

COMPANY LAW

Time allowed : 3 hours

Maximum marks : 100

NOTE: 1. Answer SIX questions including Question No.1 which is COMPULSORY.
2.All references to sections relate to the Companies Act, 1956 unless stated otherwise.

Question 1

Comment on **any four** of the following :

- (i) A company has a statutory right to alter its articles of association.
- (ii) 'Red-herring prospectus' means a prospectus which has complete particulars on the price of the securities offered and the quantum of securities offered.
- (iii) The power of directors to approve the annual accounts can be delegated to a committee of directors or some of the directors.
- (iv) There are no shareholders in a limited liability partnership, instead there are partners.
- (v) In case of a company, the terms 'winding-up' and 'dissolution' convey the same meaning. (5 marks each)

Answer 1(i)

A company has a statutory right to alter its articles of association. But the power to alter is subject to the provisions of the Act and the conditions contained in the memorandum. Section 31 of the Companies Act, 1956 provides that subject to the provisions of the Act and the conditions contained in its memorandum, a company may, by special resolution, alter its articles and adds that any alteration so made shall be as valid as if originally contained in the articles. However, no alteration made in the articles which has the effect of converting a public company into a private company shall have effect unless such alteration has been approved by the Central Government [proviso to section 31(1)].

Answer 1(ii)

"Red-herring prospectus" means a prospectus which does not have complete particulars on the price of the securities offered and the quantum of securities offered. This means that in case the price is not disclosed, the number of shares and the upper and lower price bands are disclosed. On the other hand, an issuer can state the issue size and the number of shares are determined later. A Red Herring Prospectus can be filed with the RoC without the price band and the issuer, in such a case will notify the floor price or a price band by way of an advertisement one day prior to the opening of the issue. In the case of book-built issues, it is a process of price discovery and the price cannot be determined until the bidding process is completed. Hence, such details are not shown in the Red Herring prospectus filed with the RoC.

Answer 1(iii)

The Department of Company Affairs (Now Ministry of Corporate Affairs) vide its letter dated 27.10.1976 has clarified that in the absence of any specific provision in Section 215 of the Companies Act, 1956, the power of the directors to approve the annual accounts cannot be delegated to a committee of directors or some of the directors. It, inter alia, states that the approval of annual accounts which are to be ultimately placed before the shareholders of the company is not to be treated as a routine or part of day to day work. Hence, the Board of

Directors must themselves consider the annual accounts and approve them before the accounts are handed over to the statutory auditor of the company.

Answer 1(iv)

The Statement is correct. As per section 6(1) of the Limited Liability Partnership (LLP) Act, 2008, every LLP shall have at least two partners. Section 7 of the Act provides that every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. Provided that in case of a limited liability partnership in which all the partners are body corporate, at least two partners shall nominate their respective individuals who are to act as "designated partners" and one of the nominees shall be a resident of India.

Answer 1(v)

The terms "Winding up" and "Dissolution" are sometimes erroneously used to mean the same thing. But according to the provisions of the Companies Act, 1956, the legal implications of these two terms are quite different and there are fundamental difference between them as regards the legal procedure is involved. The main points of distinction are given below:

- 1.The entire procedure for bringing about a lawful end to the life of a company is divided into two stages – 'winding up' and 'dissolution'. Winding up is the first stage in the process whereby assets are realised, liabilities are paid off and the surplus, if any, distributed among its members. Dissolution is the final stage whereby the existence of the company is withdrawn by the law.
- 2.The liquidator appointed by the company or the Court carries out the winding up proceedings but the order for dissolution can be passed by the Court only.
- 3.According to the Companies Act, 1956, the liquidator can represent the company in the process of winding up. This can be done till the order of dissolution is passed by the Court. Once the Court passes the dissolution order, the liquidator can no longer represent the company.
- 4.Creditors can prove their debts in the winding up but not on the dissolution of the company.
- 5.Winding up in all cases does not culminate in dissolution. Even after paying all the creditors there may still be a surplus; company may earn profits during the course of beneficial winding up; there may be a scheme of compromise with creditors while company is in winding up and in all such events the company may in all probability come out of winding up and hand over to shareholders/old management. Dissolution is an act which puts an end to the life of a company.

Question 2

(a)Choose the most appropriate answer from the given options in respect of the following:

(i)Where the auditor of a company resigns, the vacancy arising therefrom can be filled by the company only at—

- (a)General meeting*
- (b)Board meeting*
- (c)Audit committee meeting*
- (d)None of the above.*

- (ii) The invitation and acceptance of deposits by non-banking non-financial companies in India is regulated by—
- The Reserve Bank of India Act, 1934
 - The Securities and Exchange Board of India Act, 1992
 - The Companies Act, 1956
 - None of the above.
- (iii) The Companies Act, 1956 allows a company to re-convert its stock into—
- Fully paid-up equity shares
 - Partly paid-up equity shares
 - Unpaid equity shares
 - Uncalled shares.
- (iv) In the case of incorporation of an Asset Management Company (AMC), the memorandum of association and articles of association are required to be vetted by which of the following authority before these documents are registered by the Registrar of Companies —
- ROC
 - SEBI
 - RBI
 - NSDL.
- (v) Which of the following is correct in respect of a public limited company in India —
- Business can be commenced immediately on incorporation
 - No need to have more than two directors
 - There is no restriction on remuneration payable to directors
 - The number of members is unlimited. (1 mark each)
- (b) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :
- A private company, which is a subsidiary of a company which is not a private company, is a _____ company.
 - All contracts which are purported to be made on behalf of a company before its incorporation are known as _____ contracts.
 - The issue of ESOPs or Employees Stock Option Scheme shall be subject to approval of shareholders through a _____ resolution.
 - Sweat equity shares issued to employees or directors shall be locked-in for a period of _____ from the date of allotment.
 - When a company makes buy-back of shares or securities, the buy-back operations shall be completed within _____ from the date of passing of the special resolution or a resolution passed by the Board. (1 mark each)
- (c) Discuss the various methods by which sense of a meeting is ascertained. (6 marks)

Answer 2(a)

- (a) General Meeting.
- (c) The Companies Act, 1956
- (a) Fully paid-up equity shares.

- (iv) (b)SEBI.
- (v) (d)The number of members is unlimited.

Answer 2(b)

- (i)Public
- (ii)Preliminary/Pre incorporation
- (iii)Special
- (iv)Three years
- (v)12 months

Answer 2(c)

Sense of the meeting means the will or intent of the assembly. Since unanimity on all matters brought forward for discussion in a meeting is not possible, the chairman has to take steps to ascertain the sense of the meeting. For this purpose he has to put the question to vote. The various alternative methods which may be adopted for taking votes on a motion properly placed before a meeting are as follows:

- (i)By Acclamation: Formal motions, like the motion of thanks to the chair, are generally adopted unanimously by applause or shouting or cheering by members.
- (ii)By voice: The method is also adopted when there is perfect or near unanimity on the motion.
- (iii)By show of hands: According to this method, the Chairman calls upon the persons present who are entitled to vote to raise hands in favour of the motion and on counting them he proceeds to count the hands raised against the motion also. On comparison of the hands shown for and against the motion, the Chairman announces his verdict whether the resolution is carried or lost. Each member, irrespective of his shareholding, or voting right, has one vote.
- (iv)By Poll: In a poll, since the votes are counted on the basis of shareholdings of members, the true sense of meeting can be ascertained. Further in a poll proxies can also exercise their vote. In this system, the poll papers are given to persons who are entitled to vote. They indicate on them their names and whether they are voting for or against the motion and also indicate therein the number of votes which they are entitled to.

Question 3

- (a)Discuss the requirements for keeping the minutes book of general meetings. (4 marks)*
- (b)Discuss briefly the voting rights of a proxy. (4 marks)*
- (c)State whether a Board meeting of a company can be held at any place. (4 marks)*
- (d)What is the effect of crystallisation of a floating charge. (4 marks)*

Answer 3(a)

With a view to ensuring the authenticity of the minutes of proceedings of general meetings, Section 193 provides that every company must keep minutes containing a fair and correct summary of all proceedings of general meetings in books kept for that purpose. The minutes books must have their pages consecutively numbered, and the minutes must be

recorded therein within 30 days of the meeting. They have to be written directly on the numbered pages. Sub-section (1A) of Section 193 provides that each page of every such minutes book must be initialled or signed and last page of the record of proceedings of each meeting in such books must be dated and signed. The minutes of a general meeting should be signed by the chairman of the same meeting within 30 days or in the event of the death or inability of that chairman within that period, by a director duly authorised by the Board of directors for the purpose.

Section 194 states that the minutes of meetings kept in accordance with the provisions of Section 193, as described above, shall be evidence of the proceedings recorded therein. They are, however, only prima facie evidence and as such are refutable. Further, section 196 provides that the minute books must be kept at the registered office of the company.

Answer 3(b)

A proxy is ordinarily entitled to vote only on a poll but the articles of any company may provide for a proxy voting by show of hands also. A proxy is not, as of right, entitled to speak at a meeting, though he may be permitted to do so. There is, however, no provision preventing a proxy putting questions in writing and sending the same to the chairman for an answer.

A proxy can demand or join in a demand for a poll. A member holding a proxy for another member may, on a poll, vote in respect of his own holding in a manner contrary to that of the other person whom he represents by a proxy : *Foerster v. Newlands West (Grigualand) Dimond Mines Ltd.*, (1902) 18 TLR 497.

Answer 3(c)

Unlike the provisions of Section 166 of the Companies Act, 1956 which require the Annual General Meeting of the company to be held at the registered office of the company during the working hours and on a day that is not a public holiday, there are no such restrictions in the Act regarding the meeting of the Board of directors. The meetings of the Board of directors may, therefore, be held at any place convenient to the Directors outside the business hours and even on a public holiday unless the articles provide otherwise.

The view of the Company Law Board in the matter is that section 288 of the Act does not prohibit a company from holding its original Board meetings on public holidays unless its articles of association provide otherwise. The Company Law Board would not, therefore, object if a company holds the original Board meeting on public holidays. [As clarified by the Department of Company Affairs. Source : Company news and notes, dated August 1, 1964 issue]

Answer 3(d)

On crystallization, the floating charge converts itself into a fixed charge on the property of the company. It has priority over any subsequent equitable charge and other unsecured creditors. But preferential creditors who have priority for payment over secured creditors in the winding-up get priority over the claims of the debenture holders having floating charge. It was held in [*Re. Lewis Merthyr Consolidated Collieries (1929) 1 Ch 498*] that the preferential rights of creditors over those of debenture holders applied only to the property secured by a floating charge. Therefore, where the floating charge over certain property ceased to float, directly a receiver was appointed, but had crystallized by the appointment, the creditors had

no right under the Act to be paid in priority to the debenture holders out of the assets comprised in that property.

Question 4

(a) In the case where the shares of a company are held in joint-names of two persons Arpit and Rakshit and one of these joint-holders requests the company to split the shares equally between them by issuing fresh share certificates, what should the company do? (4 marks)

(b) Layman is a holder of a share warrant in Ontime Fliers Ltd., a public limited company. Unfortunately, Layman is unaware of any of the formalities to be complied with for transferring the said share warrant. Advise him about the formalities to be completed in this regard. (4 marks)

(c) Four types of persons, viz., a section 25 company, an insolvent individual, a trade union and a pawnee, apply for membership in your public limited company. Will you accept them as members of your company? Why? (4 marks)

(d) A company has forfeited shares of a defaulting shareholder for non-payment of call money. However, the defaulting shareholder approaches the Board after forfeiture of shares to cancel the said forfeiture. What should the Board do? Give your advice. (4 marks)

Answer 4(a)

In the case, where the shares of a company are held in joint names and one of these joint holders requests the company to split the shares equally between the joint holders by issuing fresh certificates, the company shall not be legally bound to do so unless the share transfer deeds executed by both the joint holders, duly completed, and stamped are lodged with the company together with the relevant share certificates, in terms of the provisions of Section 108 of the Companies Act, 1956. [*Rajiv Das v. The United Press Ltd.* (2001) (CLB)].

Answer 4(b)

A share warrant is transferable by mere delivery of the warrants without execution of any written instrument of transfer being registered by the company. The bearer of share warrant is not a member of the company unless otherwise so provided in the articles of the company in terms of Section 115(5) of the Companies Act, 1956. So, a bearer of share warrant is not impliedly required to observe the provision of the company's memorandum and articles.

Therefore, in view of the above, Layman is advised to transfer the share warrant by delivering the share warrants to the transferee. Further, he is not required to register the transfer of share warrant with the company. Also, no stamp duty is required to be paid by him at the time of transfer of a share warrant.

Answer 4(c)

Section 25 company: A non-profit making company licensed under Section 25 of the Companies Act can become a member of another company if it is authorised by its Memorandum of Association to invest into shares of the other company.

Insolvent as member: An insolvent cannot apply for membership in a company. The reason is that as per the Indian Contract Act, an insolvent cannot enter into a contract as his property vests in the official receiver or official assignee. This disqualification of an insolvent is removed after he is discharged. So, an insolvent can apply for membership after he is discharged from insolvency.

Trade Union as member: A trade union registered under the Trade Union Act, can be registered as a member and can hold shares in a company in its own corporate name [*All India Bank Officers Confederation v. Dhanlakshmi Bank Ltd.*, (1997) 90 Com Cases 225].

Pawnee: A pawnee has no right of foreclosure since he never had the absolute ownership at law and his equitable title cannot exceed what is specifically granted by law. In this sense, a pledge differs from a mortgage. In view of the foregoing, a pawnee cannot be treated as the holder of the shares pledged in his favour, and the pawner continues to be a member and can exercise the rights of a member [*Balakrishna Gupta v. Swadeshi Polytex Ltd.*, (1985) 58 Comp. Cas. 563 (S.C.)]. Therefore, a pawnee cannot apply for membership of a company in view of the above.

Answer 4(d)

In case, the defaulting shareholder approaches the Board after forfeiture to cancel the forfeiture, the Board is empowered to cancel such forfeiture and claim due amount with interest.

Question 5

(a) Abhay is director in two companies — Goodluck India Pvt. Ltd. and Lucky Winners India Pvt. Ltd. Abhay attended Board meetings of these two companies on 22nd August, 2009 in the same building 'Welcome House' at 2 p.m. and 4 p.m. respectively.

(i) Can Abhay draw travelling allowance from both the companies?

(ii) Is he entitled to receive sitting fees fully from both the companies?

(6 marks)

(b) Rani is a wealthy lady enjoying large dividend and interest income. She has formed three private companies and agreed with each of them to hold a block of investment as an agent for it. Income received was credited in the accounts of the company but the company handed back the amount to her as a pretended loan. This way, she divided her income in three parts in a bid to reduce her tax liability. Discuss the legality of the purpose for which the three companies were formed. (5 marks)

(c) Carefree is an officer of Cosy Cosy Ltd., who is authorised to sign on behalf of the company any contract, bill of exchange, hundi, promissory note, cheque, or order for money or goods. In these circumstances, Carefree signs a cheque on behalf of the company without mentioning the name of the company. Who is liable to the holder in such a case? (5 marks)

Answer 5(a)

The travelling allowance should not be a source of profit, the director concerned should claim only as much as would cover his actual expenses and, if he so chooses, he may reimburse himself from each of the companies proportionately so that the total amount drawn by him from all the companies put together does not exceed the expenses actually incurred by him. He may, however, draw the sitting fee from each of the companies in full [As clarified by the Department of Company Affairs. Source: Company news of notes, dated August 1, 1963].

Therefore, in view of the above clarification –

(i) Abhay can draw travelling allowance from both the companies provided the amount does not exceed the expenses actually incurred him.

(ii) He is entitled to sitting fees fully from both the companies.

Answer 5(b)

It was held in the case of [*Re.: Sir Dinshaw Manakjee Petit*, A.I.R. 1927 Bombay 371] that where it was found that the sole purpose for which a company was formed was to evade taxes, the Court will ignore the concept of separate entity, and make the individuals liable to pay the taxes which they would have paid but for the formation of the company.

In the present situation, the facts are similar to the above mentioned case. The reason to which the companies were formed by the assessee was purely and simply as a means of avoiding super-tax and the companies were nothing more than the assessee herself. Further, they did no business, but were created simply as legal entities to ostensibly receive the dividends and interests and to hand them over to the assessee as pretended loans. Therefore, the Court may disregard the formation of three private companies as these are being used for tax evasion.

Answer 5(c)

As per section 147(4)(c) of the Companies Act, 1956, if an officer of a company or any person on its behalf signs or authorises to be signed, on behalf of the company, any bill of exchange, hundi, promissory note, endorsement, cheque or order for money or goods wherein the name of the company is not mentioned, such officer or person shall be punishable with fine which may extend to five thousand rupees, and shall further be personally liable to the holder of the bill of exchange, hundi, promissory note, cheque or order for money or goods, for the amount thereof, unless it is duly paid by the company. So, in the present case, Carefree is personally liable to the holder.

Question 6

Distinguish between **any four** of the following :

- (i) 'Company' and 'corporation'.
- (ii) 'Nominal capital' and 'subscribed capital'.
- (iii) 'Shares' and 'stock'.
- (iv) 'Whole-time chairman' and 'part-time chairman'.
- (v) 'Insolvency of an individual/firm' and 'winding-up of a company'.

(4 marks each)

Answer 6

(i) Distinction between 'Company' and 'Corporation'

A company is an association of persons incorporated according to the provisions of the Companies Act, 1956 and clothed with legal personality separate from the persons constituting it. It has a perpetual succession and a common seal. Being a separate legal entity, a company can hold property in its own name. It can also sue and be sued in its own name.

As per Section 2(7) of the Companies Act, 1956 -

"Body corporate" or "corporation" includes a company incorporated outside India but does not include—

- (a) a corporation sole;
- (b) a co-operative society registered under any law relating to co-operative societies;

and

(c) any other body corporate not being a company which the Central Government may, by notification in the Official Gazette, specify in this behalf."

In other words, the expression "Corporation" or "body corporate" is wider than the word 'company'.

(ii) Distinction between 'Nominal capital' and 'subscribed capital'

Nominal or Authorised or Registered Capital is the sum stated in the memorandum of association of a company limited by shares as the capital of the company with which it is registered. It is the maximum amount which the company is authorized to raise by issuing shares. It is the capital on which the company had paid the prescribed fee at the time of registration. The nominal capital is divided into shares of uniform denomination. The amount of nominal capital is fixed on the basis of the projections of fund requirements of the company for its business activities.

On the other hand, subscribed capital is that portion of the issued capital at face value which has been subscribed for or taken up by the subscribers of shares in the company. It is clear that the entire issued capital may or may not be subscribed. For this purpose, issued capital means that part of the authorised or nominal capital which the company has issued for the time being for public subscription and allotment. This is computed at the face value.

(iii) Distinction between 'Shares' and 'stock'

- Shares in physical form bear distinct numbers, whereas stocks are the consolidated value of share capital.
- Shares may or may not be fully paid-up. Stock is always fully paid-up.
- Shares have a nominal value, whereas stocks do not have any nominal value.
- All shares are of equal denomination whereas denominations of stocks vary.
- Stock cannot be issued in the first instance, whereas shares are issued to the public initially. On conversion of shares into stock, the provisions of the Act governing the shares shall cease to apply to the share capital as it is converted into stock (Section 96).
- Stock is divisible into any amount. Thus, it is possible to transfer Rs.50.87 worth of stock, while it is never possible to transfer a fraction of a share.

(iv) Distinction between 'Whole time chairman' and 'part-time chairman'

In India, we have Boards, which are chaired by managing directors, who are known as chairman-cum-managing director (CMD). We have also Boards, which are chaired by directors who are not whole-time directors. A chairman-cum-managing director (CMD) is sometimes called a whole-time chairman whereas a Chairman, who is not a whole-time director of the company, is called a part-time chairman. Even if a managing director is chairman cum-managing director of the company, he acts as chairman of the meetings of the Board of directors only when they are held. Rest of the period, he occupies the chair of the managing director. Therefore, strictly speaking, a chairman is never a whole-time chairman. He is always a part-time chairman.

(v) Distinction between 'Insolvency of an individual/firm' and 'winding up of a company'

Following are some of the differences between the effects of insolvency of an individual or a firm and winding up of a company:

(1) In the case of insolvency, the whole of the insolvent's property is taken out of his hands and rests in the Court (under the Provincial Insolvency Act, 1920) or the Official Assignee (Under the Presidency Towns Insolvency Act, 1909). In winding up, on the other hand, the property remains vested in the company, subject to its being administered for the purposes of winding up as the company retains its complete existence. A company's legal death comes only when it is formally dissolved.

(2) In insolvency, an insolvent individual can obtain his discharge and continue living and working free from the burden of his debts. A company in liquidation cannot obtain its discharge and continue free from the burden of its debts. The liquidator winds up its affairs and then terminates it through dissolution.

(3) Although in the administration of the assets of an insolvent company the insolvency rules apply, they are, however, not identical with those of insolvency of an individual or firm. For example, the "reputed ownership" clause of insolvency law has no application in the case of a company in liquidation.

(4) In the case of an individual, the administration of his property by the Official Assignee or the Official Receiver occurs only if he is declared an insolvent by the Court. But the assumption of the directors' powers by the liquidator occurs even if the company is fully solvent. Liquidation or winding up, even of a solvent company can be proceeded with the aid of the court, as in voluntary winding up.

Question 7

State, with reasons in brief, whether the following statements are correct or incorrect:

(i) *The members of an unlimited company are liable directly to the creditors of the company.*

(ii) *A promoter has legal right to claim promotional expenses for his services.*

(iii) *Preference shares are non-cumulative unless expressly stated to be cumulative.*

(iv) *A charge created orally shall also require registration.*

(v) *A return of allotment in e-form 2 is required to be filed with the Registrar of Companies even if a single share is allotted by a company.*

(vi) *The prospectus must be dated.*

(vii) *A company is required to obtain approval of the debenture trustees for any distribution of dividend.*

(viii) *Additional directors can be appointed only by public companies.* (2 marks each)

Answer 7

(i) **Incorrect**

The members of an unlimited company are not liable directly to the creditors of the company, as in the case of partners of a firm. The liability of the members is only towards the company and in the event of its being wound up only the Liquidator can ask the members to contribute to the assets of the company which will be used in the discharge of the debts of the company.

(ii) **Incorrect**

A promoter has no legal right to claim promotional expenses for his services unless there is a valid contract. Without such a contract he is not even entitled to recover his preliminary expenses. [Re. *English & Colonial Produce Company* (1906) 2Ch. 435 CA].

(iii) Incorrect

Unless the articles provides otherwise, preference shares are deemed to be cumulative unless expressly stated to be non-cumulative. [*Fraser v. Coles*, (1906) 22 TLR 555.] In cumulative preference shares, the dividend keeps on accumulating until it is fully paid. And, unless there is a term against accumulation, preference shares are presumed to be cumulative. The presumption of accumulation can be ruled out only by a very carefully drafted clause, like this that dividend will be paid out of the profits of the company made in each year.

(iv) Correct

A charge created orally would also require registration. The registration of a charge with the Registrar itself would show that the charge is created even if no instrument is created. A Board resolution can also be taken to be the fact of creation of a charge.

(v) Correct

As per section 75 (1) of the Companies Act, 1956, whenever a company having a share capital makes any allotment of its shares, the company shall, within thirty days thereafter file with the Registrar a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and occupations of the allottees, and the amount, if any, paid or due and payable on each share.

(vi) Correct

According to section 55 of the Companies Act, 1956, a prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

(vii) Incorrect

A company is required to obtain approval of the debenture trustees for distribution of dividend only in the case of (i) default in payment of interest on debentures or (ii) default in redemption of debentures or (iii) default in creation of securities as per the terms of issue of debentures.

(viii) Incorrect

Section 260 of the Companies Act, 1956 provides that if the articles of association of a company empower its directors to appoint additional directors, the Board may exercise such power. Section 260 applies to all companies, public as well as private. [*Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holdings Ltd.* AIR 1981 SC 1298.]

Question 8

Write notes on **any four** of the following:

- (i) Disadvantages of corporate form of enterprise
- (ii) Remuneration of promoters

- (iii) Alternate directors
- (iv) Passing of resolution by postal ballot
- (v) Independent directors. (4 marks each)

Answer 8

(i) Disadvantages of corporate form of enterprise

There are certain disadvantages of a corporate form of enterprise. Some of these disadvantages are:

- (i) **Formalities and expenses:** Incorporation of a company is coupled with complex, cumbersome and detailed legal formalities and procedures, involving considerable amount of time and money.
- (ii) **Corporate disclosures:** Notwithstanding the elaborate legal framework designed to ensure maximum disclosure of corporate information, the members of a company are having comparatively restricted accessibility to its internal management and day-to-day administration of corporate working.
- (iii) **Separation of control from ownership:** Members of a company are not having as effective and intimate control over its working as one can have in other forms of business organisation, say, a partnership firm. This is particularly so in big companies in which the number of members is too large to exercise any effective control over its day-to-day affairs.
- (iv) **Greater tax burden in certain cases:** In certain circumstances, the tax burden on a company is more than that in comparison to other forms of business organisation.
- (v) **Detailed winding-up procedure:** The Act provides elaborate and detailed procedure for winding-up of companies which is more expensive and time consuming than that which is applicable to other forms of business organisation.

(ii) Remuneration of promoters

A promoter has no legal right to claim promotional expenses for his services unless there is a valid contract. Without such a contract he is not even entitled to recover his preliminary expenses. [Re. *English of colonial produce company* (1906) 2 Ch.435 CA].

When a promoter makes proper disclosure, he may expect to be rewarded for his efforts. Therefore, when the company is registered, it may (and usually does) pay or agree to pay some remuneration for services rendered. In practice, a promoter is remunerated in any of the following ways:

- (a) He may sell his own property to the company for cash or against fully paid shares in the company at a higher value after making full disclosure to an uninterested Board of directors or to the intended shareholders.
- (b) He may be given an option to buy further shares in the company at par.
- (c) He may take commission on the shares sold.
- (d) He may take a grant of some shares in the company.
- (e) He may be paid a lump-sum by the company.
- (f) The articles may provide for a fixed sum to be paid to him. Such a provision has no contractual effect and he cannot sue to enforce it, but if it is acted upon, the company cannot recover its money.

(iii) Alternate directors

The Board of directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint an alternate director, in accordance with Section 313 of the Companies Act, 1956, to act for a director during his absence for a period of not less than three months from the State in which meetings of the Board are ordinarily held.

An alternate director occupies the position of director and even though he is called an alternate director, he is a director and performs same duties and is subject to the same liabilities as of any other director. However, in calculating for the purposes of Section 275, the number of companies of which he is a director, the company in which he is an alternate director shall not be included [Section 278(1) (d)]. An alternate director may be appointed as a managing or whole-time director.

(iv) Passing of resolution by postal ballot

Postal Ballot is a system of voting in which the shareholders who are unable to attend the meeting can vote. A new Section 192A had been inserted by the Companies (Amendment) Act, 2000 which provides the procedure for postal ballot. The procedure is given below in the summarized form:

(i) The Board of directors shall appoint a designated person to conduct, supervise and control the exercise of postal ballot.

(ii) Accordingly where a company decides to pass any resolution by resorting to postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons therefor, and requesting them to send their assent or dissent in writing on a postal ballot within a period of 30 days from the date of posting of the letter.

(iii) The notice shall be sent by registered post acknowledgement due, or by any other method as may be prescribed by the Central Government in this behalf. Also with the notice, there shall be included a postage pre-paid envelope for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period.

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

(v) The designated person shall thereafter give a report to the Chairman and on the basis of such report, the Chairman shall declare the results of the poll.

(v) Independent directors

Independent director is not defined under the Companies Act, 1956. However, it finds mention in Schedule XIII to the Companies Act, 1956 wherein it is stated that remuneration committee is a committee which consists of non-executive independent directors. As per clause 49 of the listing agreement, a listed company is required to appoint certain number of independent directors on the Board. In Clause 49 of the listing agreement, the term "Independent Directors" has been defined as under:

'Independent director' shall mean non-executive director of the company who –

(a) apart from receiving director's remuneration, does not have any material pecuniary relationship or transactions with the company, its promoters, its senior management or its holding company, its subsidiaries and associated companies;

(b) is not related to promoters or management at the board level or at one level below the board.

(c) has not been an executive of the company in the immediately preceding three financial years;

(d) is not a partner or an executive of the statutory audit firm or the internal audit firm that is associated with the company, and has not been a partner or an executive of any such firm for the last three years. This will also apply to legal firm(s) and consulting firm(s) that have a material association with the entity.

(e) is not a material supplier, service provider or customer or a lessor or lessee of the company, which may affect independence of the director.

(f) is not a substantial shareholder of the company, i.e. owning two percent or more of the block of voting shares.

(g) is not less than 21 years of age.

Further, nominee directors appointed by an institution which has invested in or lent to the company shall be deemed to be independent directors.
