STUDY – I (INTRODUCTION)

The word 'corporation' is derived from the Latin term ***'corpus'*** which means ***'body'***.

The **incorporated company** owes its existence either to a special Act of Parliament or to company legislation.

A **company** has its own corporate and legal personality distinct and separate from that of its members.

The proportion of capital to which each member is entitled is his **'share'**.

By incorporation under the Act, the company is vested with a **corporate personality** quite distinct from individuals who are its members.

The **shareholders** are not the agents of the company and so they **cannot bind** it by their acts.

A shareholder **cannot** be held liable for the acts of the company even if he holds virtually the entire share capital.

The liability of a member as shareholder, extends to **contribution to the assets of the company up to the nominal value of the shares held and not paid by him**.

An incorporated company never dies except when it is **wound up as per law**.

A company being a **legal person** and **entirely distinct from its members**, is capable of owning, enjoying and disposing of property in its own name.

The capital of a company is divided into parts, called **shares**.

A member may **sell his shares in the open market** and realise the money invested by him.

On incorporation, a company acquires legal entity with **perpetual succession and a common seal**.

The **Common Seal** acts as the **official signature** of a company.

The name of the company must be engraved on its **common seal**.

A rubber stamp **does not** serve the purpose of a Common Seal.

A company being a body corporate, **can sue and be sued in its own name**.

A company, as a **person separate from its members**, may even sue one of its own members for libel.

A company, being a separate legal entity different from its members, **can enter into contracts** for the conduct of the business in its own name.

A company cannot go beyond the power stated in the **Memorandum of Association**.

A company is a **voluntary** association for profit.

A company, being an **abstract and artificial person**, does not die a natural death.

The expression 'corporation' or **'body corporate'** is wider than the word 'company'.

LLP is a body corporate and a legal entity separate from its **partners**, having perpetual succession**.**

An unincorporated company, association or partnership consisting of large number of persons has been declared **illegal**.

A company **cannot be a citizen**, yet it has nationality, domicile and residence.

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STUDY – II (TYPES OF COMPANIES)

Statutory Companies are constituted by **special Act of Parliament or State Legislature**.

A private company means a company, which has a minimum paid-up capital of **one lakh rupees**.

The words **'Private Limited'** must be added at the end of its name by a private limited company.

The number of members of the private company is limited to **50**.

A public company may be said to be an association consisting of **not less than 7 members**.

The shares and debentures of a **public company** may be quoted on a Stock Exchange.

Every **public company** shall have a minimum paid-up capital of less than **five lakh rupees**.

The **Memorandum of a company limited by guarantee** must state the amount of guarantee.

The voting power of a guarantee company having share capital is determined by the **shareholding** and **not by the guarantee**.

An **unlimited company** is a company not having any limit on the liability of its members.

An unlimited company **may or may not have share capital**.

The members of an unlimited company are **not liable** directly to the creditors of the company.

The **Section 25 company** is registered **without** paying any stamp duty on its Memorandum and Articles.

A Section 25 cannot alter the provisions of its Memorandum with respect to its objects **except with the previous approval of the Central Government** in writing.

A Government company is a company in which **not less than 51% of the paid-up share capital** is held by the Central or State Government.

The **Government company** is neither a Government department nor a Government establishment.

The employees of a Government Company are **not** the employees of the Central or State Government.

The auditor of a Government Company shall be appointed or reappointed by the **Comptroller and Auditor General of India**.

A **foreign company** is a company which is incorporated in a country outside India under the law of that other country and **has a place of business in India**.

A company is a **holding company** of another if the other is its **subsidiary**.

If the holding company holds **more than half in nominal value** of the subsidiary's equity share capital, the relationship of holding company and subsidiary subsists between them.

An **investment company** is a company, the principal business of which consists in **acquiring, holding and dealing in shares and securities**.

A **producer company** is a body corporate having objects or activities specified in **Section 581B** and which is registered as such under the provisions of the Act.

A **Financial Company** means a non-banking company which is a financial institution within the meaning of **clause (c) of Section 45-I of the Reserve Bank of India Act, 1934**.

A **statutory corporation** is a **body corporate** and can sue and be sued, enter into contracts and acquire property in its own name.

Three basic types of companies which may be registered under the Act are **private companies, public companies and producer companies**.

A limited company is a company limited by **shares or by guarantee**.

A company formed under an Act of Parliament or State Legislature is called a **Statutory Company/Corporation**.

The **Memorandum of Association** is the constitution of a company.

The **Articles of Association** contains the **rules and regulations** relating to the internal management of a company.

STUDY – III (PROMOTERS)

The Companies Act, 1956, does not define the expression 'promoters', however, it has defined by **SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009**.

A **promoter** is **neither an agent of, nor a trustee** for, the company because it is not in existence. But he occupies a **fiduciary position** in relation to the company.

A **promoter** is not allowed to derive a profit from the sale of his own property to the company unless all **material facts are disclosed**.

STUDY – IV (MEMORANDUM & ARTICLES OF ASSOCIATION)

Memorandum of Association determines the utmost possible scope of its operations **beyond which** its actions cannot go.

A company being a **legal entity** must have a name of its own to establish its separate identity.

The **name** of the company is a symbol of its independent corporate existence.

No company shall be registered by a name which, in the opinion of the Central Government, is **undesirable**.

The **name of the State** in which the registered office of the company is to be situated must be given in the **memorandum**.

In the case of a company whatever is not stated in the memorandum as the objects or powers is prohibited by the **doctrine of *ultra vires***.

An ***ultra vires* borrowing** does not create a relationship of a debtor and creditor.

An *ultra vires* contract is as **null and void** as that of contract with a **minor**.

The *ultra vires* acts are **null and void *ab initio*.**

A company is not authorised to issue capital **beyond its registered capital**.

Where a company is a **subscriber** to the memorandum of association, it must be signed by a **duly authorised agent**.

A company can change its registered office from one place to another within the local limits of the city, town or village, where it is situated, by a **Board resolution**.

Change from one city to another within the same state of the registered office **does not** involves alteration of Memorandum.

The **articles of association** of a company are its by-laws or rules and regulations that govern the management of its **internal affairs and the conduct of its business**.

Neither the articles nor the memorandum can authorise the company to do anything so as to **contravene any of the provisions of the Act**.

Regulations provided for in the Articles must **not exceed** the powers of the company as laid down by its **Memorandum**.

In the case of a **company limited by guarantee** the articles shall state the number of members with which it is to be registered.

The **Articles of Association** are subsidiary both to the Companies Act and the Memorandum of Association.

The **memorandum and articles**, when registered, become **public documents** and can be inspected by anyone on payment of nominal fee.

Outsiders dealing with incorporated bodies are bound to take notice of limits imposed on the corporation by the **memorandum or other documents of constitution**.

The **doctrine of constructive notice** seeks to protect the company against the outsiders.

The **principal of indoor management** operates to protect the outsiders against the company.

Public companies limited by shares **need not** have their own articles of association.

STUDY – V (CONTRACTS & CONVERSIONS)

The **change of name will not affect** any rights and obligations of the company, or legal proceedings commenced under the old name.

Contracts made on behalf of the company before its incorporation are called **preliminary or pre-incorporation contracts**.

Contracts made after incorporation but before obtaining the certificate to commence business are called **provisional contracts**.

In the case of a **private company** the question of provisional contracts does not arise as it can commence business immediately on its incorporation.

Where a contract is *intra vires* the company but *ultra vires* the directors, the company may be liable and may even **ratify** it.

A Private Limited Company **cease** to be a Private Company and becomes a Public Company when it fails to comply with any of the four restrictive provisions required by **Section 3(1)(iii)** to be incorporated in its articles.

A public company can be converted into a private company only after the approval of the **Central Government**.

A **private company or a company having no share capital** may commence business and exercise its various powers **immediately after it is incorporated**.

A **public company** must obtain a **certificate of commencement of business** from the Registrar before it can commence business or exercise its borrowing powers.

The certificate is **conclusive evidence** that a company is entitled to commence business.

Conversion of a private company into a public company can be grouped as **conversion by choice or volition and by default**.

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STUDY – VI (CONCEPT OF CAPITAL & FINANCING OF COMPANIES)

A share is a **right to participate** in the profits made by a company.

Rights issue is an issue of capital under Section 81(1) of the Companies Act, 1956 to be offered to the **existing shareholders** of the company through a letter of offer.

Bonus shares help companies to **reduce the gap** between capital and fixed assets.

Employee stock option scheme means a right but not an obligation granted to an employee to buy the shares of the company at a pre-determined price.

Sweat equity shares issued to employees or directors shall be locked in for a period of **3 years** from the date of allotment.

STUDY – VII (ALTERATION OF SHARE CAPITAL)

The Companies Act, 1956 permits a company limited by shares to issue two classes of shares, namely **equity share capital and preference share capital**.

Equity share capital means all share capital which is not preference share capital.

Share includes stock except where a distinction between stock and shares is expressed or implied.

Only **fully paid-up shares** can be converted into **stock**.

A company may if authorised by its articles, **forfeit shares** for non-payment of calls and the same will **not require confirmation of the Court**.

After completion of buy-back operation the securities must be extinguished and physically destroyed **within 7 days** of the last date of completion of buy-back.

Reduction of capital means reduction of issued, subscribed or paid-up capital of the company.

STUDY – VIII (PROSPECTUS)

All **public companies** either issue a prospectus or file a statement in lieu of prospectus.

If a statement in lieu of prospectus is not delivered, the company and every director shall be liable to a **fine up to Rs. 10,000**.

The prospectus must be issued **within 90 days of its registration** either by newspaper advertisement or otherwise.

Shelf prospectus means a prospectus issued by any public financial institution or bank for one or more issues of securities or class of securities specified in the prospectus.

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.

Information Memorandum is a kind of prospectus which has its relevance in the book building process.

It is the duty of those who issue the prospectus to be **truthful in all respects**.

An offer for sale is a prospectus, within the meaning of the Act, and it is deemed to have been issued by the company.

STUDY – IX (DEBT CAPITAL)

All companies are given power to borrow **by their articles** which fix the maximum limit of borrowings.

Where the company borrows without the authority conferred on it by the Articles or beyond the amount set out in the Articles, it is an **ultra vires borrowing and hence void**.

A document which, either creates a debt or acknowledges is a **Debenture**.

A company, instead of issuing debentures, each in respect of separate and distinct debt, may raise one aggregate loan fund or composite stock known as **Debenture Stock**.

Working capital may be defined as the excess of current and liquid assets over current liabilities of a business.

Certificate of Deposit is a document of title to a time deposit.

Commercial paper refers to unsecured promissory notes issued by credit worthy companies to borrow funds on a short term basis.

STUDY – X (CREATION & REGISTRATION OF CHARGES)

A **charge** is a security given for securing loans or debentures by way of a mortgage on the assets of the company.

According to Section 124 of the Act, charge **includes a mortgage**.

The advantage of a **floating charge** is that the company may continue to deal in any way with the property which has been charged.

On **crystallisation**, the floating charge converts itself into a **fixed charge** on the property of the company.

The creation of a **floating charge** leaves the company free to create a **legal and equitable mortgage** on the same property until the floating charge crystallises.

A **floating charge** remains afloat until a winding up commences, unless it has already crystallised through the intervention of the debenture holders or the creditors.

Charge identification number is allotted at the time of **registration** of the charge.

A charge created **orally** would also require registration.

The particulars of the charge must be filed within **30 days** with the Registrar **after the date of creation of the charge**.

Non-registration of mortgage or charges, does not render the transaction *void* or the debt not recoverable.

Anybody can inspect the Register of Charges of any company.

E-form 17 is required to be filed within **30 days** from the date of satisfaction or payment of full and final amount to the chargeholder.

There are two kinds of charges, **fixed or specific charge and floating charge**.

Every company is required to keep at its **registered office** a register of all charges as well as a copy of instrument creating any charge.

Company may make **petition to CLB (Central Government)** for **extension of time** for filing particulars of charges to ROC for registration.

For intimating **modification** of charge, **e-form 8** is required to be filed within **30 days** of modification.

Mortgage is created by the **act of parties** whereas a **charge** may be created either through the **act of parties or by operation of law**.

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STUDY – XI (ALLOTMENT & CERTIFICATES OF SECURITIES)

Shares come into existence on **allotment**.

The allottee **does not** automatically become a member of the company, until his name is placed on the **register of members**.

If shares are allotted on an application of a **minor**, the allotment will be **void**.

An allotment of shares should be **communicated**.

No allotment shall be made where a prospectus is issued generally until the **beginning of the fifth day** after the date on which the prospectus is so issued or such later date as may be specified in the prospectus.

All moneys received from applicants for shares must be kept in a **separate account** maintained with a scheduled bank.

In case the allotment is not made or refund order not dispatched to investors within **30 days** from the date of closure of issue, then the Company shall pay **interest @ 15% p.a.**

If the minimum subscription is not raised within **120 days** after the issue of the prospectus the money paid by the subscribers must be returned forthwith.

The company is required to issue **letter of allotment** to persons who are alloted shares.

An application is an **offer** by the applicant and allotment is an **acceptance** of the offer by the company.

When the company's issue is over-subscribed, the directors allot less shares to all or some applicants than applied for, it is called **partial allotment**.

Section 75 of the Companies Act provides that after allotment of shares by any company, a **return of allotment** in the prescribed **e-form 2** must be filed with the Registrar of Companies within **30 days of the allotment of shares**.

A **share certificate** is a certificate issued to the members by the company under its common seal specifying the number of shares held by him and the amount paid on each share.

A certificate of shares is an **evidence** to the effect that the allottee is holding a certain number of shares of the company showing their nominal and paid-up value and distinctive numbers.

A **split certificate** means a separate certificate claimed by a shareholder for a portion of his holding.

A **share warrant** is a **bearer document** of title to the specified shares.

A **share warrant holder** is **not a member** of the company.

Share warrant is a **negotiable instrument**.

Forfeiture of shares means taking back of shares by the company from the shareholders.

When forfeiture of shares takes place, shareholder **ceases to be a member** and the forfeited shares become the property of the company.

Forfeited shares are re-issued at a discount which **cannot exceed** the **amount already paid on such shares**.

Allotment means the act of appropriation by the Board of directors of the company of a certain number of shares to persons who have made applications for shares.
Shares forfeited by a company may either be **cancelled or re-issued** to another person at the discretion of the Board.

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STUDY – XII (MEMBERSHIP)

A Company can become a member of any other company provided, it must be **authorised by its Memorandum of Association**.

A subsidiary company **cannot** become a member of its holding company.

A company **cannot** become a member of itself.

A trade union registered under the Trade Union Act **can be** registered as a member of the Company.

Joint holders of shares in a public company are **not a single member**.

A public company does **not** have any restriction regarding the **maximum number of members**.

Every member of a public company limited by shares, holding equity shares, shall have votes in proportion to his share of the **paid-up equity share capital** of the company.

The liability of the members becomes **unlimited** if the number of members **falls below the statutory limits**.

A Company is composed of members, though it has its own entity distinct from **members**.

A non-profit making Company licensed under Section 25 of the Companies Act **can** become member of any other company.

Partnership firm, minor **cannot** become a member of a company.

Pawnee and Receiver **cannot** be treated as members.

The Register of Members shall be kept at the **registered office** of the Company subject to the provisions of Section 163 of the Companies Act, 1956.

STUDY – XIII (TRANSFER & TRANSMISSION OF SECURITIES)

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 Board of Directors of a company or the concerned depository has **no discretion to refuse or withhold transfer of any security**.

A **transfer** is said to be completed only after all the formalities such as **execution of the transfer deed** and handing over the share certificates are completed.

Where an instrument is not complete or is erroneous, it will be a case of bad delivery and the company would be entitled to **refuse registration**.

A **forged transfer** cannot pass any title and is a **nullity**.

A **Depository Participant** is an agent of depository and is **registered as such under the SEBI Act, 1992** to render depository services.

The Depositories Act, 1996 specifies that all **securities** held in a depository are **fungible**.

The **transfer of shares** attracts **stamp duty** under the Indian Stamp Act, 1899.

Unless the articles provide for a lien, a company has **no** inherent or prima facie **right of lien on shares** of members.

STUDY – XVIII (MEETINGS)

There must be **atleast 2 persons** to constitute a meeting.

Section 165 of the Companies Act 1956 does not specify time and place for holding a **statutory meeting**.

In terms of Section 166 of the Companies Act, 1956 an **annual general meeting** shall be held **every year**.

Notice of a general meeting given by secretary **without** the sanction of the directors or proper authority is **invalid**

A meeting convened as a meeting of the directors may be valid as a meeting of the company if **all the board members are present**.

Class meetings are those meetings which are held by holders of a **particular class of shares**, e. g. preference shares.

Section 285 of the Act prescribes that in the case of every company, a meeting of the Board of directors shall be held **at least once in every three months** and **at least four** such meetings shall be held in every year.

If notice of the meeting is not given to one of the directors then the meeting of Board of Directors is **invalid**.

There is **no restriction** regarding the holding of Board meetings on any day.

Section 193 of the Act requires that minutes of the meeting should be recorded **within 30 days** and signed either by the **Chairman of that meeting** or by the **Chairman of the next meeting**.

Quorum is the minimum number of directors required to be present to validly transact any business.

Under Section 292A, **every public company** having paid-up capital of **not less than five crores of rupees** shall constitute a committee of the Board known as **Audit Committee**.

A **proxy** is 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** can make a **demand for a poll**.

A **member** may either **vote personally or by proxy**.

At any general meeting all resolutions are decided in the first instance by a **show of hands** and each member has **one vote**.

If the shares held by a **minor** are **fully paid**, the minor will be **entitled to vote** at the meeting of the company in which he is a shareholder.

A **casting vote** is a second vote exercised by a chairman of a meeting in addition to his own vote as a member.

Motion is a proposal submitted for a discussion and a decision adopted by means of a **resolution**.

A motion becomes a resolution only after the **requisite majority of members** have adopted it.

An **adjourned meeting** is merely the **continuation** of the original meeting.

Postponement of a meeting is to put off or defer the holding of a meeting before the date originally fixed for the meeting has arrived.

The minutes book must be kept at the **registered office** of the company.

Proxy can be **revoked** by the member **by attending and voting** himself before the proxy has voted.

Postponement is the act of the convening authority whereas the **adjournment** is the act of meeting itself.

STUDY – XX (DEPOSITS)

If the deposit is in the name of the minor, the **name of the guardian** should be stated in the application, and the guardian should sign the form for and on behalf of the minor.

Companies are required to deposit or invest a sum which shall **not be less than 15%** of the amount of its deposits maturing during the financial year (commencing from 1st day of April and ending on 31st day of March).

Every company intending to invite, allowing or causing any other person to invite **deposits** shall issue an **advertisement** for the purpose in a leading English newspaper and one vernacular newspaper.

STUDY – XXI (ACCOUNTS & AUDIT)

For preparation of annual accounts, the maintenance of **proper books of account** is a must.

Section 209 requires every company to keep the aforesaid books of account at its registered office.

Where a company has a branch office whether in India or outside, the books of account relating to transactions effected at the branch office **may be kept** at that office.

The books of account are open to inspection by the **company director, Registrar or a Government/SEBI officer**.

Section 227(1) empowers an **auditor** with the right of access at all times to the company's accounts, whether kept at the head office of the company or elsewhere.

Sub-section (1)(d) of Section 209 of the Companies Act, 1956, deal with **Cost accounting records**.

Section 210 of the Companies Act makes provisions for presenting the **annual accounts** of a company before the annual general meeting.

The balance sheet and profit and loss account must be **approved** by the Board of directors and signed by the directors **before** they are submitted to the auditors for their report.

As per **Section 215** of the Companies Act, 1956, the Balance Sheet and Profit & Loss Account must be signed on behalf of the Board of directors by **not less than two directors and the manager, or secretary**, if any. If the company has a **managing director**, he should be one of the signing directors.

In the absence of any specific provision in Section 215, the power of the directors to approve the annual accounts **cannot** be delegated to a committee of directors or some of the directors.

As per **Clause 32 of the Listing Agreement**, the Company will supply a copy of the complete and full Balance Sheet, Profit and Loss Account and the Director's Report, to each Shareholder and upon application to any member of the Exchange.

Audit is an **examination of accounting records** undertaken with a view to establishing the correctness or otherwise of the transactions reflected therein.

Audit is a careful scrutinising of accounting records undertaken to establish a **true and fair view** of the company's state of affairs.

Every company shall, **at each annual general meeting** appoint an auditor or auditors **to hold office** from the conclusion of that meeting until the conclusion of next annual general meeting.

The **first auditor** or auditors are to be appointed by the Board of directors **within one month** of the date of the registration of the company.

Where a firm is appointed as auditor, the ceiling will be **20 companies per partner** who is not in whole-time employment elsewhere.

The **casual vacancy** in the office of auditor may be filled by the **Board**.

Where the vacancy is caused by **resignation** of auditor, such vacancy shall only be filled by the company in **general meeting**.

If no auditors are appointed or re-appointed at the annual general meeting, the **Central Government** may appoint a person to fill the vacancy.

The first auditor appointed by the Board of directors may be removed at a **general meeting** by the company.

An auditor is an agent of the **shareholders**.

The **cost audit** conducted under Section 233B shall be in addition to an audit of the company conducted by auditor appointed under Section 224.

The books of account should be kept on **accrual basis** and according to **double entry system** of accounting.

As per the Act, books of account and other books and papers should be available for **inspection by any director** on working days **during business hours**.

The Act provides that every profit and loss account and balance sheet of the company shall comply with the **accounting standards**.

The Act empowers the Central Government to appoint either any Chartered Accountant or the company's own auditor to conduct a **special audit** in certain circumstances.

Social audit is a combination of **performance audit and efficiency audit**.

STUDY – XXII (DIVISIBLE PROFITS & DIVIDENDS)

Final dividend is **recommended** by the **Board of directors** in its report to the shareholders, as per the requirements of Section 217 of the Companies Act, which is attached to the balance sheet for the relevant financial year.

Final Dividend is **declared** by the **shareholders** at the annual general meeting.

The shareholders may, declare the payment of dividend on equity shares at a rate **lower** than the one recommended by the directors in their report.

The **interim dividend** is paid between **two annual general meetings** of the company.

Both interim and final dividend when declared become debt and are payable **within 30 days** of declaration.

A **Preference share** carries a preferential right as to dividend in accordance with the term of issue and the articles of association, subject to the availability of distributable profits.

Dividend **cannot** be paid out of the assets of the company, and generally, can be declared only out of the profit available for the purpose.

Schedule XIV prescribes the **rates of depreciation** of various assets both under the '**written down value method**'and '**straight line method**' for single shift, double shift and triple shift basis.

A newly incorporated company is **prohibited** from transferring **more than 10%** of its profits to its reserves.

Dividend can be paid only in **cash**, not in kind.

Dividend has to be paid to the **registered shareholder** of the share or to his order or to his bankers.

Dividend has to be distributed **within 30 days** of the declaration.

Dividend Warrant is an order by the company to its banker to pay the amount specified therein to the shareholder whose name is written therein.

If a dividend is declared and paid to shareholders, the character of the payment **cannot** be altered by a subsequent resolution.

Dividend must be paid only out of profits and after providing for depreciation as provided under section 205 of Companies Act, 1956.

A preference share carries a **preferential right** as to dividend in accordance with term of issue subject to availability of distributable profits.

Under Section 173(1), declaration of dividend is an **ordinary business** at an annual general meeting.

STUDY – XXIII (SOLE SELLING AND SOLE BUYING AGENTS)

A company cannot appoint a sole selling agent for any area for a term **exceeding 5 years** at a time.

No company having a paid-up share capital of **Rupees 50 lakhs or more** shall appoint a sole selling agent except with the consent of the company accorded by a special resolution and the approval of the Central Government.

The appointment of a sole selling agent shall be **cease to be valid** if it is not approved by the company in the first General Meeting held after the date on which the appointment is made.

STUDY – XXIV (BOARD'S REPORT & DISCLOSURES)

The **Board's report** is a comprehensive document circumscribing both financial and non-financial information about the performance and prospects of the company for the benefit of the stakeholders.

The Board's report should include a statement as per the Companies (Disclosure of Particulars in the Report of Board of Directors) Rules, 1988, with respect to the matters of **conservation of energy, technology absorption and foreign exchange earnings and outgo**.

Every company not required to employ a whole-time secretary under Section 383A(1) of the Act and having a **paid-up share capital of Rupees 10 lakhs or more** shall obtain a certificate from a secretary in whole-time practice.

The **Management Discussion and Analysis Report (**MDAR) should either **form a part** of the Board's report or be given as an addition thereto in the annual report to the shareholders.

The board is bound to give full information and explanation as regards any reservation, qualification or adverse remarks contained in the **auditors' report**.

The matters to be included in Board's Report should be under the provisions of **Companies Act, Listing Agreements, SEBI Guidelines and RBI directions**.

STUDY – XXV (REGISTERS & RETURNS)

The **register of deposits** is required to be preserved in good order for a period of **not less than 8 calendar years** from the financial year in which the latest entry is made in the register.

In the case of Joint shareholders, the particulars of each joint holder **should be recorded** in the register.

No notice of any trust, express, implied or constructive, should be entered in the **register of debenture holders**.

The Register and Index of Debenture holders should be preserved for **15 years** from the date of redemption of debentures.

The **Annual Return** should be signed by two officers of the company consisting of the **Manager or Secretary of the company and a Director** of the company.

The Minutes Books of Directors' Meetings are **not available for inspection**, except to directors.

The particulars mentioned in Section 372A shall be entered in the register in chronological order **within 7 days**.

E-form No. 10 shall be filed for issue of debentures.

Filing fee is to be paid to the Registrar on all the documents filed with him as prescribed under **Schedule X** to the Companies Act.

ICSI has issued **Secretarial Standard -4 (SS-4)** on registers and records.

STUDY – XXVI (INSPECTION & INVESTIGATION)

Section 209A of the Companies Act, 1956, contains provisions in respect of inspection of books of account and other books and papers of every company.

In terms of Section 209A of the Companies Act, 1956, inspection may be made **without** giving any previous notice to the company or any officer thereof.

The Central Government has been empowered under Section 247(1) of the Companies Act, 1956, to appoint one or more **inspectors** to investigate and report on the membership of any company.

STUDY – XXVII (OPPRESSION & MISMANAGEMENT)

Under Section 397 of the Companies Act, **any member** of a company can complain that the **affairs of the company** are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member.

Where the company has a share capital, **100 members or one/tenth of the total number of members**, whichever is less, is required to make an application under sections 397 and 398 of the Companies Act, 1956.

STUDY – XXVIII (COMPROMISES & ARRANGEMENTS)

If a compromise or arrangement is not bona fide but intended to cover misdeeds of delinquent directors, the **Court shall not** sanction the scheme.

The Chairman appointed by the Court to preside over the meeting has to file his/her report **within 7 days** of the conclusion of the meeting where the scheme was considered and voted upon by the creditors or members.

Under Section 392 of the Companies Act, 1956, the Court **cannot** issue directions which do not relate either to the sanctioned scheme itself or its working in relation to the company which the scheme seeks to reconstruct.

Arrangement includes a reorganization of share capital of company by consolidation of shares of different classes or division of shares into shares of different classes or by both these methods.

The **court** has the powers to supervise the implementation of the scheme and to sanction modification of the terms of the scheme. While sanctioning the scheme, the court also has the power to order **winding up**.

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STUDY – XXIX (CO-OPERATIVES, SOCIETIES & TRUSTS)

Principles of **co-operatives** allow voluntary and open membership.

A society can be registered by minimum **7 individuals** which may include **foreigners, or registered society**.

A society can make its bye-laws in accordance with the **Rules and Regulations** of the society.

A trust may be declared either **orally** or through an instrument in writing.

Express trusts are created by the act of parties either in words or in writing.

An **implied trust** is one which is deduced from the conduct of the parties and the circumstances of the transactions.

STUDY – XXX (PRODUCER COMPANIES)

There is an obligation on the **Producer Company** to deal primarily with the produce of its active members in carrying out its specified objects.

Producer Company shall hold its first Annual General Meeting **within 90 days** from the date of its incorporation.

Every Producer Company having an average annual turnover exceeding **5 crore** rupees in each of three financial years shall appoint a member of the Institute of Company Secretaries of India as a whole-time Secretary of the company.

Companies (Amendment) Act, 2002 had added a new **Part IXA** to the main Companies Act, 1956 consisting of 46 new Sections from **581A to 581ZT** relating to Producer Companies.

STUDY – XXXI (LIMITED LIABILITY PARTNERSHIPS)

Limited Liability Partnership (LLP) is an incorporated partnership formed and registered under the **Limited Liability Partnership Act 2008** with limited liability and perpetual succession.

The Indian Partnership Act 1932 shall **not** be applicable to LLPs.

The LLP is a **body corporate** and a legal entity separate from its **partners**.

Every LLP shall have **at least 2 partners** and shall also have **at least 2 individuals** as Designated Partners, of whom **at least one** shall be resident in India.

The **Central Government** has power to investigate the affairs of an LLP, if required, by appointment of competent inspector for the purpose.

Every limited liability partnership shall have either the words **'Limited Liability Partnership' or 'LLP'** as the last words of its name.

A partner shall **not** be personally liable for the wrongful act or omission of any other partner of the Limited Liability Partnership.

STUDY – XXXII (BANKING & INSURANCE COMPANIES)

Companies carrying on banking business in India are required to use at least one word **'bank' ,'banker' or 'banking'** in their name.

It is **mandatory** for a bank to get itself registered with the **RBI**.

Insurance Regulatory and Development Authority acts as a statutory regulator to regulate and promote the insurance industry in India and to protect the interests of holders of insurance policies

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The aggregate equity participation of a foreign company cannot exceed **26 % of the paid-up capital** of the insurance company.

STUDY – XXXIII (OFFENCES & PENALTIES)

Section 5 defines the expression "officer who is in default".

STUDY – XXXIV (STRIKING OFF NAMES OF COMPANIES)

Within 20 years from publication of notice of striking off in official gazette, an application be made by the company/member/creditor to the court.

A company which is not carrying on any business or in operation is a **defunct company** and may be struck off from the register of companies under **Section 560** of Companies Act, 1956.

The **Registrar** may on its own motion proceed to strike off a company, if it has reasonable cause to believe that a company is not carrying on business.

STUDY – XXXV (WINDING UP OF COMPANIES)

A **Company or a member or a creditor** may make an application to the **court** for restoration of the name of the company to the register, if they feel aggrieved by such decision of striking off.

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.

Creditors can prove their debts in the winding up but **not** on the dissolution of the company.

Any contributory or contributories or the Registrar **may** petition for the winding up of a company.

The **Members** appoints the liquidator in case of Members voluntary winding up.

When a company is wound up by the members or the creditors without the intervention of Court (tribunal), it is called as **voluntary winding up**.

Section 439 specifies the persons by whom a petition for winding up of a company may be presented to the Court (tribunal) in compulsory winding up.

Section 433 lays down the grounds on which a company may be wound up, in compulsory winding up.

STUDY – XXXVI (E – GOVERNANCE)

The **Front Office** represents the interface of the corporate and public user with the MCA21 system.

The Front Office comprises of **Virtual Front Office and Physical Front Office**.

The **Back Office** represents the offices of **Registrar of Companies, Regional Directors and Headquarters**.

All existing and any person intending to be appointed as a director are required to obtain the **Director Identification Number (DIN)**.

DIN is **also** mandatory for directors of Indian Companies who are not citizens of India.

DIN is **not mandatory** for directors of foreign company having branch offices in India.

Only a **single DIN** is required for an Individual irrespective of number of directorships held by him.

DIN is a unique identification number and once obtained is valid for **life time** of a director.

Corporate Identity Number (CIN), works as a unique identifier of an Indian company.

Foreign Company Registration Number (FCRN) is a unique identifier in the case of a Foreign Company.

DIN to be allotted by the Central Government within **1 month** from the receipt of application for allotment of DIN.

Individuals **prohibited** to apply, obtain or possess more than one DIN.

Every existing Director to intimate his DIN to the company or all companies wherein he is a director, within **1 month** of receipt of DIN.

Every user who is required to sign an e-form for submission with MCA is required to obtain a **Digital Signature Certificate**.

Balance sheet and Profit and Loss Accounts are to be filed as **two separate documents** with different e-forms.

An **attachment** refers to a document that is sent as an enclosure with an e-Form by means of an attached file.

Pre-fill is functionality in an e-Form that is used for filling automatically, the requisite data from the system without repeatedly entering the same.

STUDY – XXXVII (SECRETARIAL STANDARDS)

ICSI has issued **Secretarial Standard -1** (SS-1) and **Secretarial Standard -2** (SS-2) on the **Meetings of the Board of Directors** and on the **Meetings of the General Meeting** respectively.