **Number of members :** A Joint Stock Company is usually owned by a large number of persons. A private limited company must have minimum 2 members and maximum 200 members. A public limited company must have minimum 7 members and there is no limit on the maximum number of members.
- 11) **Capital :** A Joint Stock Company can raise huge capital, due to large number of members. Huge amount of capital can be collected by the company in the form of shares, debentures, bonds, public deposits etc. It can also obtain loans from banks and financial institutions.
- 12) **Government control :** A Joint Stock Company has to work under Government control and supervision. Registration is compulsory for all companies. A registered company must follow the regulations given in company law. A company has to file a copy of statement of profit

and loss, balance sheet and other financial statement with the registrar. It has to maintain proper books of accounts. These accounts must be audited. If a company does not fulfill these statutory obligations, it is penalized. This control is essential to protect the financial interest of small investors.

2.3 TYPES OF COMPANIES:



The following are the important types of companies

A) ON THE BASIS OF INCORPORATION:

- 1) **Statutory Company** : These companies are incorporated by a special Act passed by the central or state legislative. e.g. Reserve Bank of India, State Bank of India, Unit Trust of India, Life Insurance Corporation etc.
- 2) **Registered Company** : These companies are incorporated under the Companies Act 2013 or any previous company law.

B) ON THE BASIS OF NUMBER OF MEMBERS:

- 1) **Private Company** : (Section 2(68))

Private company means a company having a minimum paid up capital as may be prescribed and which by its Articles -

- i) Restrict the right of members to transfer its shares if any.
- ii) Restrict the number of its members up to 200.
- iii) Prohibits any invitation to the public to subscribe for any securities or deposits of the company.

Securities: are financial instruments like shares, bonds, debentures etc. issued by the company.

All the above said conditions, should be fulfilled for a company to be called as private company. If any one of the condition is not fulfilled by the company, it shall be considered as a public company.

It must add the words 'Private Limited' at the end of its name. A private company may be a company limited by shares or a company limited by guarantee or an unlimited company.

2) Public Company : According to Section 2(71) public company means a company which is not a private company. A public company -

- 1) Has no restriction on the transfer of its shares.
- 2) Minimum number of members should be seven.
- 3) Has to have a minimum paid up share capital as may be prescribed by its Articles.
- 4) Does not prohibit any invitation or acceptance of deposits from the public.

3) One Person Company : According to Section 2(62) a one person company is a company which has only one person as member.

It is private limited company and it has to fulfill and comply with all the formalities of private company unless otherwise specified in the Act or rules.

The concept of One Person Company was introduced through the Companies Act 2013. It is operated by a single promoter who has Limited Liability. It is a better form of business organization than the sole proprietorship because the liabilities of the member is limited to the extent of his capital in the company.

One Person Company can have one or more directors. There is no need to hold Annual General Meeting.

C) ON THE BASIS OF LIABILITIES OF MEMBERS:

1) Company limited by shares: Section 2(22) : These types of companies have a share capital and the liability of each member is limited to the unpaid part of face value of shares purchased by member. During the existence of the company or in the event of winding up, a member can be called upon to pay the unpaid remaining amount on the shares purchased by him / her.

A company limited by shares may be a public company or a private company. These are the most popular types of companies.

2) Company limited by Guarantee: Section 2(21) : These types of companies may or may not have a share capital. Each member promises to pay a fixed sum of money specified in the Memorandum in the event of liquidation of the company for the payment of the debts and liabilities of the company.

Generally, such companies are not profit making companies because they are formed for the purpose of promotion of art, science, culture, charity, sports, or some other similar purpose.

- 3) **Unlimited liability company:** Section 2(92) : A company not having any limit on the liability of its members is termed as an unlimited company. The members are fully liable to cover the debts of the company.

The unlimited company can be either a private or a public company or a one person private company.

D) ON THE BASIS OF CONTROL:

- 1) **Holding company:** Section 2(46)

A Holding company is a company which holds more than one half of the total share capital of another company or has powers to appoint or remove all or a majority of directors of another company.

- 2) **Subsidiary company:** Section 2(87)

A Subsidiary company is just the opposite of a holding company. It is a company which is controlled by a Holding company. Such control is possible because the Holding company purchases more than one half of the share capital of Subsidiary company or has powers to appoint or remove all or a majority of its directors.

E) OTHER TYPES:

- 1) **Government company:** Section 2(45) : Government company means any company in which not less than 51% of the paid up share capital is held by

- 1) the central government or
- 2) State government or governments or
- 3) Partly by Central Government and partly by one or more State Governments or
- 4) Subsidiary company of a government company.

Government Company may be a private company or a public company. In fact it is a company registered and incorporated under the Companies Act 2013. e.g. Hindustan Machine Tools Limited, Steel Authority of India Limited., Bharat Heavy Electrical Limited, Coal India Limited, Oil Natural Gas Corporation Limited etc.

- 2) **Foreign company:** Section 2(42) : Foreign company means a company incorporated outside India, but having a place of business in India. e.g. Nestle India Limited, Bata India Limited, Whirlpool corporation, etc.

- 3) **Dormant Company :** If company is registered for a future project or has not made any significant accounting transactions in last two years or has not filed financial statements or annual returns in last two years, after making application u/s 455 can be called as Dormant Company.

- 4) **Listed company:** Section 2(52) Listed company means a company which has any of its securities listed on any recognized stock exchange. A public limited company may be a listed company or unlisted company. The listed companies will also have to follow SEBI's guidelines and the provisions of the Companies Act.

SEBI: Securities and Exchange Board of India is established to protect the interest of the investors in securities and regulate the securities market.

5) Small company : As per Section 2(85) of the Act, small company means a company other than a public company -

- 1) Paid up share capital of which does not exceeds ₹ 50 lakh or such higher amount as may be prescribed or
- 2) Turnover of which as per its last profit and loss account does not exceed ₹ 2 crores or such higher amount as may be prescribed.

Private company, One Person Company and company other than public company can be a small company.

6) Associate company: Section 2(6) An Associate Company is one over which another company exercise a significant degree of control which is less than the degree of control exercised over a subsidiary company.

Associate company in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company.

For the purpose of this clause ‘significant influence’ means control of at least 20% of total capital or of business decisions under an agreement.

7) Company not for profit: Under section 8 such companies are registered.



Activity:

Identify the type of following companies:

- 1) Bajaj Auto Limited
- 2) Coal India Limited
- 3) Microsoft India
- 4) Kirloskar Foundation

2.5 DISTINCTION

1. Private Company and Public Company

Sr. No.	Points	Private Company	Public Company
1)	Definition	A private company is a company which by its articles restricts the right to transfer its shares, if any; limits the number of its members to 200.	A public company means a company which is not a private company.
2)	Number of Members	Minimum- 2 Maximum- 200	Minimum- 7 Maximum- No limit
3)	Number of Directors	In a private company a minimum number of 2 directors are essential.	In a public company a minimum number of 3 directors is essential.

Sr. No.	Points	Private Company	Public Company
4)	Right to transfer the shares	Shares in private company are not freely transferable.	Shares are freely transferable.
5)	Issue of prospectus	Cannot issue a prospectus.	Can issue a prospectus.
6)	Ending word/s	It is compulsory to add the word 'Private limited' after the name of private company.	It is compulsory to add the word 'Limited' after the name of public company.

2. Comparative Study of forms of organization

Sr. No.	Points	Sole Trading Concern (STC)	Joint Hindu Family Business (JHFB)	Partnership Firm (PF)	Joint Stock Company	Co-operative Society
1)	Meaning	A business organization owned and controlled by one person.	A business organization owned and run by family member of a joint Hindu Family.	A business organization owned and run by two or more persons collectively or jointly.	An incorporated association which is an artificial person created by law, having perpetual succession.	It is voluntary association of individuals which is formed for providing services to members.
2)	Registration	Registration is not necessary.	Registration is not necessary.	Registration is not necessary, but compulsory in Maharashtra state.	Registration is compulsory.	Registration is compulsory.
3)	Number of members	Minimum- 1 Maximum- 1	There is no limit on minimum and maximum number of members.	Minimum- 2 Maximum- 50 for general business.	Private Company Minimum- 2 Maximum- 200. Public company Minimum- 7 Maximum- No limit	Minimum- 10 Maximum- No limit.
4)	Liability	Unlimited liability of Sole Trader.	Karta- Unlimited Liability Co-parceners- Limited Liability.	Liability of partners is unlimited, Joint and several.	Limited Liability of members.	Limited Liability of members.

5)	Stability	Lack of Stability. Business may be affected due to death, insolvency of trader.	Lack of stability. Business may be affected due to death, insolvency of members.	Lack of stability. Business may be affected due to death, insolvency of partners.	Stable business.	Stable business.
6)	Capital	Comparatively limited Capital.	Comparatively limited Capital.	Comparatively more than STC and JHFB but less than Joint Stock Company and co-operative society.	Huge capital.	Comparatively more than STC, JHFB, partnership but less than joint stock company.
7)	Secrecy	Ensures maximum business secrecy.	More business secrecy.	Secrecy is shared by the partners.	Less business secrecy.	Less business secrecy.
8)	Management	A sole trader alone is responsible for the management of business.	Karta alone is responsible for the management of business.	All partners are equally liable for management of their business.	Board of directors constitute the management of company.	Managing committee is the managing body of co-operative society.
9)	Government Control	There is minimum government control over the working.	There is less government control over the working.	There is limited government control over the working.	There is more government control over the working.	There is more government control over the working.

SUMMARY

❑ **There are different forms of business organization such as:**

- 1) Sole Trading Concern
- 2) Joint Hindu Family Business
- 3) Partnership Firm.
- 4) Limited Liability Partnership
- 5) Joint Stock Company
- 6) Co-operative Society

❑ **Joint Stock Company:**

A Joint Stock Company is registered association which is an artificial legal person, having an independent legal entity with a perpetual succession, a common capital comprised of transferable shares and carrying limited liability. Having a common seal is optional for a company.

Joint Stock Company is a formal form of business organization, developed after industrial revolution i.e. 1760.

□ **There are different types of companies as stated below:**

A) On the basis of Incorporation:

- 1) Statutory Company.
- 2) Registered Company.

B) On the basis of Number of members:

- 1) Private Company.
- 2) Public Company.
- 3) One person Company.

C) On the basis of liability of members:

- 1) Company limited by shares.
- 2) Company limited by guarantee.
- 3) Unlimited company.

D) On the basis of control:

- 1) Holding Company.
- 2) Subsidiary Company.

E) Other Kinds:

- 1) Government Company.
- 2) Foreign Company.
- 3) Dormant Company.
- 4) Listed Company.
- 5) Small Company.
- 6) Associate Company.
- 7) Company not for profit



EXERCISE

Q.1 A. Select the correct answer from the options given below and rewrite the statements.

- 1) A sole proprietorship has owner/owners.
a) one b) two c) five
- 2) The head of Joint Hindu Family Business is called as
a) Proprietor b) Director c) Karta
- 3) Indian Partnership Act was passed in the year
a) 1923 b) 1932 c) 1956
- 4) The members of Hindu Undivided Family Business are called
a) Karta b) partners c) co-parceners

- 5) The liability of shareholders in the public limited joint stock company is
 a) Limited b) Unlimited c) Collective
- 6) The minimum number of members required for a co-operative society is
 a) 10 b) 20 c) 50
- 7) The is / are elected representative of shareholders who manage affairs of company.
 a) Secretary b) Directors c) Auditors
- 8) State Bank of India is the example of Company.
 a) Chartered b) Statutory c) Foreign

B. 1. Match the pairs:

Group 'A'		Group 'B'	
a)	Sole Trading concern	1)	1932
b)	Joint Hindu Family Business	2)	Partner
c)	Partnership Act	3)	Artificial person
d)	Joint Stock Company	4)	1923
e)	Co-operative Society	5)	Karta
		6)	Natural person
		7)	Single Ownership
		8)	Equal voting rights
		9)	Multiple ownership
		10)	Minimum 9 members

B. 2. Match the pairs:

Group 'A'		Group 'B'	
a)	Private company	1)	51% share capital held by Government
b)	Public company	2)	Bank of England
c)	Government company	3)	Maximum 200 members
d)	Statutory Company	4)	Minimum 7 members
e)	Limited Liability Partnership	5)	Maximum 100 members
		6)	Minimum 5 partners
		7)	40% share capital
		8)	Minimum 5 members
		9)	Life Insurance Corporation
		10)	Minimum 2 partners

C. Write a word or a term or a phrase which can substitute each of the following statements.

- 1) The owner who is the sole manager and decision maker of his business.
- 2) The senior most family member of Joint Hindu Family Business.
- 3) The members of Joint Hindu Family Business.
- 4) An artificial person created by law.
- 5) The persons who have entered into an agreement of partnership.
- 6) A person who purchases shares of Joint Stock Company.
- 7) The official signature of Joint Stock Company.
- 8) Name a company that is created by a special legislation of parliament or state assembly.

D. State whether the following statements are True or False.

- 1) A joint stock company is voluntary association of persons.
- 2) A joint stock company is a formal form of business organization.
- 3) Registration of Joint Stock Company is compulsory.
- 4) A Joint Stock Company is a natural person.
- 5) A Joint Stock Company does not enjoy independent legal status.
- 6) The liability of shareholder of public limited company is limited.
- 7) A joint stock company has long and stable life.
- 8) There is no separation of ownership and management in Joint Stock Company.
- 9) Board of Directors manage the Company.

E) Complete the sentences.

- 1) A company is a creation of law, hence it is called as
- 2) A company which is incorporated under a special Act is called as
- 3) A Company which has only one member is called as
- 4) A listed company is must follow the provisions of Companies Act and

F) Select the correct option form the bracket.

Group 'A'	Group 'B'
1) Private company	-----
2) Public company	-----
3) -----	Member have unlimited liability
4) Incorporated Outside India	-----

(Foreign Company, Minimum 7 members, Maximum 200 members, Unlimited Liability Company)

G) Answer in one sentences.

- 1) How many member/s can be there in a one person company?
- 2) What is a Holding company?
- 3) What is meant by foreign company?

H) Correct the underlined word and rewrite the following sentences.

- 1) Statutory companies are registered under the Companies Act.
- 2) A Subsidiary Company holds more than half of the total share capital of another company.
- 3) A private Company must have minimum 7 Members.
- 4) A public Company can have maximum 200 Members.

Q.2 Explain the following terms/concepts.

- 1) Dormant company
- 2) Holding company
- 3) Foreign company
- 4) Company limited by guarantee
- 5) Associate company
- 6) Limited Liability
- 7) Perpetual Succession
- 8) Listed company
- 9) One person company
- 10) Government company

Q.3 Study the following case/situation and express your opinion.

- 1) Two promoters got 'Super Drinks Pvt. Ltd.' incorporated on 18th Jan, 2018. The company has 100 members as on 31st Mar, 2019.
 - a) What is the maximum number of members this company can have?
 - b) Can this company invite general public to subscribe for shares?
 - c) Can the shareholders of the company sell its shares to outsiders?
- 2) Kali VFX Ltd. was incorporated on 1st Jan, 2019 as a public limited company.
 - a) How many minimum number of members must be there in this company?
 - b) Can the members of this company sell its shares to outsiders?
 - c) How many maximum number of members can this company have?
- 3) Sunset Printers Pvt. Ltd. was incorporated on 5th Dec, 2015 as per the provisions of Companies Act 2013. Mr. Manoj was the only subscriber to the Memorandum and Articles of Association and he was also the only member of the company.
 - a) Is this company a One Person company?
 - b) Will the liability of Mr. Manoj be limited or unlimited?
 - c) Will the company close down on the death, insanity or insolvency of Mr. Manoj?
- 4) On 1st Jan, 2018 Mr. John bought 100 shares of TIPS Paints Ltd. The face value of each share was Rs. 10. Mr. John paid the full amount of Rs. 1000. In Dec, 2018 the company suffered a loss of Rs. 10 crores.
 - a) Can the company ask Mr. John to pay any further money to the company?
 - b) Which feature of Joint stock company is referred to in this example?
 - c) Explain the feature briefly.

Q.4 Distinguish between the following:

- 1) Sole Trading concern and Joint Hindu Family Business.
- 2) Sole Trading concern and Partnership Firm.
- 3) Partnership Firm and Joint Stock Company.

- 4) Joint Stock Company and Co-operative society.
- 5) Private company and Public company.

Q.5 Answer in brief.

- 1) How is LLP different from a partnership firm ?.
- 2) Explain the different types of companies on the basis of liabilities of members.
- 3) What are holding and subsidiary company?

Q.6 Justify the following statements.

- 1) Registration of Joint Stock Company is compulsory.
- 2) A Joint Stock Company is an artificial person.
- 3) The liability of shareholder of company is limited.
- 4) The ownership and management are separated in Joint Stock Company.
- 5) The Joint Stock Company collects a huge capital from public.
- 6) There is more Government control and supervision over the working of Joint Stock Company.

Q.7 Answer the following questions:

- 1) State the features of sole trading concern.
- 2) State the features of Joint Hindu Family Business.
- 3) State the features of Partnership firm.
- 4) State the features of co-operative society.
- 5) State the features of Limited Liability Partnership.
- 6) Define Joint Stock Company and explain its features.
- 7) Define a 'company'. Explain the types of companies on the basis of liability of members.
- 8) Explain any four types of companies.



3

FORMATION OF A COMPANY

3.1 Stages in the formation of a company

3.1.1 Promotion

3.1.2 Incorporation of a company

3.1.3 Commencement of business

INTRODUCTION :

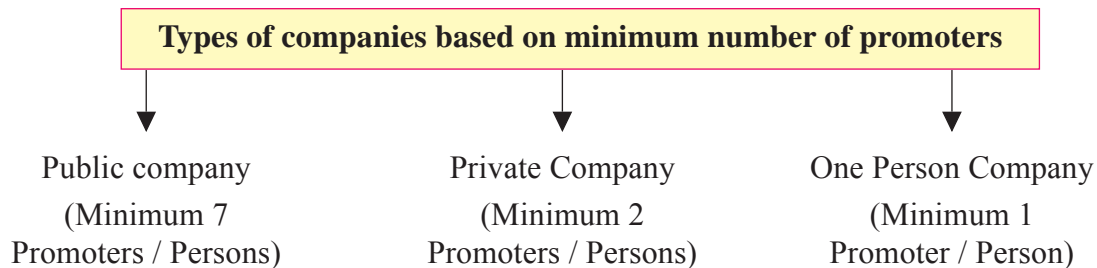
A company is an artificial legal person i.e. it is a creation of law. It comes into existence when it is registered by following the procedures laid down by the Companies Act, 2013.

Formation of a Company means registering or incorporating a company with the Registrar of companies in the state where the company's Registered office is to be located.

Registrar of companies (ROC) It is the authority as per the Companies Act which can incorporate companies.

❑ Based on minimum number of promoters:

Promoters are the persons who undertake the process of formation of a company. As per the Companies Act, 2013 (Section 3), depending upon the number of promoters intending to form a company and other aspects, 3 types of companies can be formed as follows:



❑ Based on the capital structure, a company may be registered as {section 3(2)} :

a) Company Limited by Shares :

In this company, capital is collected by issuing shares and the liability of the members is limited to the extent of unpaid part of face value of shares bought by them.

b) Company Limited by Guarantee :

In this company, its members have guaranteed to contribute a certain amount of money either to the assets of the company at the time of winding up or towards the cost of winding up of the company.

c) **Unlimited Liability Company :**

In this company, the liability of its members is unlimited i.e. the members are liable to the whole amount of company's debts and liabilities.

3.1 **STAGES IN THE FORMATION OF A COMPANY**

Following are the stages in formation of a company:

- A) Promotion
- B) Incorporation of a company
- C) Commencement of Business

The Companies Act, 2013; Section 3(1) has stated the following conditions for formation of a company :

- i) A Company shall be formed for any lawful purpose.
- ii) Minimum 7 promoters needed for a public company, minimum 2 promoters for private company and 1 promoter for One Person Company
- iii) All the promoters must subscribe their names to the Memorandum of Association.
- iv) The promoters must comply with all the provisions of Companies Act, 2013 with respect to incorporation of a company.

Memorandum of Association. It is a document which states the aims and objectives of the company.

Let us learn about the different stages in the formation of a company.

3.1.1 **PROMOTION**

Promotion of a company means taking all the necessary steps to incorporate a company as per the provisions of the Companies Act, 2013.

Meaning of Promoters :

The Persons who undertake the process of promotion of a company are called as 'Promoters'. A promoter can be an individual, a partner, a company, an association or a syndicate.

Syndicate : A group of individuals or organizations who have come together to promote a common interest.

Section 2(69) of the Companies Act, 2013 defines the term Promoter as a person :

1. Who has been named as such in a prospectus or is identified by the company in the Annual Return or

Prospectus : It is a document issued by a public Company to invite the public to subscribe (buy) its shares at the time of public offer.

Annual Return : It is a yearly statement prepared by the company which gives information about a company ownership, activities and financial position and is filed with ROC.

2. Who has control over the affairs of the company, directly or indirectly whether as a shareholder, Director or otherwise or
3. In accordance with whose advice, directions or instructions, the Board of Directors is accustomed to act.

However, a person who is assisting the promoter in a professional capacity (e.g. A lawyer, accountant etc.) cannot be called as Promoter.

Role of Promoters :

- i) Promoters are the ones who come up with the idea of starting a business.
- ii) They decide the objects of the business, amount of capital needed, scale of business operation etc.
- iii) They prepare the various documents needed for incorporation of a company like Memorandum and Articles of Association.
- iv) Approach investors for collecting capital for the company.
- v) Promoters often nominate themselves as first directors of the company and are first subscribers to Memorandum and Articles of Association.
- vi) The promoters can enter into contracts with third parties on behalf of the proposed company. These contracts are called as 'Pre-incorporation contracts' or 'Preliminary Contracts'. For e.g.. Contracts for preparing and printing Memorandum and Articles of Association, hiring office premises, etc.
- vii) Promoters have fiduciary duties towards the company they are setting up. They are supposed to act in such a manner so as to protect and promote the interest of the proposed company . They cannot make any secret profits while promoting a company.

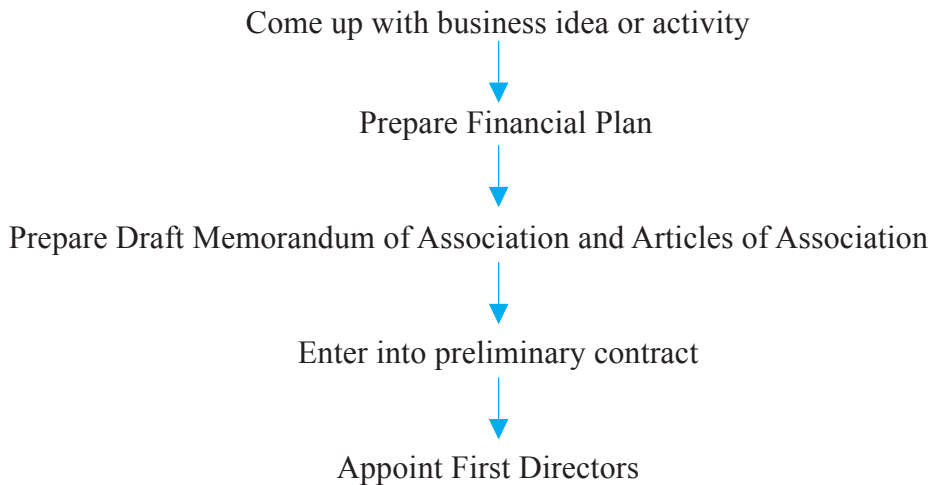
Fiduciary Duty : Means a person has to act in good faith and trust put upon him by another person.

They have to disclose any personal interest they have in a transaction they have entered on behalf of the proposed company.

After incorporation, the company compensates the promoters by reimbursing them the expenses incurred by them in promotion of a company known as preliminary expenses. Immediately after incorporation of a company, the Board of Directors takes charge of the management of the company.

Steps in Promotion of a company

Promotion involves following steps :



1. Come up with an idea or suggest a business activity:

The promoters come up with a business activity that they wish to undertake. They choose a business activity after studying various factors like scope of business, competition in the market, availability of factors of production, applicable laws etc. Based on this they prepare a business plan.

2. Prepare Financial Plan :

The promoters decide the scale of operation and accordingly prepare the Financial Plan. The Financial plan gives details of the amount of capital needed and from where to raise it.

3. Prepare draft of Memorandum of Association and Articles of Association:

Promoters prepare the draft of two most important documents viz. the Memorandum of Association and the Articles of Association which is to be submitted along with the application for incorporation of a company to Registrar of Companies.

4. Enter into Preliminary Contracts :

On behalf of the proposed company the promoters may enter into preliminary contracts with third parties. They enter into such contracts so that the company can start its business activity immediately after its incorporation.

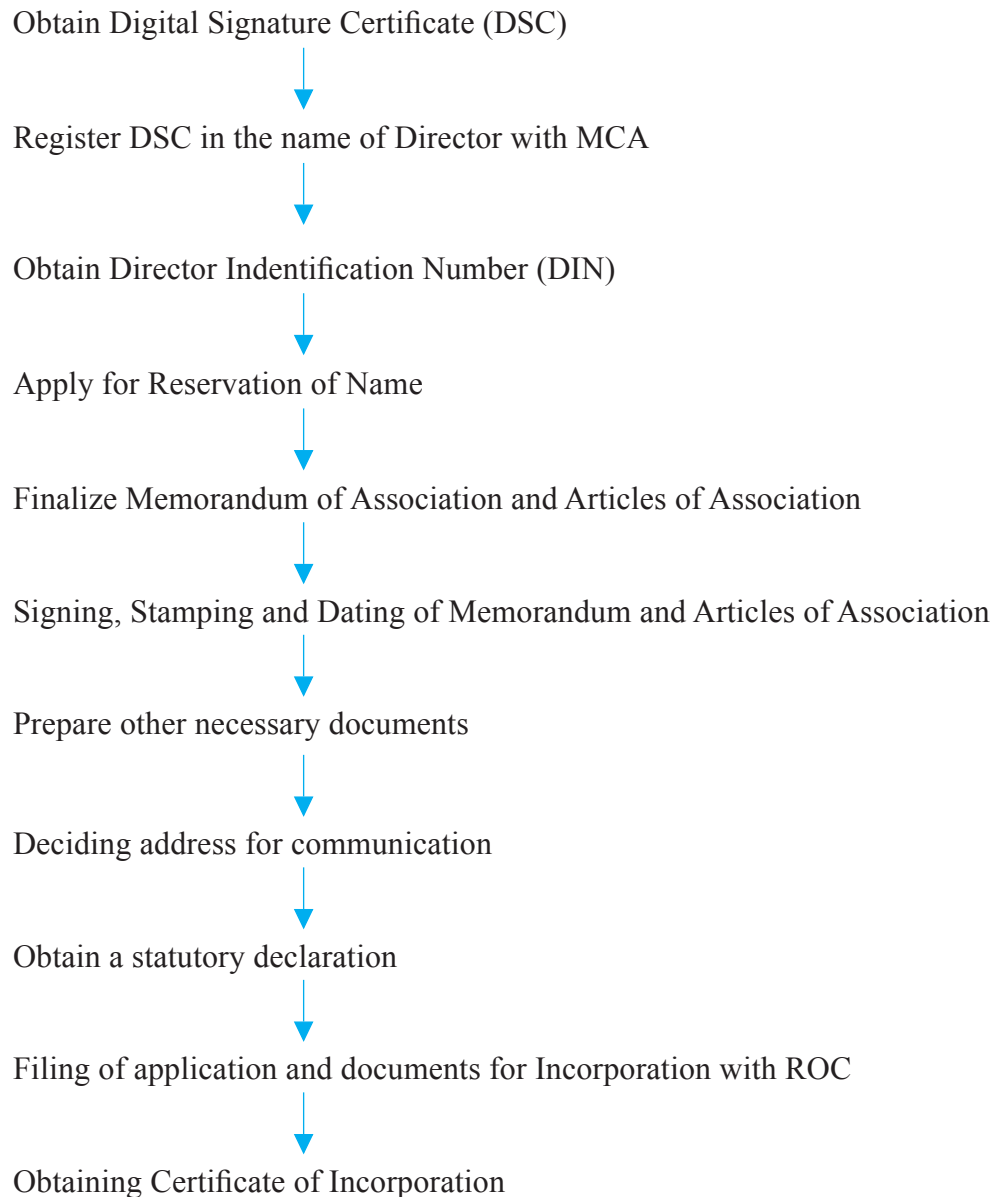
5. Appoint First Directors :

Promoters have to appoint first directors who will take charge of management of the company immediately after incorporation. Promoters often nominate themselves as first directors of company.

3.1.2 INCORPORATION OF A COMPANY

Depending upon the objects of the company, scale of operation, amount of capital needed, etc. the promoters decide whether to form a public company or a private company.

Following steps are undertaken to incorporate a company :



1. Obtain Digital Signature Certificate (DSC):

A Digital Signature Certificate is needed for persons authorized to sign documents for e-filing. So Promoters and the proposed first directors need to obtain a DSC by applying to the Certified Authority .

***Digital Signature Certificate (DSC) :** Is a signature of a person in digital (electronic) form. It is used to sign on e-documents.*

2. Register DSC in the name of the Director with MCA:

After obtaining the DSC in the name of the with Promoter / Director, the DSC has to be registered with the MCA. MCA maintains the details of every Director including their DIN, personal details, etc.

MCA : Ministry of Corporate Affairs. It administers the Companies Act, 2013.

3. Obtain Director Identification Number (DIN)

The proposed first directors of the proposed company who do not have DIN, have to apply for DIN in electronic form SPICe - 32 at the time of incorporation. A person to be appointed as a Director must have a DIN.

Director Identification Number (DIN) : It is a unique 8 digit identification number allotted to a person to be appointed as a Director of a company.

4. Apply for Reservation of Name :

The Promoters have to get the proposed name of the company approved by the Central Registration Centre (CRC) by filling form RUN (Reserve Unique Name) along with the prescribed fees through MCA Portal (www.mca.gov.in).

Central Registration Centre : It is an authority which provides speedy incorporation related services especially in reservation of proposed name of a company including DSC.

Promoters may suggest more than one name in the order of their preference. After verifying its database, CRC will give its approval for the proposed name and reserve the name for a period of 20 days from the date of application.

5. Finalize Memorandum of Association and Articles of Association :

Two important documents the Memorandum and Articles of Association have to be submitted along with the application for incorporation of a company. These documents contain legal and technical information related to objectives of company and regulations for operation of company pursuant to company Law. Hence, the promoters take the help of professionals like a company Secretary, legal experts, accountants, etc. to finalize the draft Memorandum and Articles of Association.

In case a proposed public company wants to list itself with one or more stock exchanges, Promoters should send a copy of the draft Memorandum of Association and Articles of Association to such stock exchanges for their review and suggestions.

6. Signing, Stamping and Dating of Memorandum and Articles of Association:

The Memorandum of Association and Articles of Association must be signed by each subscriber to the Memorandum and shall add his name, description address, occupation, etc. in the presence of at least one witness who shall attest the signatures and likewise sign and add his name, description, address, occupation, etc.

After signing, the Memorandum and Articles of Association needs to be stamped as per the Indian Stamp Act, 1899. The stamp duty depends on the authorized share capital of the company and varies from state to state. There should be date on M/A or A/A. It may be stamping date or any other date after stamping.

Due stamp duty is required to be paid at the time of Incorporation.

7. Preparing other necessary documents needed for incorporating a company.

i) Consent of Directors

A list of persons who have agreed to be the first directors along with their written consent should be prepared. Their personal details, DIN, Proof of identity, interest in other firms or companies, etc. should be included in the list. The required written consent should be in prescribed format as per Companies Act, 2013.

ii) Details of Manager, Secretary, etc.

If the Articles of Association names a person who will be the manager, Secretary, etc; particulars of such persons should also be prepared for filing purposes.

iii) Declaration by subscribers to the Memorandum and First Directors

A declaration should be taken from each subscriber to the Memorandum of Association and every person named as First Directors in the Articles of Association that he is not convicted of any offence in connection with promotion, formation or management of any company and he has not been found guilty of any fraud or dishonesty or breach of any duty to any company during the preceding 5 years. They also have to give an undertaking that all the documents filed with the Registrar of companies are correct, complete and true.

8. Address for communication and notice of Registered office address :

At the time of incorporation, if the proposed company has not decided its location of Registered office, the promoters have to give an address for communication. As per the Companies Act, 2013, a company is required to have a Registered office within 30 days of incorporation.

9. Obtain a statutory declaration from:

- i) An advocate, practicing company Secretary, a cost accountant or chartered accountant who is engaged in the formation of the company, and
- ii) A person named in the Articles of Association as a Director, Manager or Secretary stating that all requirements related to incorporation has been complied with.

10. Filing of application and documents for incorporation of a company:

After all the documents are prepared, the promoters have to submit an application to the Registrar of companies in the prescribed form along with all the necessary documents and the prescribed fees for incorporation.

SIMPLIFIED PROFORMA FOR INCORPORATING COMPANY ELECTRONICALLY (SPICe) :

Rule 38 of Companies (Incorporation) (Fourth Amendment) Rules has introduced, with effect from 2.10.2016, a simplified integrated process for incorporation of a company. Under this, only one form-Form INC-32 (SPICe), needs to be submitted at the time of incorporation of a company. SPICe is to be filed for applying for :

- i) Reservation of Name of Company
- ii) Incorporation of a new company
- iii) DIN for Directors
- iv) PAN and TAN for new company

PAN : Permanent Account Number : is issued by Income Tax Department and is the proof of identify of a person who pays Tax. It consists of 10 digit alpha numeric code.

TAN : Tax Deduction and Collection Account Number is issued by Income Tax Department to all persons who are responsible for deducting or collecting Tax. It is a 10 digit alphanumeric code.

Along with the SPICe form, e-Memorandum of Association, e-Articles of Association and the prescribed fees and other documents necessary for incorporation of a company are to be submitted electronically.

11. Obtaining Certificate of Incorporation

After verifying that all the documents and information submitted to it is proper, the Registrar of Companies will enter the name of the company in the Register of Companies and certifies under his hand that the company is incorporated. Registrar issues the Certificate of Incorporation in the prescribed form.

Contents of Certificate of Incorporation:

- i) the name of the company.
- ii) date of issue of Certificate of Incorporation.
- iii) CIN.
- iv) PAN and TAN of the company.
- v) Signature of Registrar with date and his seal.

Importance of Certificate of Incorporation:

- i) Certificate of Incorporation is like the Birth Certificate of the Company as the company comes into existence from the date mentioned in the certificate.
- ii) The Company now becomes a legal person distinct from its members.
- iii) Company becomes a body corporate having perpetual succession from the date of its incorporation
- iv) The company can sue and be sued upon others in its own name.

**GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS**

Central Registration Centre

Certificate of Incorporation

{Pursuant to sub-section (2) of section 7 of the Companies Act, 2013
(18 of 2013) and rule 18 of the Companies (Incorporation) Rules, 2014}

I hereby certify thatis incorporated on this Day of
Two thousandunder the Companies Act, 2013 (18 of 2013) and that the company
is limited by shares.

The Corporate Identity Number of the Company is.....

The Permanent Account Number (PAN) of the company is

The Tax Deduction and Collection Account Number (TAN) of the company is.....

Given under my hand at..... this.....day of (month) Two thousand

Digital Signature Certificate

For and on behalf of the Jurisdictional Registrar of Companies

Registrar of Companies

Central Registration Centre

Disclaimer : This Certificate only evidences incorporation of the company on the basis of documents and declarations of the applicant (s). This Certificate is neither a license nor permission to conduct business or solicit deposits or funds from public. Permission of sector regulator is necessary wherever required. Registration status and other details of the company can be verified on www.mca.gov.in

Mailing address as per record available in Registrar of Companies office :

Allotment of Corporate Identity Number (CIN):

At the time of issuing Certificate of Incorporation the ROC also allots a CIN to the Company which is its unique identity number. CIN is a 21 digit alpha numeric code and is to be quoted in every form and correspondence that the company uses.

CIN : Corporate Identity Number – issued by ROC at the time of incorporation of a Company. It indicates whether a company is listed or unlisted, Industry code, state of its location, year of incorporation, ownership type and registration number.

E.g., CIN. of Air India Ltd. - U62100DL 1992GOI048581

Additional information:

How to read and understand CIN of a Company

Tata Steel Limited's CIN is - L27100MH1907PLC000260

L	27100	MH	1907	PLC	000260
↓	↓	↓	↓	↓	↓
Listed (L) or unlisted (U) company	Industry Code	State code of ROC	Year of Incorporation	Type of company i.e., Public(PLC), Private(PTC), OPC	ROC's Company Registration number



Activity:

From the following CIN, identify the type of companies:

- 1) U74999TN2014OPC098340
- 2) L28920MH1945PLC004520
- 3) U72900KA2003PTC033028

3.1.3 COMMENCEMENT OF BUSINESS

Public Companies and Private Companies not having a share capital can commence its business activities immediately after it has received the Certificate of Incorporation from the Registrar of companies.

However, Public Companies and Private Companies having share capital and which are incorporated after 2nd November, 2018 have to obtain a Certificate of Commencement of business from the Registrar of Companies before it can commence its business activities or exercise borrowing powers.

• Steps to obtain Certificate of Commencement of business:

1) Filing of declaration by Director:

A Director of the company has to file with the ROC, a declaration in the prescribed form along with fees. The declaration states that every subscriber of the Memorandum has paid the value of the shares agreed to be taken by them. The contents of the declaration shall be verified by a Company Secretary in practice or a Chartered Accountant or a Cost Accountant in practice.

The declaration should be filed within 180 days from date of incorporation of a company.

2) File Verification of Registered Office:

Company has to also file a verification of its registered office with the ROC.

3) Obtain license or approval from Sectoral Regulator:

Certain companies which propose to conduct banking business, insurance business or proposed to be listed on stock exchanges, require registration from Sectoral Regulators like Reserve Bank of India, Securities and Exchange Board of India, etc. Such companies must submit to ROC the approval obtained from the Sectoral Regulator.

Sectoral Regulators: are regulators appointed by Government to regulate a particular sector. e.g. SEBI is the regulator of securities market.

4) Commencement of business:

After filing declaration in prescribed form, the ROC then shall issue Certificate of Commencement of business.

Public and Private companies having share capital can now start its business or start collecting or borrowing money to undertake its business activities.

A Public company issues Prospectus to the public. A Prospectus is an invitation to the public to buy the shares of the company.



Activity: Find out the promoter or promoters shareholding of Maruti Suzuki India Ltd. and Reliance Industries Ltd.

SUMMARY

A company is an artificial legal person created by law. It comes into existence only after it is incorporated as per the provisions of the Companies Act, 2013.

The stages in formation of a company are -

- a) **Promotion :** Where promoters, the ones who want to form a company, take necessary steps to incorporate a company.
- b) **Incorporation :** In this stage all the necessary documents are filed with the ROC in SPICe form. ROC issues Certificate of Incorporation and CIN to the Company. The company has now come into legal existence.
- c) **Commencement of Business :** Public and Private companies not having a share capital can start its business immediately after getting Certificate of Incorporation. Whereas public and private companies having share capital must file declaration in prescribed form to obtain Certificate of Commencement of business from ROC.

Public company can issue Prospectus to sell its shares only after getting this certificate.



EXERCISE

Q.1 A. Select the correct answer from the options given below and rewrite the statements.

- 1) A company is.....
 - a) a human being
 - b) an artificial person created by law
 - c) an natural individual
- 2) are the persons who undertake the process of formation of a company.
 - a) Promoters
 - b) Directors
 - c) Registrar of companies

- 3) A..... company needs minimum two or more members.
 - a) Public
 - b) Private
 - c) One person Company
- 4) In a public company there must be minimum or more members.
 - a) one
 - b) two
 - c) seven
- 5)refers to contracts entered into by the promoters on behalf of a proposed company.
 - a) Pre-incorporation / Preliminary contracts
 - b) Fiduciary contracts
 - c) Memorandum of Association
- 6) A Director must have a to be appointed as a Director of a company.
 - a) PAN
 - b) DIN
 - c) CIN
- 7) has 21 digit alpha numeric code which is a unique number assigned to every company at the time of Incorporation.
 - a) DIN
 - b) PIN
 - c) CIN
- 8) is a document which invites the public to buy the shares of a company.
 - a) Articles of Association
 - b) Prospectus
 - c) Certificate of Incorporation.

B. Match the pairs.

Group 'A'		Group 'B'	
a)	Minimum 7 members	1)	Persons who conceive idea of setting up a company
b)	DIN	2)	Public company
c)	Preliminary contracts	3)	Promoters
d)	Fiduciary duties towards company	4)	Eight Digit alphanumeric number
e)	CIN	5)	Private company
		6)	Unique number assigned to each Director
		7)	ROC
		8)	21 digit alphanumeric code number
		9)	One Person Company
		10)	Contracts entered by Promoters with third parties

C. Write a word or a term or a phrase which can substitute each of the following statements.

- 1) Term which means registering a company as per provisions of Companies Act, 2013.
- 2) Persons who undertake the necessary steps to set up a company.
- 3) Term which refers to contracts entered into by Promoters with third parties on behalf of the proposed company.
- 4) The Birth Certificate of a company.

D. State whether the following statements are True or False.

- 1) A company is an artificial person.
- 2) To form a Public company, there must be minimum 2 persons/promoters.
- 3) Promoters are persons who take the necessary steps to set up a company.
- 4) Promoters can make secret profits while setting up a company.
- 5) In India companies have to be incorporated as per the provisions of Companies Act, 2013.
- 6) DSC is needed by Directors when they have to sign documents for e-filing.
- 7) A company can be registered even without submitting Memorandum of Association and Articles of Association.
- 8) Every Director has to quote his DIN while giving his consent to be a Director of a company.
- 9) ROC issues CIN only to certain companies.
- 10) All companies need Certificate of Incorporation.
- 11) All companies need Certificate of Commencement of business.

E) Find the odd one.

- 1) CIN, DIN, PAN
- 2) Promotion, prospectus, Incorporation of a company

F) Complete the sentences.

- 1) Promoters are the persons who undertake the process of
- 2) The document issued by the Registrar of companies when a company is incorporated is called as
- 3) On incorporation of a company the ROC allots a unique identity number called as
- 4) On behalf of a proposed company, preliminary contracts with third parties are entered by

G) Select the correct option form the bracket.

Group 'A'	Group 'B'
1) Promoter	-----
2) -----	Certificate of Incorporation
3) CIN	-----
4) RUN is used for	-----

(Corporate Identity Number, Reserving name of a company, Formation of a company, Birth certificate of a company)

H) Answer in one sentence.

- 1) Who is a Promoter?
- 2) What is CIN?

- 3) Which company needs Certificate of commencement of Business?
- 4) What are Preliminary Contracts?

I) Correct the underlined word and rewrite the following sentences.

- 1) ROC prepares draft Memorandum and Articles of Association.
- 2) Certificate of Commencement of Business is like a birth certificate of a company.

J) Arrange in proper order.

- 1)
 - a) Appoint First Directors
 - b) Prepare Draft Memorandum of Association and Articles of Association.
 - c) Come up with business idea
- 2)
 - a) Incorporation of a company
 - b) Commencement of a company
 - c) Promotion

Q.2 Explain the following terms/concepts.

- 1) Promoters
- 2) Promotion
- 3) Certificate of Incorporation
- 4) SPICe
- 5) CIN

Q.3 Study the following case/situation and express your opinion.

- 1) Mr. Ram, Mr. Sam and Mr. Tom who are partners have come together to convert their business into a company. They have finalized all the details about the business they want to do, capital needed, etc. However, they do not know how to proceed with the legal formalities. Hence they appoint Mr. Shah who is a Practicing Company Secretary to help them prepare documents needed for incorporating the proposed company.
 - a) Can Mr. Ram, Mr. Sam and Mr. Tom convert their partnership firm into a company?
 - b) Name 2 most important documents needed to incorporate a company.
 - c) Will Mr. Shah be considered as a Promoter of the Company? Why?
- 2) Mr. T along with his 5 friends have submitted all the necessary documents for incorporation of TRIM private limited company.
 - a) How many minimum promoters are needed to incorporate a private company?
 - b) When can TRIM Private limited company be said to have come into existence.
 - c) Name the two most important documents that must be submitted at the time of Incorporation of a company.
- 3) Sagar company limited got its Certificate of Incorporation on 1st Sept. 2018. The application for Incorporation was submitted on 16th Aug. 2018. There were 10 promoters who took the steps to incorporate the company.
 - a) State the date on which Sagar company limited came into existence legally?
 - b) On which date will the company get its Corporate Identity Number?
 - c) How many minimum promoters are needed for incorporating a public company?

Q. 4 Answer in brief.

- 1) State the contents of Certificate of Incorporation
- 2) State the importance of Certificate of Incorporation.
- 3) Write a note on - Role of Promoter
- 4) Draw the flow chart of steps in promotion of a company.

Q.5 Justify the following statements.

- 1) Certificate of Incorporation is like a Birth Certificate of a company.
- 2) Every Company on incorporation gets a CIN.
- 3) Promoters play an important role in formation of a company.

Q.6 Answer the following questions:

- 1) Explain briefly the steps involved in incorporation of a company.
- 2) Promoters play an important role in formation of a company. - Explain.



4

DOCUMENTS RELATED TO FORMATION OF A COMPANY

4.1 Memorandum of Association

4.2 Articles of Association

4.3 Prospectus

4.4 Distinction

INTRODUCTION

At the time of Incorporation of a company, following documents have to be submitted to the Registrar of Companies :

- i) Memorandum of Association
- ii) Articles of Association

A public company, if it is collecting capital from the public must issue prospectus to invite the public to buy its shares, debentures, etc.

Let's learn in detail about these documents in this Chapter.

4.1 MEMORANDUM OF ASSOCIATION :

It is a primary document of a company as it states the purpose for which the company is formed. It describes the range of activities a company can undertake.

□ DEFINITION :

1. Section 2 (56) of the Companies Act, 2013 defines Memorandum as “Memorandum of Association of a company as originally framed or as altered from time to time in pursuance of any provision of any previous company Law or of this Act.”

The above definition refers to Memorandum of Association as a legal document that must be prepared by every company as per the provisions of the Companies Act, 2013.

2. Lord Cairns :

“The Memorandum of Association of the company is its charter and defines the limitation of the powers of the company.”

As per this definition, Memorandum is a document which describes the constitution of the company and its rights or privileges. It states the powers of the company i.e. what it can do and what it cannot do.

□ Features of Memorandum of Association

1. It is a primary document of a company which states its aims and objectives.
2. It describes and regulates the relationship between the company and outsiders viz. the

shareholders, creditors, suppliers, investors etc. who can make out from the Memorandum, whether a company is permitted to undertake a certain activity (or transaction) or not.

3. Every company needs to prepare its Memorandum of Association at the time of its Incorporation and submit it along with the application for Incorporation to the ROC.
4. It is prepared by the promoters and needs to be signed by minimum
7 persons - in case of a public company,
2 persons - in case of a private company and
1 person - in case of One Person Company.

Each subscriber must write against his name the number of shares he has agreed to subscribe. As per the Companies Act 2013, each subscriber must take at least one share. This will not be required for a company with guarantee without share capital.

5. It contains following clauses :
 - a) The Name Clause
 - b) The Address Clause (Registered Office Clause)
 - c) The Objects clause
 - d) The Liability Clause
 - e) The Capital clause
 - f) The Association or Subscription Clause.
6. As it defines the nature and character of the company, it is not so easy to alter the clauses. The Act has laid down specific rules and provisions to be followed to alter each clause.
7. It cannot contain anything contrary to the provisions of the Companies Act, 2013.
8. Any act done by the company which goes beyond the powers of Memorandum will be 'Ultra-Vires' i.e. it will be invalid.
9. It is a public document and any one who wants to enter into a contract with the company is supposed to have knowledge about the contents of a company's Memorandum of Association.
10. Companies Act, 2013 has prescribed the format in the form of Table A, B, C, D and E for preparing the Memorandum for different type of companies.

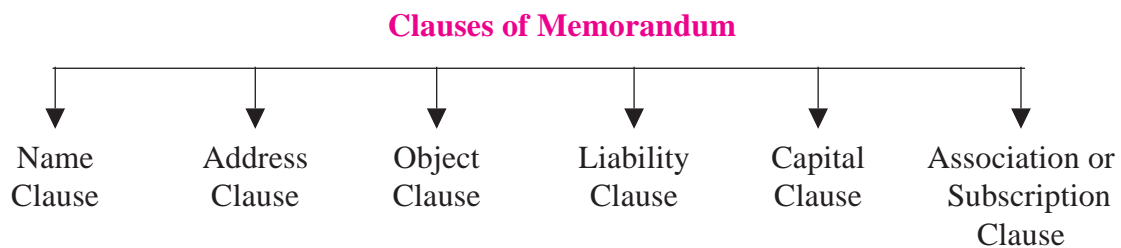
Additional information:

❑ Forms of Memorandum of Association

Companies Act, 2013 has prescribed the following format for preparing Memorandum of Association based on the type of Company :

- Table A - Memorandum of Association of a Company Limited by shares
- Table B - Memorandum of Association of a Company Limited by Guarantee and not having share capital.
- Table C - Memorandum of Association of a Company Limited by Guarantee and having share capital
- Table D - Memorandum of Association of an Unlimited company and not having share Capital.
- Table E - Memorandum of Association of an Unlimited company and having a share capital.

□ Clauses of Memorandum of Association and Provisions to alter it :



1) The Name Clause

This clause mentions the name of the company. As a Company is a legal entity distinct from its members, it has to have its own name to establish its separate identity. The promoters choose a name for the Company.

Following points should be kept in mind while choosing the name of the company

- i) The name should not be identical or resemble the name of an already existing company registered under this Act or any previous Company Law.
- ii) The name should not contain any words which will constitute an offence under any Law.
- iii) The name or words in the name shall not offend any section of people.
- iv) The name shall not violate the provisions of Emblems and Names (Prevention of Improper Use Act, 1950)
- v) The name shall not resemble any registered Trade Mark.
- vi) The name should not have any word that gives an impression that the company is connected with or has the support of Central or State Government or any Local authority.
- vii) In case of a Public company Limited by shares or Guarantee, the last word of the name should be 'Limited'. e.g. 'Tata Steel Ltd'

Similarly for a Private Company Limited by Shares or Guarantee, the last word of the name should be 'Private Limited' e.g. 'Posco India Pvt. Ltd'

And in case of One Person Company, the words 'One Person Company' must be mentioned in the name of the Company in bracket. e.g. 'Smart services Pvt. Ltd' (OPC)

The Companies Act states that every company shall paint or affix its name and the address of its registered office outside its place of business.

● Alteration of Name Clause :

A company may change its Name anytime -

- a) On its own
- b) On its conversion from Public company to Private or vice-versa.
- c) On the direction of the Central Government if it is of the opinion that the name is similar to the name of an already existing company or similar to a registered Trade Mark.

Name clause can be altered by passing a special resolution in the General Meeting of a Company

Special Resolution means 3/4th or 75% votes are in favour of a proposal.

2. The Address Clause (Registered office Clause)

The clause states the name of the State in which the Registered Office of the Company will be located. Every company must have its Registered office within 30 days of its Incorporation.

A Registered office is a must as

- i) It establishes the domicile (location) of a company.
- ii) It is the address to which all communications, notices, etc. will be sent.
- iii) It is also the place where all statutory books, records and documents of the company will be kept.
- iv) The address clause also indicates the jurisdiction of the court where cases can be filed by the company against others.

● Alteration of Address Clause

A company may change its Registered office from-

- a) One place to another place within the same city or town.
In this case, no alternation is made in the Memorandum
- b) One Town or city to another Town or city within the same state.
- c) One state to another state.

In both these cases (b) and (c), a special resolution is to be passed in the General Meeting to alter the Address clause. In case of (c) above, approval of Regional Director is required.

3. The Object Clause :

This clause defines the objects for which a company is formed. It indicates the range of activities a company can undertake. This clause states in detail the Main Objects for which the company is to be incorporated and also describes any other activities it may undertake if necessary, in achieving its main objects.

The Objects of the company must not be illegal, immoral, against the public policy or in contravention of the Companies Act or any other Laws.

A company cannot do anything beyond or outside the scope of its objects. It can do anything which is incidental to and consequential upon the objects specified in this clause.

Incidental : means related to the main activity.

Consequential : means resulting from the main activity.

Any act done by a company beyond the scope of its objects, will be 'Ultra-Vires' and will be void and have no legal validity.

● Doctrine of Ultra Vires

The word 'Ultra' means beyond and the word 'Vires' means the powers. Thus 'Ultra Vires' means beyond the powers of Memorandum. The Doctrine of Ultra Vires states that any activity done by a company which is beyond the powers of the company will be null and void or legally ineffective even if all the members have agreed to such act.

Thus a company cannot undertake any object or activity not stated in the object clause.

Effect of Ultra Vires Transaction

- 1) The acts which are Ultra-vires are considered null and void. The company cannot sue anybody nor can any third party file a case against the company for such acts.
- 2) Members of a company can get an injunction from the court to stop the company from doing any act which is Ultra Vires.

Injunction : Order from court to stop the act

- 3) The Directors of the company are personally liable for Ultra Vires acts of the company.

Purpose of the Doctrine of Ultra Vires:

Purpose of the Doctrine of Ultra Vires is to protect the interest of all the stakeholders like the shareholders, creditors, investors, Banks etc.

The stakeholders have a right to ensure that the company uses their money for the objects mentioned in the Memorandum.

- **Alteration of Object Clause**

A Company may change its object clause as and when it feels it is necessary to do so for its survival or growth.

A special Resolution must be passed in the General Meeting for altering the object clause.

4. The Liability Clause

This clause states the extent of liability of the members of the company.

In case of a company limited by shares, this clause states that the liability of the member is limited to the extent of the amount unpaid on the Face Value of Shares held by the member.

Similarly in case of a company limited by Guarantee, this clause states the amount which every member guarantees to pay towards the assets of the company at the time of winding up or towards the cost or expenses at the time of winding up.

In case of Unlimited liability company with or without share capital, this clause states that the liability of its members is unlimited.

- **Alternation of Liability Clause :**

The Companies Act, 2013 or any Rules made thereunder, does not contain any provision regarding alteration of liability clause. Legally speaking, the relationship between a member and the company is a contractual relationship. Hence, if any changes is to be made in the liability of a member, it has to be with the consent of the member and that too in writing.

5. The Capital Clause

This clause states the amount of capital with which the company is registered. This capital is hence called as Registered Capital. This is the maximum capital which the company is authorized to raise, hence it is also called as Authorized Capital.

In case of a company with share capital, this clause states the total amount of share capital in terms of total number of shares and the fixed value per share called as Face Value of the share.

If a company wants to issue more shares to raise more funds than the amount of Authorized Capital, then the Company has to alter the capital clause.

- **Alteration of Capital Clause**

The Articles of Association of a Company authorizes the alteration in the capital clause. Capital clause is altered for reasons like increasing the Authorized capital by issuing new shares, convert fully paid up shares into stock etc.

Capital clause is altered by passing an Ordinary Resolution in the General Meeting of the Company.

Ordinary Resolution: *Votes cast in favour are more than votes cast against a proposal.*

6. The Association or Subscription clause

This is the last clause of the Memorandum of Association and it is placed at the end. In this clause, the subscribers to the Memorandum make a declaration stating that they are desirous of forming a company as per the Memorandum and agree to take a certain number of shares in the capital of the company.

In case of a public company, the Memorandum must be signed by at least seven subscribers whereas for a Private Company - by at least two subscribers and one subscriber in case of One Person Company.

Each subscriber has to put his name, address and occupation in the presence of at least one witness who shall also put in his details.

4.2 ARTICLES OF ASSOCIATION

Articles of Association is the second most important document which needs to be filed with the ROC along with the Memorandum at the time of incorporation of a Company. This document is subordinate (secondary) to the Memorandum. It is like the Bye-Laws of the company as it contains rules and regulations that governs the internal management of the company. It defines the powers, rights and duties of the Board of Directors and officers and also the manner in which the business of the company will be carried on. It establishes relationship between the company and its members and also between the members.

□ DEFINITION

As per Section 2(5) of the Companies Act, 2013, ‘Articles’ means the “Articles of Association of a Company as originally framed or as altered from time to time in pursuance of any previous Company law or of this Act.”

Thus, Articles is a legal document in writing which contains rules and regulations which helps in internal management of a company. As every company may be managed differently, the Companies Act, 2013 does not specify the exact contents of the Articles. However, the regulations given in the Articles should not exceed the power of the Company as laid down by its Memorandum or contradict the Companies Act, 2013 or any other Laws.

Articles of Association usually includes rules and regulations regarding powers, rights and duties of governing body, issue of shares, calls on shares, forfeiture of shares, procedure for transfer and transmission of shares and debentures, etc.

Companies Act has given the format in the form of Model Articles i.e. Table F, G, H, I and J for preparing the Articles of Association for different types of Companies.

A Company is free to include all or any of the regulations contained in the Model Articles as applicable to such company. As per the Act, Articles must be signed by all the subscribers who have signed the Memorandum and give all their details like name, address and occupation in the presence of at least one witness who shall sign and attest the signatures and also give his details.

Additional information:

❑ Model Articles as per Companies Act 2013

The Act has given the following Model Articles based on the type of company:

Table F - Model Articles of Association for Company limited by shares.

Table G - Model Articles of Association limited by Guarantee and having share Capital

Table H - Model Articles of Association for Company limited by Guarantee and not having share Capital

Table I - Model Articles of Association for Unlimited Company having share Capital.

Table J - Model Articles of Association for Unlimited Company and not having share Capital.

❑ Contents of Articles of Association

A Company may adopt the Model Articles as given by the Companies Act, 2013 or add additional matters as per its requirements.

The Articles of Association usually contain rules and regulations related to the following matters -

- i) Share Capital - Shares and their value and their division into different types of shares.
- ii) Rights of each class of shareholders and procedure for variation of their rights.
- iii) Procedure relating to allotment of shares, making of calls and forfeiture of shares.
- iv) Rules relating to transfer and transmission of shares and the procedure to be followed.
- v) Lien of the company on shares allotted to the members for the amount unpaid by them.
- vi) Increase, alteration or reduction of Share Capital.
- vii) Appointment, remuneration, power, duties, etc. of the Directors and officers of the Company.
- viii) Procedure for conversion of shares into stock and vice versa.
- ix) Provisions related to Board, Committee and General Meetings, Voting rights of members, proxy, quorum, poll, adjournment of meeting etc.
- x) Audit of accounts, transfer of money to Reserves, declaration of Dividend, etc.
- xi) Borrowing powers of the Company and the mode of borrowings.
- xii) Issue of Share Certificates including procedure for issue of duplicate share certificate.
- xiii) Constitution and composition of Audit committee, Remuneration Committee, Corporate Social Responsibility Committee.

- xiv) Provision for winding up of Company.
- xv) Arbitration
- xvi) Indemnity

Lien on shares: means company has right of possession of shares till the member does not pay off his debts or liabilities to the company.

- ❑ Articles of Association of a Private Company must contain 3 restrictions viz -
 - i) Limit the number of members to 200
 - ii) Restrict right to transfer shares
 - iii) Prohibits inviting public to buy its shares, debentures or any securities of the company.

❑ **Entrenchment of Articles / Entrenched Articles :**

Entrenched Articles are those Articles (Provisions) which cannot be altered by passing only a special resolution but a more elaborate procedure as prescribed by the Act must be followed. e. g. To alter the name of the Company 9/10 th majority should agree.

Entrenchment Articles can be done at the time of formation of a company or even later on.

❑ **Alteration of Articles of Association**

The Companies Act states that subject to the provisions of the Act and the conditions contained in the Memorandum of Association, a company can alter its Articles of Association by passing a special resolution in the General Meeting of the Company. Alterations in the Articles, bind the members in the same way as the original Articles did.

A Company can alter its Articles of Association in the following ways -

- i) by adoption of new set of an Articles
- ii) by deletion of an article
- iii) by addition or insertion of a new article
- iv) by substitution of an article
- v) by amendment of an article

❑ **DOCTRINE OF INDOOR MANAGEMENT**

It is an accepted fact that certain information which is internal to a company cannot be known by outsiders. Hence they act in accordance to the information they get from the Memorandum of Association and Articles of Association.

Doctrine of Indoor Management states that persons entering into a contract with the company need not inquire whether the company or its officers have properly followed the internal proceedings as stated in the Articles. It is assumed that the company acts as per its Memorandum and Articles of Association.

Doctrine of Indoor Management protects the interest of the outsiders when they act based on the Memorandum and Articles of Association of a Company as outsiders are not bound to inquire into the regularity of internal proceedings.



Activity :

Read the Memorandum and Articles of Association of Tech Mahindra Limited From the website <http://www.techmahindra.com/sites/Resources>.

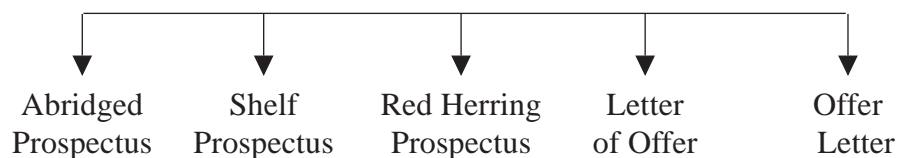
4.3 PROSPECTUS

When a Public company, is collecting capital by issuing shares to the public has to issue a document called 'Prospectus.' Prospectus is a document which contains information about various aspects about the company and invites the investors to buy the securities offered by the company.

Section 2 (70) of Companies Act, 2013 defines prospectus as “any document described or issued as a prospectus and includes a Red Herring Prospectus or shelf prospectus or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.”

The prospectus must contain true and factual disclosures as investors decide to invest based on the information given in the prospectus.

Types of Prospectus issued by a company



1. ABRIDGED PROSPECTUS

It contains the main contents of a prospectus but in brief. It is attached with the application form issued by the company while offering its securities. Abridged prospectus is issued only in case of Public offer made by a company.

2. SHELF PROSPECTUS

A public company may raise funds from the public by issuing securities as and when it needs more funds. For every such issue, fresh prospectus is to be issued. The process of preparing and registering a prospectus is very time consuming. Thus, instead of preparing fresh prospectus for every issue, a company can prepare 'Shelf Prospectus'. Shelf prospectus can be used for all issues made by the company upto one year from the date of first offering of securities under that prospectus.

However, an 'Information Memorandum' is to be filed with the ROC every time a subsequent offer of securities is made during the validity period of one year of the shelf prospectus. The Information Memorandum contains latest material facts such as any new charges created on assets of the company, changes in the financial position from that of the succeeding offers, etc.

Charges : charges is an interest or lien created on the assets of the company when it uses them as security to borrow money.

3. RED HERRING PROSPECTUS

A Red herring prospectus is a kind of incomplete prospectus as it does not include complete particulars of the quantity of securities offered or the issue price of the securities being offered. It is usually issued at the time of IPO or for any issue done under the Book Building process.

IPO (Initial Public offer) is when company offers its shares for the first time to the public.

Book Building process'. It is a process by which company determines issue price of securities based on demand from the public.

A Red Herring prospectus shall have the same obligations that are applicable to prospectus. A Company must file a Red Herring Prospectus with ROC at least 3 days prior to the opening of the subscription list and the offer.

4. LETTER OF OFFER

When a company undertakes further issue of shares by making a Rights Issue i.e. offering shares directly to its existing shareholders in proportion to the shares held by them, the company issues a document called as 'Letter of offer'. It contains the details of the offer.

5. OFFER LETTER

An offer letter is issued to select group of investors by a company when it makes private placement offer of securities. Private placement means when a company is offering its shares to any select group of investors.

□ CONTENTS OF PROSPECTUS

A prospectus must contain the following -

1. Information and Reports :

As per the Companies Act, prospectus must contain information such as the name of the issuing company, its full Registered office address with phone numbers, email address, nature, number and price of securities being offered, details of Lead Merchant Banker, Registrar to the Issue, names of Stock Exchange where the shares are to be listed, a clause on general risk, date of opening and closing of issue etc. It must also have reports on financial information. SEBI specifies the contents to be included in the prospectus.

Lead Merchant Bankers are Financial Institutions which guides companies in issuing Shares.

Registrar to the issue are agents appointed by company to collect application forms and money, maintain records of investors, etc.

2. Declaration :

There should be a declaration by the company saying that all the provisions of the Companies Act have been complied with and that the prospectus does not contain anything contrary to the provisions of Companies Act, Securities Contracts (Regulation) Act, 1956 and SEBI Act, 1992 and the rules and regulations made thereunder.

3. Statement of an Expert :

A prospectus may contain a statement made by an expert like a Company Secretary, Chartered Accountant, Cost Accountant, Valuer, Engineer, etc. relating to matters that they have looked into. The Expert has to give written consent to issue the prospectus.

4. Any other matter as may be prescribed by the Companies Act.

□ STATUTORY REQUIREMENTS IN RELATION TO PROSPECTUS

1 Draft Prospectus to be made Public

A draft prospectus filed with SEBI by the company should be made available to the Public and to the Stock Exchanges where the company wants to list its shares.

2. Signed by Directors

Prospectus must be signed by all Directors or by the duly authorized attorney.

3. Registration of Prospectus

A copy of the prospectus must be registered (filed) with the ROC before issuing it to the public.

4. Dating of prospectus

A prospectus has to be dated. The date on the prospectus is considered as the date of publication of the prospectus.

5. Issuing prospectus to the Public

Prospectus must be issued to the public within 90 days from the date of registering a copy with the ROC.

□ Penalty for non-compliance

If a Prospectus is issued in contravention of the above mentioned provisions, the penalty is as follows -

- 1) The company shall be liable to pay a fine between ₹ Fifty Thousand and Three Lacs, and
- 2) Every person who has knowingly involved in issuing such a prospectus, will be punishable with imprisonment for upto 3 years or with fine between ₹ Fifty Thousand and ₹ Three Lacs or with both.

□ MIS-STATEMENTS IN A PROSPECTUS

As the investors make their decision to invest based on the information given in the prospectus, care should be taken to ensure all information is accurate and no material fact is omitted.

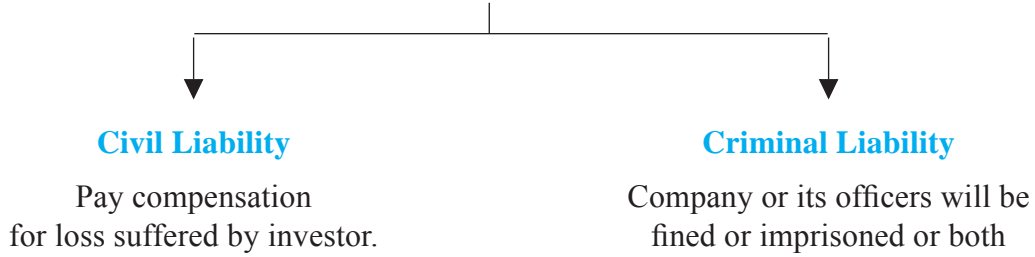
An untrue statement or mis-statement means -

- i) The statement is misleading in form or content, or
- ii) Where any inclusion of a statement or its omission is likely to mislead the reader.

If an investor has bought shares of a company based on a prospectus which had misleading information or suppressed material information, then he can take action against the Company.

If there is any untrue or mis-statements in the prospectus, the company and persons responsible for issuing such prospectus will have to face following liability.

Liability incase of mis-statement



4.4 DISTINCTION BETWEEN MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION

Sr. No.	Points	Memorandum of Association	Articles of Association
1)	Meaning	It is the document which defines the aims and objectives of the company.	It is the document which contains the rules and regulations for internal management of the company.
2)	Status	It is the primary document without which no company can be formed.	It is the second most important document prepared at the time of incorporation of the company. It is subordinate to Memorandum.
3)	Scope	It lays down the area beyond which the activities of the company cannot go. It lays down the boundaries within which the Articles will be framed.	It provides the regulations within the boundaries laid down by the Memorandum. It thus lays down the scope within which company can function.
4)	Contents in which	It lays down the range of activities a company can do and cannot do. It contains the Name of the company, state in which Registered office is located, capital structure, details of objects of company, liability of members, etc.	It lays down rules and regulations for internal management of the company. It contains details of allotment of securities, appointment, duties and powers of directors, auditors, officers, winding up procedure etc.
5)	Relation	It defines relationship between company and outsiders.	It defines relationship between Company and members and between the members.
6)	Contradict	It cannot contain anything which contradicts the Companies Act or any other statute.	It cannot contain any provisions which contradicts the Companies Act as well as the Memorandum.

Sr. No.	Points	Memorandum of Association	Articles of Association
7)	Alterations	The process of Alteration of Memorandum is little complicated as approval of Central Government may be needed at times.	Altering the Articles is a simple process as often only a special resolution is needed to alter it.

SUMMARY

- 1) At the time of Incorporation, every company has to submit Memorandum of Association and Articles of Association.
- 2) Memorandum of Association is the Primary document. It describes the nature and character of the company i.e. states the aims and objectives of the company. It establishes relationship between company and outsiders. It has following clauses :
 - a) **Name Clause** : Name of the company
 - b) **Registered office address** : The state where the company's registered office is located.
 - c) **Object clause** : The main object (activity) of the company and other activities which can be taken up in furtherance of the main object.
 - d) **Capital clause** : describes the capital structure of a company, types of shares, etc.
 - e) **Liability clause** : describes the extent of liability of the members
 - f) **Association or subscription clause** : contains the name, details and signatures of subscribers to the Memorandum.
- 3) Doctrine of Ultra Vires: It states that any act beyond the powers of memorandum is null and void.
- 4) Articles of Association is subordinate document to the Memorandum. It contains the rules and regulations for internal management of the company. It contains provisions for allotment of shares, transfer and transmission of shares, payment of Dividend, appointment, duties and powers of Directors, Managing Directors, etc.
- 5) Doctrine of Indoor Management protects people who enter into contracts with company assuming that the company follows all procedure and rules as mentioned in the Memorandum and Articles of Association.
- 6) Prospectus: It is an invitation to the public to buy the shares of a Company. A company can issue Shelf prospectus, Red Herring prospectus, Letter of offer etc. depending upon the kind of issue it is making.
- 7) Misstatements in Prospectus refers to any untrue or misleading information given in the prospectus. Company and its officer may face Civil and Criminal Liability for misstatements in prospectus.



EXERCISE

Q.1 A. Select the correct answer from the options given below and rewrite the statements.

- 1) is a primary document of the company which contains the aims and objectives of the company.
a) Memorandum of Association b) Articles of Association c) Prospectus
- 2) describes the relationship between company and outsiders.
a) Memorandum of Association b) Articles of Association c) Prospectus
- 3) The clause describes the range of activities a company can undertake.
a) Name b) Capital c) Object
- 4) Any act done by the company beyond the powers of Memorandum is called as
a) Doctrine of Indoor management b) Ultra Vires c) Mis-statement
- 5) acts are void or legally ineffective.
a) Object clause b) Main Object c) Ultra Vires
- 6) clause contains the details of liability of the members.
a) Name b) Liability c) Object
- 7) clause states the amount of Authorised capital with which the company is registered.
a) Liability b) Object c) Capital
- 8) contains rules and regulations for internal management of the company.
a) Articles of Association b) Prospectus c) Memorandum of Association
- 9) Articles establishes relationship between company and
a) Members b) Outsiders c) ROC
- 10) is an invitation to the public to subscribe for the shares of the Company.
a) Memorandum b) Prospectus c) Articles of Association
- 11) For making multiple issue of shares within a year, a company can prepare a Prospectus.
a) Abridged b) Shelf c) Red Herring
- 12) is an incomplete prospectus.
a) Red Herring Prospectus b) Shelf Prospectus c) Abridged Prospectus

B) Match the pairs.

Group 'A'		Group 'B'	
a)	Capital clause	1)	Details of capital structure of a company
b)	Liability clause	2)	Used for multiple issue of shares
c)	Acts beyond the powers of Memorandum	3)	Abridged Prospectus
d)	Red Herring Prospectus	4)	Describes main objectives
e)	Shelf Prospectus	5)	Used for Rights Issue
		6)	Incomplete Prospectus
		7)	Ultra Vires
		8)	Doctrine of Indoor management
		9)	Extent of liability of members
		10)	Articles of Association

C. Write a word or a term or a phrase which can substitute each of the following statements:-

- 1) Primary document of a company which states aims and objectives of a company.
- 2) Document which establishes company's relationship with outsiders.
- 3) Document which states the limits within which a company has to operate.
- 4) Document which contains, Name Clause, Registered Office Clause, Capital Clause, etc.
- 5) Document which is subordinate to the Memorandum of Association.
- 6) Document which contains rules and regulations for internal management.
- 7) Term used for acts beyond the scope of Memorandum of Association.
- 8) Clause which describes the main activities a company can undertake.
- 9) Clause which gives details of authorized capital or Registered Capital.
- 10) Clause which describes the extent of liability of members.
- 11) Last clause of Memorandum which contains name, signature and other details of all the subscribers to the Memorandum.
- 12) Document which establishes relationship between a company and its members.
- 13) Document issued by public company inviting public to subscribe to its shares.
- 14) Prospectus attached with every share application form.
- 15) Prospectus used for multiple issue of shares within a year.
- 16) It is an incomplete prospectus.
- 17) This prospectus does not contain information about quantum of shares to be issued or the price at which shares will be issued.

D) State whether the following statements are True or False:

- 1) Memorandum of Association and Articles of Association is prepared at the time of incorporation of a company.
- 2) Memorandum of Association describes the nature and character of the company.
- 3) Memorandum establishes relationship between Company and Members.
- 4) Any act done by the company beyond the powers of Memorandum is Ultra Vires.
- 5) Articles of Association can have provisions which contradicts the Memorandum.
- 6) Memorandum need not have a Liability Clause.
- 7) Articles of Association is subordinate to Memorandum.
- 8) Memorandum contains rules and regulations for internal management of a company.
- 9) Every subscriber who signs the Memorandum must also sign the Articles.
- 10) Entrenched Articles cannot be easily altered.
- 11) Prospectus can be issued by a private company.
- 12) Only public companies can issue Prospectus.
- 13) Prospectus must be issued within 1 year from the date of filing it with the ROC.
- 14) Actions can be taken against a company or its officers for misstatements in prospectus.
- 15) Every company has to issue shelf prospectus every time it offers shares to the public.
- 16) Red Herring prospectus does not contain details of the price at which shares will be sold by the company.
- 17) Letter of offer is issued at the time of Rights Issue.

E) Find the odd one.

- 1) Name, Clause, Rights of Board Directors, Object clause.
- 2) Rights of shareholders, Appointment and remuneration of Directors, Liability clause.
- 3) Shelf prospectus, Abridged Prospectus, Articles of Association.

F) Complete the sentences.

- 1) The documents which states the aims and objectives of a company is called as
- 2) Any act done by the company which goes beyond the powers of Memorandum of Association will be called as
- 3) The document which is subordinate to the Memorandum of Association is called
- 4) The document which contains the rules and regulations governing internal management of a company is called
- 5) The document issued by a company to invite investors to buy its securities is called as

G) Select the correct option form the bracket.

Group 'A'	Group 'B'
1) -----	Memorandum of Association
2) Liability clause	-----
3) Incomplete Prospectus	-----
4) -----	Establishes relationship between company and its members

(Articles of Association, Red Herring Prospectus, Primary document, details of liability of members)

H) Answer in one sentence.

- 1) Which document contains the aims and objectives of the company?
- 2) What does the capital clause describe?
- 3) When is Abridged Prospectus issued?

I) Correct the underlined word and rewrite the following sentences.

- 1) Articles of Association states the aims and objectives of the company.
- 2) Prospectus is subordinate to Memorandum of Association.
- 3) Prospectus contains liability clause.

J) Arrange in proper order.

- 1) a) subscription clause
b) Name clause
c) Object clause

Q. 2 Explain the following terms/concepts.

- | | |
|----------------------------------|----------------------------|
| 1) Memorandum of Association | 2) Articles of Association |
| 3) Name Clause | 4) Object Clause |
| 5) Liability Clause | 6) Capital Clause |
| 7) Registered Office Clause | 8) Ultra Vires act |
| 9) Doctrine of Indoor management | 10) Prospectus |
| 11) Mis-statements in Prospectus | 12) Abridged Prospectus |
| 13) Shelf Prospectus | 14) Red Herring Prospectus |

Q. 3 Study the following case/situation and express your opinion.

- 1) The Articles of a company stated that while borrowing any money from outsiders, the document must have the signatures of the Managing Director (MD) and any one of the Director. The Articles of Association clearly stated the procedure to be followed while

borrowing money. The Managing Director did not follow all the procedures but still borrowed money from Mr. X. Mr. X assumed that the MD has followed the required procedures.

- a) Can the MD be held punishable for his act?
 - b) Under which Doctrine can Mr. X take action against the company?
 - c) Explain the Doctrine.
- 2) Mr. A entered into a contract with Star Limited company and as advance payment gave a cheque of ₹ 1 lac to a Director Mr Sam. Mr. Sam is not the Managing Director. Articles states that only the MD is authorized to sign any contracts or receive any payments on behalf of the company.
- a) Did Mr. Sam have the authority to accept the cheque? Why?
 - b) Can Mr. Sam's action be called as Ultra Vires? Why?
- 3) The Object clause of Memorandum of a company stated the main object as manufacturing of plastic chairs and tables and any other activity in furtherance of achievement of its main activity. The Board of Directors wants to now also produce TV. Serials and feels that the shareholders may give their permission.
- a) Can the company with immediate effect start producing TV. Serials? Why?
 - b) How can the object clause of the company be altered?
- 4) A public limited company has issued all the shares mentioned in its Memorandum as Authorized Capital. Now the Company wants to make a public issue of 10,000 shares at face value of ₹ 100 Per share, to raise more funds for its expansion activities.
- a) Which clause of Memorandum needs to be altered?
 - b) In which meeting the alteration can be approved?
 - c) Which document should the company issue to invite the public to buy its shares?
- 5) A Company stated in its prospectus that it has been making profits since the last 5 years. However, Mr. X. an investor found out that two years back the company had not made any profit. The prospectus was filed with the ROC on 1 st Jan, 2017 and was issued to the public on 10 th Feb 2018.
- a) Can Mr. X state that there was a misstatement in the prospectus?
 - b) If found guilty which two types of liability will the company and its officers face?
 - c) Can the prospectus be valid for issue to the public on 10th Feb 2018.
- 6) A Company plans to offer Rights Issue.
- a) Which document must it send to its shareholders for offering the Rights Issue?
 - b) Instead of Rights Issue, if the company wants to issue shares to the public, which document must it issue for inviting the public to subscribe for it?
 - c) Name the document which is called as incomplete prospectus.

Q.4 Distinguish between the following.

- 1) Memorandum of Association and Articles of Association.

Q.5 Answer in brief.

- 1) State any four clauses of Memorandum of Association.
- 2) State any four contents of Articles of Association.
- 3) State the Statutory requirements in relation to Prospectus.

Q.6 Justify the following statements.

- 1) Memorandum of Association defines the limitations of the powers of the company.
- 2) Ultra vires acts are null and void
- 3) Contents of Articles can be altered.
- 4) Doctrine of Indoor Management protects outsiders who are unaware of the correctness of internal proceedings of a company.
- 5) Prospectus is an important document issued by a public company.
- 6) Company and officers responsible for issuing Prospectus are liable for mis-statements in Prospectus.

Q.7 Answer the following questions:

- 1) Briefly explain the clauses of Memorandum of Association.
- 2) Define Memorandum of Association. Explain its features.
- 3) What is Articles of Association? Explain briefly its content.
- 4) Define Prospectus. Explain its contents.



5.1 Members : Meaning

Member v/s Shareholder

5.2 Eligibility of Membership**5.3 Acquisition of Membership****5.4 Cessation/Termination of Membership****5.5 Rights, Duties and Liabilities of a Member****INTRODUCTION :**

An institution or organization is formed for purposes like education, entertainment, sports, health, business etc. It is a structured unit with well-defined objectives and relationships. The organization is formed and managed by persons even though by itself it is a non-living set-up. The persons associated with an organization are termed as 'Members'. It can be rightly said that organization is by Members, of Members and for Members.

Let's understand the concept of Members / Membership of Joint Stock Company:-

5.1 MEANING OF MEMBER :

Member means a person whose name is entered in the Register of Members of Company and also includes holder of equity shares whose name is entered as beneficial owner in the records of Depository.

Two pre-requisites for a person to become a member of the company are:

- 1) The agreement in writing to take shares of company.
- 2) The Registration of the person so agreeing in Register of Members of the Company.

1) Register of Members:

The Register which enlists all its members with their details in a prescribed form.

2) Depository:

Is an institution where securities are held in electronic / de-materialised form. viz. National Securities Depository Ltd. (NSDL), Central Depository Services Ltd. (CDSL).

3) Beneficial owner:

Is the investor who owns securities in electronic form and has interest in the securities.

Member v/s Shareholder:

Generally, buying shares is the most common and easiest way or medium whereby a person becomes Member of the Company. So terms Member and Shareholder can be used interchangeably and mean the same person for all practical purposes.

But in some cases, a Member might not be a shareholder and vice versa; as explained below:

I) Member without being a shareholder:

1) Signatories to the Memorandum of Association:

They become Members of the company but are not Shareholders till shares are allotted to them.

2) Company Limited by Guarantee Amount:

This company does not have any share capital. Therefore it has only Members and no Shareholders.

3) Membership by Acquiescence / Estoppel:

If any person misrepresents himself as a member; shall be stopped from refuting his position subsequently and is held liable as a member even though he is not a shareholder. A person who knowingly permits entering his name in register of members.

Acquiescence means to permit, agree to allow, accept or give approval for.

4) Transfer of Shares:

The Transferor (Seller) of shares continues to be member of company till his name is removed from Register of members and replaced with name of Transferee (Buyer).

5) On Death of a Member / By succession / Transmission of shares:

Shares of a deceased member are held by his legal heir/representative. The deceased person ceases to be the shareholder but continues to be a Member till transmission is effected. Transmission is the process wherein the shares of deceased are registered in the name of his legal representative.

6) On Insolvency of a Member:

Shares of an insolvent member are held by the court appointed Official Receiver or Assignee so the insolvent person continues to be member but he is not a shareholder.

II) Shareholder without being a Member:

The Transferee (Buyer of the shares), Official Receiver, in case of insolvency Legal heir, in case of death as explained above, are Shareholders but not Members of the Company.

5.2 ELIGIBILITY OF MEMBERSHIP:

Let us now know who can or cannot be a member of the company.

- **Criteria:** Buying shares amounts to making a contract; so any entity viz. person/ organization competent to make contracts can be a member of the company. This topic therefore has a context to the Provisions of the Contract Act too. Subject to the provisions of Companies Act, Memorandum and Articles of company; any person 'sui-juris' can become a member of the company as follows:

'sui-juris : Latin Phrase means legally competent to manage one's own affairs.

I) Individuals:

- a) **Minor:** A minor cannot be a member of the company himself. A guardian can enter into share purchase transaction on behalf of a minor.
- b) **Insolvent:** Since the beneficial rights of shareholding are held by Official Receiver/ Assignee, so the insolvent person stops being the member.
- c) **Insane/Lunatic:** Inability to enter into a contract renders the person ineligible for membership of a company.
- d) **Foreigner:** Since a foreigner can enter into contract; Foreigner can buy shares to be Member of an Indian company, subject to provisions of FEMA 1999.

FEMA: Foreign Exchange Management Act, 1999. It aims at facilitating external trade and Promote foreign exchange market in India.

II) Organizations:

- a) **Company:** A company being a legal person, can be a Member of another company in its own name. It can become member only if authorised by Memorandum of Association. Company cannot invest in its own Shares.
- b) **Co-operative Society:** Being a registered entity, it can be a Member of the company.
- c) **Limited Liability Partnership:** Since it is a juristic person it can be Member of the company.
- d) **Hindu Undivided Family: (HUF)** The Act does not prohibit membership of HUF, but shares can be registered only in the name of its 'Karta'.
- e) **Partnership Firm:** The firm cannot be member of the company as it is not a registered entity. But firm can hold shares of company in the individual names of Partners.
- f) **Trust:** Registered Trust can become a shareholder in company in it's own name.

Eligibility of Membership of a Company at a Glance

Individuals			Organizations	
Sr. No.	Category	Eligibility	Category	Eligibility
1	Minor himself	x	Company	✓
2	Insolvent	x	Co-operative Soc.	✓
3	Insane/Lunatic	x	LLP	✓
4	Foreigner	✓	HUF	x
5	Karta of HUF/ Partners	✓	Partnership	x
6			Trust	✓

(where '✓' means eligible and 'x' means not eligible)

5.3 ACQUISITION OF MEMBERSHIP

Let us now learn how one can become member of the company.

- 1) **By subscribing to the Memorandum:** The subscribers to the Memorandum of company are its members viz. seven (7) in case of public company, Two (2) in case of Private Company and one (1) in case of One Person Company. In fact they are the first members of the company.
- 2) **By application and allotment of Shares:** Any person who wishes to buy company's shares has to apply for the same and on acceptance of application by the company, the person is allotted the shares and becomes shareholder and thereby its Member on entering his/her name in Register of Members.
- 3) **By holding Shares in Dematerialized Form:**

Any person who has shares in his name as beneficial owner in the records of the Depository is member of company.

Dematerialized Form: *It means holding financial securities in Electronic form and not Physical or paper form.*

- 4) **By Transfer:** Any person who buys shares of a company from an existing member becomes its registered member after company accepts his transfer request.
- 5) **By Transmission of Shares:** Transfer of shares by the operation of law in the events of death, insolvency and insanity of member is called Transmission of shares. The legal representative/heir in case of death, Official receiver in case of insolvency and administrator in case of insanity replace the concerned member.
- 6) **Nominee of One Person Company (OPC):** In case of OPC, the name of nominee whose name is given in the Memorandum of OPC; becomes its sole owner in the event of the death of the member.
- 7) **By Acquiescence:** If a person is wrongly entered in the Register of Members or holds himself out as a member or knowingly allows his name to remain on the Register of Members (without informing the company about the mistake and getting it rectified), is stopped from denying his membership and is liable as a member like in the event of winding up of company. It is therefore called Membership by Principle of Estoppel.

5.4 Cessation/Termination of Membership:

A person ceases to be the member of the company when any of the following occurs:

- 1) Transfer of Shares
- 2) In the event of Death or Insolvency of a Member.
- 3) Sale of Shares by the Member in the buy-back offer by the company.
- 4) Forfeiture of shares by company.
- 5) Surrender of shares to the company by Member.
- 6) Exercising of lien over the shares of a Member by the company.

- 7) The Person who holds Redeemable Preference Shares; ceases to be the Member when company redeems these shares.
- 8) Person rescinds (refutes) the contract of membership on the grounds that he/she was cheated and frauded by misrepresentation of information given by company in the prospectus.
- 9) Winding up of the company.

- 1) *Buy-back means a corporate action where as a company buys back its shares from existing shareholders at price equal to or more than market price.*
- 2) *Forfeiture means cancellation of share by company if a members fails to pay money due on shares.*
- 3) *Surrender of shares is a voluntary return of shares by member to the company.*
- 4) *Lien on shares means company does not transfer shares of a member till he pays his debt to the company.*
- 5) *Redeemable preference shares are issued for a certain period of time and paid back at the end of it.*

5.5 RIGHTS, DUTIES AND LIABILITIES OF A MEMBER:

Being an integral part of a company Member enjoys certain rights and has to fulfill certain duties and liabilities.

Let's study what are the rights conferred on member and duties and liabilities to be fulfilled by member.

Rights of Members:

1) Right of accessing Books and Documents:

A member can get the copies of Memorandum and Articles of Association, Auditor's and Directors Reports, Balance Sheet and Profit and Loss Account;

Also, member can inspect Registers of Members, Debenture-holders, Charges, Investments, Minutes Book of all General Meetings, Proxies lodged for general meetings and all Returns filed by the company.

2) Right to make Fundamental Corporate Decision:

Members hold exclusive powers to decide at meetings of members on matters like a) Change of Registered office of company b) Increase in Authorized Capital c) Change of objects of the company d) Amend Articles of Association e) Acquisitions, Mergers and takeovers by the company f) Appointing sole-selling agents g) Winding up of the company.

3) Right to Participate in General Meetings:

Members have a right to receive the notice and agenda of all general meetings, attend them in person or appoint proxy, speak and vote at meetings, demand and vote at a poll; demand to call Extra-ordinary General Meeting etc.

4) Right to appoint and Remove a Director:

Members have a right to appoint and remove the Directors.

5) Right with respect to company's accounts and its audit:

Members approve the annual accounts at the Annual General Meeting; appoint auditors, decide their remuneration and also have right to remove the auditors.

6) Right to participate in Profits of the company:

Member invests money in company with a hope of getting returns on the investments. Therefore, Member has the right to approve Dividend; and get the same within 30 days of its declaration at the Annual General Meeting.

7) Shareholding Rights:

These rights include right to receive share certificate, transfer of shares, to get Rights Issue and Bonus Issue shares.

8) Right to receive surplus assets:

In the event of winding up of the company, Member is entitled to get shares of surplus assets of company, if any, after the payment to all the other stakeholders.

9) Right to Class Action Suit:

The Act confers right of class action suit to members against company or its directors; in the event of any fraudulent, unlawful or wrongful act or omission or misleading statements in the Audit Report. Any 100 members or those holding 10% of voting rights can apply to the Tribunal for redress. Members can demand investigation in the affairs of the company. Also, they can file a petition to wind up the company.

- 1) *Dividend means a share of Profit of a company distributed to its Shareholders.*
- 2) *Right issue means additional shares offered to existing equity shareholders of company.*
- 3) *Bonus shares mean shares given by the company free of cost to equity shareholder from accumulated earnings.*
- 4) *Class Action Suit mean where a group of people with similar harm/wrong caused to them sue the opposite Party for redressal of a harm / wrong.*

Duties and Liabilities of a member:

A member is required to fulfill certain liabilities and obligations; like:

1. A member is bound to the company by all the covenants of the Articles of Association.
2. Since most of the companies have liability limited upto face value of shares; the member is liable to pay full value of shares.
3. In case of unlimited liability company, a member is personally liable for all the debts of the company.

Covenants of the Article means contents & clause of Articles of Association of the company.



Activity: Find the composition of shareholding of a listed public company.

SUMMARY

- Member of a company is an integral part of company.
- Member and Shareholder generally means the same; except due to some technicalities.
- Any person or organization competent to enter into contracts legally, is eligible to become the member of the company.
- There are several ways whereby a membership of company can be acquired.
- The common most way of all is to buy the shares of the company.
- There are several ways whereby memberships of company comes to an end which is termed as cessation or termination of membership.
- The member of a company is conferred with several rights.
- The Member of a company need to fulfill certain duties and liabilities.



EXERCISE

Q.1 A. Select the correct answer from the options given below and rewrite the statements.

- 1) is a person whose name is entered in the Register of Members.
a) Member b) Creditors c) Registrar
- 2) A person can be called as a Member when the name is entered in
a) Register of charges b) Register of Members c) List of Members
- 3) A cannot be a member of a company.
a) Foreigner b) Woman c) Minor
- 4) When a person buys shares of a company by filling up an application form, person becomes a member by
a) Application and allotment of shares
b) Subscribing to Memorandum
c) Transmission of Shares
- 5) means a person ceases being a member of the company.
a) Termination of Membership
b) Acquisition of membership
c) Subscription to Membership
- 6) A member has right to participate in General Meetings means, he has a right to
a) receive dividends
b) receive notice and agenda of a meeting
c) to transfer his shares

B. Match the pairs:

	Group 'A'		Group 'B'
a)	Insane person	1)	Transfer of shares by operation of law
b)	Foreigner	2)	Cannot be a member
c)	Transmission of shares	3)	Cessation of membership
d)	Surrender of shares	4)	To get copies of Auditor's, Directors' Report, etc.
e)	Right of Members	5)	Can be a Member
		6)	To attend board meeting
		7)	Duties of member
		8)	Surrendering all assets to the company
		9)	Demand or claim money from company
		10)	Transfer of shares by order of Secretary

C. Write a word or a term or a phrase which can substitute each of the following statements.

- 1) End of membership of a person.
- 2) A person whose name is entered in Register of Members.
- 3) Book in which names of all members are entered.
- 4) Becoming a member of a company.
- 5) The subscribers of this document are considered as Members of the company.

D. State whether the following statements are True or False.

- 1) Buying shares is the most common way to become Member of the company.
- 2) Both; Individuals and body corporates can be members of the company.
- 3) Legal competency to enter into contracts is one of the criteria to become member of the company.
- 4) Limited Liability Partnership cannot be a member of the company.
- 5) Karta of HUF can be a member of company.
- 6) Member of the company is conferred with several rights.
- 7) Member is entitled to profits of the company when dividend is declared.
- 8) Member of company can attend general and Board meetings of the company.
- 9) Right to appoint Director is given to Members.
- 10) Minor can be the member of the company.

E) Find the odd one.

- 1) Subscribing to Memorandum, Forfeiture of shares, Application and allotment of shares.
- 2) Death or insolvency of member, Application and allotment of shares, surrender of shares.

F) Complete the sentences.

- 1) A person whose name is entered in the Register of Member of a company is called
- 2) In case of death or insolvency of a member, he will cease to be a
- 3) Members have a right to appoint and remove the

G) Select the correct option form the bracket.

Group 'A'	Group 'B'
1) Minor	-----
2) Co - operative society	-----
3) -----	Can hold shares in the name of partners

(Partnership firm, Cannot become a member of a company, Can become member of a company)

H) Answer in one sentence.

- 1) Which individuals cannot become a member of a company?
- 2) What is the common way of becoming the member of a company?

I) Correct the underlined word and rewrite the following sentences.

- 1) A Minor can be a member of a company.
- 2) Partnership Firm can be a member of company.

Q.2 Explain the following Terms/Concepts.

- 1) Member 2) Transmission of shares 3) Cessation of Membership
- 4) Acquisition of Membership 5) Eligibility of Membership

Q.3 Study the following case/situation and express your opinion.

- 1) Mrs. & Mr. A work in a Bank. They have a daughter named Ms. Z who is 11 years old.
 - a) Can Mrs. & Mr. A invest in shares of the company?
 - b) Can they buy shares in the name of their daughter Ms. Z?
 - c) Justify your answer in (a) & (b) in one sentence only.
- 2) M/s. ABC is a Partnership firm owned by Dr. A, Dr. B, Dr. C. The doctors want to invest the profits of ABC in the shares of a company.
 - a) Can M/s ABC buy the shares of company?
 - b) Can profits of M/s. ABC be invested in shares held in the names of Dr. A or Dr. B or Dr. C?
 - c) Are the doctors eligible to invest in shares of the company?
- 3) ZEN Limited has some investible profits. Please guide Zen limited with respect to the following?
 - a) Can ZEN Limited invest in the shares of itself?

- b) Can ZEN Limited invest in the shares of TEN Limited?
- c) Justify your answers in (a) & (b) in one sentence only.

Q. 4 Answer in brief.

- 1) State any four ways of acquiring membership of a company.
- 2) State any four ways of cessation of membership of a company.
- 3) State the rights of members with regard to participation in general meeting.

Q.5 Justify the following statements.

- 1) Member and Shareholder are interchangeable terms.
- 2) A Foreigner can invest in shares of an Indian company.
- 3) Insolvent person ceases to be the Member of the company.
- 4) Co-operative Society is eligible to be the member of the company.
- 5) Subscribers to Memorandum of Association are the first members of the company.
- 6) Nominee of the member of OPC becomes its member on death of the member.
- 7) Members of company are entitled to several rights.
- 8) Members of company have some fundamental corporate decision-making rights.
- 9) Transfer of shares results in termination of membership.

Q.6 Answer the following questions:

- 1) Explain the circumstances when Member is not a shareholder and vice-versa.
- 2) Explain the eligibility of memberships of a company.
- 3) Explain different ways to acquire membership of company briefly.
- 4) Explain how a membership of company terminates.
- 5) Explain Rights of a Member of company.





DIRECTORS AND KEY MANAGERIAL PERSONNEL OF A COMPANY

6.1 Directors:

- | | |
|---------------------|---------------------------------|
| 6.1.1 Meaning | 6.1.2 Provisions of Appointment |
| 6.1.3 DIN | 6.1.4 Qualification |
| 6.1.5 Types | 6.1.6 Appointment |
| 6.1.7 Powers | 6.1.8 Duties |
| 6.1.9 Liabilities | 6.1.10 Legal Position |
| 6.1.11 Remuneration | 6.1.12 Removal |

6.2 Key Managerial Personnel (KMP)

6.2.1 Managing Directors

- | | |
|---|---|
| <ul style="list-style-type: none">• Meaning• Dis-Qualification | <ul style="list-style-type: none">• Appointment• Powers and Duties |
|---|---|

6.2.2 Whole Time Directors

6.2.3 Manager

6.2.4 Company Secretary

- | | |
|---|---|
| <ul style="list-style-type: none">• Definition• Duties• Rights• Secretarial Standard | <ul style="list-style-type: none">• Position• Liabilities• Role• Secretarial Audit |
|---|---|

6.2.5 Chief Financial Officer

6.3 Distinctions

INTRODUCTION:

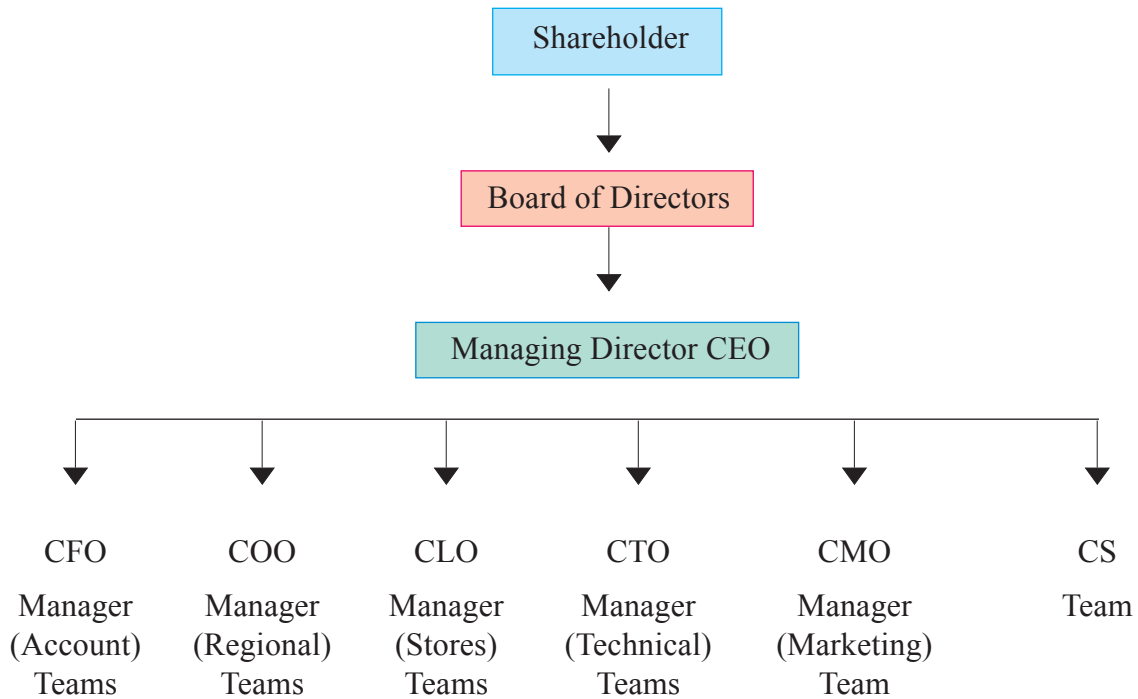
As we have already learnt that company has a unique feature of separate ownership and management; whereby shareholders are its owners and Directors are its managers. Also, as an artificial person it needs a human agency to manage and control its working and day-to-day affairs. Following are the reasons which leads to separation of ownership and management in company:

- 1) It is a large business organization having vast scope of business.
- 2) Large number of shareholders who are scattered all over and thereby management of company by them is impractical.
- 3) Disinterest on part of most of the shareholders to manage such a huge organization.
- 4) Incapability in terms of qualification and inability on part of most of shareholders to manage company.

Company as an artificial person having no physical existence needs human beings to look after its functioning and day-to-day activities. In any other case shareholders as owners would have fulfilled this duty but we have already discussed the reasons why they cannot.

So company needs a set-up/structure to manage and organize its activities.

Hierarchy of Company Management



- 1) CEO - Means is Chief Executive Officer
- 2) CFO is Chief Financial Officer
- 3) COO is Chief Operating Officer
- 4) CLO is Chief Law Officer
- 5) CTO is Chief Technology Officer
- 6) CMO is Chief Marketing Officer
- 7) CS is Company Secretary

Its top level management comprises of the Board of Directors which is a group of Directors.

6.1 DIRECTOR -

6.1.1 MEANING:

As per Section 2(34) of the Act, Director means a director appointed to the Board of the company.

Simply speaking Director is a person appointed to manage, direct and supervise the affairs of a company.

6.1.2 Provisions and Rules with respect to appointment of a Director: Section 149 of the Act states the following:

- 1) Only an Individual can be appointed as Director. It means a body corporate, association or firm cannot be director of the company.
- 2) Minimum number of directors:

Type of company	Public	Private	One-Person Company (OPC)
Minimum Number of Director	(03) Three	(02) Two	(01) One

- 3) Maximum Number of Directors: Upto fifteen (15) Directors are allowed to be appointed. If a company requires more than fifteen it should pass a special resolution.
- 4) Prescribed classes of companies shall have at least one woman director.
- 5) There must be at least one director who stayed in India for at least 182 days during the financial year.
- 6) Every listed public company should have 1/3rd of its Board as Independent Director.
- 7) A person is allowed to hold Directorship of maximum Twenty (20) companies at the same time. The Act also states that maximum number of public companies in which a person can be a director is Ten (10) only.

Who can be the Director of a company?

The person should fulfill these two conditions to be eligible to become a director: (i) only an Individual can apply for directorship (ii) Person should have been allotted a Director Identification Number (DIN).

6.1.3 What is DIN?

It means Director Identification Number:

- 1) DIN is a unique identification number for an existing director or person intending to be the director of company.
- 2) It is compulsory to acquire DIN by every director.
- 3) Only a single DIN is needed by an individual irrespective of number of directorship held by him.
- 4) On resignation of a person as director of a company, DIN should not be cancelled.
- 5) DIN is obtained through an online process of filing an application which includes photograph, proof of residence etc., duly attested by a Notary/gazetted officer/company Secretary etc.,
- 6) DIN is a pre-requisite for e-filing of company's documents.
- 7) Every document authorised by a director should mention his DIN along with his name.

● Importance of DIN:

- 1) It helps the investors of the company to take more accurate and informed decision because they get to know the composition of the top management of the company.

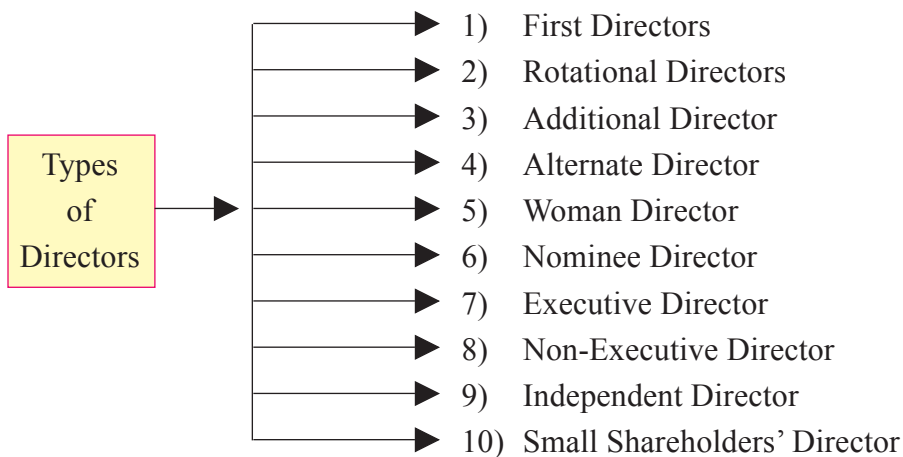
- 2) It helps to handle the problems arising due to a company disappearing after collecting/ raising money from public.
- 3) It helps in detection and handling of offences committed by a Director.

6.1.4 Qualification of a Director: The Companies Act has not prescribed any academic or professional qualifications for director. Also the Act does not impose any share qualification on them. So unless the Articles of company contain a provision, a director does not have to be shareholder of the company (Unless willingly he wishes to be one).

The noteworthy point is that usually Articles provide for a minimum share qualification.

Qualification shares: It means a director is required to buy shares of a company if articles of company states so.

6.1.5 Types of Directors: Some of the types of directors are as follows -



1) First Directors:

They are appointed by the promoters of the company at the time of incorporation of the company. They remain in office till the first Annual General Meeting of the company is held.

2) Rotational Director:

This indicates those directors who are liable for retirement by turn or rotation. They are eligible for re-appointment.

Additional information:

Retirement by Rotation:

Directors of Public company and Private company which is subsidiary of public company have to retire by rotation in every Annual General Meeting. It is decided on the basis of time spent by a Director on the Board.

u/s 152 (6) 2/3rd of the Board is subject to retirement by rotation.

1/3rd of the above will retire at every annual general meeting.

e.g. A company with 3 Directors on Board, at least Two (2) Directors must be rotational Directors and one (1) Director thereof will retire at every AGM.

Exception:

- 1) Nominee of certain Financial Institutions not liable for retirement by rotate.
- 2) Independent Director
- 3) Executive Director like MD and WTD having pre-decided term of appointment (viz. (5) years), do not retire by rotation.

3) Additional Director:

Powers and Rights of Additional Directors are on par with other directors. Additional Director is appointed by the Board as authorized by Articles as and when needed. Additional Director holds office till the next AGM.

4) Alternate Director:

It means a director who is nominated by Board to act in the place of a director in his absence. This appointment cannot be for less than 3 months.

5) Woman Director:

The following class of companies are required to appoint at least one woman director on their Board:-

- 1) Every Listed Company
- 2) Every Public company which has
 - i) Paid-up share capital of ₹ 100 crores or more
 - ii) Turnover of ₹ 300 crores or more.

6) Nominee Director:

This person is nominated on the Board by a major/dominant shareholder like a financial institution to represent and safeguard its interests.

7) Executive Director:

This category can also be called Whole Time Director (WTD). They are in a full-time employment with the company. They play a big role in day-to-day management of the company. For all practical purposes, they are given managerial responsibilities and suitable titles like Marketing Director, Finance Director, etc.

8) Non-Executive Director:

This category is not involved in day-to-day management of the company and therefore hold no executive managerial positions. In fact Non-Executive Director is labelled as 'Outside Director'. The idea behind this appointment is to get independent ideas, perspective, second opinions, and alternate voice to the Board.

9) Independent Director:

u/s 149: Any Director other than a Managing Director, Whole Time Director or a Nominee Director is Independent Director as per sections 149 of the Act.

❑ Term of Independent Director:

- 1) Independent Director holds office for a term upto Five (5) consecutive years and is eligible for reappointment.
- (2) Independent Director cannot hold office for more than Two (2) consecutive terms.

- ❑ **Qualification of Independent Directors:** The person is expected to possess appropriate skill, experience and knowledge in the fields of law, management, sales, market, administration, corporate governance and technical process/operations concerning company's business.
- ❑ **Number of Independent Directors:** The below given table reflects the number of Independent Directors as per Section (4) of 149 of the Act.

Listed Public company	Public company with paid-up share capital of ₹ 10 crores or more	Public company with turnover of ₹ 100 crores or more	Public company with aggregate outstanding loans, Debentures Deposits exceeding ₹ 50 crores
1/3rd of its total number of Directors	At least Two (02) Directors		

Schedule IV of Companies Act 2013 has stated elaborately manner of appointment, re-appointment, tenure, etc. of the Independent Directors.

10) **Small Shareholder's Directors:**

Under section 151: The Act has provided to elect one director by small shareholders of listed company. This is not a mandatory appointment.

Small shareholder is a person holding shares of nominal value of maximum ₹ 20,000.

6.1.6 Appointment of Directors: The rules of appointment of Directors are provided by the Act under its different sections as explained below:

- A) First Directors:** u/s 152: 1) usually appointed by the promoters of the company, as stated in the Articles of company. 2) If Articles do not provide for the same, signatories of Memorandum will be deemed to be first directors and in case of OPC the single member is deemed to be the first director.
- B) Appointment of Directors by Members:** u/s 152: The subsequent Directors in a Public company are appointed by Members at the Annual General Meeting. Generally this is 2/3rd of the Board and they are subject to retirement by rotation.
- C) Appointment of Directors by the Board: u/s 161:**
 - 1) Additional or co-opted Director:** This appointment is made by the Board.
 - 2) Casual Vacancy:** u/s 161 (4): Casual vacancy on Board arises due to different reasons such as death/resignation of a director, which is to be filled by the Board at the Board meeting. Such an appointment is valid only upto the time of the vacating directors incomplete term.

Reasons of additional directors: To fill casual vacancy, to take assistance in recent vital project.

- 3) **Alternate Directors:** Board of Directors may appoint an alternate director in place of a director who is going to be out of the state where Board meetings are usually held for a period of not less than 3 months.

This appointment is valid till the return of original director to the state and also expiry of the term of original director even if he has not returned.

- 4) **Nominee of an Institution:** The Board of Directors may appoint any person as director as nominated by an institution under the provisions of the Act.
- D) **Appointment of Directors by the Tribunal:** u/s 241: A Tribunal may appoint director/s, on receiving petition or application from members as relief against mismanagement of company's affairs.
- E) **Appointment of Directors by Central Govt:** u/s 167: The Central Government may order appointment of Directors, in the case where Directors have vacated their offices under any of the specified disqualification. e.g. Conviction by a court of law.
- F) **Appointment of Directors by Proportional Representation:** u/s (163): Director may be appointed either by straight majority or proportional representation.

6.1.7 **Powers of the Directors:** (under section 179 of the Act)

- 1) Directors have to work as a team via. Board of Directors and not individually.
- 2) Board cannot exercise the powers which are required to be exercised by the shareholders in the general meetings as given to them by the Act, Memorandum and Articles.
- 3) The exercise of powers by Board is subject to provision of the Act, Memorandum and Articles.
- 4) The Powers of Directors can be exercised in two ways - (i) At the Board Meeting by passing a Resolution (ii) By Delegation to different committees created by the Board.

Some examples of the powers of Board of directors are -

- a) to borrow money
- b) To invest funds of the company
- c) To issue securities whether in India or a abroad.
- d) To diversify the business of the company.
- e) To appoint or remove Key Managerial Personnel.
- f) To fill casual vacancies in the Board.
- g) To recommend dividend
- h) To appoint first auditors of the company.
- i) To remit or give time for repayment of any debt due from a director.

- 6.1.8 **Duties of a Director:** A Director's relationship with the company is regarded as fiduciary in nature i.e. his duty is full of trust, loyalty, obedience, care and most good faith. Director should not exploit his or her position of trust and confidence for personal gain, at the expense of company or shareholders. Director will not involve in any situation where Directors interests conflicts with that of the company. Director should not achieve any undue gain or advantage for self or family or associates.

Fiduciary means based on trust. It means to be responsible & careful with someone else's money. It means being agent-in-trust for a Principal (like shareholder).

Directors duties can be under two heads -

- I) **Statutory Duties:** These are imposed by the Act Examples of Statutory Duties: 1) To file Return of Allotments 2) To act in accordance of Articles of the company 3) To disclose interest in a transaction 4) To attend Board Meetings. 5) To appoint first auditors of the company
- II) **General Duties:** These can be described as:
 - 1) **Duty of good faith:** Director must act in best interest of company and its present and future members.
 - 2) **Duty of Care:** Director must display care in performance in work assigned. Director is required to display care as much as a person of ordinary prudence would.
 - 3) **Duty not to delegate:** Director being an agent cannot delegate further. Director is required to perform his functions personally. Director may delegate if permitted by Act or Articles or required to be delegated in urgent conditions.

6.1.9 The Liabilities of Directors: A Director is liable in following different ways:

- 1) Liability to the company
- 2) Liability to the third party
- 3) Liability for breach of statutory duties
- 4) Liability for the acts of Co-directors
- 5) Criminal Liability

6.1.10 Legal Position of Directors: Though the Companies Act has not defined position of Directors, keeping in mind the vastness of their powers and extensive responsibilities; an attempt is made to describe them as Agents, Trustees and Managing Partners. These expressions are indicative and not complete explanation and understanding of their powers and work.

- I) **Directors as Agents:** Since the company is an artificial person; it needs to be represented by the Director. They act on its behalf. Directors should deal skillfully, carefully and eligently. Their liability is as agents while company is held liable as the Principal.
- II) **Directors as Managing Partners:** Directors represent owners of the company viz. shareholders to conduct and manage business of the company on their behalf . They are entrusted with vast powers of management and perform several functions which are proprietary in nature like allotment of shares, raising of loans, investing funds of the company etc. This is because they themselves are significant shareholders of the company. In fact they are the most active shareholders of the company.

Board acts as the supreme policy and decision making body. It is commented that the directors are commercial men who manage a trading concern for the benefit of themselves and all the other shareholders of company.

- III) **Directors as Trustees:** Directors are required to act in the most honest ways. They are the guardians of interest of company and shareholders. They should account for all money are entrusted with. They have to utilize and apply funds of the company most cautiously. They are the trustees of all the assets of the company.

The above given triple roles played by the directors highlights the depth and vastness of their involvement with company and its investors within the parameters of the Act. It is appropriate at this point to have clarity whether directors are employees of the company or not.

Are Directors, Employees of the company?: Directors are elected representatives of the company's shareholders and enjoy well-defined rights and powers.

Whereas status of an employee is within the limits of his contract of service and his employer holds the ultimate control to guide his activities and functions.

These limits cannot be applied to directors in the context of their roles and powers we have already studied.

Directors therefore cannot be regarded as employees of the company.

6.1.11 Remuneration of Directors: u/s 197: The managerial personnel of the company viz. the Directors, Managing Directors etc. hold the managerial position and this entitles them to get managerial remuneration. It may be in the form of monthly payment like salary, specified percentage of net profits or commission and sitting fees for attending Board meetings or Committee meetings. At the same time there is no automatic entitlement of remuneration of director.

The Act states that total managerial remuneration payable by a public company to its Directors, Managing Director etc. should not exceed 11% of net profit in a financial year. This excludes sitting fees paid or to be paid for meeting.

Sitting Fees: The director is given fees to attend Board or Committee meeting which may be upto ₹ one lakh.

6.1.12 Removal of a Director: A Director may be removed from his office by (a) Shareholders u/s 169 (b) Tribunal u/s 402.

- **Vacation of office by a Directors: u/s 167 of the Act**

The office of a director shall automatically become vacant in following cases:

- 1) **Any disqualification u/s 164 :** As per this section, a person cannot be appointed as a Director if he is of unsound mind, insolvent, convicted by Court etc.
- 2) **Absentee at Board Meaning u/s 167.**
Director has been absent in the meeting of the Board of Directors held during a period of (12) Twelve months with or without taking leave of absence of the Board.
- 3) **Contravention of Provisions of Act:**
Director has acted in contravention of provision of section 184 which is about entering into contracts or arrangements where he is directly or indirectly interested.
- 4) **Failure to Disclose Personal Interest:** If a Director fails to disclose his personal interest in any contract where director is directly or indirectly interested.
- 5) **Disqualification by Court or Tribunal:** Director has to vacate office if he has been disqualified by an order of a court or the Tribunal.
- 6) **Imprisonment for an offence:** Director has to vacate office if he is convicted by a court of law for an offence involving moral grounds or otherwise and is sentenced to imprisonment of six (6) months or more.
- 7) **Provision of the Act:** Director has to vacate office if director is removed under the provision of Companies Act.



Activity:

Visit the website of a listed public company and • Find out DIN of a director of the company. • Find out the composition of Board of Directors.

6.2 KEY MANAGERIAL PERSONNEL (KMP) OF THE COMPANY

The Board of Directors of company is assisted by several persons to assure efficient and effective management and administration of the company. They need to work under the superintendence and control of the Board.

u/s 2(51) KMP means the following:

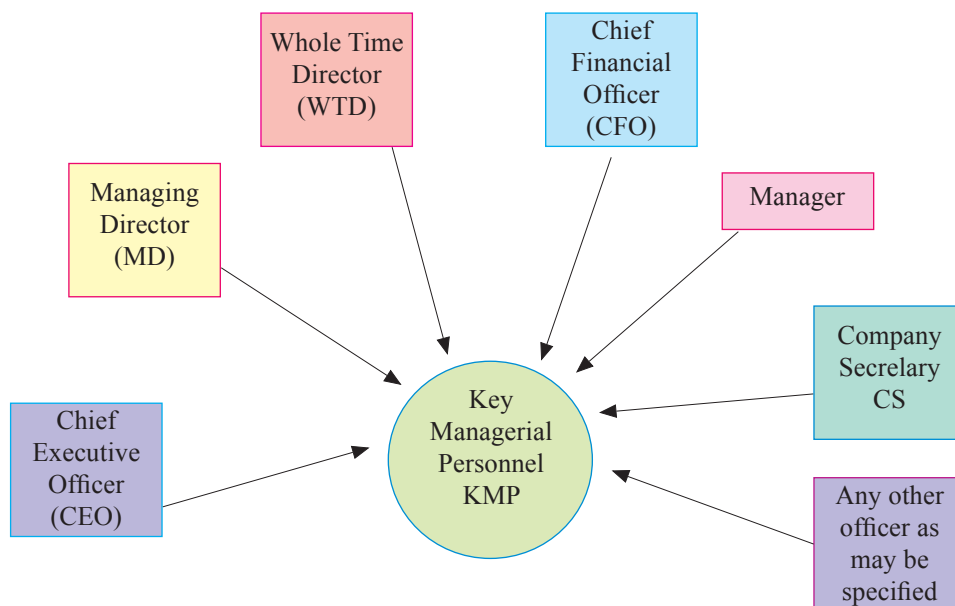
- 1) The CEO or the Managing Director or the Manager
- 2) The Company Secretary
- 3) The Whole Time Director
- 4) The Chief Financial Officer
- 5) Any other officer as may be prescribed

u/s 203 of Act: It is stated that every listed company and public company with a share-capital of Rs. 10 crores or more should have following Whole Time KMP:

- 1) The Managing Director/The Chief Executive Officer/The Manager and in their absence a Whole-time Director.
- 2) A company Secretary
- 3) A Chief Finance Officer

Also none of the whole-time KMP can hold office in more than one company; (except if its subsidiary of the company) at the same time; without the permission of the Board.

Illustration depicting different key managerial personnel



6.2.1 THE MANAGING DIRECTOR: U/S 2(54):

It means a Director who by virtue of Articles of or agreement with company or Resolution passed in General Meeting or by its Board; is entrusted with substantial powers of management of the affairs of the company.

- **Appointment of the Managing Director:** This appointment can be made by (a) An Agreement with company (b) A Resolutions passed by company in the General Meeting (c) A Resolution passed by the Board of Directors d) A clause in the Articles of Association of the company.

The Act states that a Managing Director be appointed by Board of Directors. Terms and conditions of the appointment and remuneration should be approved by the Board of Directors at its meeting. This appointment is subject to approval by Resolution at the next General Meeting.

- **Term of Appointment:** Appointment of Managing Director is made for a term of 5 years.
- **Disqualification for the post of Managing Director:**
 - 1) Any person less than 21 years of age and more than 70 years of age.
N.B. If a person of age above 70 years is required to be appointed as Managing Director, there should be passed a special Resolution with explanatory statement attached to its notice which justifies such an appointment.
 - 2) Any person who is an undischarged insolvent person or at any time been adjudged as an insolvent.
 - 3) Any person who has suspended payment to his creditors at any time or made compromise with them.
 - 4) Any person who has been convicted by a court of law of an offence with a sentence of more than six months period.
- **Powers and Duties of the Managing Director:**
 - 1) The Managing Director is appointed to manage the affairs of the company.
 - 2) Powers and Duties of the post of Managing Director are defined by a) Agreement made with company on the basis of which this appointment to made b) By Memorandum and Articles of Association of the company c) By Resolutions passed by Board and Members.
 - 3) Managing Directors is entrusted with substantial powers of management.
 - 4) The power of Managing Director may relate to particular division/s of the business.
 - 5) There may be more than one Managing Director in business/company.
 - 6) The Managing Director is required to function and exercise his powers subject to superintendence control and directions of the Board of Directors.
 - 7) Managing Director must be a Director of the company.
 - 8) In context of above, he has to fulfill his duties, responsibilities and liabilities also of an ordinary director of the company.

6.2.2 THE WHOLE TIME DIRECTOR OF THE COMPANY (U/S 2(94) (WTD):

- 1) This post includes a director who is in whole time employment of the company.
- 2) Whole time Director devotes his whole/full time to work with the company.
- 3) He can be called an employee director of the company.
- 4) WTD does not exercise 'substantial powers' of management like the Managing Director.
- 5) The whole time Director performs important administration functions.

6.2.3 THE MANAGER: U/S 2(53):

- 1) The manager means any individual appointed subject to superintendence, control and direction of the Board.
- 2) The Manager looks after or is expected to manage whole or substantially whole affairs of the company.
- 3) It includes a Director or any other person who occupies the position of a manager (or known by any name).
- 4) The manager need not be the director of the company.
- 5) Company cannot have more than one manager.

N.B. The Act allows either Managing Director/Manager.

Some clarifications about simultaneous appointment of different categories of managerial personnel (under section 196) -

- 1) It is prohibited to appoint both Managing Director and Manager simultaneously.
- 2) There is no prohibition on having whole time director and manager simultaneously.
- 3) There is no prohibition on having managing director and whole time director simultaneously.
- 4) There is no prohibition on having more than one Managing Director in a company.

The Indian companies prefer Managing Director more than Manager. This is because Managing Director holds dual authorities and is able to influence the Board better.

6.2.4 COMPANY SECRETARY:

We have studied company Secretary earlier as an important type of Secretary. Let's now study this officer of the company as KMP of company.

Section 2(24) defines Company Secretary. It states that:

- 1) Company Secretary is appointed to perform functions of company Secretary under the Act.
- 2) Person should be a member of the Institute of Company Secretaries of India (ICSI).
- 3) Following classes of companies must appoint a whole-time company Secretary
 - a) Listed companies
 - b) All other companies with a paid-up share capital of ₹ (5) five crore or more.
- 4) The whole-time company Secretary is appointed by a resolution of the Board. The Board decides terms and conditions and remuneration.

- 5) The whole-time company Secretary cannot hold office in more than one company.
- 6) The whole-time Secretary can be director of a company with the permission of the Board.
- 7) The first Secretary of the company is appointed by the Promoters of the company.
 - a) The first Secretary is called 'Pro-tem Secretary'.
 - b) The Pro-tem Secretary appointed by Promoters may or may not be appointed as regular Secretary by the Board.
 - c) The 'Pro-tem' Secretary helps in fulfilling different formalities during formation of the company.

Pro-tem means temporary for the moment, Interim for now.

- 8) The appointment of Secretary must be recorded in the 'Register of Directors and key managerial personnel and their shareholdings.'

- **Duties of Company Secretary :**

Secretary's duties can be categorized as- I) Statutory Duties II) General Duties

I) Statutory Duties : As given to the Secretary by the Act.

Some of these are -

- 1) To organize and be present at all meetings of the company including the Board meetings.
- 2) To make minutes of all meetings.
- 3) Conducting correspondence with the shareholder on matter like Issue of shares, transfer of shares etc.
- 4) Issuing notices and circular to members of the company and others as guided by the Board.
- 5) Maintain and update different Registers and books of the company like Register of Members and Debenture-holders etc.
- 6) Filing all necessary returns with the Registrar of Companies.

Minutes means the recorded proceeding of the meeting written after its conclusion.

II) General Duties :

This depends on size and nature of business and the terms of arrangement made between Secretary and the company. Some of these are:-

- 1) To provide guidance to the Board and Director of the company with respect to their duties responsibilities and powers.
- 2) To represent before different regulators and authorities with discharge of different duties under the Act.
- 3) To assist the Board in the conduct of the affairs of the company.
- 4) To assist and advise the Board in ensuring good corporate governance.
- 5) To perform all the duties that may be assigned by the Board from time to time.

- **Liabilities of Company Secretary:**

Since the company Secretary is regarded the KMP of the company, company Secretary is held liable for several non compliances and penalties are imposed on him for any default or non-compliance of the provisions of the Act and other laws of the land.

- **Rights of Company Secretary:**

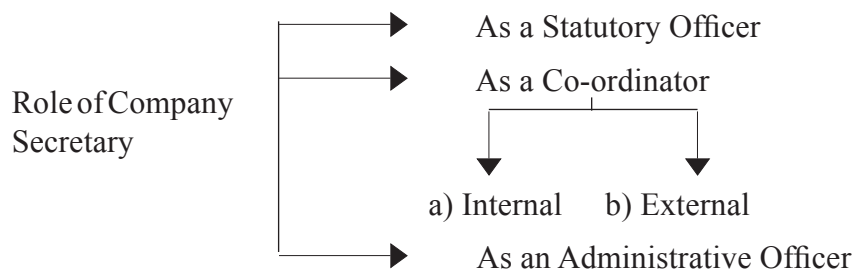
Rights are given to the Secretary by the Companies Act, Board of Directors and the shareholders. Also some rights are conferred on him by his service agreement. The rights are enlisted below -

- 1) Right to control and supervise the working of his department.
- 2) Right to be indemnified by company if any loss is suffered by Secretary while performing, discharging his duties.
- 3) Right to sign a document which requires authentication by the company; as the Principal officer of the company.
- 4) Right to get remuneration as employee of the company.

- **Role of Company Secretary**

Company Secretary plays a crucial and important role in administration of the company. It can be best explained as a three -fold role as follows -

The emphasis on good governance has increased role of Secretary in protecting the interests of different stakeholders manifolds:-



1) **Secretary as a Statutory Officer :**

As the principal officer of a company he is responsible for strict compliance of the different provisions of the Act. like :

- a) Sign any document for authentication.
- b) To sign and deliver Annual Returns and other documents and forms of Company to the Registrar of Companies
- c) To maintain different statutory registers like
 - 1) minutes of General and Board Meetings of Company, 2) Registers of Members and Debenture-holders, 3) Register of Directors and KMP and their shareholdings etc.
- d) Ensure necessary compliance of law.

2) Secretary as a Coordinator :

The Board of Directors as the supreme managerial authority decides the broad policies to be followed by the company. Effective implementation of the same is the duty of Secretary. Secretary is required to work as network between the Board and other executives at different levels. Secretary is mouthpiece / spokesperson of the Board. Secretary is a coordinator on two ways:

- a) Internally
- b) Externally
 - (a) As Internal coordinator, Secretary's activities involve the Board, the M. D., the chairperson on one hand and the executive of different cadres, trade union and auditors of the company on the other hand.
 - (b) As External coordinator, Secretary needs to create a relationship between company and shareholders, Government and public at large.

3) Secretary as Administrative officer

Secretary as a general administrative officer is required to ensure implementation of the policies of the company. Supervision, control and functioning of different departments of company is Secretary's job. The position of Secretary enables him / her to have an overall view of different aspects of company's administration and develop a strong and efficient organizational set up. Secretary contributes in administration of the company, whereby recruitment, training, remuneration, promotion etc. of staff members is assured.

□ Company Secretary in employment and in Practice:

The company Secretary is a key functionary in the corporate pyramid. What we have studied until now indicates company Secretary in Employment as employee of the company. Let us understand:-

Company Secretary in Practice

The member of the Institute is in practice when individually or in partnership with one or more members of the Institute engages himself / herself -

- 1) In practices of Profession of company Secretary.
- 2) Offers to perform services in relation to promotion, formation, incorporation and amalgamation, reconstruction, reorganization of companies
- 3) Offers services in areas of
 - a) filing, registering, presenting and verifying documents like forms, applications and returns by and on behalf of the company.
 - b) share transfer agent
 - c) share stock broker
 - d) An Issue house
 - e) Secretarial Auditor or Consultant.

□ Secretarial Standards (SS) Meaning :

The Secretarial standards are formulated by the Institute of Company Secretaries of India (ICSI) and approved by Central Government through the Ministry of Corporate affairs.

The Companies Act 2013, makes compliance with the secretarial standards I and II mandatory. The Secretarial standards are developed to standardize different practices.

- **The Need and Impact of adoption of Secretarial Standard**

Companies follow diverse practices based on differing business cultures and varied usages over a period of time. The secretarial standards aim at and achieve integrating, harmonizing and standardizing fine corporate governance practices across all companies. It leads to provide better monitoring of compliances of law, strengthening the processes of the Board and create confidence in investors. The ICSI constituted Secretarial Standard Board (SSB) in year 2000, which, includes representative of Institute of Chartered Accountants of India, Institute of Cost and Work Accountants of India, different Industrial associations like ASSOCHAM, CII, FICCI.

- 1) *FICCI - Federation of Indian chamber of Commerce and Industry*
- 2) *CII - Confederation of India Industries*
- 3) *ASSOCHAM - Associated Chambers of Commerce & Industry of India.*

There is an elaborate procedure followed while formulating the SS on a subject.

It is note worthy that SSB and its statutory recognition and implementation is unique to India. It is a quantum leap towards standardization of diverse secretarial practices existing in the corporate sector.

SS is to be reviewed by SSB once in a year or whenever there is substantial change in the law which ever is earlier.

The scope of secretarial standards : ICSI has issued total (10) Ten secretarial standards as stated below -

- S-1 : Secretarial Standard on Meetings of the BOD
- S-2 : Secretarial standard on General Meetings.
- S-3 : Secretarial Standard on Dividend
- S-4 : Secretarial Standard on Registers and Records
- S-5 : Secretarial Standard on Minutes
- S-6 : Secretarial Standard on Transmission of shares and Debentures
- S-7 : Secretarial standard on passing Resolution by circulation.
- S-8 : Secretarial standard on Affixing common seal.
- S-9 : Secretarial standard of Forfeiture of shares
- S- 10 : Secretarial standard on Board's Report

Exemption from SS: 1) SS - 1 and SS- 2 not applicable to OPC as it has only a single director on its Board.

2) SS- 2 is not applicable also to companies exempted by Central Government by notification.

- **Secretarial Audit : u/s 204**

- I) **Meaning:**

This is an audit which checks the compliance of various legislations including Companies Act and other corporate and economic laws applicable to the company,

II) Importance:

- 1) It is a mechanism to monitor compliance requirements.
- 2) It aims at detecting errors, mistakes in compliance mechanism.
- 3) It prevents the company from the risk and losses due to non-compliances.
- 4) It gives confidence to regulators, management, stakeholders that company is following a disciplined approach of evaluation and improve effectiveness, risk management, control and governance.

III) Applicability of Secretarial Audit : u/s 204(1)

- 1) Every listed company
- 2) Every public company with paid -up share capital of ₹ 50 crores or more,
- 3) Every Public company with a turnover of ₹ 250 crores or more,
- 4) Every private company which is a subsidiary of a public company.

□ Appointment of secretarial Auditor :

- 1) Only member of ICSI holding certificate of practice can conduct secretarial Audit and furnish the Secretarial Audit Report.
- 2) This appointment is made by the Board of Directors at their meeting by passing a Board Resolution.
- 3) This Appointment should be preferably made in the beginning of the financial year; thus to make possible checking of compliances on a continuous basis.
- 4) The secretarial Audit Report : should be in prescribed format viz. form no. MR-3 and to be annexed with the Board's Report.

6.2.5 The Chief Financial (Finance) Officer (CFO)

Meaning: CFO is the officer of a company who is responsible for company's finances.

- 1) This extends to financial planning, management, financial risks, record keeping and financial reporting.
- 2) CFO helps in analyzing and recognizing company's strengths and weaknesses.
- 3) This leads to take timely corrective actions with respect to finances of the company.
- 4) The CFO is responsible for presenting and reporting accurate and timely financial information of the company.
- 5) Inputs by the CFO make the basis of the Board Report.
- 6) CFO is appointed as a regular employee in the rolls of company or may be on contractual basis for a certain period of time.
- 7) CFO need not be the Director of the Company.
- 8) CFO is compulsorily required to sign audited financial statements of the Company.



Activity: Find out the KMP of the following:

- 1) Reliance Industries Limited
- 2) Cadbury India
- 3) Union Bank of India

6.3 Distinction between:

1. Director and Managing Director

Sr. No.	Points	Director	Managing Director
1)	Meaning	Director is the elected representative of the shareholders of the company.	Managing Director represents the Board in the day-to-day activities of the business.
2)	Appointment	Is elected at the Annual General Meeting by the members of company.	Appointed by the Board of Directors.
3)	Number of Companies	Director can work in 20 companies at a time out of which not more than 10 public companies at a time.	A person can be a Managing Director of two companies at a time by passing a unanimous resolution by the Board of the second company.
4)	Tenure	<ul style="list-style-type: none"> a) Directors of public company retire by rotation. b) 1/3rd Independent Director is not liable to retirement by rotation. c) This post can have maximum tenure of three years. 	Appointment of Managing Director is made for a term of five years.
5)	Positions Held	Director is only a person/member on the Board.	This is a post of dual identity. Managing Director is the Director on the Board. M. D. is the head of the management of the company by being a whole time manager.
6)	Remuneration	<p>Specific Provision entitles the directors for remuneration for their services.</p> <p>The director is given fees to attend Board Meeting which may be upto Rs. 1 lakh plus prescribed remuneration.</p>	If more than one managing director is appointed, the maximum remuneration cannot be more than ten percent of net profits. M.D. is entitled to either a monthly salary or five percent of net profits.
7)	Status	Directors are elected representatives of the shareholders managing company on their behalf. They can be agents of the company but not employees of the company.	As the duties of Managing Director are more than that of an ordinary director with more contribution, efforts and timewise; M. D. can be treated as the employee of the company.

2. Managing Director and Whole -time Director

Sr. No.	Points	Managing Director	Whole-time Director
1)	Meaning	The managing Director represent the Board in day-to- day management of the company.	The Whole-time Director is a director who devotes whole time to the working of the company.
2)	Powers	Managing Director is entrusted with substantial powers of management.	A whole time director does not have discretionary powers to take decision on policy matters.
3)	Number of Post	A person can be a Managing Director of more than one company if the Board of second company unanimously approves his appointment.	A person cannot have whole -time employment of more than a company at a time. so more than one whole-time directorship is not possible.

3. Managing Director and Manager

Sr. No.	Points	Managing Director	Manager
1)	Meaning	The Managing Director is the representative of the Board as far as the day-to-days administration of company is concerned.	The Manager is a person in charge of whole or substantially whole management of the affairs of the company.
2)	Power	Managing Director is entrusted with substantial powers of management.	The manager is entrusted with whole or substantially whole powers of management.
3)	Position Held	The Managing Director must be the director of the company.	The manager need not be a director of the company.
4)	Number of Posts	A Company may have more than one Managing Directors.	The company can have only one Manager.
5)	Appointment	The managing director may be appointed by virtue of an agreement with company or resolution passed by company's general meeting or Board meeting or memorandum or articles of the company.	Manager is appointed under a contract of service.
6)	Remuneration	In case of more than one managing director the maximum remuneration payable would be 10% of the net profit.	Maximum remuneration to a manager cannot be more than 5% of the net profit.

SUMMARY

- 1) A strong organizational structure is needed in company to take care of its unique feature of separate ownership and management.
- 2) The Board of Directors : This is the highest body with extensive powers, comprising of several Directors who are expert in their fields and appointed as per provisions of the Act.
- 3) DIN : It is a unique identification number required by every individual who intends to be the director of company.
- 4) Role of the Directors : Act in the capacities of
 - a) Agents of the company (representing the company)
 - b) Managing partners (Conducting management) and administration for and on behalf of shareholder and
 - c) trustees (guarding the interests of the company)

❑ **Key Managerial personnel of company**

It consists of

- 1) The Managing Director
- 2) The Company Secretary
- 3) The Chief Financial Officer
- 4) The Whole Time Director

The KMP strengthens the efforts of Board to assure efficient and lawfully compliant management of company.

- ### ❑ **Secretarial Standard (SS) :** It aims at standardizing diverse secretarial practices prevailing in corporate world. Note worthily; it is legally adopted in India. There are 10 SSs prepared and issued.

The SS-1 & SS-2 are approved by the Central Government and mandatory to be observed by all companies in India.

❑ **Secretarial Audit :**

It is the audit which verifies the compliance of different legislations influencing functioning of the company. A member of institute of company secretaries of India holding a certificate of Practice can conduct secretarial audit and prepare secretarial Audit Report in form No : MR-3 which is to be annexed to the Board Report.



EXERCISES

Q.1 A. Select the correct answer from the options given below and rewrite the statements.

- 1) comprises of a team of Directors.
a) Board of Directors b) Board of Trustees c) Board of Managers
- 2) can be a director.
a) An Individual b) A Firm c) A Body corporate
- 3) Up to as maximum directors are allowed to a company.
a) five b) fifteen c) fifty
- 4) A maximum of Directorships is allowed to a person.
a) two b) ten c) twenty
- 5) A maximum of Directorships of a public company is allowed to a person.
a) one b) ten c) twenty
- 6) is a unique identification number required to be a Director.
a) PIN b) DIN c) TIN
- 7) powers are the powers given to Board under the Act.
a) Statutory b) Managerial c) Administrative
- 8) Director represents company in his role as
a) Agent b) Managing Partner c) employee
- 9) Managing Director is appointed for a period of years.
a) 5 b) 10 c) 15
- 10) is required to work under superintendence, control, guidance of the Board.
a) Government b) ROC c) Managing Director
- 11) is an employee of the company.
a) Alternate director b) Non-executive Director c) Whole-time director
- 12) need not be a director of the company.
a) Manager b) Managing Director c) Whole-time director
- 13) needs a whole time director.
a) Listed company b) Partnership c) OPC
- 14) To provide guidance to Board is duty of company Secretary.
a) Personal b) General c) Statutory
- 15) Only a member of can be a practicing Company Secretary.
a) ICAI b) ACCA c) ICSI
- 16) is to be prepared in prescribed form MR -3.
a) Annual Report b) Auditors Report c) Secretarial Audit Report

B. 1. Match the pairs:

	Group 'A'		Group 'B'
a)	Board of Directors	1)	Nominated by the Board
b)	Managing Director	2)	Assists and advises the Board
c)	Company Secretary	3)	Automatic Appointment
d)	First Directors	4)	Appointed by ROC
e)	Alternate Director	5)	Extensive Powers of management
		6)	Substantial Powers of management
		7)	Appointed by Promoter
		8)	Assists and Advises the Government
		9)	Negligible Powers of management
		10)	Nominated by Council

B. 2. Match the pairs:

	Group 'A'		Group 'B'
a)	Public company	1)	Arises due to death of Director
b)	Private company	2)	Collective Powers
c)	Secretarial Auditor	3)	Individual Powers to Directors
d)	Casual Vacancy of a Director	4)	Arises due to additional work
e)	Powers of the Board	5)	Appointed by Managing Director
		6)	At least 2 (two) Directors
		7)	At least 3 (three) Directors
		8)	At least 15 (fifteen) Directors
		9)	At least 1 (one) Director
		10)	Appointed by the Board

C. Write a word or a term or a phrase which can substitute each of the following statements.

- 1) The organization with distinct feature of separate ownership and management.
- 2) The officer responsible for company's finances.
- 3) The body of elected representatives of company.
- 4) The officer who is statutory and administrative officer and also acts as co-ordinator of the company.
- 5) Qualification required to be a Company Secretary.
- 6) Agents, Trustees and Managing Partners of the company.
- 7) Audit which checks compliances of different legislations.
- 8) This KMP signs document of company requiring authentication by company.

- 9) The nature of relationship of Director with the company.
- 10) Name the secretarial standard - 1
- 11) Name the secretarial standard - 2
- 12) Name the secretarial standard - 3

D. State whether the following statements are True or False.

- 1) Large number of shareholders necessitates company to have separate managerial body.
- 2) Maximum number of Directors allowed to a company are 15 (fifteen).
- 3) A public company should have a minimum of 10 (ten) directors
- 4) DIN is required for Secretaryship.
- 5) Executive Director is called as outside Director.
- 6) Promoter of a company cannot be the Independent Director.
- 7) Only individuals can be directors.
- 8) Casual vacancy of Board is filled by the members.
- 9) To function as per Articles of Association of the company is statutory duty of the Board.
- 10) A Director is an employee of the company.
- 11) Managing Director is appointed by a resolution.
- 12) Minimum and Maximum age to be a Managing Director is 21 and 70; respectively.
- 13) A company may appoint more than one M. D.
- 14) Indian companies prefer a Managing Director over a Manager.

E) Find the odd one.

- 1) Woman Director, Promoter, Executive Director.
- 2) Absent at Board Meeting, failure to disclose interest, DIN.

F) Complete the sentences.

- 1) Separate ownership and management is a unique feature of
- 2) Minimum number of Directors for a private company should be
- 3) Minimum number of Directors for a public company should be
- 4) Minimum number of Directors for an OPC should be
- 5) First Directors of a company are appointed by
- 6) At least one Woman Director is required by company.
- 7) Casual vacancy on Board is filled by
- 8) Director is the guardian of interest of company as
- 9) First Secretary is appointed by
- 10) The audit which checks the compliance of Companies Act is called as

G) Select the correct option form the bracket.

Group 'A'	Group 'B'
1) Rotational Director	-----
2) -----	Alternate Director
3) Woman Director	-----
4) -----	First Director

(Every Listed Company, Appointed by Promoters, Appointed in place of a Director who is absent, Retire by rotation)

H) Answer in one sentence.

- 1) Who is the officer responsible for the Company's financial plan?
- 2) What is the importance of Secretarial Standards?
- 3) Who provides guidance to the Board of Directors?
- 4) What is the tenure of 'Managing Director'?

I) Correct the underlined word and rewrite the following sentences.

- 1) Public company must have minimum 15 Directors.
- 2) First Directors are appointed by ROC.
- 3) Secretarial Standards are given by the Companies Act, 2013.

Q.2 Explain the following Terms / Concepts.

- 1) Director
- 2) Managing Director
- 3) Independent Director
- 4) Executive Director
- 5) Non Executive Director
- 6) Alternate Director
- 7) Casual vacancy of a Director
- 8) Chief Financial Officer
- 9) Company Secretary
- 10) Secretarial Standard
- 11) Secretarial Audit
- 12) The Board of Directors

Q.3 Study the following case/situation and express your opinion.

- 1) Mr. A is a commerce graduate. He has vast experience in the field of finance and financial market. He wishes to become director of PQR co Ltd.
 - a) Is he required to obtain DIN?
 - b) Can PQR Co. Ltd. object to his directorship on lack of specialized qualification?
 - c) If he is appointed as director of PQR Co Ltd, is he entitled to remuneration?
- 2) Mr. Z is a member of Institute of Company Secretaries of India.
 - a) Can Mr. Z be appointed as pro-tem Secretary of LMN Ltd. which is under formation?
 - b) Can Mr. Z work as secretarial Auditor?
 - c) Mr. Z wishes to be employed as whole time Secretary in companies ABC Ltd. and OPC Ltd. Is he allowed?

- 3) Mr. M wishes to be the Managing director of QRS Ltd.
 - a) The age of MR. M is 30 years. Can he be appointed as MD of a company?
 - b) Is it necessary that Mr. M should be one of the directors on the Board of QRS Ltd.?
 - c) For how long a period QRS Ltd. can appoint Mr. M. as Managing Director?

Q.4 Distinguish between the following.

- 1) Director and Managing Director
- 2) Managing Director and Manager
- 3) Managing Director and Whole Time Director

Q. 5. Answer in brief.

- 1) What is DIN?
- 2) State any four powers of Board of Directors.
- 3) Mention any four ways in which the office of a Director becomes vacant.
- 4) State any four powers of Managing Directors.
- 5) State the Statutory duties of a company Secretary.

Q.6 Justify the following statements.

- 1) Directors are Managing Partners.
- 2) A Director is an agent of the Company.
- 3) Company has a distinct feature of separate ownership and management.
- 4) DIN helps investors of the company.
- 5) Directors have to work as a team.
- 6) Directors play a triple role.
- 7) Company Secretary plays a triple role.
- 8) A Director cannot be called employee of the company.
- 9) Managing Director has substantial powers of management.
- 10) Indian companies prefer to appoint a M. D. than Manager.
- 11) Pro-tem Secretary is helpful to the company.
- 12) Secretarial Standards should be in conformity with the Act.
- 13) Secretarial Standards leads to better legal compliance.
- 14) Secretarial Audit is required under the laws.

Q.7 Answer the following questions:

- 1) Explain the Role of Directors.
- 2) Explain the duties of Director.
- 3) Explain the Managing Director.
- 4) Explain the Company Secretary.
- 5) Explain the Role of Company Secretary.





COMPANY MEETINGS - I

7.1. Essentials of valid meeting

7.1 1. Properly convened

1. Proper authority
2. Notice
3. Agenda

7.1 2. Properly constituted

1. Quorum
2. Chairman

7.1 3. Properly conducted

- | | | |
|---------------|------------|-----------|
| 1. Proxy | 2. Motion | 3. Voting |
| 4. Resolution | 5. Minutes | |

7.2 Distinction

INTRODUCTION:

Joint stock company is very popular form of business organization. It's members are large in number. Members are treated as owners of the company but they are scattered over wide areas and have their own business hence they cannot practically manage the daily company affairs Under such circumstances it becomes necessary to make separation of ownership from management.

Meeting is the best form of oral or face to face communication of members and management in the company. Members and directors come together, discuss company related matters, exchange ideas, opinions, determine the business plan and policies and take collective decisions at a meeting.

In short company meetings are necessary for the purpose of discussing various issues relating to the company and arrive at decisions.

Meaning and Definition:

The term meeting is derived from the Latin word 'Maeta'. Maeta means 'face to face'.

Meaning:

A meeting may be defined as gathering or assembling of two or more persons for transacting any lawful business.

Definition:

According to Show & Smith "Company Meeting is an assembly of people connected with the company who have gathered for the purpose of discussing matters related to it."

In short company meeting is an official gathering of Shareholders, Directors, KMPs and / or Creditors for discussing different issues relating to the company and arrive at decisions.

Importance of company meetings:

1) **Opportunities for members to come together:**

A meeting provides an opportunity for members to come together and discuss about the working of the company.

2) **Minutes of the previous meeting:**

Minutes of the previous Board and Committee meeting are read out by the Secretary which enables the members to get a clear idea about the matters discussed in the previous meeting.

3) **Fixation and implementation of policies, plans and programmes:**

The management chalks out the policies, plans, programmes and decides ways and means of its implementation in the meeting.

4) **Analysis of problems:**

The nature of problems can be discussed and analyzed in the meeting and it becomes easy to arrive at a solution.

5) **Legal requirements:**

Meetings are to be held according to the provisions of the Companies Act. Legal formalities related with convening and conducting various meetings of the company are fulfilled by conducting meetings.

6) **Other elements:**

Meetings are essential to make the appointment of directors, and auditors, declare the dividend, study and give approval to annual report, financial statements, auditors report etc.

7.1 **ESSENTIALS OF VALID MEETINGS:**

Meetings play a very vital role in management of a joint stock company, as most of its decisions are made at the company meetings. The business transacted at these meetings must be valid. A meeting becomes valid when it is duly convened, properly constituted and properly conducted in accordance with the provisions of the Companies Act and the Articles of Association of the company.

7.1.1. **PROPER CONVENING OF MEETING:**

1. **Proper authority:**

A meeting must be convened by a proper authority. The proper authority to convene a general meeting of shareholders is the Board of directors. Under certain circumstances meetings can also be called by the members or the National Company Law Tribunal or the Central Government. The secretary should call a meeting by issuing a notice with the authority of board of directors.

2. **Notice - (Company Act 2013-section 101):**

The second requirement of a valid meeting is that a proper notice must be given to proper person.

a) **Meaning:**

The notice of a meeting is an advance written intimation containing day, date, time and place given by company to all those who are entitled to receive it.

b) Contents of notice:

Every notice of company meeting must specify

- i) Type of the meeting
- ii) The exact day, date, time and place of meeting
- iii) The agenda of meeting and contains a statement that member is entitled to appoint proxy.
- iv) If any special resolution is to be passed it must be mentioned as special resolution in notice.
- v) In case of special business to be transacted statutory note and an explanatory statement must be given in the notice.

c) Authority to send notice:

The Board of directors is the authority to send the notice of the meeting. Normally the board of directors authorizes the secretary to send the notice convening the meeting.

d) Authority to receive notice (section 172(2)):

- i) All the share holders, in case of shareholders meeting.
- ii) The Auditor of the company in case of Annual General meeting.
- iii) The legal representatives of deceased or insolvent member
- iv) A person named first in register of members in case of joint holders.
- v) All directors in case of Board meeting / General meetings.

e) Period of Notice:

In case of general meeting, notice must be sent 21 clear days before the actual meeting i.e. the day of sending notice and day of meeting is to be excluded while counting 21 days. But for a Board Meeting 7 days notice is required.

f) Ways of serving notice (Section 172(2)):

- i) Notice must be sent either personally or by ordinary post at the registered address of the member in India only.
- ii) If the member has no registered address in India, then it is sent to the address which is given by the member.
- iii) If any member wants the notice by registered post, the notice must be sent accordingly, provided he pays charges in advance.
- iv) Notice can also be advertised in a leading newspaper of the area, where the registered office of the company is situated.
- v) As per initiative of Ministry of Environment, company can also send notice of meeting through e-mail.

g) A statement to be sent alongwith notice - (Section 102):

Where special business is to be transacted in the general meeting, an explanatory statement to that effect is required to be annexed to the notice.

h) Omission to give notice (Section 101 (4):

If notice is not sent to one or more members deliberately, the meeting would become invalid.

3) Agenda :

● **Meaning:**

Agenda means a statement containing a list of items to be discussed at the meeting.

A secretary has to prepare the agenda in consultation with the chairman. Agenda is sent along with the notice of the meeting.

● **Importance of Agenda**

- i) Chairman can conduct the meeting efficiently with the help of agenda.
- ii) Chairman can discuss the items as per the sequence of agenda.
- iii) Members can get sufficient time to think over the items given in the agenda. So that they come well prepared for the meeting and actively participate in it.
- iv) All items included in agenda are discussed in the meeting.

● **Guidelines for preparation of Agenda:**

While preparing the agenda the secretary should keep in mind the following guiding principles.

- i) Agenda must be prepared in simple language and it should be brief and clear.
- ii) Routine or general nature of items should be put first in order then special matters and contentious matter should be the last.
- iii) Similar type of matters should be placed in a sequence on the agenda.
- iv) All items included in the agenda must be within the scope of the meeting.

● **Types of agenda:**

There are two types of agenda - 1. Bare statement agenda in which all items are described in brief and 2. Draft minutes agenda in which items are given in detail so that it is useful in preparing the minutes of the meeting.

7.1.2 Proper constitution of meeting:

1) Quorum - (Section 103):

Quorum is the most essential condition for a valid meeting. Quorum means the minimum number of members required to be present at a meeting. Presence of the members is essential for transacting legally the business at the meeting. The quorum has to remain present from beginning till the end of meeting. Secretary must ensure the quorum before the commencement of meeting. A meeting in absence of quorum is invalid.

Provisions for Quorum (Companies Act, 2013)

Quorum for General meeting

a) In case of public company:

Quorum depends upon the number of share holders.

Number of shareholders	Quorum
Not more than 1000	Five (5) members
More than 1000 but up to 5000	Fifteen (15) members
Exceeds 5000	Thirty (30) Members

b) In case of private company:

Two members personally present shall be the quorum for meeting of the company.

Quorum for Board Meeting:

According to the provision in the Companies Act, a quorum for Board Meeting is 1/3 of the total number of directors or two directors whichever is higher.

2) Chairman of the meeting (Section 104)

There must be a proper person i.e. chairman to conduct a meeting properly. Chairman has to preside over and conduct the proceedings of a meeting.

☐ Provisions for the appointment of Chairman: (Section 104)

If the articles of association of a company do not provide any provisions for the appointment of a Chairman, then the appointment of Chairman shall be made as per the provisions of Companies Act as follows:

- i) Unless the articles of a company otherwise provides, the members personally present at the meeting shall elect one of them to be the Chairman thereof on a show of hands.
- ii) If a poll is demanded for the election of the Chairman, it shall be taken forthwith. The Chairman elected by a show of hands shall exercise all the powers till the Chairman is elected by poll.
- iii) If some other person is elected as the Chairman as a result of the poll, that person shall be the chairman for the rest of meeting.

☐ Powers of Chairman:

- i) To keep order and conduct the meeting properly.
- ii) To decide the priority of speakers.
- iii) To maintain relevancy and order in debate.
- iv) To prevent the use of improper language and behaviour of the member.
- v) To adjourn the meeting if it becomes impossible to conduct and complete the meeting.
- vi) To give casting vote when votes in favour of the proposal and against the proposal are equal
- vii) To declare the result of the voting.
- viii) To give ruling on point of order.

☐ Duties of Chairman:

- i) To see that the meeting is properly convened and constituted.
- ii) To see the proceeding of the meeting are conducted in a proper manner.
- iii) To see that the items are discussed according to agenda.
- iv) To maintain order in the meeting.
- v) To declare result of voting.

- vi) To see that proper and correct minutes are entered in the minutes book and to sign them.
- vii) To act in the best interest of the meeting.
- viii) To deal with all incidental questions which arise at a meeting.

7.1.3. PROPER CONDUCT OF MEETING:

1) Proxy (Section 105):

Meaning:

A proxy is a person who attends a general meeting and votes on behalf of a member of the company.

Every member of a company has a statutory right to appoint a proxy.

□ Legal provisions regarding proxy:

i) Appointment:

Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf. It is also provided that the Central Government may prescribe certain companies whose members shall not be entitled to appoint another person as a proxy. A minor cannot be appointed as proxy. Proxy cannot be appointed for a Board meeting. The appointment of proxy is valid for an adjourned meeting.

ii) Right:

A proxy shall not have the right to speak at the meeting and to vote except on a poll.

iii) Membership :

A person appointed as a proxy may or may not be a member of the company.

iv) A letter of authority/proxy form:

The duly completed proxy form must be submitted by the member in company's registered office at least 48 hours before the meeting and a separate proxy form is required for each meeting.

v) Inspection:

A member can inspect any proxy form by giving not less than three days notice to the company.

2) Motion: (Section 105)

A motion is a proposal put before a meeting for its consideration and adoption. A motion is liable to alteration before it is adopted by the meeting.

A person who puts forth motion in the meeting is called a proposer or a mover.

□ Essentials of a valid motion:

- i) A motion must be in writing and signed by the proposer, and put to the meeting by the Chairman.
- ii) A motion should not contain any argument, inference or defamatory expression.
- iii) Wording of motion should be affirmative - clear, and definite.
- iv) Motion should be within the scope of agenda.
- v) Motion should be seconded by at least one member.

- vi) Every member is allowed to speak on the motion only once.
- vii) Motion can be withdrawn by proposer by following a procedure.

□ Kind of motions

1) Formal motion 2) Substantive motion

1) Formal motion:

Formal motions are related to the procedures at the meeting and are moved for the purpose of preventing or delaying or speeding up discussion on a motion. Following are types of formal motion -

i) The Closure:

When a member is convinced that sufficient time has been spent on the discussion of a particular motion, he may propose that the question be now put to vote. This is called as closure. The object of moving a closure motion is not to solve the main question, but to avoid waste of time and to arrive at a quick decision. If this motion is put to vote and if majority favours the same, no further discussion is permitted.

ii) Previous Question motion:

The main purpose of this motion is to prevent discussion on the main motion. When some members come to the conclusion that it is unwise or inconvenient discussion on the main motion, they may move the previous question. The wording of this motion is 'The question be not now put.' If it is carried, the discussion on the main motion is dropped. If the previous question is lost, the original motion is put to vote.

iii) Next Business motion:

This motion is similar to the previous question motion. The object of moving such a motion is to shelve discussion on the main motion before the meeting. The wordings of motion is 'The meeting to proceed to next business'.

Such motion is generally moved when a member is of the opinion that the main motion under discussion is of little importance and other important items of business are not yet transacted. In such a case the motion is put to vote and if it is carried, the original motion is dropped at once and the meeting proceeds to next business.

iv) Adjournment of Debate motion:

By this motion discussion on the motion can be postponed. The wording of this motion is 'The debate on the subject be adjourned.' The mover of the motion feels that additional information is required for further discussion and the discussion should be delayed for particular period. If it is carried, the debate will be postponed if it is lost the debate continues.

v) Adjournment of meeting motion:

The aim of this is to postpone the meeting for a particular period or indefinite period. The wording of this motion is "The meeting be now adjourned." If it is carried, the meeting is postponed to future date. If it is lost, meeting continues.

2) Substantive motion:

A motion which is changed due to amendment is called substantive motion. When an

amendment is passed, it is incorporated in the original motion. The substantive motion is put to vote, if it is passed it becomes a resolution.

❑ **Amendment:**

An amendment is any alteration proposed by a member to the original motion when a motion is under discussion.

Amendments are generally moved to alter original motion by-

- a) Adding some new words.
- b) Deleting some words.
- c) Replacing some words.
- d) By changing the position or place of words.

The amendment should be relevant to the main motion and it must not alter the original motion entirely.

❑ **Point of Order :**

A point of order is a question or objection raised by any member when he wants to bring to the notice of the chairperson the irregularities in the meeting.

The point of order may be for-

- 1) Absence of quorum
- 2) Breach of any rule relevant to meeting
- 3) Misbehaviour of any member.
- 4) Use of improper language by any member

When the point of order is raised, discussion on the original motion is stopped for some time. The decision on the point of order is taken by the chairperson. It shall be final and binding on the meeting.

3) Voting:

To vote means to express opinion in a formal way. After discussion on motion in a meeting, it is put to vote for knowing the opinion of members. Voting is necessary to ensure the sense or trend of the meeting. Each share holder has the right to vote on each motion in lawful manner.

❑ **Methods of voting:**

1. Voting by voice

Under this method the members are requested to say 'yes' if they are in favour of the motion or say 'No' if they are against the motion. Decision is taken on the basis of volume of voice.

This method is exercised rarely. The volume of voice does not give the clear idea about the majority of votes.

2. Voting by Division

Under this method present members are divided into two groups. Members in favour and those against the matter are asked to go in different rooms. Then the trend of the meeting is ensured by counting and chairman declares the result.

3. Voting by show of hands - (section 107)

This method is used in the general meetings of a company. After the discussion on the motion the chairman requests the members to raise their hands in favour or against the motion. The chairman declares the result by counting number of hands in favour or against the proposal.

4. Voting by Ballot

Under this method to record the vote, ballot papers are distributed to every member and they deposit it in the ballot box. The votes are counted and the result is declared. This method maintains secrecy in voting.

5. Voting electronically (section 108)

The Central Government may prescribe certain companies for having compulsory electronic voting in general meeting. Member may exercise his right to vote by the electronic means.

6. Voting by postal ballot (section-110)

The Central Government may prescribe certain companies for having voting by postal ballot. Ballot papers are sent by post to members.

7. Voting by Poll

Poll can be demanded after the declaration of result by the show of hands. Under this method each member can vote in proportion to the number of shares held by him. Polling papers are given to members and proxies for recording their votes. The result of poll is final and not to be challenged.

Legal provisions regarding voting by poll-

- i) The chairman can demand poll
- ii) In case of a private company.
 - a) Poll can be demanded by one member when not more than seven members are present and
 - b) by two members when more than seven members are present
- iii) In case of public company poll can be demand by at least five members present in person or by proxy.
- iv) It can also be demanded by any member/members present in person or by proxy holding 1/10 of the total voting power.
- v) The poll must be conducted within 48 hours of its demand.
- vi) The decision taken by poll is final and cannot be changed.
- vii) The demand for poll can be withdrawn any time by the person who demanded it.

Merits :

- 1) Proxies are allowed to vote.
- 2) Secrecy can be maintained under this method.
- 3) It is scientific method of voting.
- 4) Shareholders can vote in the proportion of shares held.

Demerits

- i) Under this method 'one share one vote' principle is exercised hence this method is criticized as capitalistic method of voting.
- ii) This method is expensive, time consuming and complicated.

4) Resolution

A motion accepted in a meeting is called resolution. A Resolution is formal and final decision of meeting. No discussion is allowed on the resolution. Every resolution should be recorded in minutes book. Every resolution should be brief and framed in the affirmative form. Number of members voting in favour and against the resolution should be mentioned. Resolution should be drafted in present tense. Resolution cannot be altered.

Types of Resolution

A) Ordinary Resolution (Section 114)

A resolution which is passed by simple majority is called ordinary resolution. More than 50% of the votes should be in favour of motion. An ordinary resolution need not be submitted to registrar of companies. The notice of the meeting need not require to explain the particulars of an ordinary resolution. For e.g. Approval of statutory report, Alteration of the share capital, Declaration of Dividend, Approval of directors, auditor report and final accounts, Election of directors, appointment of secretary and auditor and fix their consideration etc.

B) Special Resolution (Section 114(2))

The resolution which is passed by special majority is called as special resolution. It is passed by 3/4 or 75% majority. The number of votes in favour of motion should be three times of the votes cast against the motion. Purpose of passing a special resolution should be mentioned in the notice of the meeting. A special resolution is passed in general meeting only. Notice of Special Resolution has to be given to the members 21 days before the meeting. A copy of special resolution must be filed with the Registrar of Companies through e - filing on MCA portal within 30 days of passing resolution.

Examples of special Resolution-

- i) Change in the name of the company (Section 13)
- ii) Shifting of registered office of the company from one state to another (Section 12)
- iii) Alteration in the object clause of company
- iv) Reduction in the authorized share capital of the company
- v) Alteration in the Articles of Association of company (Section 14)

C) Resolution requiring special notice (Section 115)

Some resolutions require special notice as per the Companies Act or Articles of Association of the company, hence such resolutions are called resolution requiring special notice.

Special notice resolution may be ordinary or special resolution.

A proposer of the motion has to give a special notice of 14 days to the company. The company should then give a notice of that resolution to all members at least 7 days before the meeting.

Under the Companies Act 2013 for the following resolutions require special notice -

- i) Resolution to appoint a person as a auditor other than a retiring auditors
- ii) Resolution providing that a retiring auditor shall not be reappointed
- iii) Resolution to appoint director other than retiring director
- iv) Resolution to remove a director before the expiry of his term
- v) Appointment of a person as a director in place of the director removed

D) Resolution requiring Registration (Section 117)

Resolutions which are required to be registered with the Registrar of Companies are called as resolution requiring registration. Resolution should be filed with Registrar within 30 days of it's passing. Examples of such resolutions as following.

- i) All Special Resolutions,
- ii) Resolution made by Board of Directors regarding appointments or reappointment of managing director,
- iii) Resolution made by members regarding dissolution of company.

E) Resolution by Circulation

When directors have to take important and urgent decisions and do not have sufficient time to call a meeting; at that time a draft resolution is prepared and forwarded to all directors to pass resolution. It is called as resolution by circulation.

□ Validity of Resolution

Resolutions passed at the meeting by following proper rules and regulations are termed as valid resolutions. If resolutions are passed without following proper rules and regulations they are termed as invalid resolutions.

Points regarding Invalid Resolutions

- i) Resolution is not within the scope of notice and meeting.
- ii) Resolution passed at the meeting but not properly convened and constituted.
- iii) If the fact of special business is not mentioned in the notice of the meeting.
- iv) If resolution requires a specific majority of votes but it is passed only by ordinary majority of votes discussed at the meeting.
- v) Resolution is out of the scope of Memorandum of Association.
- vi) Voting on the motion is irregular.

5) Minutes (Section 118)

Meaning

The term minutes means written records of proceedings of a meeting.

Definition

According to M. C. Kuchhal - The term minutes means a concise and accurate official record of the decisions taken at the meeting.

Minutes are prepared by the secretary within 15 days after the meeting. Minutes are recorded in minutes book and written in the past tense. After preparing minutes, it should be passed in

consecutive meeting. Minutes Books for General Meetings and Board Meetings are maintained separately.

Importance of Minutes :

1) Authentic Record

Detailed information about proceeding of the meeting is made available through minutes.

2) Evidence

Minutes can be used as prima facie legal evidence in the court of law.

3) Future reference

Minutes is a permanent record. It is useful for taking future managerial decisions.

4) Legal provisions

Minutes are to be prepared by following legal provisions mentioned in the Companies Act and secretarial standard.

5) Information to Absent members

Minutes helps the absent members in knowing the proceedings of meeting and it also serves as a reminder of the subject.

6) Information about Resolution

The motion and discussion on the motion are reflected in the resolution. Interested parties can always refer to the text of a resolution when there is contradiction or confusion.

7) Inspection of Minutes (Section 119)

As per the Companies Act Minutes Book should be kept at the registered office of the company and every member has right to inspect the minutes book of the general meetings.



Activity: Prepare an agenda for a meeting to discuss holding of Annual Day.

7.2 DISTINCTION BETWEEN -

1. Motion and Amendment

Sr. No.	Points	Motion	Amendment
1)	Meaning	Motion is a written proposal placed before the meeting for discussion and decision.	An amendment is an alteration or a modification proposed to the original motion.
2)	Purpose	The main purpose of motion is to discuss and to take proper decision.	The main purpose of an amendment is to revise or modify the main motion.
3)	Effect	When motion is accepted by majority in the meeting, it becomes resolution.	When an amendment is approved by majority, it becomes a part of resolution.

2. Motion and Resolution

Sr. No.	Points	Motion	Resolution
1)	Meaning	Motion is a written proposal placed before the meeting for discussion and decision.	Resolution is an accepted motion in the meeting.
2)	Amendment	Motion is subject to amendment before it is put to vote.	When resolution is passed, it cannot be amended.
3)	Recording	A motion is not recorded in the minutes book of a meeting.	All resolutions must be recorded in the minute book of a meeting.
4)	Filing	Motion need not be filed with the registrar of companies.	Certain resolutions are required to be filed with the registrar of the companies within 30 day of the date of its passing.
5)	Withdrawal	It may be withdrawn by mover before it is put to vote.	Once it is approved, it cannot be withdrawn.
6)	Types	Motion can be i) formal motion ii) substantive motion	Resolutions are of 3 types i) Ordinary ii) Special iii) Resolution Requiring special notice

3. Agenda and Minutes

Sr. No.	Points	Agenda	Minutes
1)	Meaning	Agenda is a list of business to be transacted at the meeting.	Minutes is the statutory record of business transacted at the meeting.
2)	Importance	Agenda is sent to members along with the notice of meeting. It is useful to the chairman to take items for discussion according to agenda Members can prepare themselves for meeting.	It acts as prima facie evidence in court of law and it is useful for future reference.
3)	When prepared?	Agenda is prepared before the meeting.	Minutes are prepared after the meeting.
4)	Tense	Agenda is always written in the future tense.	Minutes is always in the past tense.
5)	Where recorded?	Agenda is included in the notice of a meeting.	Minutes is recorded in minutes book.

4. Voting by show of hands and Voting by poll

Sr. No.	Points	Voting by show of hands	Voting by poll
1)	Meaning	A voting by show of hands is a method of voting in which members cast their votes by raising hands.	Voting by poll is a method of voting in which every member is given a ballot paper to record his votes according to the number of shares held by him.
2)	Secrecy	Votes are given openly by show of hands, hence secrecy is not maintained.	Votes are recorded on voting papers hence secrecy is maintained.
3)	Voting by proxy	Proxies are not allowed to vote under this method.	Proxies can vote only in this method.
4)	Number of votes	'One man, one vote' is the principle of voting in this method.	'One share, one vote' is the principle of voting by poll. Therefore each member can vote in proportion to the number of shares held by him.
5)	Effect	The decision by show of hands is cancelled, when poll is demanded.	The decision taken by poll is final and it cannot be cancelled. It is binding on all the members of the company.

5. Ordinary Resolution and Special Resolution

Sr. No.	Points	Ordinary Resolution	Special Resolution
1	Meaning	The resolution which is passed by a simple majority of votes is called as ordinary Resolution.	The resolution which is passed by 3/4 th majority of votes is called as special resolution.
2	Majority	Ordinary resolution requires more than 50% of majority of votes.	Special resolution requires at least 75% majority of votes.
3	Examples	Appointment of auditors, declaration of dividend, election of directors, etc.	Change in the name of company, alteration in the object clause of Memorandum, reduction in share capital of company etc.

SUMMARY

- 1 A meeting may be defined as coming or gathering or assembly of two or more persons for transacting any lawful business.
- 2 Company meeting is an assembly of people connected with the company who have gathered for the purpose of discussing matters related to it.

- 3 Notice is an advance intimation given by company to its members containing agenda, day, date, time and place of meeting.
- 4 Agenda is a statement containing a list of items to be discussed at the meeting.
- 5 Quorum means the minimum number of members required to be present at the meeting.
- 6 Chairman of meeting is a person who conducts the meeting properly.
- 7 Proxy is the representative of an absent member.
- 8 Motion is a proposal put before the meeting for discussion and decision.
- 9 Accepted motion is called resolution. An amendment is the alteration proposed to the original motion.
- 10 A point of order is a question raised regarding the conduct of meeting or the procedure of meeting.
- 11 Minutes is the written record of proceeding of meeting.



EXERCISE

Q.1 A. Select the correct answer from the options given below and rewrite the statements.

- 1) The intimation to members stating the day, date, time and place of meeting is known as..... .
a) quorum b) agenda c) notice
- 2) The notice of the general meeting must be sent to all members clear days before the meeting.
a) 24 b) 21 c) 14
- 3) The person who presides over the meeting is known as..... .
a) Secretary b) Chairman c) Director
- 4) A proxy can vote only in the case of voting by..... .
a) division b) show of hand c) poll
- 5) The appointment of an auditor requires
a) resolution requiring special notice b) an ordinary resolution
c) a special resolution.
- 6) Ais the proposal put before the meeting for discussion and decision.
a) Motion b) Resolution c) Minutes
- 7) The right of casting vote is given to the..... .
a) Director b) Chairman c) Secretary
- 8) Minutes must be recorded withindays of the conclusion of the meeting.
a) 60 b) 21 c) 15
- 9)resolutions are not passed in general meeting.
a) Ordinary b) Special resolution c) Resolution by circulation

- 10) For passing special resolution..... majority is required.
 a) 51% b) 66% c) 75%
- 11) For alterations in the Articles of Associations..... is required.
 a) a special resolution b) an ordinary resolution
 c) a resolution requiring a special notice
- 12) Provisions about resolutions are contained in of a company.
 a) Articles of Association b) Memorandum of Association c) Prospectus
- 13) When a poll is demanded it must be taken within hours.
 a) 48 b) 36 c) 12

B. Match the pairs:

Group 'A'		Group 'B'	
a)	Chairman	1)	Proposal put before the meeting
b)	Quorum	2)	Casting vote
c)	Motion	3)	Amendment
d)	Minutes	4)	Minimum number of members required for a valid meeting
e)	Notice	5)	Voting
f)	Proxy	6)	Maximum number of members required for a valid meeting
		7)	Record of meeting
		8)	Accepted motion
		9)	Intimation stating agenda, day, date, time and place of meeting
		10)	Representative of member
		11)	Representative of a director
		12)	Formal motion

C. Write a word or a term or a phrase which can substitute each of the following statements.

- 1) The person who signs the minutes of the meeting.
- 2) A method of voting where members can vote in proportion to the number of shares held.
- 3) A resolution passed by simple majority.
- 4) A resolution passed by 3/4 majority.
- 5) A company officer who is required to draft the minutes of the meeting.
- 6) A person who conducts the proceedings of the meeting.

D. State whether the following statements are True or False.

- 1) Minutes are prepared before the meeting.
- 2) Maximum number of members required to attend the meeting is called as Quorum.
- 3) Meetings are held only to review the progress of the company.
- 4) Chairman has right to conduct the meeting.

E) Find the odd one.

- 1) Next Business Motion, Previous Question Motion, special Resolution.
- 2) Ordinary Resolution, Resolution requiring special notice, Substantive motion.

F) Complete the sentences.

- 1) The authority who can convene the general meeting of shareholders is
- 2) The advance intimation about the day, date, time etc. of a meeting sent to the members is called as
- 3) The minimum number of members required to be present at a meeting is called as
- 4) A person who attends a general meeting and votes on behalf of a member is called as
- 5) A proposal put before a meeting for consideration and adoption is called as
- 6) A formal and final decision taken in a meeting is called as
- 7) The written records of proceedings of a meeting is called as

G) Select the correct option form the bracket.

Group 'A'	Group 'B'
1) Voting by poll	-----
2) -----	Special resolution
3) Substantive Motion	-----
4) -----	Chairman

(Presides over the meeting, Proxy, An amended Motion, 3/4 or 75% majority)

H) Answer in one sentence.

- 1) What is Minutes?
- 2) What is Notice?
- 3) What is Ordinary Resolution?
- 4) What is agenda?
- 5) Who is Chairman?
- 6) What is point of order?

I) Correct the underlined word and rewrite the following sentences.

- 1) Minutes are prepared before the meeting.
- 2) Resolution is a proposal put before a meeting for discussion.
- 3) Polling papers are used for voting by show of hands.
- 4) A Motion is a final decision taken in the meeting.
- 5) Agenda is prepared after the meeting.

J) Arrange in proper order.

- 1) a) Drafting Minutes
b) Sending notice
c) Confirming quorum
- 2) a) Motion
b) Resolution
c) Voting

Q.2 Explain the following terms/concepts.

- | | | |
|------------------------|--------------|------------|
| 1) Ordinary Resolution | 2) Agenda | 3) Quorum |
| 4) Proxy | 5) Amendment | 6) Motion |
| 7) Special Resolution | 8) Notice | 9) Minutes |
| 10) Point of order | | |

Q.3 Study the following case/situation and express your opinion.

- 1) XYZ Ltd co. sent notice of its Annual General meeting to its members. In the meeting a resolution is to be passed on altering the Articles of Association.
 - a) Should agenda also be sent with Notice?
 - b) What type of resolution is needed to alter the Articles?
 - c) Should the resolution for altering articles be filed with registrar of companies?
- 2) A General meeting of public limited company is to be held. State the provision of quorum for -
 - a) meeting of the company which has less than 1000 members
 - b) meeting of the company which has more than 5000 members
 - c) meeting of the company which has 2500 members
- 3) Mr. P is elected as chairman of General Meeting. Please advise him on the following matters:
 - a) What should be done if the votes cast in favour and against the motion are equal?
 - b) How many votes can a member cast under poll method?
 - c) What should Mr. P do if any point of order is raised by a member?

Q.4 Distinguish between the following

- 1) Agenda and Minutes
- 2) Motion and Resolution
- 3) Voting by show of hands and Voting by poll.

Q.5. Answer in brief.

- 1) State the importance of company meetings.
- 2) State the legal provisions regarding Proxy.
- 3) When can point of order be raised?
- 4) Explain any four methods of Voting?
- 5) State the importance of Minutes.

Q.6 Justify the following statements.

- 1) Meeting must be duly convened and properly constituted.
- 2) Chairman is responsible for proper conduct of meeting.
- 3) Motion can be amended.
- 4) Proxy can not speak in the meeting.
- 5) Notice is issued to members for a meeting along with agenda.

Q.7 Answer the following questions.

- 1) Explain the powers and duties of chairman
- 2) Explain the different methods of voting.
- 3) Explain the types of resolution





COMPANY MEETINGS - II

8.1 Types of Meeting

8.1.1 Shareholders Meetings

A) General meetings

1. Annual General Meeting
2. Extra ordinary Meeting

B) Class Meeting

8.1.2 Directors Meetings

1. Board Meeting
2. Committee Meeting

8.1.3 Creditors Meeting

8.2 Functions of Secretary related with Annual General Meeting

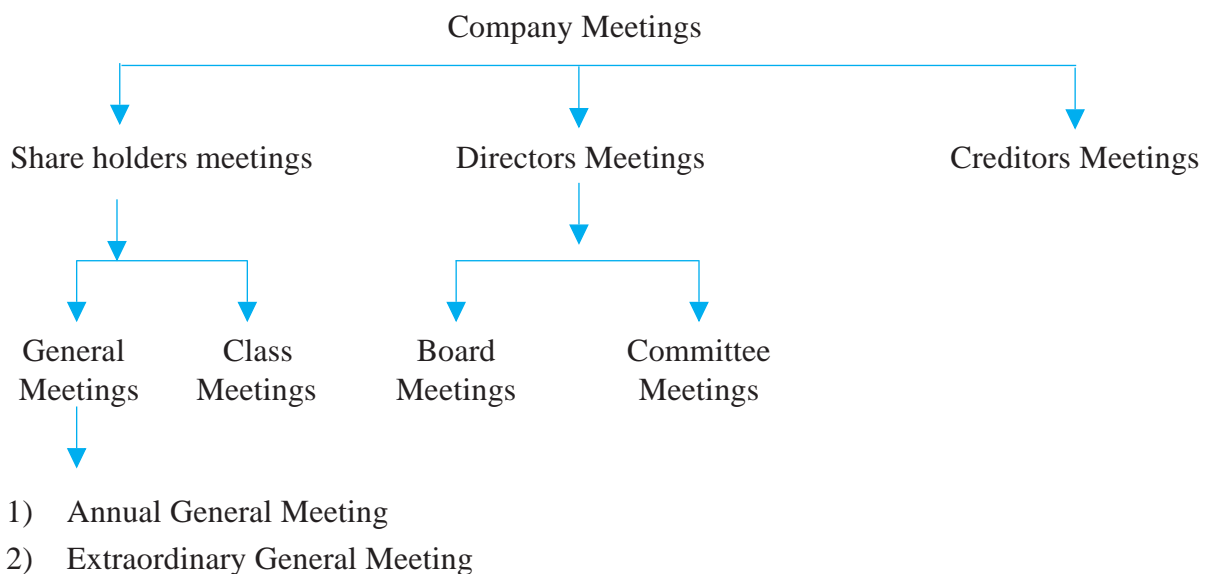
8.3 Distinction

1. Shareholders Meeting and Board Meeting
2. Annual General Meeting and Extra ordinary General Meeting

INTRODUCTION

In Joint stock company there is separation of ownership and management. Hence, there is a need to conduct meetings of the shareholders and Board of Directors. Several types of Shareholders meetings and Directors meetings are conducted by the company.

8.1 TYPES OF MEETING :



8.1.1 SHAREHOLDERS MEETING :

Shareholders participate in the management of the company. They exercise their right to manage the company by participating in shareholders meetings. Shareholders meetings are arranged to discuss on various issues and arrive at decisions.

A) General Meetings : These are meetings of equity shareholders of the company. There are two types of General Meeting - Annual General Meeting and Extra Ordinary General Meeting.

1) Annual General Meeting (Section 96)

Annual General Meeting is a meeting of equity shareholders which is held once in every financial year.

• Purpose of Annual General Meeting

Annual General Meeting of shareholders is held every year to review the progress made by the company during the financial year and to discuss and to take decisions on various issues such as -

- 1) To adopt Annual Accounts, Directors' Report and Auditor's Report
- 2) To declare dividend
- 3) To elect Directors in place of retiring Directors
- 4) To appoint auditors and fix their remuneration
- 5) To review the progress and performance of the company

• Legal provisions

1) Time of Holding Annual General Meeting

A) First Annual General Meeting : The first Annual General Meeting shall be held within nine months of closing of the first financial year of the company.

B) Subsequent Annual General Meeting : It must be held within 6 months after completion of its financial year.

C) The Interval between two AGM - should not be more than 15 months.

D) Extension of time for conducting AGM - The registrar may for any reason extend time to conduct AGM by a period not more than three months. However, the Registrar cannot provide extension in case of the first AGM.

One Person Company is exempted from provision of AGM.

2) Authority to convene Meeting : The Board of Directors is the proper authority to convene Annual General Meeting.

3) Notice : The secretary should send 21 clear days notice to all members of the company at their registered address by post or through electronic mode.

4) Date, time and place of AGM : Every Annual Meeting shall be called during business hours between 9.00am to 6 pm on any day that is not a national holiday and shall be held either at the registered office of the company or at some other place within the city or village in which the registered office of the company is situated.

National holiday means and includes a day declared as National holiday by Central Government.

- 5) **Quorum** : According to Companies Act, 2013 the quorum for AGM of a public company is as under

Number of shareholders	Quorum
Not more than 1000	Five (5) members
More than 1000 but up to 5000	Fifteen (15) members
Exceeds 5000	Thirty (30) members

For private company, minimum two members should be personally present.

- 6) **Adjournment of Meeting** : Annual General Meeting is adjourned in absence of Quorum. It is held on the same day, time and place in the next week.
- 7) **Default** : If the Annual General Meeting is not held as per the provisions of the Act or instruction of Central Government, it is called as default in holding Annual General Meeting. The company and every officer of the company who is in default are punishable with fine. Fine may be upto ₹ 1,00,000 and in the case of continuing default with further fine which may extend upto ₹ 5000 per day.



Activity : Visit the website of any public company and study it's Annual Report/ Director's Report.

8.1.2 EXTRA ORDINARY GENERAL MEETING (SECTION 100)

Meaning :

The meeting which is held to discuss and decide special or urgent matters is called as Extra Ordinary General Meeting. Such special matters which are transacted in EOGM are called 'special business'.

This meeting is convened between two Annual General Meetings.

Purpose of Extra Ordinary General Meeting : Extra Ordinary General Meeting of shareholders is held to take immediate decisions on some important issues of the company.

1. Alteration in Memorandum of Association
2. Alteration of Articles of Association
3. Removal of Director before expiry of his / her terms
4. Removal of Auditor before expiry of his / her terms
5. Voluntary winding up of company

● Legal Provisions

1. Authority to convene

A) Board of Directors :

The Board of Directors has the right to call an Extra Ordinary General Meeting by giving proper notice to shareholders.

B) Board of Directors on requisition of Members :

Every member can request the company to hold Extra Ordinary General Meeting. In case of company having share capital, members holding at least 1/10 of the paid up share capital carrying voting rights and in case of a company not having share capital, members having 10% of voting powers can request to hold Extra Ordinary General Meeting. The Board must hold EOGM within 45 days of the date of the receipt of the requisition from the members.

C) Requisitionist themselves :

If the Board fails to call on Extra Ordinary General Meeting, the meeting can be called by the requisitionist themselves. It should be held within 3 months from the date of deposit of requisition. Company shall pay for all the expenses incurred in holding this extra ordinary General Meeting.

D) National Company Law Tribunal (NCLT) or Government :

If due to any reason it is impracticable for a company to hold Extra Ordinary General Meeting then NCLT can order the company to hold it. NCLT can order such a meeting on its own or at the request of a director or any member having voting rights.

2. The provisions related with period of notice and quorum are same as annual general meeting.

B) Class Meeting : (Section - 48)

- i) Meaning :** A meeting which is held to make changes in rights and duties of particular class of shareholders and to get their consent for the changes affecting their interest is called as Class Meeting.
- ii) Resolution :** In this meeting generally special resolutions are passed.
- iii) Purpose :** When company wants to change rights of a particular class of shareholders, then company has to call a meeting of such shareholders to get consent for a the change.
- iv) Frequency :** The class meeting is not held regularly.

8.1 DIRECTORS MEETING (SECTION 173)

The Directors are the elected representatives of the shareholders. They are responsible for day to day affairs of the company. Directors Meetings are arranged to discuss on policy matters and to take decision relating to the management of the company. Directors Meetings are classified in two categories - Board Meeting and Committee Meeting.

1) Board Meeting (Section 173)

It is the meeting of Board of Directors. In pursuit of regular management of the business, the Board of Directors have to meet frequently. The Board of Directors can exercise their powers collectively through the Board Meeting.

• Legal provisions regarding Board Meeting :

A) Authority to Convene :

The Chairman of the Board is the proper authority to call the Board Meeting.

B) Number of Board Meeting :

- i) First Board Meeting :** Every company shall hold the first Meeting of the Board of directors within 30 days of the date of its incorporation.
- ii) Subsequent Board Meeting :** Every company shall hold minimum of 4 Board meetings every year. The gap between two meetings should not be more than 120 days.
- iii) In case of One Person Company :** A One-Person Company, small company and dormant company, the meeting of Board of Directors should be conducted at least one meeting in each half of calendar year and the gap between the two meetings should not be less than 90 days.

C) Virtual Meeting :

The participation of Directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means. The meeting should be capable of recording and recognizing the participation of the directors. In certain cases, the Central Government shall specify certain matters that cannot be dealt through video conferencing or other audio visual means.

D) Notice (Section 173 (3)) :

The notice of every Board Meeting must be given to every director at least 7 days before the meeting at his address. The notice is sent along with agenda of meeting. The notice shall be sent by hand delivery or by post or electronic means. Every officer whose duty is to give notice fails to do so shall be liable to a penalty of Rs.25000/-.

E) Quorum – (Section 174) :

As per the Companies Act the quorum for the Board Meeting is 1/3 of total number of directors or two directors whichever is higher. Any fraction should be rounded off as one. Interested directors i.e. directors who have a personal interest in any matter to be discussed in the meeting are excluded from the quorum.

F) Adjournment of meeting :

The Board Meeting is adjourned in the absence of quorum. It is to be held on the same day, time and place in the next week.

2) Committee Meeting :

As per the Articles of Association of a company, Board of Directors appoint small committees of Directors to study the various matters / problems of the company and to get reports from them. Audit committee, Transfer of share committee, share allotment committee, Enquiry committee etc. are the examples of committees. Meeting of such committees are called committee meetings. Secretary assists the committee and maintains separate minute book for recording the proceedings of committee meetings.

8.1.3 CREDITORS MEETINGS :

Company can hold meeting of creditors like debenture holders, depositors, company bankers, lenders etc. to discuss on certain issues relating to the terms and conditions of loans which affect their interest for e.g. to alter the rate of interest, to alter the terms of security to modify the rights of creditors etc. When a company is in a financial difficulty, it may call meeting of creditors to secure their support.

8.2 FUNCTIONS OF SECRETARY RELATED WITH ANNUAL GENERAL MEETING

Secretary has to perform several functions related with general as well as board meetings. The functions are important for compliance of provisions of the Act and for smooth conduct of meeting. Secretary has to perform functions before, during and after the meeting. Secretary's duties may vary to some extent according to type of meeting. Following are the functions of secretary related with Annual General Meeting -

- **Functions before the Annual General Meeting :**

- 1) **Fixing the Board Meeting :**

Secretary arranges the Board Meeting which is held to fix the date, time and place of the Annual General Meeting.

- 2) **Issue of Notice :**

Secretary has to print and send notice and agenda to members and statutory auditors 21 clear days before the meeting and has to publish it in leading newspapers for the convenience of all.

- 3) **Speech of the Chairman :**

Secretary assists in preparing the speech of Chairman.

- 4) **Preliminary arrangement :**

Secretary books the hall and makes needful arrangement for the meeting.

- 5) **Company Accounts :**

Secretary has to see that accounts are finalized and get the statement of profit and loss and balance sheet audited and auditor's report related to these accounts is ready. Secretary has to prepare Annual Report.

- **Functions during the Annual General Meeting :**

- 1) **Attendance :**

Secretary arranges to take down the attendance of members and takes their signatures.

- 2) **Quorum :**

Secretary ensures the quorum is present and reports to the Chairman.

- 3) **Reading Reports :**

Secretary reads the notice and the Director's Report and any other reports at the beginning of the meeting.

- 4) **Writing the proceedings :**

Secretary notes down the proceedings of the meeting which are useful to draft the minutes of the meeting.

- 5) **Helps Chairman :**

Secretary provides information, material etc, to the Chairman as and when needed for smooth conduct of the meeting.

- 6) **Conduct Poll :**

Secretary makes arrangement for conducting the poll, if it is demanded by the members.

- **Functions after the Annual General Meeting :**

- 1) **Drafting the Minutes :**

Secretary drafts the minutes of the meeting and gives the same to the Chairman for approval.

- 2) **Implementing decisions :**

Secretary instructs the concerned officers for implementing the decisions taken at the meeting.

- 3) **Sending documents and filing resolutions :**

Secretary has to send dividend warrants to the members and file Annual Report with the Registrar. In case of special resolution passed, secretary has to file the special resolution with Registrar within 30 days of passing.

- 4) **Send information to absent members :**

Secretary sends the information of the proceedings of the meeting to the absent members.



Activity :

Enlist the functions of Secretary related to Extra Ordinary General Meeting.

8.3 DISTINCTION :

1. Shareholders Meeting and Board Meeting

Sr. No.	Points	Shareholders' Meeting	Board Meeting								
1)	Meaning	A meeting of all the shareholders or members of the company is called a shareholders meeting.	A meeting of all the Directors of the company is called a Board meeting.								
2)	How many times	Annual General Meeting is held once in every year. Extra ordinary general meeting is held to discuss and decide special or urgent matters as and when required.	Minimum 4 board meetings in a year and gap between two consecutive meetings should not be more than 120 days.								
3)	Quorum	<p>The quorum for a shareholders meeting is as follows</p> <p>A) In case of public company</p> <table border="1"> <thead> <tr> <th>Number of shareholder</th> <th>Quorum</th> </tr> </thead> <tbody> <tr> <td>Not more than 1000</td> <td>5 members</td> </tr> <tr> <td>More than 1000 but up to 5000</td> <td>15 members</td> </tr> <tr> <td>Exceeds 5000</td> <td>30 members</td> </tr> </tbody> </table> <p>B) In case of private company two members personally present shall be the quorum for meeting of the company.</p>	Number of shareholder	Quorum	Not more than 1000	5 members	More than 1000 but up to 5000	15 members	Exceeds 5000	30 members	The quorum for a Board meeting is minimum 2 directors or 1/3 of the total number of directors whichever is higher.
Number of shareholder	Quorum										
Not more than 1000	5 members										
More than 1000 but up to 5000	15 members										
Exceeds 5000	30 members										

Sr. No.	Points	Shareholders' Meeting	Board Meeting
4)	Proxy	A shareholder can appoint a proxy to attend and vote at meeting on his / her behalf.	A Director cannot appoint proxy to attend and vote in a meeting on his / her behalf.
5)	Notice	A notice of this meeting must be sent to all the members at least 21 clear days before the meeting.	The notice of Board meeting must be sent to every Director at least 7 days before the meeting.
6)	Purpose	The purpose of this meeting is to take approval of shareholders on certain matters like appointment of Director and Auditor, approval of Annual Report etc.	The purpose of this meeting is to discuss the policy matters of the company like issue of shares, calls on shares, forfeiture of shares, appointment of staff, expansion of business etc.

2. Annual general meeting and Extra ordinary general meeting

Sr. No.	Points	Annual General Meeting	Extra ordinary General Meeting
1)	Meaning	A meeting of all shareholders held once in every year as per the provision of section 96 of the companies Act 2013 is called as Annual General Meeting	A meeting of all shareholders held to discuss and decide urgent matters as per the provision of Section 100 of the Companies Act 2013 is called as extra ordinary general meeting
2)	Purpose	The purpose of this meeting is to review the progress made by the company during the year.	The purpose of this meeting is to discuss and decide urgent and special matters.
3)	Time of holding	The first Annual General Meeting is held within 9 month after the completion of first financial year of the company and subsequent Annual General Meeting is held within 6 months after the completion of financial year.	Extra Ordinary General Meeting is held at any time between two Annual General Meetings.
4)	Authority to call the meeting	Annual General Meeting is usually called by the Board of Directors or under certain circumstances by the Central Government.	Extra ordinary general meeting is called by A) Board of Directors B) Board of directors on requisition of members C) The National Company Law Tribunal.

Sr. No.	Points	Annual General Meeting	Extra ordinary General Meeting
5)	Business transacted	This Meeting is held A) To approve annual accounts B) To approve Auditor's and Directors' Report C) To appoint directors, auditors D) To declare dividend	This Meeting is held to discuss matters like A) To alter Memorandum of Association. B) To alter Articles of Association C) Removal of a director before expiry of his / her term D) Voluntary winding up of a company
6)	Penalty	In case of default in holding this meeting, every officer concerned is punishable with a fine ₹ 1,00,000 and a further a fine of ₹ 5000 per day till the default continues.	If the directors fail to hold this meeting on requisition, the requisitionists themselves can hold it and recover the expense of holding such meeting from the company.

SUMMARY

Various meetings are arranged in the company. The purpose of every meeting is to discuss the different issues/matters related to the company and to take proper decisions.

Types of Meeting are as under-

A) Shareholders Meetings :

- 1) **Annual General Meeting :** It is held every year at the completion of financial year. 21 days notice is required to be sent to members. Annual report is sent with notice. It is held to give information to the members about the working of the company during the year. Secretary has to perform certain functions before, during and after the Annual General Meeting.
- 2) **Extra ordinary General Meeting :** It is called for special and urgent matters. It is held between two Annual General Meetings.
- 3) **Class Meeting :** It is the meeting of particular class of shareholders.

B) Board Meeting :

- 1) **Directors Meeting :** It is arranged to discuss policy matters and take decisions relating to the management of the company.
- 2) **Committee Meeting :** Board of Directors appoints certain committees to study the various matters of the company. Committee works within a specific period of time and submit their report to the Board. Such meetings are called Committee Meeting.

C) Creditors Meeting :

It is meeting of creditors like debenture holders, depositors, bankers etc. The purpose of this meeting may be to alter rate of interest, terms of security and modify the rights of creditors.



EXERCISE

Q.1 A. Select the correct answer from the options given below and rewrite the statements.

- 1) The secretary has to prepare before the meeting.
a) resolution b) notice c) minutes
- 2) General Meeting must have a notice of at least clear days.
a) 7 b) 21 c) 14
- 3) The gap between two annual general meetings should not be more than months.
a) 15 b) 18 c) 24
- 4) Auditor is appointed in
a) Annual General Meeting b) Creditors Meeting c) Extra ordinary General Meeting
- 5) The business transacted in extra ordinary general meeting is business.
a) Ordinary b) Routine c) Special
- 6) An extra ordinary general meeting is held
a) once in a year b) once in the life time c) under special circumstances
- 7) Writing the minutes of meeting is the duty of the
a) Chairman b) Director c) Secretary
- 8) New Directors in place of retiring Directors are appointed in the
a) Class Meeting b) Annual General Meeting c) Creditors Meeting
- 9) Before the Annual General Meeting is held the Secretary has to compile
a) Auditor's Report b) Committee Report c) Annual Report
- 10) The Secretary has to draft the minutes of the meeting within days of the meeting.
a) Fifteen b) Sixty c) Forty

B. Match the pairs.

Group 'A'		Group 'B'	
a)	Board Meeting	1)	Once in the year
b)	Auditor	2)	Minimum 4 meetings in a year
c)	Annual General Meeting	3)	Prepare at any time
d)	Extra ordinary General meeting	4)	Auditor's Report
e)	Minutes of meeting	5)	Prepared before the meeting
		6)	Prepared after the meeting
		7)	Under special circumstance
		8)	Prepared during the meeting
		9)	Once in Six months
		10)	Meeting of creditors

C. Write a word or a term or a phrase which can substitute each of the following statements.

- 1) A meeting of shareholders which is held once in a year.
- 2) A meeting of shareholders which is held between two annual general meetings.
- 3) A Report which is prepared before Annual General Meeting.
- 4) A meeting of the shareholders which is held under special circumstances.
- 5) A meeting of the preference shareholders of a company.

D. State whether the following statements are True or False.

- 1) Only special business is transacted at Annual General Meeting.
- 2) Annual Report is prepared by members.
- 3) Extra ordinary General Meeting is called for special and urgent purpose.
- 4) A member has a right to attend Board meeting.
- 5) Class meeting is the meeting of particular class of shareholders.
- 6) Director cannot appoint proxy to attend and vote at board meeting.
- 7) 21 clear days notice should be given in case of Board Meeting.
- 8) Secretary has to arrange to take down the notes of the proceedings of the meeting.

E) Find the odd one.

- 1) Annual General Meeting, Extra Ordinary General Meeting, Board Meeting
- 2) Annual General Meeting, Committee Meeting, Class Meeting

F) Complete the sentences.

- 1) The meeting which is held once in every financial year is called is
- 2) The meeting held to discuss and decide any special or urgent matters is called as
- 3) Meeting of all Directors is called as
- 4) The Authority to convene the Annual General Meeting is with the

G) Select the correct option form the bracket.

Group 'A'	Group 'B'
1) Interval between two Annual General Meetings	-----
2) First Board Meeting	-----
3) -----	21 clear days
4) -----	Alteration in Memorandum of Association

(Notice of General Meeting, Extra ordinary General Meeting, Not more than 15 months, within 30 days of company's Incorporation))

H) Answer in one sentence.

- 1) Who can attend Board Meetings?
- 2) When can an Adjourned Annual General meeting be held?
- 3) Why is Extra - ordinary General Meeting held?
- 4) When should the first Annual General Meeting be held?
- 5) What should be the interval between two Annual General Meeting?
- 6) What should be the gap between two Board Meetings?

I) Correct the underline word and rewrite the following sentences.

- 1) Minimum four Committee Meeting s must be held in a year.
- 2) Creditors Meeting must be held once in every year.
- 3) Extra Ordinary Meetings must be held every year.
- 4) The Meeting of all Directors is called Annual General Meeting.

Q.2 Explain the following terms/concepts. _____

- 1) Committee Meeting
- 2) Virtual Meeting
- 3) Creditors Meeting

Q.3 Study the following case/situation and express your opinion.

- 1) Platinum Limited Company was incorporated on 1st Jan.2018. Advise the Board of Directors on the following matters.
 - a) Within what period should the company hold its 1st Annual General Meeting?
 - b) At which place should the Annual General Meeting be held.
 - c) How many days in advance should the notice and agenda be sent to members?
- 2) XYZ Ltd held its Annual General Meeting on 11th May 2018. On 1st June Mr. X, a Director of the company was arrested for a financial scam. Hence the shareholders of the company want to remove him.
 - a) Can the company call for the next Annual General Meeting to be held immediately to remove the Director?

- b) Which meeting of members should the company hold to discuss removal of the Director?
- c) What type of resolution will be passed in this meeting for removal of the Director?

Q.4 Distinguish between the following.

- 1) Shareholders' Meeting and Board Meeting
- 2) Annual General Meeting and Extra ordinary General Meeting.

Q.5 Answer in brief.

- 1) List the duties of a Secretary after the Annual General Meeting.
- 2) State the objectives of Annual General Meeting.
- 3) State any four legal provisions regarding Board Meeting.
- 4) What are Class Meetings?
- 5) What is the purpose of conducting Extra ordinary General meeting?

Q.6 Justify the following statements.

- 1) Annual General Meeting is adjourned in absence of quorum.
- 2) A notice of meeting must be sent to all members in case of General Meeting.
- 3) Extra ordinary general meeting is called under special circumstances.
- 4) Board of Directors can exercise their powers collectively through the Board Meeting.
- 5) The Quorum for Annual General Meeting of a public company depends upon the number of shareholders.
- 6) When a company is in a financial difficulty, it may call a meeting of creditors.
- 7) As per the Companies Act every company has to hold the Annual General Meeting.

Q.7 Answer the following questions.

- 1) Explain the functions of a secretary related with Annual General Meeting.
- 2) Explain the different types of General Meetings of company.
- 3) Explain the different types of Directors Meeting.





BUSINESS COMMUNICATION SKILLS OF SECRETARY

9.1 Business communication : Meaning and Definition

9.2 Types of communication

9.3 Methods of communication

9.4 Merits of written communication

9.5 Modes of electronic communication

9.6 Essential skills for effective communication

9.7 Roles of Secretary in Business communication

9.7. 1 Business Letter

9.7. 2 Notices

9.7. 3 Reports

9.7. 4 Minutes

INTRODUCTION:

The term 'communication' is derived from the Latin term 'communis' that means 'common'. Whatever is common is shared by all.

George R. Terry defines "Communication is an exchange of facts, ideas, opinions or emotions by two or more persons".

9.1 MEANING AND DEFINITION OF BUSINESS COMMUNICATION

□ MEANING:

Business communication is the branch of general communication which is especially concerned with business activities. When communication takes place among business entities concerning business affairs or business related issues it is known as business communication.

□ DEFINITION:

Brennar defines "Business communication is the expression channeling, receiving and interchanging of ideas in commerce and industry".

9.2 TYPES OF COMMUNICATION:

No organization can function satisfactorily or achieve its goals without effective communication that happens both internally and externally.

A INTERNAL COMMUNICATION:

Internal communication refers to the communication that takes place internally between various departments of an organization.

Internal communication is important because it supports the managerial functions.

B. EXTERNAL COMMUNICATION:

External communication refers to the communication that takes place between business organizations and outsiders like banks, suppliers, creditors, Government, etc.

External communication connects an enterprise to the outside environment.

9.3 METHODS OF COMMUNICATION:

Methods of communication refer to the path, through which the message passes from one person to the other. Communication can be either verbal (oral), non-verbal and written.

A VERBAL (ORAL) COMMUNICATION:

In the process of communication, conveying a message in spoken form is known as verbal or oral communication. Oral communication takes place in different ways such as personal talks, interviews, speeches and talking on telephone etc.

B NON-VERBAL COMMUNICATION:

Man does not communicate through words alone or only through writing, speaking and listening. There is another aspect of communication, that is, the non-verbal aspect. Non-verbal communication is defined as communication that involves neither written nor spoken words. Non-verbal communication takes place in different ways such as body language, facial expression, eye contact, silence, symbols, signs, gestures etc.

C WRITTEN COMMUNICATION:

When exchange of information or ideas is in a written form rather than by spoken words, it is known as written communication. Written communication includes reports, letters, circulars etc. The choice of words should be made carefully in written communication and the words should be such as to convey a specific meaning and not confuse the reader with multiple meanings. As far as possible messages should be in short sentences so that the receiver has no difficulty in finding the true meaning of the message.

There are many situations when written communication is used. Many types of documents are prepared for official work. The layout for each document is decided by custom. Letters, memos, notices, circulars, reports, minutes are some of the common types of communication.

9.4 MERITS OF WRITTEN COMMUNICATION:

i) Accurate and precise:

Written communication is usually drafted with great care. Since written communication is open to verification and its authenticity can be easily challenged, the communicator has to be accurate and factual. Therefore, in written communication, there is an insistence on greater accuracy and precision.

ii) Re-read many times:

The receiver of a written communication can go over the message at any time again in the future. He can re-read till he thinks he has properly understood it.

iii) Permanent record:

Written communication becomes a permanent record of the organization and can prove very useful for future reference.

iv) Documentary evidence:

Written communication is acceptable as a legal document and as legal evidence also.

v) Wide access:

Written communication is the best channel of communication for conveying information to persons living at different places.

vi) No need for personal contact:

It is not necessary for both parties to be available at the time of communication. It is because under this form of communication, messages can be sent to the concerned person which can be read when the receiver gets spare time.

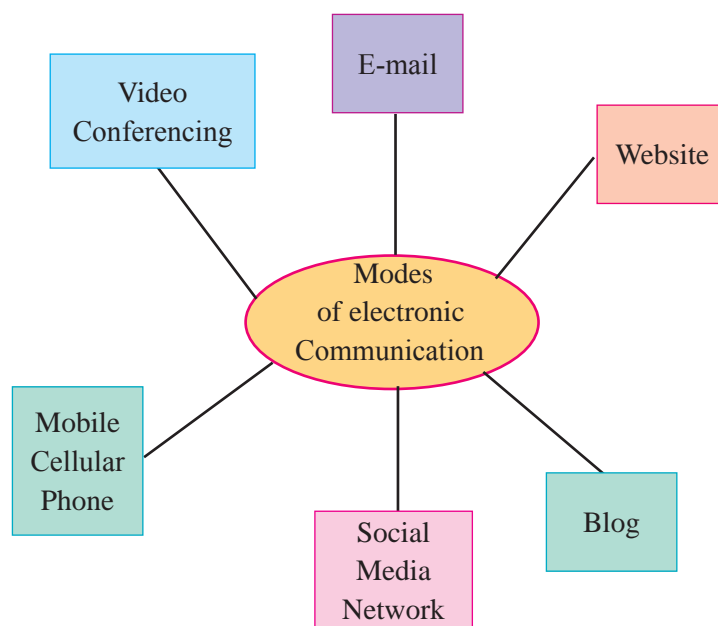
vii) Completeness:

Written messages are prepared with perfect knowledge of the things concerning the matter. So there is completeness in the message.

viii) Economical:

If the receiver of the message is at a far away place, then this method is economical as postal and courier charges are quite nominal. Now a days e-mail are more popular method of written communication.

9.5 MODES OF ELECTRONIC COMMUNICATION:



i) E-Mail:

E-mail is an electronic mail means sending messages using electronic devices through internet. It is possible to send electronic files through e-mail in the form of words, tables, pictures, graphs, sounds, videos and so on.

ii) Websites:

Website is a set of interconnected web pages located on a single web domain. These pages contain the information provided by owner of the website, which can be a person, a group or an organization. It is accessible through the internet or a private local area network. Each website has a unique internet address known as a 'Uniform Resource Locator (URL)'. Each website address starts with 'www'. (world wide web).

iii) Blog:

A business blog (b-blog) is a website for publishing, informal online articles that are either included in a company's internal communication system or posted on the internet for the public to read.

A business blog may also be referred to as a corporate blog or corporate web blog.

iv) Social media network:

Social media are online interactive groups created using advanced mobile and web-based technologies.

There are various social networking platforms that allow their users to exchange ideas or information.

From the business point of view it provides great opportunity to interact with the public and communicate about their products and services. It helps in developing loyalties and strong relationship with the audience and the consumers. There are different types of social media like Twitter, Facebook, YouTube etc. which are very popular these days.

v) Mobile / cellular phone:

Since past few years the usage of mobile phones has increased. Companies find it as yet another medium to advertise their product by call or by using a short message service (SMS) to reach the customers.

vi) Video conferencing:

Video conferencing means using computers to provide a video link between two or more people. This can be simple two-way personalized web-cam based communication. The participants are able to see and hear each other and also display visual data, models etc.

9.6 ESSENTIAL SKILLS FOR EFFECTIVE COMMUNICATION:

Being able to communicate effectively is an essential skill. Whether it is in one's business life or personal relationship, effective communication is the key to our success.

i) Listening:

One of the most important aspect of effective communication is being a good listener. Effective communication requires active listening. Active listening involves hearing and understanding what a person is saying to you. Unless you understand clearly what a person is telling you, you cannot respond appropriately.

ii) Body language:

Body language is an important communication tool. Body language should help convey words. Other factors to be considered are things like the tone and pitch of voice, hand gestures and ensuring eye contact.

iii) Clear and concise:

Message should be conveyed by using as few words as possible, whether in person or via telephone or email. Message should be clear, concise and direct. Avoid using excessive words. Before speaking, give some thought to the message to be conveyed. This will prevent causing any confusion.

iv) Personable:

When communicating face to face with someone, use friendly tone and ask personal questions. This helps in creating a personal touch.

v) Confident:

For effective communication confidence is needed. Making eye contact, using a firm but friendly tone, are ways of showing confidence.

vi) Empathy:

Empathy is a skill of being able to understand and share the feelings of another person. Empathy can be shown with the use of appropriate words or action.

vii) Give and receive feedback:

Giving and receiving appropriate feedback is an essential communication skill. Feedback helps in improving the performance.

9.7 ROLE OF SECRETARY IN BUSINESS COMMUNICATION:

It is the secretary who has to communicate under various circumstances with the Directors, officers, employees, outsiders, authorities etc. Secretary has to handle correspondence, draft notices, reports, minutes, etc.

9.7.1 BUSINESS LETTERS:

● **Meaning:**

The business letter is a type of written communication written by a Secretary. Good letter writing is important for maintaining the image of the business.

● **Definition:**

Robert Shurter defines business correspondence as - “business correspondence is a message that attempts to influence its recipient to make some action or attitude, desired by the sender”.

Thus, business letters are written with the objective of not only understanding the contents but also to take appropriate action or decision.

❑ **Layout of a business letter:**

Layout means proper arrangement of various parts of a letter. Layout of the business letter is also called the structural design of letter. It is an internal arrangement of matter in a proper way for creating good impression on reader.

LAYOUT OF BUSINESS LETTER	
1) HEADING	
NAME AND ADDRESS OF COMPANY	
.....	
.....	
.....	
C.I. No	
Telephone:	Email:
Fax:	Website :
3) Reference No.	2) Date:
4) Inside Address	
To,	
.....	
.....	
.....	
5) Subject:	
6) Salutation	
7) BODY OF LETTER	
A	INTRODUCTION
B	MAIN PARAGRAPH
C	CONCLUDING PARAGRAPH
8) Complimentary Close	
9) Signature	
10) Enclosure	
11) CC.:	

- Letter writing is an art. The format of the letter should be visually appealing and correct. In present time different alignments are used. e.g. left alignment, right alignment.

□ **Layout contains the following parts -**

1) Heading:

Heading contains the name, address, telephone number, fax number, e - mail Id, website, CIN of the company etc. It is that part of business letter which introduces the sender to the receiver. Usually printed letter heads are used.

E.g. TATA MOTORS LTD.

17C, S.B. ROAD, MIDC

PUNE-411015

CIN - L28920MH1945PLC004520

Telephone- (022) 4756823 FAX-(022)4756824 E-mail-tatamotors@gmail.com

website-www.tatamotors.com

2) Date:

Date is written on the right hand side of the letter just below the heading. Date includes date, month and year on which letter is typed. Letters without date are incomplete. Date is very important as letter acts as a legal evidence.

Date is written in different ways:

E.g. British style - 1st April, 2019

American style - April 1st, 2019

3) Reference Number:

It is written on left hand side below the heading. Reference number is given to have quick reference to the matter concerned. Reference number is a number or word used by the letter writer. Every outgoing letter is given reference number.

E.g. 91/p/2019

91 - Serial no. of letter,

p- Purchase department, 2019- year.

4) Inside address:

It contains name, address of the receiver of the letter. It is written on the left hand side of the letter. For personal names Mr, Shri, Mrs, or Smt are used and for firms 'Messer' is used.

**E.g. 1) Mrs. Pallavee Pathare
18 'A' Ganesh Complex,
M.G. Road,
Ratnagiri 415612**

**2) M/s Jagannath Trading Company,
Market Yard,
Sangli - 416436**

5) Subject:

It is written in brief as 'Sub'. It shows the purpose of the letter. The Reader gets the idea of matter of the letter without reading the letter completely. It helps to send it to concerned section or department and quick filing is possible. Sometimes reference line is also written to give reference of advertisement, document etc.

E.g. Sub - Opening a Current Account

6) Salutation:

Salutation is a greeting from the writer to the reader. It creates favourable impression on the reader's mind. It appears on the left hand margin below the inside address.

- E.g. Dear Sir/Madam**
- Or Respected Sir/Madam**

7) Body of the letter:

It is the most important part of the business letter. It contains actual message for receiver of the letter. The message should be divided in paragraphs.

First Paragraph

It introduces the subject or matter. It should be brief but effective. It should create interest in the mind of the reader to go through the contents of the letter.

Main paragraph

It contains the main message of the letter. It is the heart of the letter. Simple language, clarity and correctness should be reflected in the message. Brevity is the soul of a letter.

Closing paragraph

It is the concluding paragraph. It should be written carefully so that the desired action be taken by the receiver of the letter.

8) Complimentary close:

This is concluding part of the letter. It is written below the body of letter on right hand side. It shows polite end of the letter. It should match the salutation.

- E.g. Yours faithfully,**

9) Signature:

It is a final part of the letter. The authorized person signs below the complimentary close. A letter without signature is incomplete and invalid. Below the signature, the name of the person and his or her designation is written. The person who signs, is responsible for the matter written in the letter.

- E.g.**
- Sign**
.....
- Name -**
- (Designation)**

10) Enclosure:

It includes documents, cheques etc. which are attached with the letter. It is shown by the word 'Encl' which is written on left hand side. If documents are more than one it should be numbered and attached serially. It helps the receiver to check the documents.

- E.g. Encl: 1) Copy of board resolution**
- 2) Specimen signature of two directors**

11) The Carbon Copy Notation (C.C.)

If the copy of the letter is to be sent to the other person at the same time, it is shown by two alphabets "C.C.". It is written below enclosures on the left hand side.

Additional information:

Some letters may also have the following additional information.

a) Postscript:

It is additional information written after the letter is completed. As far as possible postscript should be avoided. It creates bad impression on the receiver. If post script is used it should be initialed by the persons signing the letter.

b) The Identification Initials:

Initials of the Dictator and typist of the letter appear on the left bottom side of the letter. It helps to identify the dictator and typist of the particular letter on any later date.

b) ESSENTIALS OF A GOOD BUSINESS LETTER:

Good business letter is that which conveys maximum information in minimum words clearly and correctly. A business letter should possess following qualities to call it a good business letter :-

i) Clarity

Clarity is the soul of business letter. The message of the letter must be clear. Simple and common words are to be used. Technical, double meaning words and short forms should be avoided. The names and figures are important parts of letter. So they should be correct and clear.

ii) Conciseness

Letter should be in brief. Minimum words are to be used. Unnecessary and irrelevant information should be avoided. A brief letter saves the time of the reader and proves more effective.

iii) Completeness

A letter must give complete information to the reader. The letter should cover all possible facts and figures pertaining to the subject matter of the letter. An incomplete letter does not achieve the desired results.

iv) Courtesy

Courtesy means language of the letter must be polite and kind. A courteous letter gets a favourable response from the reader. Harsh, rude words, insulting remarks etc. should be avoided.

v) Correctness:

A business letter should be correct regarding information or message. Any mistake in figures or facts will create problem. There should not be any grammatical or spelling mistake.

vi) Coherence:

A letter should be written in a logical sequence. The message should be divided into different paragraphs. All paragraphs should be arranged logically or connected to each other.

vii) Consideration:

This is also called as use of 'You attitude'. The letter should be written from the reader's point of view. The writer should give due importance and consideration to the reader and consider the problems of the reader. The reader has to be motivated to act after reading the contents of the letter.

viii) Cheerfulness:

A business letter should be cheerful. A cheerful letter is positive and it shows a spirit of helpfulness. The letter writer should avoid negative words and sentences.

c) PHYSICAL APPEARANCE OF THE BUSINESS LETTER:

A business letter represents the organization. So it should be attractive. Now-a-days business letters are normally sent by E-mails. Therefore some points like paper quality, size, folding, envelope doesn't matter. But when letter is sent in physical form following points are to be kept in mind.

i) Paper:

The paper used for letter writing should be of a superior quality. The size of the paper should not be too large or too small. Generally white paper of A - 4 size is used.

ii) Typing :

Now-a-days handwritten letters are rarely used. Letters are usually computer printed. Typing should be done carefully without any mistakes. A printed letter is attractive and it creates a good impression.

iii) Margin:

Proper margin should be left on both sides of the paper. Margins give an attractive look to the letter. The usual margin is 1.5" on both sides and at top and at the bottom.

iv) Spacing :

Sufficient space should be provided between words, lines and between paragraphs. Spacing should be uniform. Spacing makes reading the letter easier.

v) Letterhead :

Letterhead includes name and address of the sender. Letterhead should be attractive and decent, as it creates first impression on the reader.

vi) Folding:

Letter is to be folded before inserting into an envelope. Minimum foldings should be made. The receiver should feel convenient to open folds. Too many folds spoil the contents of the letter. Generally two or three folds are made.

vii) Envelope:

Size of the envelope should not be very big or too small. Complete address of the receiver should be typed on the envelope. It should be the same as the inside address. Generally window envelope are used. If a window envelope is used, the letter should be folded in such a way that the inside address appears below the window.

9.7.2.NOTICE:

Notice gives precise information regarding an important event that is about to take place. With the help of the notice, information is conveyed publicly for others to know and follow.

According to Companies Act 2013, Notice is an advance intimation given by company informing the persons who are supposed to attend the meeting the day, date, time, place and business to be transacted at the meeting.

Secretary has to be particular about contents, agenda, period of notice, mode of delivery etc.

Secretary has for certain reasons arrange for publishing public notice in the news papers e.g. Notice of Annual General Meeting, notice about shifting office of the company etc.

9.7.3.REPORTS:

A report is an organized statement of facts or opinion leading to some conclusions with or without some recommendations. It is a systematic presentation of facts, figures, conclusions about specific event or topic. A report may be prepared by an individual or by a committee.

Some reports are to be prepared as per the provisions of the Companies Act. e.g. Annual report. Some reports are to be prepared by the company as per the requirement of the company. e.g. report on possible site for setting up new branch.

Secretary must have skill of drafting reports. Secretary should be acquainted with contents and format of different types of reports.

9.7.4.MINUTES:

Minutes is defined as “written summary of the business transacted at the meeting”. It is a concise and accurate official record of the discussions and decisions at company meetings. It can be used for future reference. As Minutes is officials record of meeting, it is necessary to draft minutes in proper format. Day, date, time, place, type of meeting, chairman of meeting, details about Directors/Members present are recorded. All resolutions must be recorded in the minutes.

As per the Companies Act minutes for different class of meetings should be prepared by the secretary within 15 days of a meeting.

Minutes are prepared by secretary, confirmed by members or directors, signed by a Chairman and counter signed by a secretary. It is always written in past tense and written in the minutes book.



Activity : How can a company use Twitter and Blogs to reach out to the outsiders.

SUMMARY

Communication- is an exchange of facts, ideas, opinions or emotions by two or more persons.

Business communication- is the expression channeling, receiving and interchanging of idea in commerce and industry.

❑ **Types of communication:**

- i) Internal communication
- ii) External communication

❑ **Methods of communication:**

- i) Verbal / Oral communication- process of conveying a message in spoken form.
- ii) Non-verbal Communication- process of communication by using body language, facial expressions, eye contact, silence, signs, symbols etc.
- iii) Written Communication- is an exchange of opinion, information or ideas in written form.

❑ **Modes of Electronic Communication**

- i) E-mail- is fastest mode of communication.
- ii) Website- is a set of interconnected web pages located on a single web domain.
- iii) Blog- it is also referred to as corporate blog or corporate web blog. It is a website for publishing articles or information online.
- iv) Social media network - Online interactive platform for exchange of ideas or information. e.g. Twitter, YouTube, Facebook etc.
 - a) Twitter- micro blogging website.
 - b) Facebook- popular social networking site.
 - c) YouTube-video sharing website.
- v) Mobile cellular phone.
- vi) Video conferencing.

Business letters : is a message that attempts to influence its recipient to take some action or attitude desired by the sender.

Notice : is an advance intimation given by company informing the day, date, time, place of the meeting and business to be transacted at the meeting.

Report : is usually an answer to question or a demand from some other person for information.

Minutes : is a written summary of the business transacted at the meeting.



EXERCISE

Q.1 A. Select the correct answer from the options given below and rewrite the statements.

- 1) Business communication is concerned with activities.
a) economic b) business c) social
- 2) Written communication is a record.
a) permanent b) temporary c) unauthorised
- 3) E-mail is mode of communication.
a) fastest b) slowest c) costliest
- 4) A unique internet address of website is known as.....
a) World Wide Web b) Uniform Resource Locator c) . com
- 5) is an organised statement of facts.
a) Report b) Notice c) Heading
- 6) There should be proper between words, lines and between paragraphs.
a) margin b) typing c) spacing
- 7) refers to use of minimum words.
a) Courtesy b) Conciseness c) Correctness
- 8) A letter without is invalid.
a) You attitude b) signature c) clarity

B. Match the pairs:

Group 'A'		Group 'B'	
a)	Twitter	1)	Hearing and understanding
b)	Consideration	2)	Personable
c)	Active listening	3)	Harsh, rude words
d)	Body language	4)	Social Media
e)	Courtesy	5)	Non-verbal communication
		6)	Blog
		7)	'You' attitude
		8)	Empathy
		9)	SMS
		10)	Politeness

C. Write a word or a term or a phrase which can substitute each of the following statements.

- 1) Process of communication, conveying a message in spoken form.
- 2) A set of interconnected web pages located on a single web domain.
- 3) Part of a business letter which introduces the sender to the receiver.

- 4) Written summary of the business transacted at the meeting.
- 5) Part of a letter which contains the name and address of the sender.
- 6) Audio-Visual means of electronic communication.

D. State whether the following statements are True or False.

- 1) Notice is a written summary of business transacted at a meeting.
- 2) Written communication provides permanent record.
- 3) Active listening is essential for effective communication.
- 4) Inside address gives the name and address of the sender.
- 5) A letter without date is incomplete and invalid.
- 6) Reference number shows the purpose of the letter.
- 7) Coherence refers to logical arrangement of contents of a letter.
- 8) A letter should have minimum folds.

E) Find the odd one.

- 1) Paper, Margin, typing, courtesy.
- 2) Clarity, courtesy, spacing, correctness
- 3) Date, Inside Address, Conciseness, Subject.

F) Complete the sentences.

- 1) When communication is done through Reports, Letters, Circulars etc it is called as
- 2) Proper arrangement of different parts of business letter is called as
- 3) The part of letter which contains the name and address of the receiver of the letter is called as

G) Select the correct option form the bracket.

Group 'A'	Group 'B'
1) You Attitude	-----
2) Conciseness	-----
3) -----	Complete information
4) -----	Polite language

(Minimum words, Completeness, Courtesy, Consideration)

H) Answer in one sentence.

- 1) Name the type of communication in which words are not used.
- 2) Name the type of communication in which communication is done in spoken form.
- 3) Name the type of communication which can be re read.

I) Correct the underlined word and rewrite the following sentences.

- 1) Consideration means the letter should be in logical sequence.
- 2) Completeness means use of minimum words.
- 3) Complimentary close contains greetings to the reader of the letter.

J) Arrange in proper order.

- 1) a) Heading
b) Complimentary close
c) Subject
- 2) a) Enclosure
b) Body of letter
c) Date

Q.2 Explain the following terms/concepts.

- | | |
|--------------------------|----------------------------|
| 1) Communication | 2) Business communication |
| 3) Written Communication | 4) Business correspondence |
| 5) Report | 6) Minutes |

Q.3 Study the following case/situation and express your opinion.

- 1) Mr. Rahul is the secretary who has been asked by the Managing Director to inform a director about a decision taken in a board meeting in which he was absent.

Which aspect of essentials of a good business letter he follows:

- a) When he is giving the required information in a very short and brief manner
- b) When he is using courteous words so as to be polite
- c) When he is giving the entire information about the meeting in a proper manner
(Clarity, conciseness, coherence, courtesy, completeness, correctness)

Q. 4 Answer in brief.

- 1) Explain any four essentials of effective communication.
- 2) State any four essentials of goods business letter.

Q.5 Justify the following statements.

- 1) Written communication is very useful to the organization.
- 2) Social media network is very useful to the business.
- 3) Listening is the most important aspect of effective communication.

Q.6 Answer the following questions.

- 1) State the merits of written communication.
- 2) Explain different parts of a business letter.



10.1 Precautions to be taken by the Secretary while corresponding with Directors**10.2 Circumstances under which a Secretary has to enter into correspondence with Directors****10.3 Specimen letters****INTRODUCTION :**

The directors occupy a very important position in the management of the company. The Board of Directors are the elected representatives of the shareholders. Directors are responsible for decision making, framing plans and policies. Directors exercise their powers and authorities collectively as a Board.

10.1 PRECAUTIONS TO BE TAKEN BY THE SECRETARY WHILE CORRESPONDING WITH DIRECTORS

Directors are not present everytime at company's office therefore they require information from Secretary, which helps the directors in making proper decisions. Also, Secretary should always remember that Directors occupy key position and are superiors so the communication with them should be cautious and tactful.

The following points are to be kept in mind by the Secretary while corresponding with Directors:-

1) Prompt Reply :

In any correspondence prompt reply is very important. The company Secretary must give prompt replies to any queries of the directors. Secretary should provide quick reply on business matters without any delay to the directors.

2) Politeness :

A courteous letter shows empathy, respect and mutual understanding. It is helpful for getting favourable response and built up goodwill of the organization. Secretary should not use any harsh words while corresponding with directors.

3) Initiative :

The Secretary must take a lead in making arrangements for the board meetings. Secretary reminds the directors to convey general meetings of the shareholders on time. Secretary also helps the directors in smooth conduct of the meetings.

4) Accuracy :

The Secretary must provide accurate information. Correct numerical, factual presentation about the business activities to the directors and helps them to take accurate and wise decisions.

5) Brevity :

The Secretary should always provide all the information in concise or compact manner. Correspondence with the directors must be brief and to the point. Secretary should provide maximum information in minimum words. A letter should not be lengthy. Un-necessary details, irrelevant information or explanation, lengthy paragraphs, etc. should be avoided.

10.2 CIRCUMSTANCES UNDER WHICH A SECRETARY HAS TO ENTER INTO CORRESPONDENCE WITH DIRECTORS :

The following are some of the circumstances under which a Secretary enters into correspondence with the Directors-

1. Notice and Agenda of Routine Board Meeting.
2. Disclose personal interest of Director in a contract.
3. Report to the Director who was absent for a meeting.
4. Reminding the Director of the provision regarding absenteeism at the Board Meetings.

10.3 SPECIMEN LETTERS :

1) Draft of Notice and Agenda of a Routine Board Meeting :

Sec.173 (1) of the Companies Act, 2013

Every company shall hold the first meeting of the Board of Directors within 30 days from the date of its Incorporation. Minimum Four Meetings of Board of Directors must be held every year. The gap between two consecutive Board Meetings should not be more than 120 days.

A meeting of the Board shall be called by giving not less than 7 days notice along with agenda in writing to every Director at his address registered with the company. Such notice shall be sent by hand delivery or by post or by electronic means.

Diamond Company Ltd.

Registered Office: 30, Diamond House,

M.G. Road, Camp, Pune-411001

CIN: L10013 MH2015PLC300477

Phone : 020-20041977

Website: www.diamondlimited.com.

Fax : 020-70052010

Email: Diamond 12@gmail.com.

Ref. No.: D/DR/11/18-19

30th March, 2018

The Director,

Mr. Anju N. Rangwala,

5, Ganesh Apartment,

J.M. Road, Deccan,

Pune-411004

Sub : Notice of the Board Meeting dated 25th April 2018.

Dear Sir,

Notice is hereby given that the Meeting of the Board of Directors of the company will be held on Thursday, 25 April 2018 at 11.00 A.M. at the registered office of the company, for transacting the following business.

AGENDA

1. To read the notice convening the board meeting.
2. To take note of the minutes of the previous Board Meeting.
3. To consider and approve the applications for the Transfer of Shares.
4. To consider the financial position of the company for the year ended 31st March, 2018
5. To open Dividend Account.
6. To discuss and decide any matter with the permission of the chair.

You are hereby requested to be present at the Board Meeting.

Thanking you,

Yours faithfully,
For Diamond Company Ltd.

Sign
Company Secretary

2. Disclose personal interest of Director in a contract.

Sec.184 of the Companies Act, 2013 provides the manner and periodicity in which every director shall disclose his concerns or interest in the company.

The Director shall not participate at the Meeting of the Board, in which such a contract or arrangement is discussed in which the director is interested.

Diamond Company Ltd.

Registered Office: 30, Diamond House,

M.G. Road, camp,

Pune - 411001

CIN: L30309 MH2016 PLC123075

Phone : 020-20041977

Website: www.diamondlimited.com.

Fax : 020-50062018

Email: Diamond 30@gmail.com.

Ref. No.: D/DR/12/18-19

15th June, 2018

The Director,

Mr. Atul N Shah,

48, Gurwar Peth,

Pune-411007

Sub : Disclosure of personal interest.

Dear Sir,

This is to bring to your kind notice that the meeting of the Board of Directors of the company will be held on 7th July, 2018. The Board has decided to appoint sole selling distributors on commission basis for selling products of the company. This will help to accelerate the sale of the products of our company.

I have received information from a reliable source that, one of your relative Ms. Neelam R. Shah has applied for appointment as sole selling Agent.

I wish to know whether the said information is true. In case you have any personal interest in her appointment, kindly disclose your nature of interest as per Sec. 184 of the Companies Act, 2013.

Please send your reply as early as possible.

Thanking you,

Yours faithfully,
For Diamond Company Ltd.

Sign
Company Secretary

3. Report to the Director who was absent for a meeting

Sec.118 (1) of the Companies Act, 2013. Every company is required to prepare minutes of the proceeding of General Meetings, Board Meetings and other Meetings, within 15 days of the conclusion of such meetings.

If any Director remains, absent in the Board Meeting, then as per his request, the Secretary sends a letter to the concerned Director. In this letter, Secretary gives important details of the Board Meeting and draft minutes of that meeting for his kind consideration.

Diamond Company Ltd.

Registered Office: 30, Diamond House,
M.G. Road, camp, Pune-411001
CIN: L30309 MH2016 PLC123075

Phone : 020-30041977

Fax : 020-50062018

Website: www.diamondlimited.com.

Email: Diamond30@gmail.com.

Ref. No.: D/DR/13/18-19

12th November, 2018

The Director,

Mr. Mahesh N. Saluja,

Sr.No.78, Guru Niwas,

Kondhwa, Pune-411048

Sub : Report of Board Meeting held on 5 November, 2018.

Dear Sir,

Please find enclosed herewith copy of draft Minutes of the Board Meeting held on 5th November, 2018 which you could not attend.

I would like to draw your attention to point No. 8 of the minutes of the Board Meeting. A proposal to open a new branch office at Mumbai, Mira Road (E) which was moved by Mr.A.N.Shah. Mr. M.H.Gunjral seconded the proposal. After a detailed discussion the said proposal was passed with majority of present directors.

The other items of the agenda being of routine nature, need no explanation.

Thanking you,

Yours faithfully,
For Diamond Company Ltd.

Sign
Company Secretary

Encl : Copy of the draft Minutes of Board Meeting

4. Reminding the Director of the provision regarding absenteeism at Board Meeting

Sec.167 (1) (b) of the Companies Act, 2013 provides that if a Director remains absent from all the meetings of the Board, held during a period of twelve months, with or without the leave of absence from the Board, he shall be deemed to have vacated his office.

The purpose of this provision ensures that Directors perform their duties diligently and do not skip the Board Meetings.

Diamond Company Ltd.

Registered Office: 30, Diamond House,
M.G. Road, camp, Pune-411001
CIN: L30309 MH2016 PLC123075

Phone : 020-30041977

Website: www.diamondlimited.com.

Fax : 020-50062018

Email: Diamond30@gmail.com.

Ref. No.: D/DR/14/18-19

31st December, 2018

The Director,
Mr. Ashish V. Shroff,
78, Narayan Peth,
Pune-411030

Sub : Information about Absenteeism in the Board Meeting.

Dear Sir,

I am instructed by the Chairperson, to bring to your kind attention, about the fact that you could not attend all the Board Meetings, which were held from 1st April, 2018.

You are requested to note that Section 167(1) (b) of the Companies Act, 2013 provides that a director has to vacate his office, if concerned director remains absent from all the meetings of the Board for a period of twelve months, with or without leave of absence from the board.

I, therefore, request you to kindly attend the next Board Meeting scheduled on 25th January, 2019 to avoid disqualification under section 167(1) (b). The notice and agenda of the Board Meeting has been already forwarded to you.

Thanking you,

Yours faithfully,
For Diamond Company Ltd.

Sign
Company Secretary

SUMMARY

- ❑ The Secretary acts as a link between the members and the directors. The Secretary constantly communicates with Directors regarding business polices and daily administration.
- ❑ The Secretary has to correspond with Directors on important occasions such as Draft Notice and Agenda of Routine Board Meeting, Disclosure of Personal interest of Directors in a Contract, Report to the Director who was absent for a meeting, requesting Director to be present as an expert, Retirement of Director etc. and other matters.



EXERCISE

Q.1 A. Select the correct answer from the options given below and rewrite the statements.

- 1) Representatives of shareholders are
a) directors b) employees c) servants
- 2) The notice of the meeting of the Board of Directors must be accompanied by
.
a) agenda b) minutes c) resolution
- 3) looks after the management of a company,
a) Board of Directors b) Auditor c) Company Secretary
- 4) The Directors take decisions at meeting.
a) Annual General b) Board c) Statutory
- 5) According to Sec.167(1)(b) of the companies Act.2013 if a director absents himself from all the meetings of the Board, for a period of months or more, with or without the leave of the Board, he shall be deemed to have vacated his office.
a) 12 b) 10 c) 9
- 6) Every company except OPC and small company shall hold minimum Board Meetings in each year.
a) 4 b) 3 c) 5
- 7) The gap between two consecutive Board Meetings should not be more than days.
a) 120 b) 110 c) 130

B. Match the pairs:

Group 'A'		Group 'B'	
a)	Directors	1)	At least 2 Directors
b)	Absenteeism of Director in Board Meetings	2)	At least 3 Directors
c)	Public Company	3)	Disqualification of director
d)	Private Company	4)	Representatives of shareholders
e)	Notice of a Routine Board Meeting	5)	21 clear days
		6)	7 days
		7)	70 days
		8)	Representative of public
		9)	At least 20 directors
		10)	At least 30 directors

C. Write a word or a term or a phrase which can substitute each of the following statements.

- 1) An elected body of representatives of Shareholders.
- 2) An employee of a company who provides guidance and advice to the Board of Director about business matters.
- 3) A meeting of all the directors of a company.
- 4) A written invitation given to the Director to attend the meeting.

D. State whether the following statements are True or False.

- 1) A director can be removed before the expiry of his term.
- 2) Directors act as trustees of the company.
- 3) A director can remain absent for any number of Board Meetings,
- 4) Directors act as agent and trustees of the company.
- 5) Company Secretary need not attend the board meetings.
- 6) Director can take decisions individually.

E. Complete the sentences.

- 1) The elected representatives of the shareholders are called as
- 2) The meeting of all Directors is called as
- 3) The notice period for Board Meeting shall not be less than

F. Select the correct option form the bracket.

Group 'A'	Group 'B'
1) Notice of Board Meeting	-----
2) -----	Meeting of all directors
3) Duty of Directors	-----

(Board Meeting, Not less than 7 days, Disclosure of personal interest)

G. Answer in one sentence.

- 1) When does a Director vacate his office due to absenteeism at Board Meeting?
- 2) Can a Director who was absent at Board Meeting get a copy of minutes of that Board Meeting?

H. Correct the underlined word and rewrite the following sentences.

- 1) Secretary is a elected representative of the shareholders.
- 2) Secretary is responsible for decision making and framing policies of a company.

Q.2 Explain the following terms/concepts.

- 1) Director
- 2) Board of Directors
- 3) Conciseness
- 4) Politeness
- 5) Initiative
- 6) Notice and Agenda of board meeting

Q.3 Answer in brief.

- 1) What are the points to be considered by a secretary while corresponding with the directors?
- 2) Under what circumstances will a Secretary correspond with a Director?

Q.4 Justify the following statements.

- 1) Directors exercise their powers and authorities collectively as a Board.
- 2) The Secretary should take certain precautions while corresponding with Directors.
- 3) The Board of Directors are the elected representatives of the shareholders.
- 4) The Secretary has to correspond with Directors on important occasions.

Q.5 Attempt the following.

- 1) Draft the notice and agenda of routine board meeting.
- 2) Write a letter to the director requesting him to disclose his personal interest in a contract.
- 3) Write a letter to the director who was absent for a Board Meeting to inform him about proceedings of the meeting.
- 4) Write a letter to the director reminding him about the provision regarding absenteeism at the Board Meeting.





CORRESPONDENCE WITH BANKS

11.1 Bank – Meaning

11.2 Functions of Commercial Bank

11.3 Precautions to be taken by a Secretary

11.4 Circumstances under which a Secretary has to enter into correspondence with banks

11.5 Specimen letters

11.6 Distinction

INTRODUCTION :

Bank is a Financial Institution. Bank is one of the important aids to trade. Bank plays an important role in the economic development of the country by providing financial services.

The primary functions of commercial banks include – Accepting deposits and lending funds. Correspondence with banks is essential for every business organization.

11.1 Meaning and Definitions :

Meaning of Bank :

A bank is a Financial Institution, in which those people who have idle or surplus cash, deposit it in the bank and those who require funds (Loan), borrow from banks.

Banks promote saving habit among the people and channelize these savings into profitable investments.

Definitions of Bank :

- 1) Cairns Cross: ‘‘A Bank is an institution which deal in money and credit’’.
- 2) Sec.5(1)(b) of the Banking Regulation Act, 1949
‘‘Banking means accepting for the purpose of lending or investment of deposits of money from the people repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise.’’
- 3) Section 5(c) of the Banking Regulation Act, 1949 defines a Banking Company as any company which transacts the business of banking in India.

From the above definitions, we can say that, a bank is an institution which receives money as deposits and lends money in different forms.

11.2 Functions of Commercial Bank :

The commercial bank performs two types of functions namely : A) Primary functions
B) Secondary Functions

A) Primary Functions :

The primary functions of a bank include – 1) Accepting Deposits 2) Lending Money

1) Accepting Deposits :

Accepting deposits from the public is the basic or primary function of commercial bank. The bank pays interest on deposits at a lower rate and charges interest on loan at a higher rate. The difference between these two rates of interest is the profit of the bank.

People who have surplus funds and savings, deposit the amount with the banks in different types of deposits.

The bank accepts two types of deposits from the public :

I) Demand Deposits :

The deposits which are repayable on demand are called Demand Deposits.

The banks accept the demand deposits in the following forms :

a) Savings Deposits :

To encourage saving habit among the people, bank allows depositors to open savings account. There are certain restrictions on the frequency and the amount of withdrawals from savings bank account.

E-statement is available on demand. Pass book is issued to the depositor.

b) Current Deposits :

This account is normally opened by business person, firms or companies. There is no limit on the amount or number of withdrawals. Generally, interest is not payable on this account.

Overdraft facility is given only to current depositors, after following the prescribed procedures of the bank.

II) Time Deposits :

The deposits which are not repayable on demand are called 'Time Deposits.' These deposits are repayable after a specific period.

The banks accept the Time deposits in the following forms :

a) Fixed Deposits :

Fixed Deposits are the deposits received for a fixed period. It carries specified rate of interest, which depends on the period of deposits. The rate of interest is high for fixed deposits. Interest is paid either on periodic basis or on maturity of deposits. Fixed Deposit Receipt (F.D.R.) is issued to the depositor. Loan facility is also given against fixed deposit.

b) Recurring Deposits :

In order to encourage customers to make regular savings, banks receive deposits in the form of Recurring Deposits. A customer is required to deposit a fixed sum of money for a specified period of time. The money is deposited periodically. Rate of interest is more than Savings Deposits. Pass book is issued to the depositor. E-Statement is issued on demand.

2) Lending Money :

Out of the deposits accepted, after keeping certain cash reserves, commercial banks grant loans and advances to the needy borrowers.

Commercial banks accept deposits at a lower rate of interest and gives it as loans and advances at a higher rate of interest.

Generally, banks grant loans and advances to the borrowers in the following forms-

I) Loans :

A loan granted for a specific time period against personal security, gold and silver and other movable and immovable assets is called term loan. It is credited in borrowers account.

Types of Term Loans are as under :

a) Short Term Loans:

These loans are provided for the period of not more than one year. The rate of interest is higher than call loans and lower than medium term loans. It is required by businessmen in order to fulfill their requirements of working capital.

b) Medium Term Loans :

These loans are provided by commercial banks for the period from 1-year up to 5 years. The rate of interest charged by bank is higher than short term loans and lower than the long term loans.

c) Long Term Loans :

When Commercial Banks give loans for a period of more than 5 years, they are referred as Long Term Loans. The rate of interest charged by the Commercial Banks is highest as compared to other types of loans. It is required for growth and development of the business.

II) Advances :

An advance is a credit facility provided by the bank to its customers. It differs from loans, in the sense that, Loans may be granted for longer period, but advances are normally given for a shorter period. The purpose of granting advances is to meet day-to-day requirements of a business. Interest is charged only on the amount withdrawn and not on the amount sanctioned.

Types of Advances :

a) Overdraft :

Overdraft is a credit facility granted by bank to current account holders. Under overdraft facility the bank allows its customer to overdraw an amount, upto a particular limit, i.e. to withdraw more than the amount of credit balance in his current Account. The collateral securities usually accepted for overdraft facility are-Shares, Government Securities, F.D.R., L.I.C. Policy, etc. Rate of interest charged by commercial bank for Overdraft is low.

b) Cash Credit :

A separate cash credit Account is to be opened to avail this facility. Securities like stock of raw material, finished goods etc. are required to avail this facility. Under Cash Credit facility, a bank allows the borrower to withdraw amount upto a specific limit. It is a

separate account where bank credits the sanctioned amount. The borrower can withdraw the amount as and when he needs. Interest is charged on the amount actually withdrawn.

c) Discounting of Bills :

A bill of exchange is a Negotiable Instrument. Banks can provide short-term finance by discounting bills, i.e. provide financial assistance before due date of bill.

Bill of Exchange : It is a written unconditional order by Seller (drawer) to the Buyer (drawee) to pay a certain sum of money on a future fixed date for payment of goods or services received.

B) Secondary Functions:

The secondary Functions of a bank can be divided into two parts:-

1) Agency Functions: Banks perform various functions on behalf of their

Customers or account holders such as :

- a) Collection of cheques and bills
- b) Collection of Dividend, Interest and Salary
- c) Payment of Rent, Insurance premium, Electricity Bill etc.
- d) Purchase and sale of Securities (Banks play role as Depository participant i.e.D.P.)
- e) Remittances (transfer) of money.
- f) Fulfill standing instructions of depositors
- g) Act as trustees, executor of will and attorney.
- h) Act as Banker to the issue, Lead Manager, etc. for Companies.

2) Utility Functions :

The commercial banks also provide following general utility services as :

- a) Safe deposit vaults (Locker Facility)
- b) Letter of Credit
- c) Dealing in Foreign Exchange
- d) A.T.M., Credit cards, Debit cards.
- e) Financial position status Report
- f) Buying and selling of Securities.
- g) Travellers cheque
- i) R.T.G.S. (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer) NACH (National Automated Clearing House) and ECS (Electronic Clearing Service)

11.3 PRECAUTIONS TO BE TAKEN BY THE SECRETARY WHILE CORRESPONDING WITH BANKS :

The following precautions must be taken by the Secretary while corresponding with banks.

1) Prompt reply :

In any correspondence prompt reply is very important. The replies to the bank are to be sent without any delay.

2) Brevity/conciseness :

Correspondence with the banks must be brief and to the point. A letter should not be lengthy. Unnecessary details should be avoided.

3) Courtesy :

The letter to the bank should be polite. Secretary should not use any harsh or rude words while corresponding with the banker.

4) Clarity :

Clarity is required to avoid misunderstanding with the banker. The Secretary must provide true, factual, update and clear information about his organization to the banker.

5) Accuracy :

The Secretary should provide accurate information. The facts and figures in the bank correspondence must be accurate.

6) Secrecy :

The Secretary must keep secrecy while corresponding with the Bank and not disclose any confidential matter of the Company.

7) Legal procedure :

The Secretary must keep in mind legality of content in correspondence with the bank. While corresponding with the banker in different circumstances, Secretary should enclose necessary documents along with the letter.

11.4 CIRCUMSTANCES UNDER WHICH A SECRETARY HAS TO ENTER INTO CORRESPONDENCE WITH BANKS :

The following are some of the circumstances under which the Secretary enters into correspondence with the banks–

- 1) Letter for opening a Current Account with the Bank
- 2) Letter requesting a bank to stop payment of cheque
- 3) Letter requesting a bank for granting overdraft facility
- 4) Letter requesting a bank to issue letter of credit

11.5 SPECIMEN LETTERS :

1. Letter for opening a current Account with the bank.

The decision of opening a current Account is taken in a board meeting by passing a resolution. The board instructs the Secretary for opening current Account. The Secretary has to write letter to the bank accordingly and enclose necessary documents.

PLATINUM COMPANY LTD.

Registered office 35,Platinum House,
J.M.Road, Nariman Point, Mumbai-400 021
CIN – L30309 MH2017PLC123075

Phone : 022-12111972

Website –www.Platinum limited.com.

Fax : 022-35029191

Email-Platinum30@gmail.com

Ref-P/BK/07/18-19

5th June, 2018

The Bank Manager,
Bank of Maharashtra,
30,J.M. Road, Nariman Point,
Mumbai-400 021.

Sub- Opening of a Current Account

Dear Sir,

This is to request you to open a Current Account in the name of our company i.e. Platinum Company Limited.

The Board of Directors of the company has passed a resolution to this effect in their meeting held on 27th May.2018. Please find enclosed herewith the following documents for the purpose of opening Current Account of our company :

- 1) The Current Account Opening Form duly filled, signed and dated
- 2) Certified copy of Certificate of Incorporation of the Company
- 3) Certified copies of the Memorandum and the Articles of Association of the company
- 4) Certified copy of list of present Directors of the company
- 5) Specimen signature card containing signatures of two Directors Mr.Yash and Ms.Yukta and the Company Secretary
- 6) Certified copy of Board Resolution dated 27th May, 2018
- 7) Duly filled up pay in slip along with ₹.3000/- (Rupees Three Thousand only) in cash as initial deposit
- 8) Copies of PAN and TAN card

Thanking you,

Yours faithfully,
For Platinum Company Ltd.
Sign
Company Secretary

Encl - As above

2. Letter requesting a bank to stop payment of cheque.

Company issues cheques to various parties in settlement of their dues. These cheques are sent by post or by hand delivery. There is a possibility of misplacement of cheque or loss of cheque in transit.

Therefore, it is necessary to inform the bank about the loss of cheque with the instruction to stop payment of such cheque. In these circumstances, the Secretary must mention all details of cheque such as cheque number, name of the party in whose favour the cheque is issued, date of cheque and amount of cheque etc. in the letter.

PLATINUM COMPANY LTD.

Registered Office 30,Platinum House,
J.M.Road, Nariman Point, Mumbai-400 021
CIN – L30309 MH2017PLC123075

Phone : 022-12111972

Fax : 022-35029191

Website –www.Platinum limited.Com.

Email-Platinum30@gmail.com

Ref-P/BK/08/18-19

12th February, 2018

The Bank Manager,
Bank of Maharashtra,
30,J.M. Road, Nariman Point,
Mumbai-400 021.

Sub : Stop Payment of Cheque No.017913.

Ref- Our Current Account No.1555

Dear Sir,

We request you to stop payment of the cheque No.017913 dated 5th February, 2018 of ₹ 1,50,000/- issued by the company, from Current Account No.1555 in favour of M/s.N.J. Industries, Pune.

The said cheque is reported lost by the party. As a precautionary measure, we request you to stop payment of the said cheque.

Inconvenience caused to you is regretted.

Thanking you,

Yours faithfully,
For Platinum Company Ltd.

Sign
Company Secretary

3. Letter requesting a bank for granting overdraft facility.

It is a widely prevailing method of providing short term credit facility which a bank extends to its Current Account holders. The banker allows a Current Account holder, to withdraw more than the balance available in the Current Account for a short period. The bank fixes overdraft limit against securities.

PLATINUM COMPANY LTD.

Registered Office 30,Platinum House,
J.M.Road, Nariman Point, Mumbai-400 021
CIN – L30309 MH2017PLC123075

Phone : 022-12111972

Website –www.Platinum limited.Com.

Fax : 022-35029191

Email-Platinum30@gmail.com

Ref-P/BK/09/18-19

5th July, 2018

The Bank Manager,
Bank of Maharashtra,
30,J.M. Road, Nariman Point,
Mumbai-400 021.

Sub- Grant of overdraft facility.

Ref- Current Account No.1555

Dear Sir,

Our company has a Current Account with your bank since last 5 years (Current A/C.No.1555)

The Board of Directors in its meeting held on 3rd July,2018 has decided to request you to grant overdraft facility of ₹ 5 Lakhs for a period of 3 months, from August to October 2018.

We are the Manufacturer of computer peripherals. We have received a large export order, for which we need working capital for a short period.

We request you to accept security of fixed deposits worth ₹ 5 Lakhs with your bank.

An early reply will be appreciated.

Thanking you,

Yours faithfully,
For Platinum Company Ltd.

Sign
Company Secretary

4. Letter requesting a bank to issue letter of credit.

A letter of credit is a payment or method, generally used for an International trade transactions. Letter of credit is issued by a bank on behalf of its client promising to pay certain amount of money to the seller in case the buyer fails to pay it. This letter is given by buyer to the seller.

PLATINUM COMPANY LTD.

Registered Office 30,Platinum House,
J.M.Road, Nariman Point, Mumbai-400 020
CIN – L30309 MH2017PLC123075

Phone : 022-12111972

Website –www.Platinum limited.Com.

Fax : 022-35029191

Email-Platinum30@gmail.com

Ref-P/BK/10/18-19

30th April, 2018

The Bank Manager,
Bank of Maharashtra,
30,J.M. Road, Nariman Point,
Mumbai-400 020.

Sub- Issue of Letter of Credit

Ref- Our Current Account No.1555

Dear Sir,

We are pleased to inform you that, we want to import photo copying machines and printers from Japan.

As per the quotation received from Canon Photo Copies of Japan, we have placed an order for import of two photo copying machines and printers for 80,00,000 Yen.

The above mentioned company of Japan requested us to send a Letter of Credit for the said amount as per the terms and conditions of the contract.

As security, we are submitting Fixed Deposit Receipt of Rs. Fifty lacs with your bank.

I request you to issue us a Letter of Credit in favour of the said company of Japan for 80,00,000 Yen. We are willing to offer other required security for this purpose.

Kindly issue a letter of credit as early as possible.

Thanking you,

Yours faithfully,
For Platinum Company Ltd.

Sign
Company Secretary

11.6 Distinction between

1. Current Account and Savings Account

Sr. No.	Points	Current Account	Savings Account
1)	Meaning	Current Account is that account which is opened by businessman and others who have regular banking transactions.	Savings Account is that account which is opened by individuals in order to save a part of their income.
2)	Withdrawals	Depositors or Customers can withdraw money from bank by cheques.	Depositors or Customers can withdraw money from bank either by cheques or by Withdrawal Slip.
3)	Facilities	The bank gives a Passbook, Cheque book, Statement of account and pay-in-slip book to the Current Account holder.	The bank gives a Passbook, Chequebook, and pay-in-slip book to the Saving Account holder.
4)	Rate of Interest	Normally, interest is not given on Current Account or it may be given at a nominal rate.	The rate of interest is higher than Current Account.
5)	Overdraft facility	Overdraft facility is given to Current Account holder.	No Overdraft facility is given to Savings Account holder.
6)	Suitability	It is suitable for traders, businessmen, firms and institutions.	It is suitable for salary earners and fixed income group.

2. Fixed Deposit Account and Recurring Account

Sr. No.	Points	Fixed Deposit Account	Recurring Deposit Account
1)	Meaning	Fixed Deposit Account is that account where a fixed sum of money is deposited for a fixed period.	Recurring Deposit Account is that account where depositors can regularly deposit fixed amount for a specific period.
2)	Withdrawals	Customers or Depositors cannot withdraw during the period of fixed deposit. If withdrawn earlier, rate of interest will be less than applicable.	Depositors cannot withdraw during the period of recurring deposit. If withdrawn earlier, rate of interest will be less than applicable.
3)	Facilities	The bank gives a Fixed Deposit Receipt to the Depositor.	The bank gives a Pass book and Pay-in-Slip book.
4)	Rate of Interest	Interest rate is higher. Longer the period, higher will be the rate of interest.	The rate of interest is higher than Savings Account but less than Fixed Deposit Account.
5)	Suitability	It is suitable for any person with surplus income.	It is suitable for fixed income group.

3. Loan and Overdraft

Sr. No.	Points	Loan	Overdraft
1)	Meaning	It is an arrangement under which a certain amount is advanced for a certain fixed period.	It is an arrangement under which the current account holder is allowed to overdraw in excess of the balance from Current Account.
2)	Eligibility	Any account holder i.e. Current, Savings, Fixed, Recurring can get a Loan.	Only Current account holders can get overdraft facility.
3)	Duration	It is for long period.	It is for short period.
4)	Purpose	The Purpose is to meet long term requirements.	The Purpose is to meet short term working capital requirements.
5)	Repayment	Amount of Loan with interest is to be repaid in installments or in lump sum on the due date.	Amount of overdraft is adjusted against the balance of deposits in the current account.
6)	Security	Some valuable assets are to be given as security.	Overdraft is sanctioned against hypothecation of stock, pledge of Fixed Deposit Receipts.



Activity : Visit a bank and collect the Form of opening a bank account and find-out the details to be filled and the documents needed to open an account.

SUMMARY

- A Bank is one of the important Financial Institution in the business sector. It helps the company in various economic transactions.
- It is an institution where money is lent, borrowed, exchanged, issued, deposited and remitted. Banks play an important role in the economic development of any country.
- The Secretary has to correspond with the bank. There are several occasions or circumstances, where the Secretary has to correspond with the bank such as- Opening Current Account, stop payment of Cheque, Granting overdraft facility, requesting a bank to issue Letter of Credit etc.
- The Secretary has to be polite, precise and accurate while writing letters to the bank.



EXERCISE

Q.1 A. Select the correct answer from the options given below and rewrite the statements.

- 1) A company usually opens account in a bank.
a) Current b) Saving c) Recurring
- 2) Bank is a institution.
a) financial b) social c) cultural
- 3) The appointment of banker is usually made by the
a) Board of Directors b) Secretary c) Chairman
- 4) Resolution for opening Bank Account is passed in the meeting.
a) Board b) Statutory c) Annual General
- 5) Bank provides overdraft facility to account holder.
a) Current b) Saving c) Fixed Deposit
- 6) is used for depositing cash into a bank account.
a) Pay-in-slip b) Withdrawal slip c) Cheque
- 7) Borrowing/Accepting and lending money are considered as functions of bank.
a) Primary b) Secondary c) Agency
- 8) Withdrawals are not permitted from the deposit account.
a) Fixed b) Current c) Savings
- 9) account is suitable to salaried people.
a) Savings b) Current c) Fixed
- 10) Generally Interest is not paid on deposit account.
a) Current b) Saving c) Fixed
- 11) A deposit which is kept for fixed period in bank is called deposit.
a) Fixed b) Current c) Recurring

B. Match the pairs.

Group 'A'		Group 'B'	
a)	Lost cheque	1)	Board of Directors
b)	Appointment of Banker	2)	Higher rate of interest
c)	Cash credit	3)	Used for depositing cash and cheque
d)	Fixed Deposit Account	4)	Stop Payment
e)	Savings Account	5)	Restrictions on withdrawals
f)	Pay-in-slip	6)	Separate Account
g)	Overdraft facility	7)	Current Account
		8)	Recurring Account
		9)	Shareholders
		10)	No interest is paid
		11)	Used for withdrawing amount from account
		12)	Long term credit facility
		13)	Certain restrictions on withdrawals
		14)	Dealing in foreign exchange

C. Write a word or a term or a phrase which can substitute each of the following statements.

- 1) A slip used for depositing cash and cheque in the Bank account.
- 2) Permission to withdraw excess amount from Current Account.
- 3) Separate loan account under which the short term loan facility given by bank to the business.
- 4) The short term credit facility given by bank to current account holder.
- 5) The account which is generally opened by business organization.
- 6) Request of Secretary to the bank not to make the payment of cheque.
- 7) The type of account for which higher rate of interest is paid to bank depositors.
- 8) The slip which is used for withdrawing money from Savings Account.
- 9) Negotiable Instrument which can be discounted with the bank.

D. State whether the following statements are True or False.

- 1) Joint Stock Company opens Current Account.
- 2) Generally no interest is paid by bank on Current Account.
- 3) In cash credit, customers account is credited by bank with sanctioned amount.
- 4) Board resolution is not required to open the Current Account with the bank.
- 5) Bank account of company is operated by shareholder.
- 6) Overdraft facility is granted to Savings account holders.
- 7) Bank correspondence should be brief and to the point.
- 8) It is necessary to instruct the bank to stop payment of a cheque which is lost.
- 9) Bank overdraft facility is a long term facility.
- 10) Banks grant long term loans only.

E) Find the odd one.

- 1) Saving Deposit, Recurring Deposit, Cash Credit, Fixed Deposit.
- 2) Over draft, Fixed Deposit, Discounting of Bills, Cash Credit.

F) Complete the sentences.

- 1) A financial institution which receives deposits and lends money is called as
- 2) Accepting deposits and lending money are the primary functions of
- 3) A facility under which a customer can overdraw money from his account is called as
- 4) Overdraft facility is given to

G) Select the correct option form the bracket.

Group 'A'	Group 'B'
1) Overdraft	-----
2) Primary Function	-----
3) International Trade Transactions	-----
4) -----	Current Account

(Accepting Deposits, Current Account, Letter of Credit, Businessman)

H) Answer in one sentence.

- 1) What is a Letter of Credit?
- 2) Which facility is given to Current Account holder?
- 3) What do you mean by stop payment of cheque?

I) Correct the underlined word and rewrite the following sentences.

- 1) Accepting deposits is the Secondary function of Banks.
- 2) Businessman opens Fixed Deposit Account.
- 3) Under Cash Credit facility businessman / Account holder can overdraw from his account.

Q.2 Explain the following terms/concepts.

- 1) Bank
- 2) Demand Deposits
- 3) Time Deposits
- 4) Savings Deposits
- 5) Current Deposits
- 6) Recurring Deposits
- 7) Fixed Deposits
- 8) Loans
- 9) Advances
- 10) Cash Credit
- 11) Overdraft
- 12) Discounting of Bill
- 13) Letter of credit
- 14) Stop payment of cheque

Q.3 Distinguish between the following.

- 1) Current Account and Savings Account
- 2) Loan and Overdraft

- 3) Fixed Deposit and Recurring Deposit

Q. 4 Answer in brief.

- 1) What are the points to be kept in mind by a Secretary while corresponding with Banks?
- 2) Under what circumstances will a Secretary correspond with the Banks?
- 3) State the Agency functions of Banks.
- 4) State the Utility functions of Banks.
- 5) Explain the different types of Deposits.

Q.5 Justify the following statements.

- 1) The secretary has to correspond with the Banks under certain circumstances.
- 2) The secretary should observe certain precautions while corresponding with the Banks.
- 3) The Primary functions of Commercial Banks include-Accepting deposits and leading funds.
- 4) The Bank accepts two types of deposits from the public i.e. Demand and Time Deposits.
- 5) There is a difference between Loans and Advances given by the Bank.
- 6) Overdraft facility is given only to current depositors.

Q.6 Attempt the following.

- 1) Write a letter to bank for opening a Current Account.
- 2) Write a letter to bank to stop payment of cheque.
- 3) Write a letter requesting the banks to issue Letter of Credit.
- 4) Write a letter requesting the bank for granting Overdraft facility.



- 12.1 Ministry of Corporate Affairs (MCA)
- 12.2 Registrar of Companies (ROC)
- 12.3 National Company Law Tribunal (NCLT)
- 12.4 National Company Law Appellate Tribunal (NCLAT)
- 12.5 Securities and Exchange Board of India (SEBI)
- 12.6 Precaution to be taken while corresponding with statutory authorities
- 12.7 Specimen Letters

INTRODUCTION

The Central Government through the Ministry of Corporate Affairs is primarily concerned with administration of the Companies Act, 2013. To enable smooth functioning, the Central Government has delegated some powers to various authorities like the Regional Directors, ROCs, NCLT, NCLAT etc.

In this chapter, we will learn about few such statutory authorities including SEBI which is the regulator of the Securities Market.

We shall also study the various types of correspondence undertaken by a secretary with these authorities.

12.1 MINISTRY OF CORPORATE AFFAIRS (MCA)

The Central Government has delegated its powers to regulate the functioning of the Corporate sector to MCA.

❑ MCA is mainly concerned with administration of the following Acts :

- i) The Companies Act, 2013
- ii) The Partnership Act, 1932
- iii) The Limited Liability partnership Act, 2008
- iv) The Competition Act, 2002
- v) Societies Registration Act, 1860

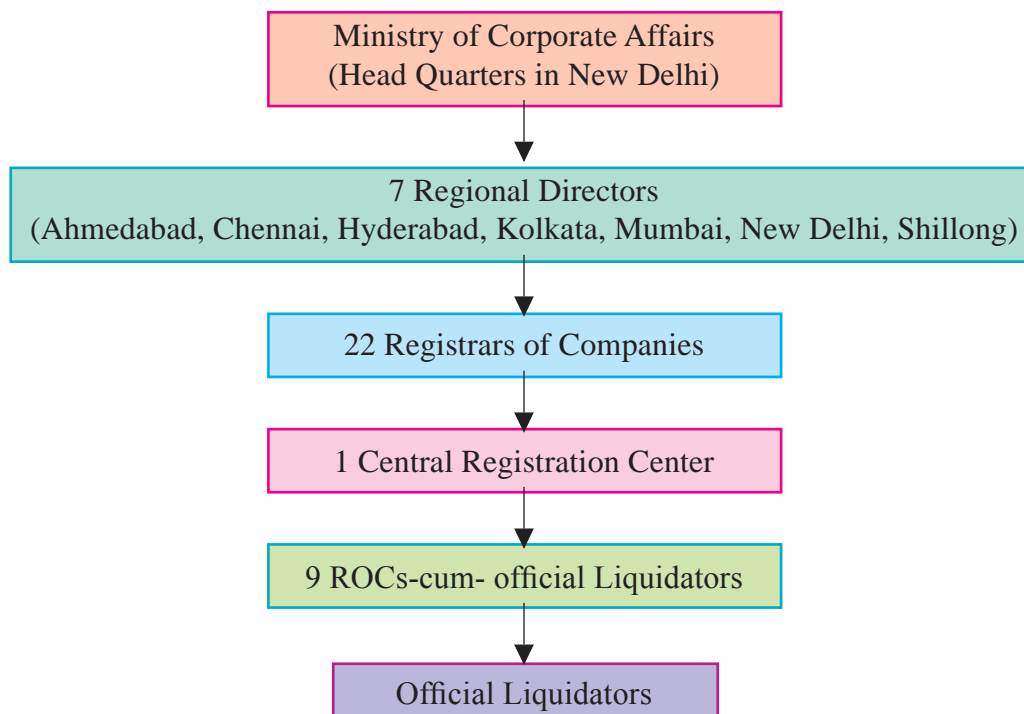
❑ MCA also supervises professional bodies such as :

- i) Institute of Chartered Accountant of India (ICAI)
- ii) Institute of Company Secretaries of India (ICSI)
- iii) Institute of Cost Accountants of India

❑ Objectives of MCA

1. To administer the provisions of the Companies Act, 2013 and other allied laws to facilitate ease of doing business.
2. To quickly identify non-compliance of the Companies Act.
3. To encourage companies to improve Corporate Governance and adopt responsible business practices.
4. To promote fair competition.
5. To make available to the public corporate data
6. To offer various services to the stakeholders.

Organizational set up to administer the Companies Act, 2013 (Source : www.mca.gov.in)



- **Regional Directors (RD)** : Seven Regional Directors are in charge of 7 regions of India. They supervise the working of ROCs and Official Liquidators in their region.
- **Official Liquidators** : They are officers attached to various High Courts and help in winding up of companies based on orders issued by the Courts.

12.2 REGISTRAR OF COMPANIES (ROCs)

The Companies Act, 2013 has empowered the Central Government to appoint ROCs for registration of Companies and administering the Companies Act in the state over which it has jurisdiction.

ROCs are full time field officers who have wide powers and responsibilities in administering the Companies Act.

- **DUTIES OF ROCs**

The ROCs have to examine the various documents filed with it by the companies in compliance with the Companies Act 2013. If any document received by it is found to be defective or incomplete, it shall ask the Company to rectify the defect or complete the document within prescribed time / period. The ROCs have to take decisions on documents filed with it and reply within 30 days from the date of filing the documents.

On payment of prescribed fees, all the documents filed or registered with the ROC is available for inspection by the public and they can even ask for a copy of it.

ROC charges fees for filing various documents with it. The fees are charged as per rates given in Companies (Registration offices and Fees) Rules, 2014.

- **POWERS OF ROC**

Besides the powers vested in the ROC by the Companies Act 2013, the Central Government too has delegated some of its powers to the ROCs.

The Companies Act has given following powers to the ROCs :

- i) To extend the time of holding Annual General Meeting, other than the First AGM by a period not more than 3 months.
- ii) To inspect or call for books of account, other books and papers.
- iii) To seek in writing any information or explanation with regard to any document furnished to ROC.
- iv) Seek the Special Court to issue an order for seizure of books and papers of a Company if the ROC feels that such records may be destroyed, altered or falsified.
- v) To strike off (Remove) the name of a company from the Register of companies.

12.3 NATIONAL COMPANY LAW TRIBUNAL (NCLT)

It is a quasi-judicial body setup in June 2016 by the Central Government to grant approvals and decide certain disputes under the provisions of the Companies Act, 2013. It handles Corporate Civil disputes.

The Tribunal operates through 'Benches' consisting of 2 members i.e.. a judicial member and a technical member. At present there are 15 benches and the Principal Bench is at New Delhi. Few more Benches are being created.

The Tribunal has to dispose off every application or petition within 3 months of receiving it. It has exclusive jurisdiction in respect of suits or proceedings which it is empowered to determine as per the Companies Act. Before passing its order, the Tribunal gives reasonable opportunity of being heard to for concerned parties to justify their case. An appeal against the order of NCLT can be made to National Company Law Appellate Tribunal (NCLAT).

- **POWERS OF NCLT**

Some of the important powers of the Tribunal are as follows :

- i) Hear and decide all proceedings related to compromise, arrangement and reconstruction of a company.

- ii) Hear and decide all winding up petitions on the ground of inability to pay its debts and on other grounds.
- iii) Hear and decide petition for extension of time for repayment of deposits.
- iv) Hear and decide cases pertaining to oppression and mismanagement of a company.
- v) Call for holding AGM or EOGM of a company.
- vi) Direct a company not to dispose off Funds of a company and to freeze the assets of a company for being used against the interest of the company.
- vii) Hear and decide grievances of rejection in transferring shares and securities.

12.4 NATIONAL COMPANY LAW APPELLATE TRIBUNAL (NCLAT)

The Companies Act 2013 has empowered the Central Government to set up a NCLAT to hear appeals against the orders of NCLT or the National Financial Reporting Agency. The NCLAT was set up in June 2016. It is headed by a chairperson and has maximum 11 members comprising of Judicial and Technical members. NCLAT is also the Appellate Tribunal for hearing appeals against the orders passed by Insolvency and Bankruptcy Board of India, Competition Commission of India.

Any person aggrieved by an order of the Tribunal, may within 45 days from the date on which the copy of the order was made available, file an appeal to the Appellate Tribunal. The Appellate Tribunal may confirm, modify or set aside the order of the Tribunal.

An appeal against the order of NCLAT may be filed by the aggrieved person to the Supreme Court within 60 days of receipt of the order of NCLAT.

12.5 SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

SEBI was established in 1992 as a statutory body to regulate the Securities Market in India. Its head office is in Mumbai. It supervises and controls the operations of Stock Exchanges, Companies issuing securities and intermediaries like Underwriters, Merchant Bankers, Brokers etc. It protects the interests of investors in the securities market. The main objectives of SEBI are :

- a) To regulate the securities markets and the Stock Exchanges to ensure their proper functioning.
- b) To provide protection to all investors and safeguard their rights.
- c) To regulate the market intermediaries and develop a code of conduct for fair practices by these intermediaries.

Market Intermediaries: Are people or organizations who act as middlemen between the capital providers and capital seekers. e.g. stock brokers, bankers to an Issue, underwriters etc.

12.6 PRECAUTIONS TO BE TAKEN BY SECRETARY WHILE CORRESPONDING WITH STATUTORY AUTHORITIES

- 1) **Prompt Reply :** Secretary should promptly reply to any letter or inquiry received from any of the statutory authorities.

- 2) **Legal aspects :** While replying to any letter received from the statutory authorities, secretary has to ensure that all legal formalities or provisions are properly followed. Where necessary, secretary should enclose required documents, proofs etc.
- 3) **Accuracy :** All information provided by secretary to the authorities should be true and accurate.
- 4) **Clarity :** While providing information or while replying to any queries, the secretary should convey the information in a precise, explicit and simple manner.
- 5) **Brevity :** Care should be taken by secretary while corresponding with the authorities to keep the letter short and brief.
- 6) **Courtesy :** Every correspondence with any statutory authority should be courteous. This creates a good impression on the reader.

12.7 SPECIMEN LETTERS

Now let us see few instances when a secretary has to correspond with few of the statutory authorities.

1. Correspondence with ROC for extension of time for holding Annual General Meeting. (AGM)

If a company cannot hold its AGM within the prescribed time limit, it has to seek an approval from the ROC for extension of time to hold the AGM. The ROC can give an extension of upto 3 months. Some of the reasons why a company may not be able to hold its AGM on time may be :

- i) Most directors are traveling and so cannot attend the AGM
- ii) Strike by employees for the last few months which has stopped all normal activities of the company
- iii) Raid by authorities e.g.. Income Tax Department
- iv) Annual Financial statements not approved / not audited / incomplete audited / due to natural calamity loss of financial data.

1. Letter to ROC for seeking extension of time to hold AGM

SUNRISE LIMITED

Registered office : Moon House,
Civil Road, Vashi, Mumbai - 400 709
CIN : L 26942 MH 2010 PLC 000111

Phone : 022 2212 5745, 91 992 038 0555

website : www.sunriselimited.com,

Email : sunrise@limited.com

Ref. NO. : ROC / AGM - 110

30th July, 2018

The Registrar of Companies
Maharashtra State,
Marine Lines,
Mumbai - 400 020

Sub : Extension of time for holding 3rd Annual General Meeting.

Dear Sir,

The Companies Act, 2013, Section 96 provides that every company other than OPC shall in each year hold an Annual General Meeting. Hence as per the Act, the company must hold its 3rd AGM on or before 30th Sept, 2018, for the financial year ending 31st March, 2018.

We are sorry to inform you that our employees have been on strike since 20th June, 2018. Hence we have not been able to finalize our accounts on time. Therefore, in the given circumstances we are not in a position to hold the AGM before 30th Sept, 2018.

We, therefore, request you to grant us an extension of two months for holding the AGM i.e. upto 30th Nov, 2018. We will be highly obliged if you grant us the extension.

Thanking you,

Yours faithfully,
For Sunrise Limited

Sign
Company Secretary

Encl : Copy of Annual Report of 2016-17

2. Letter to MCA for Ticket raising or other service related technical complaints

These days companies have to file various documents electronically with the MCA at its portal. However, many a times companies find it difficult to upload or download an e-Form or put signature on an e-document, etc. In such instances the company has to raise a ticket with MCA. Service Request Number (SRN) is generated which is to be mentioned on the challan. Raising a ticket means informing difficulty in uploading e - form.

SUNRISE LIMITED

Registered office : Moon House,
Civil Road, Vashi, Mumbai-400 709
CIN : L26942MH2010 PLC 000111

Phone : 022 - 22125745
91 - 9920380555

Website : [www. sunriselimited.com](http://www.sunriselimited.com),
Email : sunrise@limited.com

Ref. No.: MCA/SC-III
Web Information Manager,
'A' wing, Shastri Bhawan Garage,
No- 14, Dr. Rajendra Prasad Road,
New Delhi - 110001

1st July, 2018

Sub : Difficulty in downloading e-form

Dear Sir,

Company needs to file form SH - 7 to intimate the Registrar of Companies about the alteration made in our Share Capital.

However, from last two days, we are unable to download the form. The system message states 'The File is damaged and it cannot be repaired.'

We have tried our best to resolve the issue but failed. Hence we request you to look into the matter at the earliest.

Thanking you,

Yours faithfully,
For Sunrise Limited

Sign
Company Secretary

Encl : Copy of the message as appearing on website

3. Reply to a complaint by Investor

Investors can complain to a company on various grounds like non receipt of Dividend, Notice and Agenda of a Meeting, Annual Reports etc. A company has to reply to all such complaints received by it immediately. If not, investor may approach a Stock Exchange where the company's securities are listed or SEBI and they may issue order to the company about the same. Company has to settle the issue by giving reply to the investor and SEBI or the stock exchange.

SUNRISE LIMITED

Registered office : Moon House,
Civil Road, Vashi, Mumbai - 400709
CIN : L26942MH 2010PLC000111

Phone : 022 2212 4745, 91992038 0555

Website : www.sunriselimited.com.

Email : sunrise@limited.com

Ref. No.: IC/201

2nd October, 2018

Mr. Vaibhav Joshi
102-A, Don Appts, Link Road
Matunga, Mumbai - 400029

[By Registered Post A.D.]

Sub : Non Receipt of Annual Report.

Dear Sir,

We are in receipt of your letter dated 28th Sept; 2018 regarding non -receipt of Annual Report.

As per the Companies Act, 2013, the company had sent by post to all members the notice of 5th AGM along with the Annual Report well in advance as per the address on record in the Register of Members.

It is unfortunate that you have not received the notice and the Annual Report. Hence we are once again sending you the same to the address mentioned in your letter.

Yours faithfully,
For Sunrise Limited

Sign
Company Secretary

Encl : Annual Report 2017-18

CC to : SEBI

4. Letter to NCLT seeking extension of time to repay Public deposits

Public Deposits are deposits accepted by a company from the public for a period of maximum 36 months. Strict actions are taken against the company for any default with regard to acceptance or repayment of Deposits. Company can request NCLT to give extension of time for repayment of deposits.

SUNRISE LIMITED

Registered office : Moon House,
Civil Road, Vashi, Mumbai-400 709
CIN : L26942MH2010 PLC 000111

Phone : 022 - 22125745
91 - 9920380555

Website : www.sunriselimited.com.
Email : sunrise@limited.co

Ref. No. NCLT/ 101E
The National Company Law Tribunal Board,
'B' wing, 3rd Floor, Paryavaran Bhavan,
C.G.O. complex, Lodhi Road,
New Delhi - 110003

1st October, 2018

Sub : Extension of time to repay Public Deposit

Dear sir,

The Company had accepted Public Deposits worth ₹ 10 lacs on 1st Jan, 2017 for a period of two years. The Deposits are to be repaid on or before 31st Dec, 2018.

However, as the company is facing severe financial problems, company is unable to repay the Deposits on the above mentioned date.

The Board held a Meeting on 29th September., 2018 and passed a resolution for seeking extension from NCLT for a period of two months to repay the Deposits. Therefore, we wish to seek an extension of two months to repay it.

Copy of the petition is attached in two sets.

We assure you that the company will repay the Deposits on or before 28th Feb, 2019.

Yours faithfully,
For Sunrise Limited

Sign
Company Secretary

Encl : i) Certified copy of Board Resolution
ii) Petition for Extension of time
iii) Challan for fees paid

SUMMARY

- **Ministry of Corporate Affairs (MCA)**

It is the main authority concerned with administration of the Companies Act, 2013 and other allied Acts and Rules and Regulations. It supervises professional bodies like ICAI, ICSI etc.

- **Registrar of Companies (ROC)**

The Central Government appoints the ROC for registration of companies and administering the provisions of Companies Act in the state over which it has jurisdiction.

- **National Company Law Tribunal (NCLT)**

It is a quasi-judicial body and has exclusive jurisdiction over specific suits or matters prescribed in the Companies Act 2013.

- **National Company Law Appellate Tribunal (NCLAT)**

It hears all appeals filed by an aggrieved person against the orders passed by NCLT. If a person is unhappy with the order of NCLAT, then can file an appeal with the Supreme Court.

- **Securities and Exchange Board of India (SEBI)**

SEBI was established in 1992 as statutory body as the regulator of the securities market in India. It supervises and controls the operations of Stock Exchanges, companies issuing securities, intermediaries like brokers, merchant bankers etc. It also protects the interest of investors.



EXERCISE

Q.1 A. Select the correct answer from the options given below and rewrite the statements.

- 1) is the main authority to regulate the administration of Companies Act, 2013 in India.
a) MCA b) Company Secretary c) Board of Directors
- 2) The headquarters of MCA is at
a) Mumbai b) New Delhi c) Pune
- 3) To administer the provisions of the Companies Act, 2013 is the objective of
a) MCA b) ROC c) Directors
- 4) is responsible for registering companies.
a) ROC b) SEBI c) Auditors
- 5) The Certificate of Incorporation is issued by.....
a) ROC b) MCA c) NCLT
- 6)can strike off or remove the name of a company from the Register of Companies.
a) MCA b)ROC c) SEBI

- 7) Central Government exercises administrative control over ROCs through the..... .
a) MCA b) SEBI c) Regional Directors
- 8)is the quasi judicial body set up by Central Government to grant certain approvals and decide disputes under the provisions of Companies Act.
a) MCA b) ROC c) NCLT
- 9) can hear appeals against the orders issued by NCLT.
a) NCLAT b) SEBI c) MCA
- 10) An appeal against the order of NCLAT can be filed in the
a) MCA b) SEBI c) Supreme Court
- 11)was established as a statutory body to regulate the securities market in India.
a) NCLT b) MCA c) SEBI
- 12)regulates the functioning of Stock Exchange in India.
a) SEBI b) MCA c) ROC

B. Match the pairs :

Group 'A'		Group 'B'	
a)	Administration of Companies Act, 2013	1)	SEBI
b)	ROC	2)	Hears appeals against orders of NCLT
c)	NCLAT	3)	NCLT
d)	Regulator of Securities Market	4)	Incorporation of companies
e)	Quasi-judicial body	5)	MCA
		6)	Board of directors
		7)	Companies Act 2013
		8)	Regional Director
		9)	Chennai
		10)	Liquidator

C. Write a word or a term or a phrase which can substitute each of the following statements.

- 1) The main authority concerned with administration of Companies Act.
- 2) Organization responsible for administering Companies Act and regulating professional bodies like ICAI, ICSI, etc.
- 3) Authority which issues Certificate of Incorporation to company.
- 4) Every company has to apply for incorporation to this authority situated in the state where its head office is to be located.
- 5) Authority that handles corporate civil disputes in India.
- 6) An appeal against the orders of NCLT is heard by this authority.

- 7) Regulator of securities market in India.
- 8) Institution that regulates functioning of stock exchanges and intermediaries in the securities market.

D. State whether the following statements are True or False.

- 1) MCA regulates the functioning of corporate sector as well as administers the Companies Act.
- 2) MCA has no supervisory authority over professional bodies like ICSI, ICAI, etc.
- 3) ROC is concerned with registration of companies.
- 4) On payment of fees, ROC allows the public to inspect certain documents filed with it.
- 5) NCLT has jurisdiction over proceedings on matters of disputes arising under Companies Act.
- 6) NCLAT can hear appeals against order of NCLT.
- 7) NCLAT may confirm, modify or reject the orders passed by the NCLT.
- 8) SEBI protects the interest of investors in securities market.
- 9) ROC is the regulator of securities market.

E) Complete the sentences.

- 1) Administration of Companies Act and other Laws related to corporate world is the responsibility of
- 2) Registration of companies is done by
- 3) The authority which handles corporate civil disputes is called as
- 4) The authority which hears appeals against the orders of NCLT is called as

F) Select the correct option form the bracket.

Group 'A'	Group 'B'
1) Regulator of Securities Market	-----
2) MCA	-----
3) -----	Hears appeals against orders of NCLT

(NCLAT, Administers Companies Act, SEBI)

G) Answer in one sentence.

- 1) Name the authority which administers Companies Act and Partnership Act.
- 2) Name the authority attached to High Court which help in winding up of Companies.

H) Correct the underlined word and rewrite the following sentences.

- 1) R.O.C. Supervises and controls the operations of stock exchanges in India.
- 2) An appeal can be made against the order issued by NCLT to NCLAT within 90 days.

Q.2 Explain the following terms/concepts.

- 1) Ministry of Corporate Affairs (MCA)
- 2) Registrar of Companies (ROC)
- 3) National Company Law Tribunal (NCLT)
- 4) National Company Law Appellate Tribunal (NCLAT)
- 5) Securities and Exchange Board of India (SEBI)

Q.3 Answer in brief.

- 1) State the Powers of ROC.
- 2) State the Powers of NCLT.
- 3) What are the objectives of MCA?

Q.4 Justify the following statements.

- 1) The MCA was set up by Central Government to fulfill certain objectives.
- 2) The Companies Act, 2013 has given certain Powers to ROC.
- 3) The Central Government has empowered NCLT with certain powers.

Q.5 Attempt the following

- 1) Write a letter to ROC seeking extension of time to hold the AGM.
- 2) Write a letter to MCA with regard to ticket raising.
- 3) Write a reply to a complaint by Investor.
- 4) Write a letter to NCLT seeking extension to time of repay Public Deposits.



ANSWER KEY

Chapter - 1 Secretary

- Q.1 A.** 1 - Secretarius, 2 - an individual, 3 - confidential, 4 - ICSI, 5 - Personal Secretary, 6 - protect, 7 - IAS, 8 - Accuracy
- B.** a - 9. Ancient Indian History, b - 1. Government department, c -3. Appointed by busy persons, d - 6. Faithfulness. e - 5. Maintenance of books of accounts, f - 2. Paid employee
- C.** 1 - Scribae, 2 - Non-profit association, 3 - Personal Secretary, 4 - Loyalty, 5 - Secretarius, 6 - ICSI, 7 - Maharashtra State Co-operative Societies Act, 1960
8 - Co-operative society
- D.** 1 - False, 2 - False, 3 - True, 4 - True, 5 - True, 6 - False, 7 - False, 8 - False
- E.** 1) ICSI 2) IAS
- F.** 1) Secretarius 2) Personal Secretary / Personal Assistant
3) I. C. S. I. (Institute of Company Secretaries of India)
- G.** 1) Appointed by Busy Individual - Personal Secretary,
2) Secretary of Government Department - IAS,
3) ICSI - Company Secretary,
4) Roman Empire - Scribae

Chapter - 2 Joint Stock Company

- Q.1 A.** 1 - One, 2 - Karta, 3 - 1932, 4 - co-parceners, 5 - Limited, 6 - 10, 7 - Directors, 8 - Statutory
- B.1.** a - 7. Single ownership, b - 5. Karta, c - 1. 1932, d - 3. Artificial person, e - 8. Equal voting rights
- B.2.** a - 3. Maximum 200 members, b - 4. Minimum 7 members, c - 1. 51% share capital by Government, d - 9. Life Insurance Corporation, e - 10. Minimum 2 partners.
- C.** 1 - Sole Trader, 2 - Karta, 3 - Co-parceners, 4 - Joint stock company, 5 - Partners, 6 - Shareholder, 7 - Common seal, 8 - Statutory company
- D.** 1 - True, 2 - True, 3 - True, 4 - False, 5 - False, 6 - True, 7 - True, 8 - False, 9 - True
- E.** 1) Artificial Person 2) Statutory Company
3) One Person Company 4) SEBI Guidelines.
- F.** 1) Private Company - Maximum 200 members,
2) Public Company - Minimum Seven (7) members,
3) Unlimited Liability Company - Members have Unlimited Liability
4) Incorporated Outside India - Foreign Company

Chapter - 3 Formation of a company

- Q.1 A.** 1 - an artificial person created by law, 2 - Promoters, 3 - Private, 4 - seven, 5 - Pre-incorporation / Preliminary contracts, 6 - DIN, 7 - CIN, 8 - Prospectus

- B.** a - 2. Public company, b - 6. Unique number assigned to each Director, c - 10. Contracts entered by Promoters with third parties, d - 3. Promoters, e - 8. 21 digit alphanumeric code number
- C.** 1 - Incorporation, 2 - Promoters, 3 - Preliminary contracts, 4 - Certificate of Incorporation
- D.** 1 - True, 2 - False, 3 - True, 4 - False, 5 - True, 6 - True, 7 - False, 8 - True, 9 - False, 10 - True, 11 - False
- E.** 1) PAN 2) Prospectus
- F.** 1) Formation of a company 2) Certificate of Incorporation
3) Corporate Identity Number / CIN. 4) Promoters
- G.** 1) Promoter - Formation of a company,
2) Birth Certificate of a company - Certificate of Incorporation,
3) C. I. N. - Corporate Identity Number,
4) R.U.N is used for - Reserving name of a company.
- J.** 1) a) Come up with business idea
b) Appoint first Directors
c) Prepare draft M/A and A/A
2) a) Promotion
b) Incorporation of a Co.
c) Commencement of Business

Chapter - 4 Documents related to formation of a company

- Q.1 A.** 1 - Memorandum of Association, 2 - Memorandum of Association, 3 - Object, 4 - Ultra Vires, 5 - Ultra Vires, 6 - Liability, 7 - capital, 8 - Articles of Association, 9 - Members, 10 - Prospectus, 11 - Shelf, 12 - Red Herring Prospectus.
- B.** a - 1. Details of capital structure of a company, b - 9. Extent of liability of members, c - 7. Ultra Vires, d - 6. Incomplete Prospectus, e - 2. Used for multiple issue of shares
- C.** 1 - Memorandum of Association, 2 - Memorandum of Association, 3 - Memorandum of Association, 4 - Memorandum of Association, 5 - Articles of Association, 6 - Articles of Association, 7 - Ultra Vires, 8 - Object clause, 9 - Capital clause, 10 - Liability clause, 11 - Association or subscription clause, 12 - Articles of Association, 13 - Prospectus, 14 - Abridged Prospectus, 15 - Shelf Prospectus, 16 - Red Herring Prospectus, 17 - Red Herring Prospectus,
- D.** 1 - True, 2 - True, 3 - False, 4 - True, 5 - False, 6 - False, 7 - True, 8 - False, 9 - True, 10 - True, 11 - False, 12 - True, 13 - False, 14 - True, 15 - False, 16 - True, 17 - True
- E.** 1) Rights of Board of Directors 2) Liability clause 3) Articles of Association
- F.** 1) Memorandum of Association 2) Ultra vires. 3) Articles of Association
4) Articles of Association. 5) Prospectus.
- G.** 1) Primary Document - Memorandum of Association,
2) Liability clause - Details of Liability of members,
3) Incomplete Prospectus - Red Herring Prospectus,
4) Articles of Association - Establishes Relationship between company and its member.
- J.** 1) a) Name clause b) Object clause c) Subscription clause

Chapter - 5 Members of a company

- Q.1 A.** 1 - Member, 2 - Register of Members, 3 - Minor, 4 - Application and allotment of shares, 5 - Termination of membership, 6 - receive notice and agenda of a meeting
- B.** a - 2. Cannot be a member, b - 5. Can be a member, c - 1. Transfer of shares by operation of law, d - 3. Cessation of membership, e - 4. To get copies of Auditor's, Directors' Report etc.
- C.** 1 - Termination of membership, 2 - Member, 3 - Register of Members, 4 - Acquisition of membership, 5 - Memorandum of Association
- D.** 1 - True, 2 - True, 3 - True, 4 - False, 5 - True, 6 - True, 7 - True, 8 - False, 9 - True, 10 - False
- E.** 1) Forfeiture of shares.
2) Application and Allotment of shares.
- F.** 1) Member 2) Member of a Company. 3) Director
- G.** 1) Minor - cannot become a member of a company,
2) Co-operative Society - can become a member of a company.
3) Partnership Firm - can hold shares in the name of Partners.

Chapter - 6 Directors and Key Managerial Personnel of a company

- Q.1 A.** 1 - Board of Directors, 2 - An individual, 3 - fifteen, 4 - twenty, 5 - ten, 6 - DIN, 7 - statutory, 8 - Agent, 9 - 5, 10 - Managing Director, 11 - Whole time Director, 12 - Manager, 13 - Listed company, 14 - statutory, 15 - ICSI, 16 - Secretarial Audit Report.
- B.1.** a - 5. Extensive powers of management, b - 6. Substantial powers of management, c - 2. Assists and advises the Board, d - 7. Appointed by promoters, e - 1. Nominated by the Board
- B.2.** a - 7. At least 3 (three) directors, b - 6. At least 2 (two) directors, c - 10. Appointed by the Board, d - 1. Arises due to death of a Director, e - 2. Collective powers
- C.** 1 - Joint stock company, 2 - Chief Financial Officer, 3 - The Board of Directors, 4 - Company Secretary, 5 - Member of ICSI, 6 - The Board of Directors, 7 - Secretarial Audit, 8 - Company Secretary, 9 - Fiduciary, 10 - Secretarial Standards on meetings of the BOD, 11 - Secretarial Standards on General Meeting, 12 - Secretarial Standards on Dividend
- D.** 1 - True, 2 - True, 3 - False, 4 - False, 5 - False, 6 - True, 7 - True, 8 - False, 9 - True, 10 - False, 11 - True, 12 - True, 13 - True, 14 - True
- E.** 1) Promoter 2) DIN
- F.** 1) Company 2) Two 3) Three 4) One
5) Promoter 6) Listed Company 7) Board 8) Trustees
9) Promoters 10) Secretarial Audit
- G.** 1) Rotational Director - Retire by Rotation,
2) Appointed in Place of a director who is absent - Alternate Directors,
3) Women Director - Every Listed company,
4) Appointed by Promoters - First Directors.

Chapter - 7 Company Meetings I

- Q.1 A.** 1 - notice, 2 - 21, 3 - Chairman, 4 - poll, 5 - an ordinary resolution, 6 - motion, 7 - Chairman, 8 - 15, 9 - Resolution by circulation, 10 - 75%, 11 - a special resolution, 12 - Articles of Association, 13 - 48
- B.** a - 2. Casting vote, b - 4. Minimum number of members required for a valid meeting, c - 1. Proposal put before the meeting, d - 7. Record of meeting, e - 9. Intimation stating day, date, time and place of meeting, f - 10. Representative of member
- C.** 1 - Chairman, 2 - Voting by poll, 3 - Ordinary Resolution, 4 - Special Resolution, 5 - Secretary, 6 - Chairman
- D.** 1 - False, 2 - False, 3 - False, 4 - True
- E.** 1) Special Resolution 2) Substantive Motion
- F.** 1) Board of Director 2) Notice 3) Quorum. 4) Proxy 5) Motion
6) Resolution 7) Minutes
- G.** 1) Voting by poll - Proxy,
2) 3/4 or 75% majority - Special Resolution,
3) Substantive Motion - An amended Motion,
4) Presides over a Meeting - Chairman.
- J.** 1) a) Sending Notice b) Confirming Quorum c) Drafting Minutes
2) a) Motion b) Voting c) Resolution

Chapter - 8 Company Meetings II

- Q.1 A.** 1 - notice, 2 - 21, 3 - 15, 4 - Annual General Meeting, 5 - special, 6 - under special circumstances, 7 - Secretary, 8 - Annual General Meeting, 9 - Annual Report, 10 - Fifteen
- B.** a - 2. Minimum 4 meetings in a year, b - 4. Auditor's Report, c - 1. once in the year, d - 7. Under special circumstances, e - 6. Prepared after the meeting
- C.** 1 - Annual General Meeting, 2 - Extra Ordinary General Meeting, 3 - Annual Report, 4 - Extra Ordinary General Meeting, 5 - Class Meeting
- D.** 1 - False, 2 - False, 3 - True, 4 - False, 5 - True, 6 - True, 7 - False, 8 - True
- E.** 1) Board Meeting 2) Committee Meeting
- F.** 1) Annual General meeting 2) Extra - ordinary General Meeting
3) Board Meeting 4) Board of Directors.
- G.** 1) Interval between two Annual General Meeting - Not more than 15 months,
2) First Board Meeting - within 30 days of companies Incorporations,
3) Notice of General Meeting - 21 clear days, 4) Extra ordinary General meeting -
Alteration in Memorandum of Association.

Chapter - 9 Business Communication Skills of Secretary

- Q.1 A.** 1 - business, 2 - permanent, 3 - Fastest, 4 - Uniform Resource Locator, 5 - Report, 6 - spacing, 7 - Conciseness, 8 - signature
- B.** a - 4. Social Media, b - 7. You attitude, c - 1. Hearing and understanding, d - 5. Non-verbal communication, e - 10. Politeness

- C. 1 - Verbal communication, 2 - Website, 3 - Heading, 4 - Minutes, 5 - Heading or Letterhead, 6 - Video conference
- D. 1 - False, 2 - True, 3 - True, 4 - False, 5 - True, 6 - False, 7 - True, 8 - True
- E. 1) Courtesy 2) Spacing 3) Conciseness
- F. 1) Written Communication 2) Layout 3) Inside Address
- G. 1) You Attitude - Consideration,
2) Conciseness - Minimum words,
3) Completeness - Complete Information,
4) Courtesy - Polite language.
- J. 1) a) Heading b) Subject c) Complimentary close
2) a) Date b) Body of letter c) Enclosure

Chapter - 10 Correspondence with Directors

- Q.1** A. 1 - directors, 2 - agenda, 3 - Board of Directors, 4 - Board, 5 - 12, 6 - 4, 7 - 120
- B. a - 4. Representatives of shareholders, b - 3. Disqualification of director, c - 2. At least 3 Directors, d - 1. At least 2 Directors, e - 6. 7 days
- C. 1 - Board of Directors, 2 - Company Secretary, 3 - Board Meeting, 4 - Notice of Board Meeting
- D. 1 - True, 2 - True, 3 - False, 4 - True, 5 - False, 6 - False
- E. 1) Board of Directors 2) Board Meeting 3) 7 days
- F. 1) Notice of Board Meeting - Not less than 7 days,
2) Board Meeting - Meeting of Board of Directors,
3) Duty of Director - Disclosure of Personal interest

Chapter - 11 Correspondence with banks

- Q.1** A. 1-Current,2-Financial,3-Board of Directors,4-Board,5-Current,6-Pay-in-slip,7-Primary, 8 - Fixed, 9 - Savings, 10 - Current, 11 - Fixed
- B. a - 4. Stop payment, b - 1. Board of Directors, c - 6. Separate Account, d - 2. Higher rate of interest, e - 5. Restriction on withdrawals, f - 3. Used for depositing cash and cheque, g - 7. Current Account
- C. 1 - Pay-in-slip, 2 - Overdraft, 3 - Cash credit, 4 - Overdraft, 5 - Current Account, 6 - Stop payment request, 7 - Fixed Deposit Account, 8 - Withdrawals Slip, 9 - Bill of exchange
- D. 1 - True, 2 - True, 3 - True, 4 - False, 5 - False, 6 - False, 7 - True, 8 - True, 9 - False, 10 - False
- E. 1) Cash Credit 2) Fixed Deposit
- F. 1) Bank 2) Commercial Bank / Bank
3) Overdraft facility 4) Current Account Holder
- G. 1) Overdraft - Current Account,
2) Primary Function - Accepting Deposits,
3) International Trade Transaction - Letter of Credit,
4) Businessman - Current Account

Chapter - 12 Correspondence with Statutory Authorities

- Q.1**
- A.** 1 - MCA, 2 - New Delhi, 3 - MCA, 4 - ROC, 5 - ROC, 6 - ROC, 7 - Regional Directors, 8 - NCLT, 9 - NCLAT, 10 - Supreme Court, 11 - SEBI, 12 - SEBI
- B.** a - 5. MCA, b - 4. Incorporation of companies, c - 2. Hears appeals against orders of NCLT, d - 1. SEBI, e - 3. NCLT
- C.** 1 - MCA, 2 - MCA, 3 - ROC, 4 - ROC, 5 - NCLT, 6 - NCLAT, 7 - SEBI, 8 - SEBI
- D.** 1 - True, 2 - False, 3 - True, 4 - True, 5 - True, 6 - True, 7 - True, 8 - True, 9 - False
- E.** 1) MCA - Ministry of Corporate Affairs
2) ROC - Registrar of Companies.
3) NCLT - National Company Law Tribunal
4) NCLAT - National Company Law Appellate Tribunal
- F.** 1) Regulator of Securities Market - SEBI
2) MCA - Administers Companies Act,
3) NCLAT - Hears appeals against orders of NCLT.



LIST OF WEBSITES

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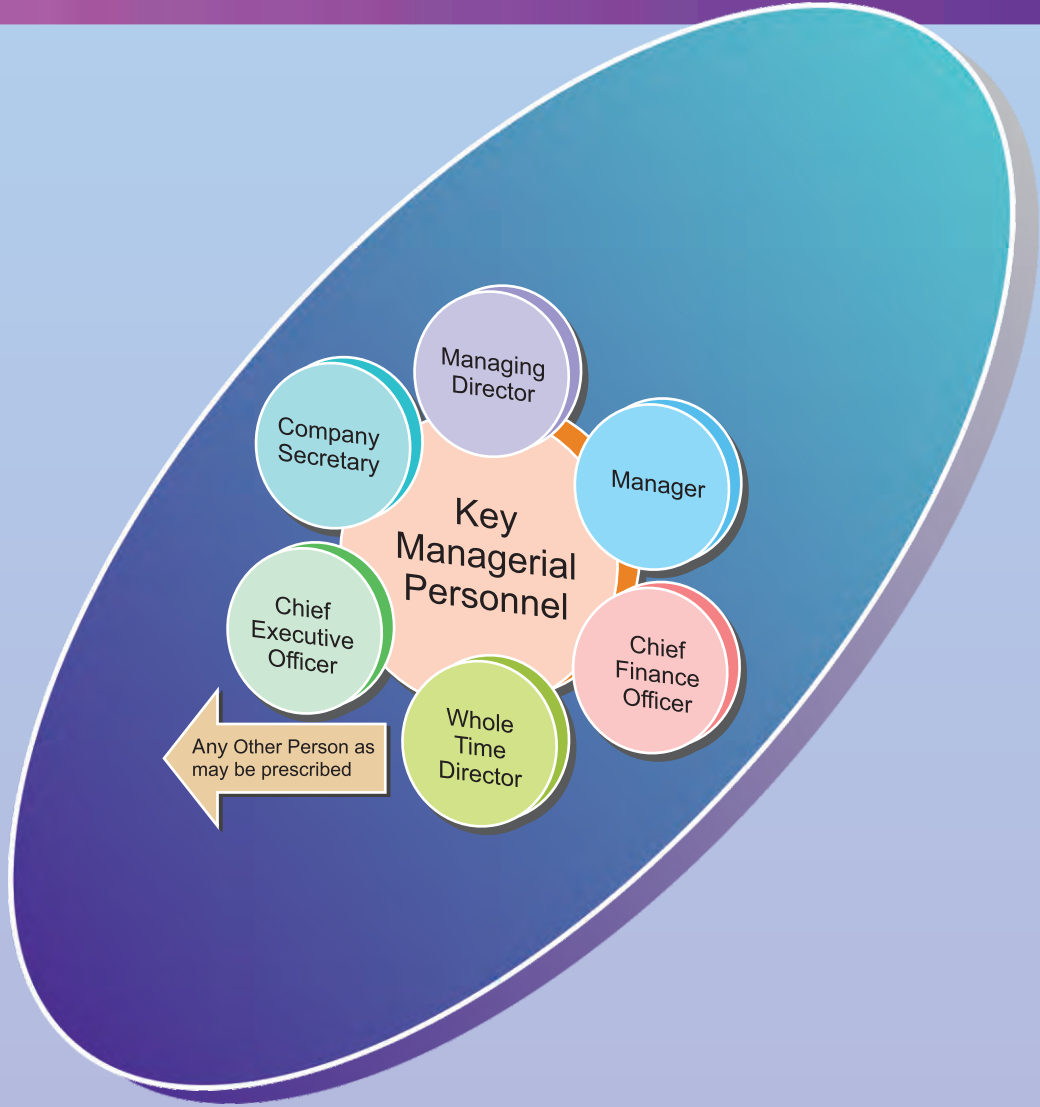
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