FOR IPCC

Company Law

THE COMPANIES ACT, 1956

Revision Summary based on Arihant Spiral and Bare Act

Special features:

- *Full coverage of Companies Act, 1956*
- *Strictly based on Bare Act and Arihant Spiral*
- *With summarize and easy to remember format*
- *Useful sections and Landmark judgments*
- *Very useful for Practical Questions*
- *Also covered Final's selected sections for enhanced conceptuality*
- *According to SEBI guidelines and Amendments*

Written by: *Bhavin Pathak*

(Student, CA-IPCC, BN-14, Arihant Institute Pvt. Ltd.)

Special Thanks: *CS Tejpal Sheth*

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Rules of My Life:
"Don't use anyone, but being useful for everyone."
"There is no tax on helping each other."
"Live for other is more joyful rather than live for yourself."
"If you light a lamp for somebody, it will also brighten your path."
"Happiness is a by-product of an effort to make someone else happy." ☺
– Me

DEDICATED TO MY FRIENDS

- Written by Bhavin Pathak

COMPANIES ACT, 1956

Chapter 1 Basic Concept

COMPANY:

- Definition - [Section 3(1) (i)] A company means a company formed and registered under the companies Act, 1956 or any existing company.
  (ii) "Existing Company" means a company formed and registered under any of the previous companies' laws.
- A Company is an incorporated association, which is an artificial person created by law, having a separate entity, with a perpetual succession and a common seal. – *Haney.*

Characteristics:

(i) Registered association
(ii) Artificial person
(iii) Separate legal entity
(iv) Perpetual existence
(v) Common seal
(vi) Transferable shares
(vii) Limited liability

Advantages of incorporation:

1. **Registered association:** A company is in law different from its members. It has as independent corporate existence; it has a legal personality of its own. It can make contracts open a bank account can sue and be sued by others, it can own property in its own name. Unlike a partnership firm, which has no existence, a part from its members a company is a juristic person independent of its members.
   The law has recognised at even if a person holds virtually all the shares the rights and obligations of the company shall be different from its members. The company's money and property belong to the company and not to the shareholders. The member's personal property cannot be held liable to pay the creditors of the company. In **Saloman V. Saloman & Co. Ltd.** It was held that company is a different person altogether from its members, It is not possible in case of partnership firm.
2. **Perpetual succession:** ***Section 34 (2)*** of the Act states that an incorporated company has perpetual succession. The life of a company is not related to the life of members. The life of the company is not affected by death insolvency, retirement or transfer of shares of members. Members may come and members may go, the company continues until is dissolved.
3. **Limited liability:** It is the most important advantage of a corporate from of business organisation. It means that the liability of a member shall be limited to the nominal value of the shares held by him. Once he has paid the full amount on the shares held by him, he couldn't be called upon to bear the loss from him personal property. In the case of a company limited by guarantee, the liability of members is limited up to the amount guaranteed by a member. In case of partnership the liability of members is unlimited and direct towards creditors.
4. **Transferability of Shares:** The shares of a joint stock company are freely transferable. A shareholder can transfer his shares to any person without the consent of other members. A Company cannot impose any restrictions on the rights of members to transfer their shares. However, the articles shall lay down the procedure of transfer of shares otherwise will governed by **table A.**
5. **Separate Property:** Because of its corporate personality, a company can own and transfer property in its own name. Although the shareholders have contributed to the capital of the company, they do not become the part owners of its property. Property of the company should not be treated as member's property or vice versa.

In **Bacha F. Guzdar** Case the court held that no member can claim himself to be the owner of the company's property during its existence or on its winding up.

6. **Capacity to Sue:** A company being a juristic person it can sue in its own name and be sued by others. In **Abdul Haq v. Das,** it was held that for the recovery of the any amount, the remedy lies against the company and not against the directors or members of the company.
7. **Flexibility and Autonomy:** Diversity of ownership from management. The company is managed by professional persons and they have the freedom to act in the interest of the company. In partnership, all the decisions are taken by partners.

Disadvantage:

(i) More formalities
(ii) Loss of privacy
(iii) Expansive management
(iv) Separation between management and ownership

Body Corporate

Section 2 (7) of the Act defines body corporate or corporation as follows:

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

(a) A corporation sole;
(b) A co-operative society registered; and
(c) Any other body corporate (not being a company as defined in this Act) which the central government may be notification in the official gazette specify in this behalf.

- It is a legal entity distinct from the members constituting it and having perpetual succession and common seal.
- The term body corporate is wider in scope than the term company.
- Body corporate refers not only to companies incorporated in India but also foreign companies and other foreign bodies corporate.
- It includes (a) public financial institutions, (b) Nationalised banks, and (c) corporations formed under Acts of parliament.
- Corporation may be either *(i) corporation sole, or (ii) corporation aggregate*. Corporation sole refers to a single individual constituted as a corporation in respect of some office or function for example a bishop, president governor etc.
- A corporation sole is not a body corporate under the companies Act though it is very much a legal person capable of holding property and becoming member of a company. Corporation sole should not be confused with the one man company which is registered as a company under this Act.

Difference between a company and a partnership firm:

(i) Mode of Creation
(ii) Membership (a) Minimum (b) Maximum
(iii) Legal Status
(iv) Liability of members
(v) Transfer of shares
(vi) Agency of members
(vii) Management
(viii) Perpetual succession
(ix) Powers
(x) Restriction on powers
(xi) Dissolution
(xii) Legal Obligations

LIFTING OF CORPORATE VEIL

- From the juristic point of view, a company is a legal person distinct from its members *[**Saloman v. Saloman & Co. Ltd.**]*. This principle may be referred to as the veil of corporation. The effect of this principle is that there is a veil between the company and its members. That is the company has a corporate personality which is distinct from its members.

Corporate veil can be lifted (LIC v. Escort ltd.)

- The companies Act itself has provided for certain cases making the members or directors personally liable. These are;
  1. **Reduction in membership (Section 45):** If a company carries not business of more than six months after the number of its members has been reduced below seven in case of a public company and two in case of private company, every person who was a member of the company during the time when it carried on business after those six months and who was aware of this fact shall be severally liable for all debts contracted after six months.
  2. **Mis-description of the company (Section 147):** The name of the company should be fully and properly mentioned on all documents, instruments, etc. If an officer of a company or any other person acts on its behalf and enters into a contract or signs a negotiable instrument without fully writing the name of the company then such officer or person shall be personally liable.
  3. **Fraudulent trading (Section 542):** Where in the course of winding up of a company it appears that the business of the company has been carried on with intent to defraud creditors of the company or any other person or for any fraudulent purpose, all those who were aware of such fraud shall be personally liable without any limitation of liability.
  4. **Holding act subsidiary company (Section 212-214):** In the eyes of law, the holding company and its subsidiary company have separate legal entities. In has been held that even a hundred per cent subsidiary is a separate legal entity and its holding company is not liable for its acts. Under **Section 212 (1),** a holding company is required to attach with its final accounts, a copy of the balance sheet profit and loss account directors report of each subsidiary.

     Sometimes the court may refuse to treat the subsidiary company as a separate entity and treat it as only a branch of the holding company.
  5. **Failure to Refund application money (Section 69):** If the application money of those applicants to whom shares have not been allotted, is not repaid within 130 days of the date of issue of the prospectus, then the directors shall be jointly and severally liable to repay that money with interest @ 6% p.a. [According to SEBI guidelines-@ 15% p.a.]
  6. **Ultra vires acts:** Directors of a company shall be personally liable for all such acts which they have done on behalf of the company if they are ultra vires the company or ultra vires the directors and the company does not ratify their acts.

Occasions Under Judicial Interpretation:

(1) **For determining the character or status of a company:** When it is suspected that the company is owned or controlled by enemies of the country, the court may lift the corporate veil and examine the character of persons in the real control of company. **Daimler Co. Ltd. v. Continental Tyre & Rubber Co. Ltd.**

(2) **For the protection of revenue:** If a company is used as a means to evade tax, the courts may disregard the corporate veil. In **Juggila1 Kamlapat v. Commissioner of Income Tax, U.P.** the Supreme Court held that the court is entitled to lift the mask of corporate entity if it is used for tax evasion or to circumvent tax obligations. In such a shareholders may be held liable to pay income tax.

(3) **For preventing fraud or improper conduct: -** The court may also lift the corporate veil of a company where it appears that the company was formed only of some fraudulent purpose, to defraud creditors or to avoid legal obligations. In such cash cases shareholders were held to be persons who actually work for the corporation. **[Tata Engg. Locomotive Co. Ltd. v. State of Bihar.**

(4) **Where the doctrine conflicts with policy:** Where the corporate veil conflicts with public policy, the court lifts the veil for protecting the public policy. (Connors Ltd. v. Connors)

A Company not citizen

- Though, a company is regarded as a legal person, it is not a citizen under the citizenship Act 1955 or the constitution of India. In state trading corporation of India Ltd. V. C. T. O. the Supreme Court held that STC though a legal person, was not a citizen, therefore, a company does not have the right of citizenship.
- However certain fundamental rights enshrined in the constitution of India for protection of person, e.g., **right to equality (Article 14)** are available to a company. In **Bennet Coleman Co. v. Union**

of India the Supreme Court observed the fundamental rights of shareholders as citizens are not lost when the associate to form a company.

Financial Institution

1. According to **Section 4A** of the Companies Act, the following financial institutions shall be regarded, for the purposes of the companies Act, as public financial institutions, namely: (ICICI),
2. (IFCI),
3. (IDBI),
4. (LIC) &
5. (UTI)

In addition to the above Section 4A (2) empowers the central government to specify other institutions as it may think fit, to be a public financial institution. However no institution shall be so specified unless:

(i) It has been established or constituted by or under any central Act; or
(ii) Not less than 51 per cent of the paid share capital of such an institution is held or controlled by the central government.

The Central Government has specified the following institutions to be public financial institutions.

(i) (IRBI)
(ii) (GIC)
(iii) The National Insurance Company Limited.
(iv) The new India Assurance Company limited.
(v) The oriental fire and general insurance company limited.
(vi) The united fire and general insurance company limited.
(vii) The shipping credit and investment company of India Ltd.
(viii) (TFCI)
(ix) Risk capital and technology finance corporation limited.
(x) Technology development and Information Company of India limited.
(xi) Power Finance Corporation Limited.
(xii) National housing bank (NHB)
(xiii) Rural Electrification Corporation limited.

ILLEGAL ASSOCIATIONS [Section 11]

Without registration under the companies Act, or any other Indian laws no company, association or partnership consist of more than (except HUF) 20 persons (10 in case of banking business) be formed to carry on any business for profit.

***Consequences of Non-registration*:**

(i) No legal existence.
(ii) Unlimited personal liability of member.
(iii) Fine upto Rs. 10,000.
(iv) It cannot enter into contract
(v) It cannot sue of to be sued by others.
(vi) It cannot contract debt
(vii) It cannot be debtor of creditor for any debt.
(viii) However income of the Illegal association will be taxable.

Officer who is in default (Section 5)

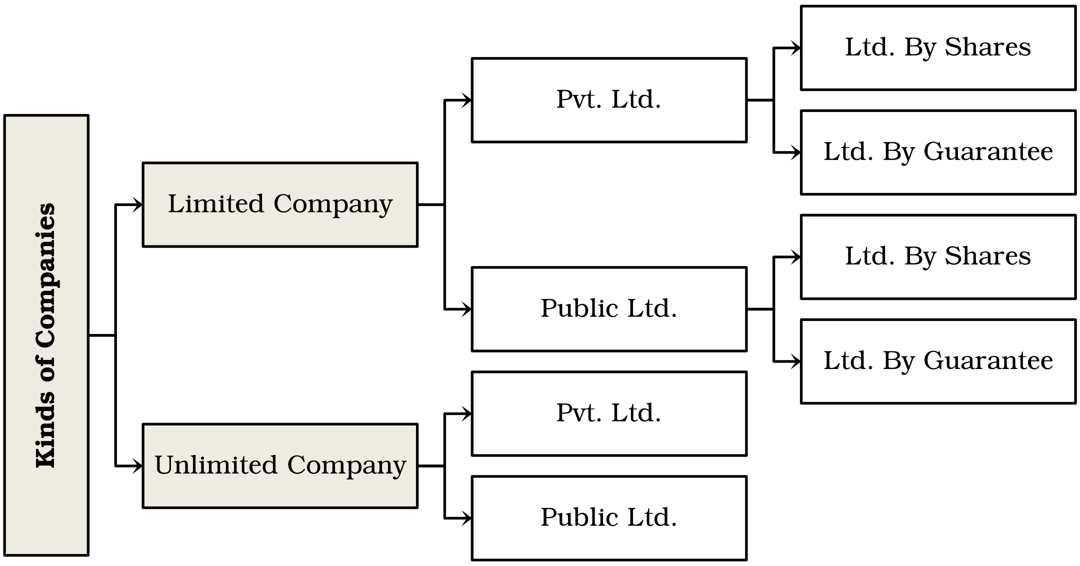
(i) The managing director;
(ii) The whole-time director;
(iii) The manager;
(iv) The secretary;
(v) Any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;
(vi) Any person charged by the Board of directors with the responsibility of complying with any provision, provided the person so charged has given his consent in this behalf to the Board of directors;
(vii) Where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board of directors in this behalf or where no director is

so specified, all the directors (Section 5).

Relative (Section 6)
A person is deemed to be a relative of another if
(a) They are members of a Hindu Undivided Family (HUF);
(b) They are husband and wife; or
(c) The one is related to the other in the manner indicated in Schedule I-A to the Act.

SCHEDULE I-A 1. Father ➢ Father's father; ➢ Father's mother. 2. Mother ➢ Step mother; ➢ Mother's mother; ➢ Mother's father. 3. Son ➢ Step son; ➢ Son's wife; ➢ Son's son; ➢ Son's son wife; ➢ Son's daughter; ➢ Son's daughter's husband;	4. Daughter ➢ Step daughter; ➢ Daughter's husband; ➢ Daughter's son; ➢ Daughter's son's wife; ➢ Daughter's daughter; ➢ Daughter's daughter's husband; 5. Brother ➢ Step brother; ➢ Brother's wife; 6. Sister ➢ Step Sister; ➢ Sister's husband;

Chapter 2 — *Kinds of Companies*



1. Public company [Section 3 (1) (iv)]

- Which is not a private company
- The paid of capital will be Rs.5 lakhs or higher.

2. Private company [Section 3 (1) (iii)]

- Company which, by its articles,
  - (a) Restricts the write to transfer its shares.
  - (b) Limits the number of its members to 50 excluding present or ex-employee.
  - (c) Prohibits any invitation to the public for subscription of shares or debentures.
  - (d) Cannot accept deposit from person other than director and member.
  - (e) The minimum paid of capital of a private company will be Rs. 1 lakh or higher.
- Minimum number is two.
- Joint holder is treated as one member.
- It has been further stated that every private company and public company existing on the commencement of the Companies (Amendment) Act, 2000 with a paid up capital of less than one lakh or five lakh rupees, as the case may be shall within a period of two years from such commencement, enhance its paid up capital to one lakh or five lakh rupees as the case may be.
- The said Section further provides that no private company shall invite or accept deposits from persons other than its members, directors or their relatives.
- A private company which is a subsidiary of a public company will be deemed a public company for the purposes of the Act.
- A private company or a public company which fails to enhance its paid up capital, as capital, as aforesaid shall be deemed to be a defunct company within the meaning of Section 560 and its name shall be struck off by the Registrar.
- A Company registered under Section 25 before or after the commencement of the companies (Amendment) Act 2000, need not have to fulfill the requirement of minimum paid up capital as aforesaid.

Special Privileges and Exemptions

(i) A Private company can be formed with only two members.
(ii) Minimum subscription is not required.
(iii) A private company is not required to issue prospectus.
(iv) A Private company is free to allot new issue to outsiders.
(v) A Private company can issue any kind of shares.
(vi) A private company can commence business immediately after its incorporation.
(vii) It need not have an index of members.

(viii) It need not required to hold a statutory meeting
(ix) Unless the articles otherwise provide, two members personally present shall form quorum.
(x) Minimum Directors are two.
(xi) All the directors may be appointed by single resolution.
(xii) The directors of a private company need not retire by rotation.
(xiii) Directors need not file there written consent to act as directors or to take up their qualification shares.
(xiv) For appointment of a new director, a special notice is not required.
(xv) Directors of a private company can vote on a contract in which they are, interested.
(xvi) A private company is exempted from restrictions regarding managerial remuneration.
(xvii) The provisions of Sections 85-89, do not apply to an independent private company.
(xviii) **Sections 171 to 186** relating to general meetings are not applicable to an independent private company if it makes its own provisions by the articles.
(xix) No person other than the members of an independent company is entitled to inspect, or obtain copies of the profit and loss account of the company under .
(xx) The provision that the written consent of directors should be filed with registrar is not applicable to an independent private company.
(xxi) An independent private company may by its articles, provide additional disqualification for appointment of directors.
(xxii) An independent private company may be its articles provide special grounds for vacation of office of a director.
(xxiii) Provision regarding prohibition of loan to director, etc. (Section 295) in not applicable to an independent private company.
(xxiv) The restrictions as to number of companies of which a person may be appointed managing director and prohibition of such appointment for more than five years at a time to not apply to it.
(xxv) The restructures regarding loans to company's loans to companies under the same management do not apply to it.
(xxvi) The provision prohibiting the subscription purchase or otherwise, the shares of other companies in the same group do not apply to it.

On the basis or liabilities

1. **Company limited by shares [Section 12(2)(a)] :**
   Which limit liability of its member by its memorandum to the amount unpaid on shares held, is called Company limited by shares.
2. **Company limited by Guarantee [Section 12(2)(b)]**
   Which limits liability of its member by its memorandum to the amounts undertaken by them to contribute to the assets of the company in the event of winding up. Articles of this company must state the number with which the company is to be registered. If it has share capital the amount of share capital with which it is to be registered.
3. Unlimited company [Section 12(2)(c)]
   Where liability may extend to personal property of members. Articles of an unlimited company must state the number of members with which the company is to be registered and if it has share capital the amount of share capital with which it is to be registered.

SOME SPECIAL KINDS OF COMPANIES

1. Companies not for profit (Section 25)

- For promotion of commerce, science, religion, charity etc
- Profit shall not be distributed as dividend
- A license is taken from Central Govt.
- May exclude 'Ltd' or 'Pvt. Ltd. ' from its name

2. Foreign company [Section 591]

- A company incorporated outside India but having a place of business in India. A Company has a place of business in India if it carries on business at some specified or identified place such as office Godown or a storehouse.
- Within 30 days of establishment of business in India, a foreign company is required to file with ROC of the place where principal office of the company is situated and the ROC of New Delhi.

(i) Memorandum and article
(ii) Address of registered office abroad
(iii) Details of directors and secretary
(iv) Name & address of a person resident in India, authorised to accept on behalf of the company, service of any notices.
(v) Address of Principal place of business in India
(vi) A foreign company when it ceases to carry on any business in India may be wound up as an unregistered company **[Section 584].**
(vii) Where 50% or more of the paid up share capital up share capital (equity or preference) of a foreign company is held by one or more Indian citizens, or by one or more Indian companies or corporations than it shall have to comply with such of the provisions of the companies Act, as may be prescribed as if it were an Indian company.

3. Govt. Company [Section 617]

- A company in which not less than **51%** of paid up share capital is held by central Govt. or any state Govt. or both and includes a com. which is a subsidiary of a Govt.com
- Auditor shall be appointed by C & AG. C & AG. also has power to conduct a supplementary or test audit.
- C & AG has power to comment on the audit report.
- Where the Central Government is a member of a government company, the central government must prepare an annual report on the working and affairs of the company. The report must be ready within three months of the company's annual general meeting before which the audit report is placed. The report shall be laid before both houses of parliament together with a copy of the audit report and the comments, if any made by the comptroller and auditor general of India.
- Where in addition to the central government a state government is also a member of the company the state government shall lay the report before the house or both House of state legislature **[Section 619 A (2)].**

4. Holding Company [Section 4(4)]

A Company shall be deemed to be the holding of another if, but only if, that other is its subsidiary. Under Section 212 every holding company is required to present a consolidated position of accounts by attaching to its annual accounts copies of balance sheet profit and loss account directors and auditors reports in respect of each of its subsidiary companies and also a statement of the holding company's interest in the subsidiary at the end of the financial year.

5. Subsidiary Company: A Company shall be deemed to be a subsidiary of another company, when the other company

(i) Controls the composition of its board of director
(ii) Holds more than $\frac{1}{2}$ in nominal value of its equity shares
(iii) Holds more than half of total voting power where both pref. and equity enjoy same voting right
(iv) Where it is a subsidiary of any other company which is also a subs of other company

The composition of BOD shall deemed to be controlled by another company if other company without consent or concurrence of any other person can appoint or remove all or majority of director.

A Company shall be deemed to have the power to appoint a person as a director in other company in the following cases:

(i) Where a person cannot be appointed thereto without the exercise in his favour by the company of such a power of appointment.
(ii) Where a person's appointment as director in subsidiary company follows his appointment as director or manager of, or any other office or employment in the company.
(iii) Where a directorship is held by an individual nominated by the company or a subsidiary thereof.

In determining whether a company is subsidiary of another company, shares held or powers exercisable in the following three cases shall be disregarded.

(i) Where the shares are held or the power is exercisable by the company in a fiduciary capacity.
(ii) Where the shares are held or the power is exercisable by an person by virtue of , the provisions of any debentures

(iii) Where the shares are held or the power is exercisable by a lending company by way of security and only of purposes of transaction entered into in the ordinary course of business.

6. **Deemed Public Company (Section 43A)**
A new sub-Section (11) to Section 43 A of the Act has been added so as to provide that provisional Section 43 A of the Act (that is provisions relating to deemed public companies) except sub-Section (2A) will not apply on and after commencement of the Companies (Amendment) Act, 2000.

Conversion of a private into public company

1. **Conversion by default [Section 43].** Where a default is made by a private company in complying with the essential requirements of a private company, the company ceases to enjoy the privileges and exemptions conferred on a private company. In such a case the provisions of the companies Act apply to it as if it were not a private company. The National Central Govt. may relieve the company from the consequences as aforesaid. If it is of opinion that the non-compliance was accidental or due to inadvertence or other sufficient cause. It may also grant relief if on some grounds it is just and equitable. It may however, impose such terms and conditions as seem to it just and expedient.
2. **Conversion by choice or volition [Section 44].** If a private company so alters its articles that they do not contain the provision, which make it a private company. It shall then file with the Registrar, within 30 days, either a prospectus or a statement in lieu of prospectus. When this is done, the company becomes a public company.

A private company which becomes a public company shall also –

(i) File a copy of the resolution altering the Articles, within 30 days of passing thereof with the registrar

(ii) Take steps to raise its membership to at least 7 if it is below that number on the date of conversion and also increase the number of its directors to more than 2 if it is below that number

(iii) After the regulations contained in the Articles which are inconsistent with those of a public company.

The prospectus/statement in lieu of prospectus to be filed by a private company on its conversion

Conversion of a public company into private company

- It is possible only in case of a public company having number within the limit prescribed for a private company
- A public company may be converted into a private company by passing a special resolution. The special resolution should be to change the articles of the company so as to include the condition as prescribed in **Section. 3(1) (iii)** which make the effect of converting a public company into a private company shall have effect only when such alteration has been approved by the Central Government. Where the alternation has been approved by CG a printed copy of the article shall be filed with ROC within 1 month of receipt of approval.

Chapter 3 Promotion & Incorporation

- The term promoter has not been defined in company law, although the term is used expressly in **Sections 62, 69, 76, 478 and 519**.
- "The term promoter is a term not of law but of business usefully summing up in a single word a number of business operations familiar to the commercial world by which a company is generally brought into existence"

Duties of Promoter

(i) Not to make any secret profits, and
(ii) To make a full disclosure to the company.

Liabilities of Promoters

1. Liability of account for the profits: The company may either -
   - Rescind the contract and recover the purchase price where he sold his own property to the company, or
   - Pay not more than the market value of the property purchase, or
   - Claim damage for breach of fiduciary duties.
2. Liability for mis-statements in the prospectus: He may be imprisoned for a term which may extend to two year or may also be punished with fine up to Rs. 50,000 or both.
3. Liability in course of winding for misfeasance or breach of trust (Section 543)
4. Personal liability for pre-incorporation contracts

Step for the formation of a company

(i) To decide registered office of the proposed company
(ii) To decide the name of the proposed company
(iii) Preparation of the memorandum of association and articles of association.

Documents* to *be filed

(i) Letter from registrar regarding availability of name.
(ii) Memorandum and Articles of Association duly signed, stamped and witnessed.
(iii) The agreements if any relating to appointment and terms and condition of MD or manager.
(iv) Statutory declaration in Form No 1.
(v) Particulars of directors in Form No.**32** in duplicate and
(vi) Location of registered office in Form No.**18**.
(vii) In case of public limited company following additional documents are also filed. The written consent of the directors to act as such in form No.**29**.
(viii) An undertaking to take up and pay for their qualification shares.

Form No.**32** and form No.**18** can be filed within **30** days of incorporation

CERTIFICATE OF INCORPORATION

- **Section 35** states that the certificate once issued is conclusive evidence that the Company has been duly registered i.e., all the requirements in respect of registration and of matters precedent and incidental thereto have been complied with.
- This provision prevents the reopening of matters prior and contemporaneous to the registration and essential to it and it places the existence of the company as a legal person beyond doubt.
- ***Moosa Gaoolam Ariff v. Ebrahim Gulam Ariff* :** The court held the certificate to be conclusive for all purposes.
- Jubilee Cotton Mills Ltd. v. Lewis the Registrar issued a certificate oaf incorporation on January 8^{th} but dated it January 6^{th} which was the date he received the documents. On January 6^{th} the company mode an allotment of shares to Lewis. *Held* that the certificate was conclusive evidence of incorporation on January 6^{th} and that allotment was not void on the ground that it was made before the company was incorporated.
- However certificate of incorporation does not legalise the illegal objects.

CONTRACT

- **In Case of Public Ltd**
  - Pre- incorporation Contract
  - Provisional Contract
  - Post-incorporation Contract
- **In Case of Pvt. Ltd**
  - Pre-incorporation Contact
  - Post-incorporation Contract

Pre-incorporation Contract

1. Not binding on company :
2. Company cannot rectify the agreement
3. Promoters personal liability
4. Company cannot sue or be sued on that contract.
5. Position under specific relief Act. When contracts are warranted by terms of incorporation the contract may be specifically enforced by or against the company, if the company has accepted the contract and communicated such acceptance to the other party.

Provisional Contract

The contract is not binding up to the date of commencement of business but when the certificate of commencement of business is issued, the contract is automatically binding. If the company unable to obtain commencement of business certificate to commence business, it will never become binding on it and no one can sue it.

Post-incorporation Contract

Only Ultra Vires contract will be void.

Commencement of business

Public Company having share capital required to obtained commencement to business certificate for commencing business or exercising borrowing power.

When the company has issued a prospectus

(i) The declaration that shares payable in cash has been allotted up to the amount of the minimum subscription.
(ii) The declaration that every director has paid in respect of shares taken, an amount equal to what is payable on shares offered to the public on application and allotment.
(iii) The declaration that no money is refundable by reason of failure to apply for the permission or obtain permission to deal on the stock exchange.
(iv) A statutory declaration in **Form No.19 by** director or secretary CS in practice**.**

If the company has not issued a prospectus

(a) File with the registrar a statement in lieu of prospectus. A declaration that every director has paid in cash the application money and the allotment money on the qualification shares taken by them; and
(b) A statutory declaration in **Form No.20 by** director or secretary CS in practice

Chapter 4 *Memorandum of Association*

- The Memorandum of Association of a company is its charter, which contains the fundamental conditions upon which alone the company can be incorporated. It tells us the objects of the company's formation and the utmost possible scope of its operation beyond which its actions cannot go. Thus, it defines as well as confines the powers of the company. If anything is done beyond these powers that will be ultra vires (beyond powers of) the company and so void.
- Memorandum means the memorandum of Association of a company as originally framed or as altered from time to time in pursuance of any previous Companies law or of the companies Act 1956. **Section** 2 **(28)**
- The memorandum of association of a com. is its charter and defines the limitation of the powers of a company -Lord Cairns in ***Ashbury Carriage* Co. *v. Riche.***
- The purpose of the memorandum is to enable the shareholders, creditor and those who deal with the company to know its permitted range of enterprise.

Form of Memorandum

(a) **Table B** - Company limited by shares.
(b) **Table C** - Company limited by guarantee and not having a share capital.
(a) **Table D** - Company limited by guarantee and having share capital
(b) **Table E** - Unlimited company

Contents of Memorandum (Section 13)

1. **Name clause**
   - Name of every company limited by shares or by guarantee must end by the word 'Ltd.' or 'Pvt. Ltd.' except companies exempted u/s 25.
   - The name must not be undesirable or most not resemble the name of any other registered company.

2. **Registered office clause**
   - Must contain the name of state is which registered office is situated.
   - Actual address of registered office is notified to ROC within 30 days of incorporation.

3. **Object clause**
   - Sets out object or vires of the company.
   - The objects not be illegal.
   - Not be against the provision of the companies Act.
   - Not against public.
   - Not be ambiguous.
   - Must be divided in to two parts main objects and other objects.
     (i) (a)The main objects and
     (b) Objects incidental or ancillary to the main objects.
     (ii) Other objects.

4. **Liability clause**
   - States that liability of members is limited to the amount unpaid on their shares and in case of company limited by guarantee the amount which every member undertakes to contribute to the assets of the company in the even if its winding up.

5. **Capital clause**
   - Every company having a share capital, the amount of share capital with which the company is proposed to be registered and the division of its shares into a fixed denomination.

6. **Association or subscription clause**
   - In this clause the subscribers declare that they desire to be formed into a company and agree to take shares stated against their names. Every subscriber must take at least one share.

ALTERNATION OF MEMORANDUM

* As per **Section16** Alteration is only possible by strictly following the procedure laid down in the Act.

Alteration in name clause

1. Pass a special resolution and get approval of central Govt. **Section 21.**
2. But no approval is required for deletion or addition of 'Pvt.' from the name.
3. File copy of resolution with ROC with them 30 days of passing the resolution.
4. If name is identical to another existing co.
5. By ordinary resolution and with the permission central govt. **Section-22.**
6. If name is identical to another existing co. then central govt. will issue order to change the name to the company within 12 months from incorporation of the company.
7. Then company must comply the direction of the govt, within 3 months and change name. By ordinary resolution and with the permission central govt.
8. However, central government has no power to issue direction under Section 22 after expiry of 12 months from incorporation.
9. ROC will issue fresh certificate of incorporation then only change become effective.
10. Change of name shall in no way affect the rights and obligations of the company or render defective any legal proceeding by or against the company.

Alteration is registered office clause.

a) Within same city
   - No change in memorandum
   - Pass a board resolution
   - File notice to ROC within 30 days

b) Within same state
   - No change in memorandum.
   - Pass a special resolution.
   - File a copy of resolution to ROC in 30 days
   - File notice of new address within 30 days of shifting.

c) One state to other state
   - Possible only if such change is for the following purpose [Section 17 (1)].
     (i) To carry on its business more economically or more efficiently.
     (ii) To attain its main purpose by new or improved means.
     (iii) To enlarge or change its local area of its operation.
     (iv) To carry on new business which can be suitably combined with the present business.
     (v) To restrict or abandon any of the objects.
     (vi) To amalgamate the company with any other company.
     (vii) To sell or disposal of the whole or any part of its undertakings.
- Procedure:
  1. Pass special resolution and fill it within 30 days to ROC.
  2. Get confirmation from Central govt.
  3. Fill copy of Central govt. confirmation together with new memorandum with ROC of each state within three month.
  4. The ROC shall issue a fresh certificate of resignation within one month of the filing of the documents.
- **Section 17A** to provide that confirmation by the Regional Director will be necessary for changing registered office of a company from one place of registrar of Companies to the jurisdiction of another Registrar of Companies within the State.
- Order of Regional Director shall be filed with ROC within 2 months from the date of order, together with a printed copy of memorandum as altered and ROC shall register the same and certify the registration under his hand within one month from the date of filing of such document.

***Alteration of Object Clause*:**
Object can be altered only for the purposes stated above in Section 17(1).
Procedure:
1. Pass a special resolution and fill within 30 days to ROC
2. Confirmation from NATIONAL COMPANY LAW TRIBUNAL under Section 17(2) shall no longer be necessary.
3. The registrar will register the documents and issue, within one month, a certificate which will be conclusive evidence that everything required has been done (Section 18).

Alteration of liability clause
1. Liability of shareholders can be increased by express approval of each and every member.**(Section 38)**
2. However in case the company is a club or similar association and alteration in the memorandum requires the member to pay recurring charge at a higher rate, although he does- not agree in writing to be bound by the alteration.
3. Liability of directors, MD or managers can be made unlimited by passing a special resolution if the article so permit and getting consent of such officer.
4. Unlimited liability of shareholders can be made limited by.
5. Pass a special resolution and fill it within 30 days.
6. Obtain tribunal sanction and fill it within 3 months of the date of order.
7. Alteration will be effective from date of registration.

Alteration of capital clause
(i) Alteration of share capital **(Section 94)**
- If article provides, by passing an ordinary resolution, following can be altered-
  - (a) Increase in authorised capital
  - (b) Consolidate or sub-divide the whole or any part of existing shares into shares of larger or smaller denominations.
  - (c) Convert its fully paid up shares into stock or vice-versa.
  - (d) Cancel its unsubscribe shares by diminishing authorised capital.
- If article doesn't provide, first alter the article by passing special resolution.
- File copy of resolution and altered memorandum within 30 days to ROC.

DOCTRINE OF ULTRA VIRES
- Ultra vires means doing an act beyond the powers. The ultra vires acts can be divided into the following categories.
  - (i) An act ultra vires the directors.
  - (ii) An act ultra vires the articles of associations.
  - (iii) An act ultra vires the memorandum of association; and
  - (iv) An act ultra vires the companies Act.
- All the acts which are outside the ambit of the objects clause of memorandum are deemed to beyond powers (ultra vires) of the company. This doctrine was first applied in '*Ashbury Railway carriage* & *Iron* Go, *Ltd. us. Riche* (1875)'. The purposes of this doctrine is to protect the interest of shareholders and creditors.
- A Company can pursue all the main objects mentioned in the memorandum and all those, which are incidental or ancillary to the attainment of the main objects. But it cannot pursue objects mentioned in other objects clause unless the requirements of Section 149 are duly completed with.
- The object of this doctrine is to restrict the use of funds of the company in unauthorized activities and protect the interest of the creditors and shareholders.

Effects:
(i) All such transactions are wholly null and void
(ii) Such transactions can never be rectified even all shareholders give consent for it.
(iii) Company cannot sue or be sued

Exceptions

(1) If an act is ultra vires the directors of a company but is intra vires the company, the company may ratify it.
(2) If an act is ultra vires the Articles of a company, the Articles may be altered to include the act within the powers of the company.
(3) If an act is intra vires a company, but is irregularly done, the shareholders may ratify it.
(4) If a person borrows money from a company under a contract which is ultra vires the company the company can sue him for the recovery of the money.
(5) If an act is ultra vires the company, the rights arising independently of the act are not affected.
(6) If a company has purchased some property from a third party under an ultra vires contract or has taken an ultra vires loan, the third party has the right to follow his property or money if it exists in specie. He may also obtain an injunction from the Court restraining the company from parting with that property or money.
(7) If a company takes an ultra vires loan and uses it to payoff intra vires debts, the lender who has lent money under the ultra vires contract is substituted in place of the creditor who has been paid off and as such he can recover the money.
(8) If a company has taken an ultra vires loan through some misrepresentation of fact by the director, the lender has the right to make the directors personally liable on the ground of breach of implied warranty of authority.

Ultra vires The company Act:

Any act which is contrary to or in excess of the scope of activity of companies Act shall be ultra vires the company. Such an act is void and cannot be ratified by a unanimous resolution of all the shareholders.

Chapter 5 Articles of Association

- The Articles of Association are the rules and regulations or the bye-laws which govern the internal management of the company.
- They defines the duties, rights, powers and authority of the shareholders and the directors in their respective capacities and of the company, and the mode and form in which the business of the company is to be carried out.
- **Section 2 (2)** of the companies Act. Articles means the Articles of Association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act.
- Every private limited company, a company limited by guarantee and an unlimited company must have Articles of association. It is however not obligatory for public companies limited by shares to have their own articles **(Section 26)** the rules and regulations contained in **Table** A of schedule of the Companies Act **(Section 28)** will apply to that company.
- The Articles of an unlimited company must state the number of members with which the company is to be registered and if it has a shares capital the amount of share capital with which it is to be registered **[Section 27 (I)].** The Articles of a company limited by guarantee must state the numbers with the company is to be registered **[Section 27 (2)]**

Contents of Articles of Association

(1) The exclusion whole or in part, of table A;
(2) Share capital;
(3) Rights of different classes of shareholders;
(4) Allotment of shares;
(5) Call on share;
(6) Lien on shares;
(7) Forfeiture of shares;
(8) Transfer of shares;
(9) Surrender of shares;
(10) Share certificate;
(11) Issue of share warrants;
(12) Increase of decrease of share capital;
(13) Conversion of shares into stock;
(14) Consolidation and sub-division of shares;
(15) Borrowing powers
(16) General meeting proceedings thereof and votes proxies and polls;
(17) Appointment of managerial personal e.g., directors their remuneration qualifications powers an proceedings of board meetings;
(18) Appointment and remuneration of auditors;
(19) Dividends and reserves;
(20) Accounts and audit;
(21) Adoptions of execution of preliminary contracts, if any;
(22) Capitalisation of profits;
(23) Notices; Common seal; and Winding up.

Alteration of Articles of Association - Any of the clause of Articles of Association can be changed simply by a special resolution. [Section 31(1)]

- As per Section 2(1 A), 'alteration' includes making any addition and omissions. Thus, scope is available for making alterations to Articles.
  The restrictions are as follows
  * Such alteration cannot be with retrospective effect. Retrospective amendments be permissible as long as vested rights are not adversely affected.
  * It should not be against provisions of Memorandum of Association or Comp Act.
  * The alteration must be bona fide for the benefit of company as a whole
  * Altered article cannot include anything which is illegal or opposed to public.

* Company cannot justify breach of contract by altering the articles.
* Amendment cannot increase liability of a member, unless his written consent is obtained. However, in case of club or association where member has to recurring periodical or recurring subscription or charges, a member is liable! if he does not agree in writing to the increase - Section 38 proviso (b).
* The amendment must not constitute a fraud on minority. It cannot be oppression of minority.
* Articles cannot change a public company to a private company without approval of Central Government - Section 31.
* Statutory powers of company to amend the Articles cannot be curtailed,

Procedure for Alteration

(i) A decision in the meeting of the board must be taken to change all or any of the regulations of the existing articles and day, time place and agenda for the general meeting.
(ii) It should be seen that the proposed alteration conforms to the provisions of the Act and the Memorandum.
(iii) If the shares are lilted then notice sent to the shareholders must be sent to such stock exchange.
(iv) A special resolution should be passed by shareholders in the general meeting.
(v) After the articles have been altered, then six copies of such amendments (one copy must be a certified copy) should be filed with the stock exchange.
(vi) Form No.23 must be filed with the Registrar.
(vii) Necessary change must be made in all the copes of Articles.
(viii) If the effect of alteration is to convert a public company into a private company, the approval of the central Government is necessary.

The Article of Association constitutes a contract between the company and it a member and also members *inter se*.

1. **Member to the company:** Every member of the company is bound to observe the provisions of the memorandum and the Articles as if each member has signed the same ***(Hanuman Prasad Gupta v. Hiralal).*** A Company can sue its members for the enforcement of these provisions and the members may also be restrained by court from the breach of provisions of these documents.
2. **Company to the members:** Any members are entitled to sue the company and obtain an injunction restraining the company from committing any breach of the Articles or from doing an illegal act. The company is bound to each member in respect of their rights as members.
3. **The Member inter se:** The memorandum and Articles of Association do not constitute express agreement among the members of the company, but each member is bound by these documents on the basis of the implied contract. But such rights can be enforced only through the company.
4. **Company to outsiders:** The articles of association create no contract between the company and outsiders even though outsiders are named in the Articles in some capacity other than of a member.

Eley v. Positive Govt. Security Life Ass. Co.

The Articles of a company contained a clause that Eley should be the solicitor of the company for life. He could be removed from office only for misconduct. Eley accepted the assignment. In lieu of his professional services rendered to the company, he was paid in cash and was also allotted shares. By this way, he became a shareholder. After some time the company dismissed him without alleging misconduct. Eley sued the company for damages for breach of contract. Held, Eley did not succeed as the Articles did not constitute any contract between the company and outsider.

Constructive Notice:

- **Section 610** provides that MOA & AOA on registration these documents become public documents. These documents are available for public inspection either in the office of the company or in the office of the registrar of companies on payment of Rs.50 for each inspection.
- Every person who deals with the company whether shareholder or an outsider is presumed to have read these documents and understood them in their true perspective. This is known as Doctrine of constructive notice.

Indoor management

- The doctrine of indoor management is an exception to the rule of constructive notice. The rule was first laid down in ***The royal British bank** v **Turquand.***
- The doctrine of indoor management is of great practical value this rule is based on business convenience and justice first no business could possibly be carried on it a person before dealing with the company was required to find out whether all the internal rules and regulations have been duly complied with, Secondly an outsider dealing with the company is presumed to know the constitution of the company but not what may or may not have taken place within the doors that are closed to him

Exceptions

(i) Knowledge of irregularity.
(ii) Negligence on the part of the outsider.
(iii) Forgery.
(iv) Acts outside apparent authority.
(v) Void or illegal transactions.

Chapter 6 *Prospectus*

- A prospectus as per **[Section 2 (36)]** read along with **Section 58A** means and means any document described or issued as prospectus and includes any notice circular advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in or debentures of a body corporate.

Offer to the public [Section 67]

(i) An invitation to the public shall include an invitation to any Section of the public whether selected as members or debentures holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.
(ii) An invitation shall not be an invitation to the public if it cannot be calculated to result directly or indirectly in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the invitation.
(iii) **Section 67** of the Act has been amended to provide that offer or invitation to subscribe for shares or debentures made by a company to fifty persons or more will be treated as a public offers. It has also been proposed that the aforesaid provision shall not apply to the non-banking financial companies or public financial institutions specified in Section 4A of the Act.

Initial offer of the securities to be in dematerialised form in certain cases

- A new **Section 68B** has been introduced in the act to the effect that every listed public company making initial public offer of any security for a sum of rupees ten crores or more should issue the same only in dematerialised form by complying with the requisite provisions of the Depositories Act, 1996 and the regulations made thereunder.

Issue of prospectus not compulsory

(i) A private company is not required to issue a prospectus.
(ii) Public company if the promoters or directors feel that they can mobilise resources through personal relationship and contacts.
(iii) A company-may issue any form of application for shares or debentures of a company accompanies by a memorandum containing the prescribed salient features of a prospectus.
(iv) Where the application form is issued in connection with a bonfide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures [Section 56 (3)).
(v) In case of rights issue [Section 56 (5)).
(vi) Where the issue relates to shares or debentures which are, or to be uniform in all respects with shares or debentures previously issued and dealt in or quoted on a recognised stock exchange. [Section 56]

Statement in lieu of prospectus (Section 70)

1. Where a public company *does not invite public* to subscribe for its shares but arranges to get money from *private sources*, it need not issue a prospectus to the public.
2. The promoters are required to prepare a draft prospectus known as a 'statement in lieu of prospectus' which should contain the information given in Schedule III of the Act.
3. A company having a share capital which does *not* issue a prospectus shall *not allot* any of its shares or debentures *unless* at least three days before the allotment, there has been *delivered* to the Registrar for registration a '*statement in lieu of prospectus*'.
4. The statement shall be *signed* by every person who is named therein as a
   i. Director;
   ii. Proposed director; or
   iii. His agent authorised in writing.
5. A private company is *not* required to file a 'statement in lieu of prospectus' at the time of allotment.

Shelf prospectus:

(1) Any public financial institution, public sector bank or scheduled bank whose main object is financing shall file a shelf prospectus.

(2) A company filing a shelf prospectus with the Registrar shall not be required to file prospectus afresh at every stage of offer of securities by it within a period of validity of such shelf prospectus.

(3) A company filing a shelf prospectus shall be required to file an information memorandum on 'all material facts relating to new charges created changes in the financial position as have occurred between the first offer of securities, previous offer of securities and the succeeding offer of securities within such time as may be prescribed by the Central Government prior to making of a second or subsequent offer of securities under the shelf prospectus.

(4) An information memorandum shall be issued to the public along with shelf prospectus filed at the stage of the first offer of securities and such prospectus shall be valid for a period of one year from the date of opening of the first issue of securities under that prospectus:

Provided that where an update of information memorandum is filed every time an offer of securities is made. Such memorandum together with the shelf prospectus shall constitute the prospectus.

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

Section 60B: Information memorandum

(1) A public company making an issue of securities may circulate information memorandum to the public prior to filing of a prospectus.

(2) A company inviting subscription by an information memorandum shall be bound to file a prospectus prior to the opening of the subscription lists and the offer as a red-herring prospectus, at least three days before the opening of the offer.

(3) The information memorandum and red-herring prospectus shall carry same obligations as are applicable in the case of a prospectus.

(4) Any variation between the information memorandum and the red- herring prospectus shall be highlighted as variations by the issuing company.

Explanation- "**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.

(5) Every variation as made and highlighted in accordance with sub- Section (4) above shall be individually intimated to the persons invited to subscribe to the issue of securities.

(6) In the event of the issuing company or the underwriters to the issue have invited or received advance subscription by way of cash or post-dated cheques or stock-invest. the company or such underwriters or bankers to the issue shall not encash such subscription before the date of opening of the issue, without having individually intimated the prospective subscribers of the variation and without having offered an opportunity to such prospective subscribers to withdraw their application.

(7) The applicant or proposed subscriber shall exercise his right to withdraw from the application within seven days from the date of such intimation.

(8) Any application for subscription which is acted upon by the company or underwriters or bankers to the issue without having given enough information of any variations. or opportunity for withdrawal shall be void and the applicants shall be entitled to receive back their original application and interest at the rate of fifteen per cent from the date of encashment till payment of realisation.

(9) Upon the closing of the offer of securities. a final prospectus stating therein the total capital raised. Whether by way of debt or share capital and the closing price of the securities and any other details as were not complete in the red-herring prospectus shall be filed in a case of a listed public company with the Securities and Exchange Board and Registrar and in any other case with the Registrar only.

DEEMED PROSPECTUS

- **Section 64** provides that all documents containing offer of shares or debentures for sale shall be included within the definition of the term prospectus and shall be deemed as prospectus by implication of law.

- Unless the contrary is proved an allotment of or an agreement to allot shares or debentures shall be deemed to have been made with a view to the shares or debentures being offered for sale to the public if it is shown
  (a) That the offer of the shares or debentures of or any of them for sale to the public was made within 6 month after the allotment or agreement to allot; or
  (b) That at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been received by it. (Section 64(2)]
- **Section 64 (3)** requires that it must contain certain information in addition to the information required to be stated in a prospectus under Section 56.
  (a) The net amount of consideration received or to be received by the company in respect of the share or debentures to which the offer relates; and
  (b) The place and time at which the contract under which the said shares or debenture have been or are to be allotted may be inspected.
- **Section 64 (5)** deemed prospectus shall be signed on behalf of company or firm by two directors of the company or by not less than half of the partners in the firm as the case may be.

4. Registration of prospectus (Section 60]

The copy of the prospectus should be accompanied by the following documents;

(i) Consent of the expert to the issue, if a statement made by him is to be published.
(ii) Written consent of all those, whose names are mentioned in the prospectus as auditors legal advisers solicitors bankers brokers etc.
(iii) A copy of every contract appointing or fixing remuneration of a managing director or manager.
(iv) A copy of every other material contract not being contract entered into the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into not more than 2 year before the date of the prospectors.
(v) A written statement by the person making any report required by part II of schedule II relating to the adjustments in figure of P&L a/c, *B/C*, giving reasons therefor.
(vi) Consent of director under Section 266 to act in that capacity.
(vii) A copy of the underwriting agreement if any.

Registrar must refuse registration of a prospectus; [Section 60 (3)]

(a) It is not dated (Section 55)
(b) It does not comply with the requirements of [Section 56] as to matters and report to be set out in it.
(c) It contains statements or reports of experts engaged or interested in the formation or promotion of management of the company [Section 57]
(d) It includes a statement purported to be made by an expert without a statement that he has given and has not withdrawn his consent to the manner of its inclusions therein (Section 58].
(e) It is not signed by every person who is named therein as a director or proposed director of the company or by his agent Authorised in writing [Section 60 (1)]
(f) It is not accompanied by the consent in writing of the auditor legal advisor attorney solicitor banker or broker of the company or Intended Company to act in that capacity 1Section 60 (3)].

Mis-statements in a prospectus Section 65

(i) A statement included in prospectus shall be deemed to be untrue if the statement is misleading in the context in which it is included and.
(ii) Where the omission from a prospectus of any matters is calculated to mislead the prospectus shall deemed in respect of such omission to be a prospectus which an untrue statement is included.

Liable for mis-statements:

(i) Company
(ii) Promotes
(iii) Directors and
(iv) Experts

Liabilities in case of mis-statement:

(i) Civil liability and

(ii) Criminal liability

Civil liability

(i) Remedies against the company, and
(ii) Remedies against the directors, promoters and experts.
(iii) The shareholder should have relied on the contents of the prospectus.

Remedies against the company

1. *Rescission of the contract to take shares:*
   (i) To avail the is right, the allotted must prove that
   (ii) The prospectus was issued by or on behalf of the company. There was a material misrepresentation of fact.

   However the right to *rescind the contract is lost in the following circumstances:*
   (i) If the allotted does not take steps to set aside the contract within a reason able time after he comes to know of the misrepresentation.
   (ii) By affirmation of the contract by the allottee after he discovers the misrepresentation i.e. by selling shares, appearing in general meeting, accepting dividends etc.
   (iii) If the company goes into liquidation. In such a case if repayment is allowed it will injure the interest of creditors and the law always favours creditors at the expense of members.

2. *Claim damages:*
   The right of the allotee against company is to sue for damages for deceit. In order to succeed, the allotee must in addition to the three facts maintained above in connection with the rescission of contract), prove;
   (i) That those acting on behalf of the company acted fraudulently;
   (ii) That those purporting to act on behalf of the company were authorised to act in its behalf; and
   (iii) That he suffered a loss or damages.

<u>Remedies against the promoters directors and experts</u>

Damages [Section 62]: Liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the prospectus for any loss or damage sustained by reason of any untrue statement included therein.

Defence available to directors or promoters

(i) Withdraw his consent before the issue of prospectus and that. it was issued without his consent.
(ii) Issued without knowledge. That it was issued without his knowledge or consent and that on becoming aware of its issue, he forthwith gave public notice that it was issued without his knowledge or consent.
(iii) Ignorance of untrue nature of the statement. That he believed, on reasonable grounds, that the statement was true.
(iv) Official documents. That the statement was a correct and fair representation of a public official document or was based on the authority of an official person.
(v) Statement of expert. That the statement was made on the authority of an expert who was competent to make it and that person has given the consent and has not withdrawn it.

Defences available to experts

(i) That the withdrew his consent in writing before delivering a copy of the prospectus for registration; or
(ii) That after the delivery of the copy of the prospectus for registration but before allotment thereunder he on becoming aware of the untrue statement, withdrew his consent and gave reasonable public notice of the withdrawal and reason there for or
(iii) That he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the allotment of the believe that the statement was true.

Criminal liability [Section 63]

- Imprisonment for a term which may extend to 2 years or with fine which may extend to Rs. 5,0000or both.

Defense:

(i) That the statement was immaterial, or
(ii) That he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, the statement was true.

* However, an expert is not criminally liable in respect of misstatements in the prospectus.

- **Expert** includes an engineer a valuer an accountant and any other person whose profession on gives authority to a statement made by him.
- **Section 68** further provides that any person who either knowingly or by recklessly, making any statement promises or forecasts which is false, deceptive or misleading or any dishonest concealment of material facts induces or attempts to induce another person to enter into or to offer to enter into any agreement of for or with a view to acquiring disposing of, subscribing for, underwriting shares or debenture shall be punishable with imprisonment for a term which may extend to 5 years or with may extend to 1,00,000 rupees or with both.

Impersonation for acquisition of shares [Section 68 A (1)]:

Any person who

(a) makes in a fictitious name an application to a company for acquiring or subscribing for any shares therein, or
(b) Otherwise induces a company to allot or register any transfer of shares therein to him or any other person in a fictitious name shall be punishable with imprisonment for a term which may extend to 5 years.

Golden rule for framing prospectus*:*

New brunswiek. & Canada Rly. & Land Co. v Muggeridge (1869)

- Those who issue a prospectus hold out to the public great advantage which will accrue to the persons who will take shares in the proposed undertaking. The public is at the mercy of company promoters. Everything must therefore be state with strict and scrupulous accuracy. Nothing should be stated as fact which is not so and no fact should be omitted.
- In a word, the true nature of the company's venture should be disclosed.
- A half truth for instance represented as a whole truth may tantamount to a false statement.
- *In Rex v. Kylsant* the prospectus stated that dividends of 5 to 8 per cent hand been regularly paid over a long period. The truth was that the company had been incurring substantial losses during the seven years preceding the date of the prospectus and dividends had been paid out of the realised capital profit. Held, the prospectus was false and misleading.

Chapter 7 *Deposits*

- 'Deposit' to mean any deposit of money with and includes any amount borrowed by a company but shall not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.
- **Rule 2(b)** provides the 'deposit' means any deposit of money with and includes any amount borrowed by a company. 'Deposit' does not include:

(i) Any amount received from the Govt. Or is guaranteed by Govt. Or local I authority or foreign Govt. Or foreign citizen ;
(ii) Any amount received as a loan from any banking company;
(iii) Any amount received from any of the notified financial institutions ;
(iv) Any amount received by a company from any other company;
(v) Any amount received from employee of a company by way of security deposit; ,
(vi) Any amount received by way of security or as an advance from any purchasing agent, selling agent or other agents;
(vii) Any amount received by way of subscriptions to any shares, stock, bonds, or debentures pending the allotment and any amount received by way of calls in advance;
(viii) Any amount received in trust or any amount in transit;
(ix) Any amount received from a director of company;
(x) Any amount raised by issue of the bonds or debentures secured by the mortgage of any immovable property or with an option to convert them into shares in the company;
(xi) Any amount brought in by the promoters by way of unsecured loans in pursuance of stipulations of financial institutions subject to the fulf1lment of the following conditions, namely:
   (a) the loans are brought in pursuance of the stipulation imposed by the financial institutions;
   (b) the loan are provided by the promoters themselves and / or by their relatives ;
   (c) the exemption shall be available only till the loans of financial institutions are repaid and thereafter .

Deposits not allowed in case of default in repayment

- A Company shall also be not entitled to invite deposits if it has made any default in the repayment of any deposit or part thereof and thereof any interest thereupon in accordance with the terms and conditions of such deposit.

Repayment of deposit

- Every deposit by a company, unless renewed in accordance with the roles made under Sub-Section 58A, shall be repaid in accordance with the terms and conditions of such deposit.

Declaration by the Depositor

- The form of application shall contain a declaration by the depositor that the money in not being deposited out of funds acquired by him by borrowing or accepting deposits from any other person.

Nomination

- A depositor may at any time make a nomination and the provisions of Sections 109A and 109B, shall apply to nomination.

Deposits payable by demand

- A Company cannot accept or renew deposits payable on demand.

Deposits before 12 month

- A Company cannot accept deposits payable before 12 months, and after 60 months. However, deposits for less than 12 months but not less than 3 month may be accepted provided such deposits do not exceed 10% of the paid-up capital and free reserves.

Interest of deposits

- Now it is 11 % p.a. compounded on monthly basis.

Ceiling on deposits

(a) 10 per cent of the paid up capital and free reserves, in case of deposits in the form of any deposit against and unsecured debenture, deposit from a shareholder (not being a deposit accepted by a private company from its shareholders) or any deposit guaranteed by the Directors of the Company together with short term deposit.

(b) Any other deposit not exceeding 25 per cent of the aggregate of the paid up share capital and free reserves of the Company.

Deposits by Govt. Companies

- No Govt. Company shall accept any deposits in excess of 35 per cent of its paid up capital and free reserves.

Penalties for Contravention

- Any deposit received in contravention of the provisions of the Act/Rules must be paid back within 30 days from the date of acceptance of such deposit. The period of 30 days may be extended by the Central Govt. by another period but not exceeding 30 days.
- In case of default, the company shall be subjected to fine, which shall not be less than twice the amount not repaid and ½ of the fine shall be paid to the depositor. In addition, every officer of the company, who is in default, shall be punishable with imprisonment for a term, which may extend up to 5 years.

Penalty for acceptance of deposit

- Where the contravention relates to acceptance of deposit, the company may be subjected to fine, which shall not be less than the amount of deposit so accepted.

Penalty for invitation of any deposit

- Where contravention relates to the invitation of any deposit, the company shall be punishable with fine, which may extend to Rs. 1 lakh but shall not be less than Rs. 5,000.

Remedy if the Company Fails to Repay on Due Date:

- **Section 58 A (9)** provides that where a company has failed to repay any deposit as per the terms and conditions of such deposit, the Tribunal may direct the company, if it deems necessary to safeguard the interests of the company, its depositors or public interest, either on its own motion or on the application of the depositor, to repay such deposit forthwith or within of within such time and subject to such conditions as the Tribunal may specify. Where a depositor wishes to make an application, it should be submitted in duplicate in **Form No.4** with a fee of **Rs. 50**. However, the application should be accompanied by the following documents:
  - *(i)* Copy of the deposit receipt;
  - *(ii)* Copy of the correspondence exchanged with the company;
  - *(iii)* Bank draft evidencing payment of application fee;

It may be clarified that in the following circumstances, application Section 58A (9) of the Act will not lie.

(i) Deposit made for booking/ purchase of scooter, car, etc.

(ii) Deposits accepted by financial companies or a company, which receives deposits under any scheme or by way of contributions/subscriptions or by sale of units/certificates.

(iii) Deposits accepted by a sick industrial company

(iv) Deposits accepted by relief undertakings which are notified as such under the State Laws.

Further, it may be clarified that the depositor can, besides the relief under the Companies Act, take action against the defaulting companies under the normal civil law of the country.

Maintenance of Liquid Assets
- Every company shall before the **30th day of April of each year**, deposit or invest, as the case may be, a sum which shall **not be less than 15 per cent** of the amount of its deposits maturing during the year ending on the **31st of March**. At no time such investment or deposit shall fall **below 10%** of the deposits repayable within next 31st March.
- Investment shall be made in any of the following purpose.
- Current or other deposit in any schedule bank.
- Unencumbered securities of Central Govt. or State Govt.
- Unencumbered securities
  (a) P/N, Debenture, stock or other securities of Central govt. or State govt.
  (b) Securities both principal & interest guaranteed by State govt.
  (c) Stock debenture share of Corporation interest there on guaranteed by Central govt.
  (d) Unit of UTI.
- Unencumbered bond of housing development finance corporation.

Register of deposit (Rule 7)
(i) Name and address of the depositor;
(ii) Date and amount of each deposit;
(iii) Duration of the deposit and the date on which each deposit is repayable;
(iv) Rate of interest;
(v) Date or dates on which repayment of interest will be made;
(vi) Any other particulars relating to the deposit ;

Section 58A do not apply to:
1. A banking company
2. Companies other than banking companies as the Central Government may after consultation with the Reserve Bank of India.
   Exemption of small scale units:
   (a) The paid up capital of the company does not exceed rupees **25 lakhs**.
   (b) The company accepts deposits from not more than **100 persons**;
   (c) There is no invitation to public for deposits; and
   (d) The amount of deposits accepted by the company does not exceed **Rs. 20 lakhs** or the amount of its paid up capital, whichever is less.
3. Financial Companies as the Central Govt. may, after consultation with the RBI

Power or the Central Govt. to grant total or partial exemption [Section 58A (8)]
- From the provisions of Section 58 A for a specified period to a company (or a class of companies) after consultation with the RBI
- The Central Government may impose such conditions at it my think fit while granting exemption or extension of time.

Along with the application the company has to attach the following documents;
(i) On copy each of the articles and memorandum of association of the Company;
(ii) One copy of each of the audited accounts of the company together with director's reports and auditors reports for the last 3 years of the company?
(iii) A copy of the resolution of the Board of directors in support of the proposal;
(iv) One copy each quarterly, half-yearly or other Performa accounts of the company subsequent to the latest audited accounts;
(v) One copy each of the advertisement issued in newspapers pursuant to Rule 4.1 of the Companies (Acceptance of Deposits) Rules, 1975. .

Small-depositor
- A new Section 58 AA relating to small depositors and another new Section 58 AAA relating to default in refund or acceptance of deposit to be cognizable have been included in the Act.
- As per the new Section 58 AA every company which has defaulted in repayment of deposits should suo motto intimate Tribunal within 60 days from the date of default and furnish full particulars of the principle sum of deposit and interests accrued thereon due to small depositors. Small depositors for the purpose of this Section has been defined to mean a depositor who has invested

in a company a sum not exceeding twenty thousand rupees in a financial year and includes his successors, nominees and legal representatives. The intimation about any default should be given on monthly basis to Tribunal. The Tribunal may pass an order with a period of 30 days or extended time from the date of receipt of intimation. It shall not be necessary for a small depositor to be present at the hearing of the TRIBUNAL proceeding. No company should accept further deposits from small depositors unless each small depositors who deposit has matured has been paid the amount of the deposit and the interest accrued thereon.

- Every defaulting company shall state in every future advertisement and application for inviting deposit from public, no. of small depositors and amount due to them in respect of which such default has been made but also of any waiver of interest on the deposits of small depositors.
- Another important provision that has been added under sub-Section (7) is that where a company had accepted deposits from small depositors and subsequent to such acceptance of deposits, obtains funds by taking loan from bank for working capital the amount must be first utilised for repayment to small depositors.

Form and Particulars of Advertisement (Rule 4)

(i) Name of the company;
(ii) Date of incorporation of the company;
(iii) Business carried on by the company and its subsidiaries with the details of branches or units, if any;
(iv) Brief particulars of the management of the company;
(v) Names, address and occupations of the directors;
(vi) Profits of the company, before and after making provision for tax, for the three financial years, immediately proceeding the date of advertisement,
(vii) Dividends declared by the company in respect of the said years;
(viii) A summarised financial position of the company as in the two audited balance sheets immediately preceding the date of advertisement. .
(ix) The amount which the company can raise by way of deposits under these rules and the aggregate of deposits actually held on the last day of the immediately preceding financial year .
(x) A statement to the effect that in the day of the advertisement, the company has no overdue deposit other than unclaimed deposits or a statement showing the amount of overdue deposits, as the cases may be;
(xi) A declaration to the effect :
(xii) That the company has complied with the provisions of the companies (acceptance of deposits) rules, 1975;

Period of validity of advertisement and delivery to the Registrar

- The advertisement shall remain valid for a period of 6 months from the date of the closure of the financial year in which it is issued or until the date the balance sheet is laid before the company in general meeting or where the Annual General meeting is not held the latest date on which the meeting should have been held which ever is earlier.

Statement in lieu of Advertisement (Rule 4 A)

- Every company to accept deposits without inviting them is required to rue with the Registrar a statement in lieu if advertisement containing the same particulars as in the case of advertisement referred above and signed in the same manner stated above before accepting any deposits.

Signing of Advertisement

- The advertisement should be signed by a majority of the directors of the company as constituted at the time the Board approved the advertisement or their duly authorised agent in writing and a copy of the same should be delivered to the Registrar for registration.

Chapter 8 — *Share Capital*

Nominal, Authorised or Registered Capital
- This is the sum stated in the memorandum as the share capital of a company with which it is proposed to be registered. This is the maximum amount of capital which it is authorised to raise by issuing shares.

Issued Capital
- It is that part of the authorised capital which the company has issued for subscription. The amount of issued capital is either equal to or less than the authorised capital.

Subscribed Capital
- It is that part of the issued capital which has been subscribed.

Called-up Capital
- The company may not call up full amount of the face value of the shares. Thus, the called-up capital represents the total amount called-up on the shares subscribed.

Reserve Capital
- The company may reserve all or part of the uncalled capital which can then be called in the event of the company being would up. For this purpose a special resolution is required to be passed. This can be changed into capital or canceled with the permission with Tribunal.

Paid-up Capital
- Paid-up Capital is the amount of money called-up on the shares subscribed.

Share
- A share is share in the share capital of a company, and includes stock expect where a distinction between stock and share is expressed or implied. **[Section 2(46)]**

Distinction between *share* and *share stock* is as follows:

Share	Stock
* A share may either be fully paid up or partly paid up.	* Stock can never be partly paid – up.
* Shares can be issued originally.	* A company cannot make an original issue of stock.
* A share has a nominal value.	* A shock has no nominal value.
* A share has a definite number which distinguishes it from other shares.	* A shock has no such number.
* A share can be transferred only in its entirety or in its multiples only.	* Stock may be transferred in any fractions.
* Shares can be issued by any company-public or private.	* Stock is applicable only by public company limited by shares.

Share certificate (Section 84):

(1) A certificate, under the common seal of the company, specifying any shares held by any member, shall be prima facie evidence of the title of the member of such shares.

(2) A certificate may be renewed or a duplicate of a certificate may be issued if such certificate
 (a) Is proved to have been lost or destroyed or
 (b) Having been defaced or mutilated or torn is surrendered to the company.

(3) If a company with intent to defraud renews a certificate or issues a duplicate thereof, the company shall be punishable with fine which may extend to ten thousand rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to (one lakh rupee) or with both.

Section 86: The share capital of a company limited by shares formed after the commencement of this Act, or issued after such commencement shall be of two kind only namely

(a) Equity share capital
   1. With voting rights; or
   2. With differential rights as to dividend voting or otherwise in accordance with such rule and subject to such condition as may be prescribes.

(b) Preference share capital.

Section 88 of the Act has been *deleted*.

1. *Preference shares:* Preference shares are those shares which have some preferential right in respect of the payment of dividend and with respect to repayment of capital. Kinds of reference share
   (a) Non–cumulative (b) Cumulative.
   (a) Redeemable (b) Irredeemable.
   (a) Participating and (b) Non-participating preference shares.
2. *Equity Shares:* The equity shares are those which are not preference shares.

Shares warrant and share certificate

1. A share warrant can be issued only by pubic companies. A share certificate, on the other hand may be issued be pubic as well as private companies.
2. Issue of share warrant requires provision in the articles and also approval from the C.G., It is not necessary in case of share certificate.
3. A share warrant can be issued only with respect to fully paid up shares. Whereas a share certificate can be issued at any stage.
4. The holder of share certificate is a member of the company. Holder of share warrant is not member of the company unless article authorized him for particular purpose.
5. A share warrant can be transferred by mere delivery and no registration of transfer with the company is required, transfer of shares in not complete unless reregistered by the company.
6. No stamp duty is payable in transfer of a shares warrant whereas stamp duty is payable on transfer of shares.
7. A share warrant is transferable as negotiable instrument. A share certificate is not so considered.

Reduction of Share capital [Section 100–105]

It can be made

(i) By writing off the lost capital. or
(ii) By refunding surplus of the paid-up capital or
(iii) By reducing the liability of the members for the uncalled capital. or
(iv) By any other method approved by the court

Procedure

(i) Authorised by Articles :
(ii) Special resolution
(iii) Where a company has passed a resolution for reducing share capital it shall apply, by petition to the Tribunal for an order confirming the reduction (Section 101).
(iv) If reduction of share capital involves diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid up share capital, the following provisions *shall* have effect:
   (a) Every creditor of the company *can* object to the reduction where reduction involves diminution of liability on any shares in respect of unpaid share capital or repayment of amounts already paid on any shares.
   (b) The Tribunal *shall* settle a list of creditors who are entitled to object. It may publish notice fixing a day or days within which creditors not entered on this list may claim to be so entered.
(v) Where a creditor entered on the list *does* not consent to reduction and his debt is not *discharged* or *determined* by the company, the Tribunal may either have his interest *secured* or if it thinks fit *dispense* with his consent.

(vi) *Powers of the Tribunal.* If the Tribunal *is* satisfied that every creditor of the company entitled to object *has* consented to the reduction or that his debt has been *discharged or secured* it may make an order confirming the reduction on such terms and conditions as it thinks fit (Section 102).
(vii) The Tribunal may require the company to add to its name as last words, the words '*and reduced*' for a specified time. The company *may* also be directed to publish reasons for the reduction of capital for public information. The Tribunal exempted the company from adding the words '*and reduced*' to its name.
(viii) Where creditors *are not* affected at all, the only question to be considered by the Tribunal is whether the reduction is *fair and equitable* as between the different classes of shareholders.
(ix) *Registration of order of Tribunal with Registrar.* The order of the Tribunal confirming the reduction *shall* be produced before the Registrar and a certified copy thereof *shall* be filed with him for registration (Section 103).

The resolution for reducing share capital as confirmed by the order of the Tribunal shall take effect only on its registration with the Registrar.

Redeemable and Irredeemable Preference share [Section 80]

A Company may issue redeemable preference share when;
(i) Authorised by Articles.
(ii) No such shares hall be redeemed except out of the profits or proceeds of afresh issue a share.
(iii) No such shares shall be redeemed unless they are fully paid.
(iv) The premium if any, out of profit or out of securities premium account.
(v) Where such are redeemed out of profits a sum equal to the nominal amount of the shares redeemed is to be transferred out of profits to the CRR A/ c.
(vi) No company shall issue a preference share which is irredeemable or is redeemable after the expiry of a period of 20 years

Conversion or loans and debentures into shares (proviso See. 81(3))
(i) Term of debenture or loan has either approved by C.govt or in conformity with the rules made by C.G. and
(ii) In case of debentures or loans issued to or loans obtained other than from the Govt. or any institution specified by C.G. the term has also been approved by a special resolution.

The* term does not *require the approval of* CG *when:
(i) The deb. or loans issued or raised either through Pvt. Subscription or through issue of prospectus.
(ii) A PFI either underwrites or subscribes or sanctions whole or part.
(iii) The consent of C.G. where necessary is obtained.
(iv) Having regard to the financial position of the company, the F.I. provides for an option to convert such debentures or loans or part thereof into shares of company.

Allotment of shares

Allotment means the appropriation out of the previously unappropriated capital of a company of a certain number of shares to a person.

Restrictions on allotment of shares
(a) *Prospectus*: A copy of the prospectus must be duly rued with the registrar (See. 60).
(b) *Application Money:* At least 5% of the nominal value **(see. 69(3).** As per SEBI guidelines application money must not be less than 25% of the issue price. As per SEBI guidelines, in case the issue size is more than **Rs. 500** crores, application money cannot be more than **25%** of the issue price.
(c) *Minimum Subscription*: According to the SEBI guidelines if minimum subscription including accepted development from underwriters etc, has not been received within **60 days of closure of issue,** all the money must be repaid, if money is not repaid **within 10 days,** the directors of company shall be jointly and severally liable to repay that money with interest (15% p.a.).
(d) *Opening of the subscription* List (*Section* 72): No allotment until the beginning of the 5th day after the date on which the prospectus is issued.

(e) *Shares to be dealt on stock exchange:* Every Company intending to offers share or debentures to public for subscription by issue of prospectus shall, before such issue, make an application to one more stock exchanges for permission for Share or debentures to be dealt with in the stock exchange.

- Such prospectus shall state the name of stock exchange or as the case may be, each such stock exchange, and any allotment made on an application in pursuance such prospectus shall be void, if permission has not been guaranteed by the stock exchange. Provided that an appeal again the decision recognized stock exchange has been preferred. U/S 22 of SCR Act.
- If permission is refused or not granted within 10weeks from the date of closing of the subscription list, application money to be refunded 8 days after expiry of 10 weeks with interest. If not refunded within 8 days. Directors to repay with interest @ 15% p.a. **[Section 73 (2)]**
- Company and every director in default liable for fine upto Rs. 50,000. In case refund is delayed beyond 6 months director also liable to imprisonment upto 1 year

(f) Money to be kept deposited in a separate bank account.

Effect of an irregular allotment

Name of Irregularity	Nature of Allotment	Liability
Copy of a prospectus not delivered to the Registered (Section.60)	Allotment is valid	Company and every person knowledge in party to the issued of such prospectus, punishable with fine which may extend to Rs. 50,000 [Section. 60(5)].
Application money being less than 5% of the nominal value of shares [Section. 69(3)].	Allotment is voidable [Section 71(1)].	Director, liable for damages to the company as well as to allot-tee [Section. 71(3)]. Company and every officer of the company punishable with find which may extend to 5,000 rupees [Section. 629A]
Where minimum subscription is not received [Section. 69].	Allotment is voidable [Section 71(1)].	Moneys received should be returned forth with, in case not repaid with in 10 days, the company shall be liable to repay with interest (present, 15 of p.a.). Further, director responsible for contravention shall be liable for damages to allotee as well as the company. [Section.71 (3)].
Where a statement in lieu of prospectus is not delivered to the Registrar [Section.70].	Allotment is voidable [Section 71(1)].	Company and every director liable for fine upto Rs. 10,000/- Directors, who contrivances liable for damages to company & allottee [Section. 71(3)].
Where time limit regarding the opening of the subscription of the subscription list in not observed. [Section. 72]	Allotment is valid [Section72].	Company and every officer who is in default liable for fine upto Rs. 50,000 [Section. 72(3)].
Application money not kept deposited with a scheduled bank [Section 69 (4)]	Allotment is voidable [Section71(1)]	Director willfully authorising the venation liable for damages the company as well as the allottee [Section 71 (3)].
Condition as to listing of shares on a recognised stock exchange not observed [Section 73 (1)]	Void	If permission is refused or not granted within 10weeks from the date of closing of the subscription list, application money to be refunded. If not refunded within 8 days. Directors to repay with interest @ 15% p.a. [Section 73 (2)]. Company and every director in default liable for fine upto Rs. 50,000. In case refund is delayed beyond 6 months director also liable to imprisonment upto 1 year

An allotment made by a company to an applicant in contravention of Section 69 or 70 shall be voidable at the instance of the applicant-

(a) Within two months after the holding of the statutory meeting of the company, and not later, or
(b) In any case where the company is not required to hold a statutory meeting or where the allotment is made after the holding of the statutory meeting, within two months after the date of the allotment, and not later.

Underwriting
Underwriting is thus in the nature of an insurance against the possibility of inadequate subscription.

Underwriting Commission [Section 76]

(i) It should be Authorised by the **Articles** of the company.
(ii) The commission payable should not exceed 5**%** in the case of shares and 2½% in the case of debentures.
(iii) Underwriting commission may be paid in cash or kind.
(iv) Underwriting commission should be disclosed in the prospectus or statement in lieu of prospectus.
(v) Copy of the contract relating to the payment of the commission should be delivered to the registrar.
(vi) No underwriting commission shall be paid to any person on shares or debentures which are not offered to the public for subscription.

Underwriting Commission & Brokerage – Even if the share issue is not to public Companies Act permits payment of underwriting commission and brokerage. Maximum total commission payable (excluding brokerage) cannot exceed 596 of the price shares or 2.596 in case of debentures, or lower rate, if prescribed by Articles 01 Association. Payment of brokerage or underwriting commission must be authorised by Articles of Association. The amount of commission payable must be disclosed in statement in lieu of prospectus. If any circular, or notice (not being a prospectus)i issued, the commission payable should be disclosed in such circular /letter also. Copy~ contract for payment of commission has to be filed with Registrar of Companies at the time of delivery of statement in lieu of prospectus or letter of offer. [Section 76(1)1 Underwriting or appointment of brokers is not mandatory as per Companies Act.
Practically, if a company is not issuing shares to public, it may still have to appoint broker and pay commission, if capital is proposed to be raised from outsiders. If capitalis to be raised from friends and family members, it will not be necessary to appoint broker and pay commission. .

Brokerage permissible – In addition to commission, brokerage is permissible. Such brokerage should be 'as permissible here to before. [Section 76(3)]. Thus, only brokerage can be paid only to those who deal in shares and whose business includes the procuring of subscribers for shares. Thus, brokerage can be paid only to those who are registered with SEBI as brokers.

No other commission – Except the underwriting commission or brokerage as explained above, no other commission, discount or allowance can be paid, either directly orindirectly, for subscribing or agreeing to subscribe for any shares or debentures of the company. [Section 76(2)]. **In** case of private issue, direct commission to investor is not permissible. [Section 76(4A)]. Default can involve penalty upto Rs 5,000.

SEBI Guidelines with Respect to Public Issues:

1. SEBI Guidelines with respect to public issue of equity shares or any other security convertible into equity shares.
2. The appointment of Merchant Banker registered with SEBI to manage an issue shall be compulsory.
3. Registrar to issue must be appointed.
4. Partly paid shares must either be made fully paid or forfeited.
5. No company shall make a public or rights issue of securities unless firm arrangements of finance through verifiable means towards 75% of the stated means of finance, excluding the amount to be raised through proposed Public/Rights Issue, have been made

* If 100 crores is the total cost of the project.
* Then maximum 25 crores can be through public issue.

6. The company shall not make public issue where it has been prohibited by the SEBI.

7. Draft offer document (prospectus) shall be filed with the SEBI at least 21 days before filing of the prospectus with Registrar of Companies.

8. The draft offer document filed with the SEBI shall be made public for a period of 21 days from the date of filing the offer document with the SEBI.

9. The lead merchant banker shall,

(i) While filing the draft document with ,he SEBI also file the draft offer document with the stock exchange(s) where the securities are proposed to be listed;

(ii) Make copies of draft offer document available to the public; host the draft and final offer documents on the websites of all the lead managers/ syndicate members associated with the issue and also ensure that the contents of documents hosted on the websites are the same as that of their printed versions.

(iii) Obtain and furnish to the SEBI, an in-principle approval of the stock exchange(s) for listing of the securities within 15 days of filing of the draft offer document with the stock exchange(s).

(iv) Lead merchant bankers or stock exchanges may charge an appropriate sum to the person requesting for the copy of offer document.

10. The company shall carry out the changes suggested by SEBI before filing of prospectus with Registrar of Companies.

11. Issue shall open within 365 days from the date of issuance of observation letter by SEBI, if any, or 365 days from the 22nd day from the date of filing of the draft offer document with SEBI, if no observation letter is issued.

12. Public Issue by Unlisted Companies (Other than a banking company): An unlisted company shall be allowed to make a public issue of equity shares or any other security convertible into equity shares only if it meets all the following conditions:

a. The company has net tangible assets" of at least Rs. 3 crore each of the preceding 3 full years (of 12 months each), of which not more than 50% is held in monetary assets:

b. Provided that if more than 50% of the net tangible assets are held in monetary assets, the company has made firm commitments to deploy such excess monetary assets in its business/project;

c. The company has a track record of distributable profits in terms of Section 205 of the Companies Act, 1956, for at least three (3) out of immediately preceding five (5) years. However, extraordinary items shall not be considered for calculating distributable profits in terms of Section 205 of the Companies Act,]956;

d. The company has a networth of at least 1 crore in each of the preceding 3 full years (of 12 months each);

e. In case the company has changed its name within the last one year, at least 5090 of the revenue for the preceding 1 full year is earned by the company from the activity suggested by the new name; and

f. The aggregate of the proposed issue and all previous issues made in the same financial year in terms of size (i.e., offer through offer document + firm allotment + promoters' contribution through the offer document) documents not exceed five (5) times its pre-issue net worth as per the audited balance sheet of the financial year.

13. In case an unlisted company does not satisfy anyone or more of the requirements at (9) above, it can make a public issue only in either of the following two ways:

(i) Through book-building process subject to at least 50% of the issue size being allotted to Qualified Institutional Buyers (QIBs) failing which full subscription money must be refunded.

'*Qualified Institutional Buyer*' *shall mean*

a. Public financial institution as defined in Section 4A of the Companies Act, 1956;
b. Scheduled commercial banks;
c. Mutual funds;
d. Foreign institutional investors registered with SEBI;
e. Multilateral and bilateral development financial institutions;
f. Venture capital funds registered with SEBI;
g. Foreign venture capital investors registered with SEEI;
h. State industrial development corporations;

i. Insurance companies registered with the Insurance Regulatory and Development Authority (IRDA);
j. Provident Funds with minimum corpus of Rs. 25 crores;
k. Pension Funds with minimum corpus of Rs. 25 crores,

(ii) Alternatively, the 'project' should have at least 15% participation by Financial Institutions/Scheduled Commercial Banks, of which at least 10% must come from the appraiser(s). In addition to this, at least 10% of the issue size shall be allotted to OIBs, failing which the full subscription money shall be refunded.

14. Other Requisites for Public Issues by unlisted companies

i. The minimum post-issue face value capital of the company shall be Rs. 10 crore.
OR [i.e. in case of companies with less than Rs. 10 crores of post issue capital]
There shall be a compulsory market-making for at least 2 years from the date of listing of the shares subject to the following:

* Market makers undertake to offer buy and sell quotes for a minimum of 300 shares;
* Market makers undertake to ensure that the bid-ask spread (difference between quotations for sale and purchase) for their quotes shall not at any time exceed 10%;
* The inventory of the market makers on each of such stock exchanges, as on the date of allotment of securities, shall be at least 5'16 of the proposed issue of the company.

ii. Further, no allotment pursuant to a public issue shall be made unless, in addition to satisfying the conditions as aforesaid, the prospective allottees are at least one thousand (1000) in number.

15. Again, the company shall enter into agreements with all the depositories for dematerialization of securities. However, the investors shall have an option to receive allotment of securities through any of the depositories.

16. **Exemption from Eligibility Norms-** The eligibility norms for making a public issue as noted above shall not be applicable in case of-

➢ A banking company including Private Sector Banks
➢ An infrastructure company:
(a) Whose project has been appraised by a Public financial Institution (PFI) or Infrastructure Development Finance Corporation (IDFC) or Infrastructure Leasing and Financing Services Ltd. (IL& FS) or a bank which was earlier a PFI (say, IDBI Bank or ICICI Bank), and
(b) Not less than 5% of the project cost is financed by any of the institutions referred to in sub-clause (a), jointly or severally, irrespective of whether they appraise the project or not, by way of loan or subscription to equity or a combination of both.

17. **Face Value of Shares and Pricing of Issue** - Face value, i. e., 'par value' of shares shall be Rs. 10 if issue price is less than Rs. 500 per share. If issue price is Rs. 500 or more per share, face value can be below Rs. 10 but in multiple of Rupees e.g. Re.l, Rs. 2, Rs. 5, etc.

Differential Pricing

(i) Any unlisted company or a listed company making a public issue of equity share's or securities, convertible at a later date into equity shares, may issue such securities to applicants in the firm allotment category at a price different from the price at which the net offer to the public is made provided that the price at which the security is being offered to the applicants in firm allotment category is higher than the price at which securities arc offered to public.
"The net offer to the public" means the offer made to the Indian public and does not include firm allotments or reservations or promoters contributions.

(ii) A listed company making a composite issue of capital may issue securities at differential prices in its public and rights issue.

(iii) In the public issue which is part of a composite issue, differential pricing as per (i) above is also permissible.

(iv) Justification for the price difference shall be given in the offer document.

18. A banking company shall be allowed to make a public issue at a price approved by the Reserve Bank of India.

19. **Public Issue by listed companies** - A listed company shall be eligible to make a public issue of equity shares or any other security which may be converted into or exchanged with equity shares at a later date:

* **Provided** that the aggregate of the proposed issue and all previous issues made in the financial year in terms of size (i.e. offer through offer document + firm allotment + promuters

contribution through the offer document), issue size does not exceed 5 times its pre-issue networth as per the audited balance sheet of the last financial year

* Again, in case there is a change in the name of the issuer company within the last I year (reckoned from the date of filing of the offer document), the revenue accounted for by the. activity suggested by the new name must not be less than 50% of its total revenue in the preceding I full year period.
* A listed company which does not fulfil the aforesaid conditions, shall have to comply with the requirements of unlisted companies, before it can make a public issue of equity shares or securities convertible at a later date into equity shares.
* A listed company shall be allowed free pricing of its issue (i.e., it can issue at par or at premium). Where the Board of directors have been authorized to determine the offer price within a specified price band (Maximum 20%), such price shall be determined by a resolution of the Board passed at its meeting of which a 48 hours notice must have been given to the designated stock exchange.

20. Denomination of Shares: An eligible company shall be free to make public or rights issue of equity shares in any denomination determined by it in accordance with sub-Section (4) of Section 13 of the Companies Act, 1956 and in compliance with the following and other norms as may be specified by SEBI from time to time

(i) In case of initial public offer by an unlisted company,

(a) If the issue price is Rs. 500 or more, the issuer company shall have a discretion to fix the face value below Rs. 10 per share subject to the condition that the face value shall in no case be less than Rs1 per share.

(b) If issue price is less than Rs. 500 per share, the face value shall be Rs. 10 per share.

(ii) The disclosure about the face value of shares (including the statement about the issue price being × times of the face value) shall be made in the advertisement, offer documents and in application forms in identical font size as that of issue price or price band.

Change of Denomination : The companies. which have already issued shares in the denomination of Rs. 10 or Rs. 100, may change the standard denomination of the shares by' splitting or consolidating the existing shares.

21. Abridged Prospectus, The lead merchant banker shall ensure the following:

(i) Every application form distributed by the Issuer Company or anyone else is accompanied by a copy of the Abridged Prospectus (stapled to application form or perforated)

(ii) Abridged Prospectus shall not contain matters extraneous to prospectus.

(iii) Abridged Prospectus shall be printed at leas! in point 7 size with proper spacing.

(iv) Enough space shall be provided in the application form to enable the investors to fill in various details like name, address, etc.

***22.* Promoters' Contribution**

(a) Unlisted company - The promoters' contribution shall be at least 20 per cent of the post issue capital.

(b) Listed company- The promoters' contribution shall be:

(i) At least 20 per cent of the proposed public issue; or

(ii) Shall not fall below 20 per cent of the post issue capital.

(c) In case of composite issues of listed companies, rights issue component of the composite issue shall be excluded while calculating the post issue capital.

(d) Private placement of promoters' contribution through market Intermediaries shall not be allowed.

(e) Further, promoters' contribution shall be at the same price as applicable to the investing public.

(f) Minimum amount to be contributed by each promoter shall not be less than Rs. 25,000 per application. This limit shall also apply to contributions made by business associates such as dealers and distributors. However, in case of contributions made by firms or body corporates not being business associates, the minimum contribution shall be Rs. 1,00,000.

(g) In case of Listed as well as Unlisted Companies:

(i) Promoters must bring in the full amount of their contribution (including premium at least one day before the issue opens which shall be kept in an escrow account with a scheduled commercial bank and the said contribution/amount shall be released to the company along with the public issue proceeds).

(ii) Where promoters' contribution exceeds Rs. 100 crores, they shall bring Rs. 100 crores before opening of the issue and the balance on pro rata basis in advance before calls are made on public.

(iii) The company's Board shall pass a resolution allotting the shares or convertible instruments to promoters against the money received.

(iv) A copy of the resolution along with a Chartered Accountants' Certificate certifying that the promoters' contribution has been brought in shall be filed with the SEBI before opening of the issue.

(v) The certificate of the Chartered Accountants shall also be accompanied by a list of names and addresses of friends, relatives and associates who have contributed to the promoters' quota along with the amount of subscription made by each of them.

(vi) Promoters shall not acquire shares through private placements either directly or through any Intermediary.

(vii) The following shall be ineligible for computation of promoters' contribution:

(a) Shares acquired for consideration other than cash and against revaluation of assets/capitalization of intangible assets, during three)yeas before filing the offer document.

(b) Shares acquired by way of Bonus out of revaluation of reserves or reserves without accrual of cash reserves.

(c) In case of unlisted companies shares acquired during preceding 12 months at a price lower than the price at which equity is offered to public.

(h) Promoters Participation in Excess of the Required Minimum Contribution to be Treated as Preferential Allotment: In case of a listed company. participation by promoters in the proposed public issue in excess of the required minimum' provisions shall attract the pricing provisions of Guidelines on preferential allotment, if the issue price is lower than the price as determined on the basis of said preferential allotment guidelines.

(i) Exemption from requirement of promoters' contribution

(j) The requirement of promoters' contribution shall not be applicable in case, of public issue of securities by a company which has been listed on a stock exchange for at least three years and has a track record of dividend payment for at least 3 immediately preceding years.

However, the promoters must disclose their existing shareholding and the extent to which they are participating in the proposed issue in the offer document.

23. **Lock-in Period** - The promoters' contribution shall be subject to a lock-in ([e.. promoters cannot sell or transfer except amongst promoters inter-se) period of 3 years:

Provided that where shares held by promoter(s) are lent to the Stabilizing Agent under Green Shoe Option, they shall be exempted from the lock-in requirements specified above, for the period starting from the date of such lending to the date when they are returned to the same promoter(s).

24. Lock-in of excess contribution by promoters - In case the promoters' contribution in the proposed issue exceeds the required minimum contribution, such excess contribution shall be locked in for a period of one year.

25. Lock in of pre-issue share capital- The entire pre-issue share capital, other than that locked-in as promoters' contribution, shall be locked-in for a period of one year from the date of commencement of commercial production or the date of allotment in the public issue, whichever is later.

However, the aforesaid lock-in requirement shall not be applicable to the preissue share capital:

(i) Held by venture capital funds and foreign venture capital investors registered with the Board though the same shall be locked-in as per the provisions of the SEBI (Venture Capital Funds) Regulations, 1996 and SEBI (Foreign Venture Capita] Investors) Regulations, 2000 and any amendment thereto;

(ii) Held for a period of at least one year at the time of filing draft offer document with the Board and being offered to the public through offer for sale;

(iii) Held by employees other than promoters, which were issued under Employee Stock Option or Employee Stock Purchase Scheme of issuer company before the IPO. However, the same is subject to the issuer company complying \\ith the requirements laid down in SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines. 1999.

26. **Inter-se Transfer of Securities amongst Promoters** - Shares held by promoter(s} which are locked-in as per the relevant provisions of this chapter, may be transferred to and amongst promoter/promoter group or to a new promoter or persons in control of the company, subject to continuation of lock-in in the hands of transferees for the remaining period and compliance of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations. 1997. as applicable.

27. Reservations and firm allotment

(a) Reservations for allotment on firm/preferential basis for various categories together with promoters contribution must not exceed 75%' of the total issue amount.

(b) Reservation on competitive basis can be made in a public issue to the following categories:

S. No. Category of persons

(i) Permanent employees (including working directors) of the company and in the case of a new company. (the permanent employees of the promoting companies)

(ii) Reservations and Firm Allotment in favour of Shareholders of the promoting companies in the case of a new company and shareholders of group companies in the case of an existing company. As per amendment of 28th May, 2004, "In a public issue (not being a composite issue) by a listed company, the reservation on competitive basis can be made for the shareholders who, on the record date (date fixed for the purpose of determining the eligible shareholders). are holding shares worth up to Rs. 1.00.000 [Earlier Rs, 50.000 ET 30 March 2005] determined on the basis of closing price as on the previous day:

Provided that the allotment to such shareholders shall be on proportionate basis as in case of allotment in public category

(iii) Indian Mutual funds.

(iv) Foreign institutional investors (including non resident Indians and overseas corporate bodies).

(v) Indian and multilateral development institutions.

(vi) Scheduled banks.

(vii) Existing small shareholders (i.e. retail individual investor) where holding is less than Rs. 1.00,000 on basis of closing price of previous day [Earlier Rs. 50,000 ET 30 March, 2005]

(c) Firm allotment in public issues can be made to the following:

S. No. Category of persons

(i) Indian and multilateral development financial institutions.

(ii) Indian mutual funds.

(iii) Foreign institutional investors (including non-resident Indians and overseas corporate bodies).

(iv) Permanent/ regular employees of the issuer comJ1any.

(v) Scheduled banks.

(d) Reservations in favour of employees shall not exceed 10% of the issue. Reservations in favour of shareholders and lead merchant bankers must not exceed 1096 and 596 respectively. .

(e) In case promoting companies are designated financial institutions/State and Central financial institutions, the employees and the shareholders of such promoting companies shall not be eligible for the said reservations.

(f) The allotments on firm basis shall be subject to a lock-in period of one year from the date of commercial production or the date of allotment in the public issue, whichever is later.

(g) In case of reservations/firm allotment in favour of any person, no further application for subscription to the public issue from such person(s) (excepting from employees) shall be entertained.

(h) No buy-back or stand-by or similar arrangements shall be allowed with the persons for whom securities are reserved for allotment on a firm basis.

(i) Any unsubscribed portion in any reserved category may be added to any other reserved category.

The unsubscribed portion, if any, after such adjustments amongst the reserved categories shall be added back to the net offer to the public.

(j) If any person to whom firm allotment is proposed to be made withdraws partially or fully from the offer made to him after filing of the prospectus with the ROC, the extent of shares proposed to be allotted to such persons shall be taken up by the promoters and the subscription amount shall be brought in at least one clay prior to the issue opening date.

The promoters who acquire such shares shall not be allowed to sell them or otherwise transfer them for a period of one year.

28. **Minimum application value and minimum application size**
The minimum application value shall be within the range of Rs. 5,000 to Rs. 7,000. The issuer company, in consultation with the merchant banker, shall stipulate the minimum application size (in terms of number of shares) falling within the aforesaid range of minimum application value and make upfront disclosures in this regard, in the offer document.
Explanation: For the purpose of this clause, the minimum application value shall be with reference to the issue price of the shares and not with reference to the amount payable on application.

29. Retail Individual Investor - Retail Individual Investor is one who applies or bids for securities of or for a value not more than Rs. 1,00,000.

30. Minimum Application Money - The minimum application money to be paid by an applicant along with the application shall not be less than 25% of the Issue price. However, in case of an offer for sale, the entire amount payable on each instrument shall be brought in at the time of application.

* Application for shares or debentures should be such that the minimum total amount payable on shares/ debentures is within the range of Rs. 5,000 to Rs. 7,000. Allotment will be on proportionate basis within the specified categories. rounded off to the nearest integer. Minimum allotment will be equal to the minimum application size fixed and disclosed by the issuer.

31. **Minimum Tradeable Lot.** Concept of 'tradable lot' has been abolished w.e.f. 28-5-2004. Allotment should be in nearest integer. Minimum allotment should be equal to the minimum application size fixed and announced in offer document.

32. **Share application form to seek permanent account number** - In respect of applications for the value of Rs. 50,000 or more, the applicant(s) shall mention his/her/their permanent account number/GIR number and income tax circle/ward, district or the fact of non-allotment of PAN/GIR number, as the case may be. Applications not complying with these provisions are liable to be rejected.

33. **Closure of issue** - Issue must be kept open for at least 3 working days and not more than 10 working days. However, public issues made by infrastructure companies may be kept open up to 21 working days.

34. **Minimum subscription** - The following statements shall appear in the prospectus:

(i) For non-underwritten Public issues: If the company does not receive the minimum subscription of 90% of the issued amount on the date of closure of the issue, or if the subscription level falls below 90% after the closure of issue on account of cheques having being returned unpaid or withdrawal of applications, the company shall forthwith refund the entire subscription amount received. If there is a delay beyond 8 days after the company becomes liable to pay the amount, the company shall pay interest as per Section 73 of the Companies Act, 1956.

(ii) For Underwritten Public Issues: "If the company does not receive the minimum subscription of 90% of the net offer to public including devolvement of Underwriters within 60 days from the date of closure of the issue, the company shall forthwith refund the entire subscription amount received. If there is a delay beyond 8 days after the company becomes liable to pay the amount, the company shall pay interest prescribed under Section 73 of the Companies Act, 1956.

(iii) For Composite Issues
  (a) The Lead Merchant Banker shall ensure that the requirement of "minimum subscription" is satisfied both jointly and severally, i.e., independently for both rights and public issues.
  (b) If the company does not receive the minimum subscription in either of the issues, the company shall refund the entire subscription received.

The aforesaid requirement of 90% minimum subscription will not be relevant in case of offer for sale of securities (i.e., the management offering their shareholdings through public offer with a view to convert a closely held company into a widely held company).

Again. the requirement of 90 per cent subscription for issue of capital by an infrastructure company shall not be mandatory if disclosures are made in the prospectus regarding the alternate sources of funding. The lead manager shall verify and confirm the same as part of their due diligence.

35. **Over-subscription** - No retention of over-subscription shall be allowed except to the extent of maximum 10% necessitated by approximation while making proportionate allotment.

36. **Allotment to be on proportionate basis** - In a public issue of securities (other than the book building portion of an issue through book-building process). the Executive Director/Managing Director of the Designated Stock Exchange along with the post-issue Lead Merchant Banker and the Registrars to the Issue shall be responsible to ensure that the basis of allotment is finalised in a fair and proper manner in accordance with the following guidelines:
Allotment shall be on proportionate basis within the specified categories rounded off to the nearest integer subject to a minimum allotment being equal to the minimum application size as fixed and disclosed by the issuer.

37. **Issue to be made fully paid up** - Issue must be made fully paid up within 12 months except where the total issue size exceeds Rs. 500 crores. If the investor fails to pay call money within 12 months, as aforesaid the subscription money already paid may be forfeited.

38. **Refund of over-subscription** - All money in excess of the application money on shares allotted must be repaid forthwith without interest. Section 73(2A) provides that if such money is not repaid within 8 days from the day the company becomes liable to pay the company and every director of the company, who is an officer in default, shall be jointly and severally liable to repay the same with interest @ 15% p.a.

39. **Refund orders/shares or debentures certificates** - Refund Orders of the value over Rs. 1.500 and shares/debentures certificates shall be sent by registered post only.

40. **Safety Net or Buy-Back Arrangement-** Where any safety net scheme or buy back arrangement is proposed, it must be ensured that:

(i) The safety net scheme or buy-back arrangement has been finalised in advance and disclosed in the prospectus;
(ii) The facility can be made available only to original allottees who are persons resident in India;
(iii) The facility is limited up to a maximum of 1000 shares per allottee;
(iv) The offer must be kept open for a period of at least six months from the last date of despatch of securities;
(v) The financial capacity of the person (viz.. Promoters, directors or merchant bankers) making available such facility must have been disclosed in the draft prospectus; and
(vi) No buy-back or stand-by or similar arrangements are allowed with the persons for whom securities are reserved for allotment on firm basis.

41. **Other Requirements**

(i) **Updation of offer document**: he lead merchant banker shall ensure that the particulars as per audited statements contained in the offer document are not more than 6 months old from issue opening date. In respect of a Government Company making a public issue, the auditors report in the prospectus shall not be more than six months old as on the date of filing of the prospectus with the Registrar of Companies or the Stock Exchange as the case may be.

(ii) **Appointment of Compliance Officer:** Issuer company shall appoint a compliance officer who shall directly liaise with SEBI with regard to compliance with various laws, rules, regulations and directions issued by SEBI and investors complaints related matters. The name of the compliance officer so appointed shall be intimated to SEBI.

(iii) **Incentives to prospective shareholders**: The issuer shall not offer any incentives to the prospective investors by way of medical insurance scheme, lucky draw, prizes, etc.

(iv) **Requirement of monitoring agency:** In case of issues exceeding Rs. 500 crores, the issuer shall make arrangements for the use of proceeds of the issue to be monitored by one of the financial institutions. A copy of the monitoring report as per the format specified at Schedule XIX, shall be filed with the Board by the said monitoring agency, on a half yearly basis till the completion of project, for the purposes of record.

(v) No company shall make any further issue of capital in any manner whether by way of issue of bonus shares, preferential allotment, rights issue or public issue or otherwise, during the period commencing from submission of offer document to the SEBI on behalf of the company for public or rights issues, till the securities referred to in the said offer document have been listed or application moneys refunded on account of non-listing or under-subscription, etc.

(vi) Option to receive securities in dematerialised form: The lead "merchant banker shall incorporate a statement in the offer document and in the application form to the effect that the investors have an option to either receive securities in the form of physical certificates or hold them in a dematerialised form.

42. **Post-Issue Obligations:** The post issue obligations shall be as follows:

(i) Lead merchant banker responsible for post issue obligations (post-issue lead merchant banker) shall ensure that a public representative nominated by the Board is associated in the process of finalisation of allotment in the following cases:
 (a) Par issues with over subscription level of more than 5 times.
 (b) Premium issues with over subscription level of more than 2 times.

(ii) The post-issue lead merchant banker shall ensure the submission of the post-issue monitoring reports as per formats specified in Schedule XVI. The due date for submitting post issue monitoring report in case of public issues by listed and unlisted companies through book-building shall be:
 (a) *(For a 3 day monitoring report)* 3rd day from the date of allocation in the book built-portion or one day prior to the opening of the fixed price portion, whichever is earlier.
 (b) *(For a 3 day monitoring report)* 3rd day from the date of closure of the issue, in other cases.
 (c) The final post-issue monitoring report for all issues.

(iii) The post-issue lead merchant banker shall ensure that in all issues, advertisement giving details relating to (1) oversubscription, (2) basis of allotment, (3) number, value and percentage of applications received along with stock invest, (4) number, value and percentage of successful allottees who applied through stock invest, (5) date of completion of despatch of refund orders, (6) date of despatch of certificates and date of filing of listing application is released within 10 days from the date of completion of the various activities at least in an English National Daily with wide circulation, one Hindi National paper and a Regional Language Daily circulating at the place where registered office of the Issuer company is situated.

(iv) The post-issue lead merchant banker shall submit within 2 weeks from the date of allotment, a certificate to the Board certifying that the stock invests on the basis of which allotment was finalised have been realized.

Employees Stock Option Scheme [ESOS]

Employees stock option' means the option given to the whole-time directors, officers or employees of a company which gives such directors, officers or employees the benefit or right to purchase or subscribe at a future date, the securities offered by the company at a pre-determined price SESI Guidelines, in this regard, provide as follows:

1. No ESOS shall be offered unless the disclosures, as specified in Schedule IV, are made by the company to the prospective option grantees and the company constitutes a Compensation Committee for administration and superintendence of the ESOS.

 A. Issue of stock options at a discount to the market price would be regarded as another form of employee compensation and would be treated as such in the financial statements of the company regardless of the quantum of discount on the exercise price of the options.

1. Subject to the aforesaid financial treatment ESOS would not be covered by the pricing provisions of SEBIs preferential allotment guidelines.

2. However, this ESOS does not replace the old Scheme. Companies may, therefore, offer either of the two alternatives.

SEBI guidelines regarding rights issues

1. These guidelines apply to the rights issues made by existing listed companies (i.e., companies whose equity capital is listed). Therefore, a company whose debentures/ bonds are listed but not the equity (i.e., shares) will not be governed by these guidelines. These guidelines are no/applicable where the size of the issue is upto Rs. 50 lakhs.

2. Rights issue cannot be withdrawn after the announcement of the record date. If done, then no security of the company shall be eligible for listing upto 12 months.

3. The underwriting of rights issue shall be optional.

4. Appointment of Registrars to Issue shall be compulsory.

5. Appointment of Category-I Merchant Banker holding a valid certificate of registration issued by SEBI shall be compulsory.
6. Partly paid shares, if any, must either be made fully paid or forfeited.
7. Letter of offer shall contain disclosures specified by SEBI.
  A. The Lead Merchant Banker shall:
    (i) Ensure compliance of the requirements of SEBI guidelines with respect to the offer document relating to rights issues.
    (ii) File with SEBI a copy of the offer document at least 21 days before filing of the same with the Regional Stock Exchange.
8. The company shall enter into an agreement with the depository for dematerialisation:
  (i) Of securities already issued;
  (ii) Proposed to be issued;
  (iii) The subscribers/shareholders must be given an option of holding the shares in a dematerialised mode or by way of share certificates.
9. The rights issue must be kept open for a minimum period of 30 days. It cannot remain open for more than 60 days.
10. SEBI requires the following clauses in respect of minimum subscription .lo be stated in the letter of offer.
If the company does not receive the minimum subscription of 90% of the issue' the entire subscription will be refunded to the applicants within 42 days from the dale of closure of the issue. If there is delay in the refund of the application money by more than 8 days after the company becomes liable to pay the amount, i.e., forty two days 'Where the issue is underwritten. the clause shall read 'including devolvement of underwriters after closure of the issue, the company will pay interest for the delayed period, @ 15% per annum as prescribed in sub-Sections (2) and (2A) of Section 73 of the Companies ,', Act, 1956:
11. No reservation shall be allowed in rights issue.
12. The requirement of promoter's contribution shall not be applicable in case of rights issues.
13. No company shall, pending conversion of FCDs/PCDs, issue any shares by way of rights unless similar benefit is extended to the holders of such FCDs or PCDs. The benefits shall be extended by making a reservation of shares in proportion to the convertible part of FCDs/PCDs. The shares so reserved may be issued at the time of conversion of such debentures on the same terms on which the rights issue was made
14. No company shall make any further issue of capital in any manner, whether by way of issue or otherwise, during the period commencing from the submission of offer document to SEBI on behalf of the company for rights issue, till the securities referred to in the said offer document have been listed or application moneys refunded on account of non-listing or under subscription, etc.
15. Over-subscription shall not be retained under any circumstances.
16. Issue shall be made fully paid-up within 12 months except where the total issue size exceeds Rs.500 crore.

Sweat Equity
Equity shares issued by the company to the person providing know-how or making available rights in the nature of intellectual property rights or value additions by whatever name called.
(i) The shares to be issue are of a class already issued;
(ii) The issue is Authorised by a special resolution passed by the company in the general meeting;
(iii) The resolution specifies the number of shares, current market price consideration, if any and whom such quite shares are to be issued;
(iv) Not less than one year has at the date of the issue, elapsed sine the date on which the company was entitled to commence business.
(v) If the company has its equity shares listed on a recognised stock exchange(s) the issue of sweat equity shall be in accordance with the regulations made by SEBI in this behalf. In other cases sweat equity shall be made in accordance with the guidelines as may be prescribed.

Issue of shares at premium (Section 78]
First of all the premium amount must be transferred to the securities premium account. *Used of securities premium account*

(i) To issue fully paid fully paid bonus shares to the members of the company.
(ii) To write off preliminary expenses.
(iii) To write off the expenses of or the commission paid or the discount allowed on any issue of shares or debentures of the company.
(iv) To provide for the premium payable on the redemption of preference shares or debentures of the company.
(v) For the purpose of buy back of securities as per Section 77A.

If securities premium account's is to be used for purposes other than those mentioned in Section 78, otherwise the procedure for reduction of share capital set - out in Section 100-105, be followed.

Issue of shares at discount (Section 79]

1. The shares offered at a discount must be of a class already issued
2. Not less than 1 year must at the date of the issue have elapsed since the date on which the company became entitled to commence business.
3. The issue must be authorised by an ordinary resolution passed in general meeting of the company, and must be sanctioned by the National Company Law Tribunal.
4. The resolution and specify the maximum rate of discount which in no case shall exceed 10% unless the National Company Law Tribunal agree to higher rate.
5. The shares must be issued within 2 months after receiving sanction of the National Company Law Tribunal or within extended time as the board may allow

Company Prohibited to Buy its shares or to Finance their Purchase (Section 77)

A Company cannot buy its own shares. Further more a public company or its subsidiary must not finance the purchase by any person of its own shares or those of i its holding company.

Exceptions

(a) A Company may redeem its redeemable preference shares.
(b) A banking company may lend money in the ordinary course of business.
(c) A company may provide financial assistance:
  (i) For the purchase of fully paid shares by trustees to be held for the benefit of employees of the company including directors holding salaried posts.
  (ii) To bona fide employees of the company to enable them to purchase fully paid shares for amount not exceeding 6 months' salary.
(d) A company may buy its shares from any member in pursuance of a court order under Section 402 of the Companies Act.

Sources to buy back: [Section 77 A]

(i) Its free reserves; or
(ii) The Security premium account or
(iii) The proceeds of any shares or other specified securities.
No buy-back of any shares or specified securities salary made out of proceeds of earlier issue of the same kinds of share or specified securities.

<u>Conditions for Buy-back</u>

(i) The buy-back is Authorised by its Articles;
(ii) A special resolution. Provided no special resolution is necessary if :
  (a) The buy-back is or less than ten percent of the total paid-up equity capital and free reserves of the company; and
  (b) Such buy-back has been authroised by the board by means of a resolution passed at its meeting.
(iii) The buy-back is **upto 25%** of the total paid up capital and free reserve. However, in case of equity shares, it may be noted that it **cannot exceed 25%** of the total paid equity capital in that financial year.
(iv) The ratio of the debt owed by the company is not more than twice the capital and its free reserves after such buy-back. However the central government may prescribe a higher ratio.
(v) All the shares or other specified securities are fully paid up
(vi) The buy-back of listed securities is in accordance with the regulations made by the SEBI.
(vii) The buy-back in respect of shares not listed on recognised stock exchange is in accordance with the guidelines as may be prescribed.

(viii) Every buy-back shall be completed within twelve months form the date of passing the special resolution under clause.
The buy-back under sub-Section (1) may be –
(a) Form the exiting security holders on proportionate basis; or
(b) From the open market or
(c) From employees
(d) It shall extinguish and physically destroy the securities so bought-back within seven days of the last date of completion of buy back.
(ix) It shall not make further issue of same class of share or specified securities within six month except. Bonus issue sweat equity, stock option scheme conversion of pref. share debenture into equity share.

Prohibition for buy-back in certain circumstance (Section 77 B)
(i) Through any subsidiary company including its own subsidiary companies or
(ii) Through any investment company or group of investment Companies; or
(iii) If a default in repayment of deposit or interest thereon, redemption of debentures or preference shares or payment of dividend or repayment of a term loan or interest thereon .
(iv) In case it has not complied with provisions of Section-159, 207, 211.

However in the following not taken to have purchased is shares when it has.
(a) Redeemed its redeemable preference shares,
(b) Forfeited its shares for non-payment of calls or
(c) Accepted a valid surrender of shares-

Right Shares
Section 81 provides that where at any time after the expiration of two years from the date of incorporation of the company or after one year from the date of the first allotment of shares, whichever is earlier, a public company limited by shares, issues further shares within the authorised capital its directors must first offer these shares to the existing holders of equity shares in proportion, as nearly as circumstances admit, to the capital paid up on their shares at the time of the further issue.

Exceptions
(i) The company may by special resolution in general meeting decide that the directors need not offer the shares in the further issue to the existing equity shareholders, and that they may dispose them off in any manner whatsoever.
(ii) But where it has been possible to muster ordinary majority only and approval of the central govt. is obtained.
(iii) Further Section 81 does not apply to a private company.
(iv) In case of issue of shares against conversion of loans or debentures.

SEBI Guidelines for bonus issue
(i) No bonus issue shall be made within 12 months of any public/right issue.
(ii) The bonus issue shall only be made out of free reserves built out of the genuine profits or share premium collected in cash only.
(iii) Reassure created by revaluation of fixed asset are not to be Capitalised.
(iv) The declaration of bonus issue in lieu of dividend, is not made.
(v) The bonus issue is not made unless the partly paid shares are fully paid up
(vi) The company
* Has not defaulted in payment interest or principal in respect of fixed deposits and interest or principal on debentures
* Has not defaulted in respect of the payment of statutory dues of the employees
(vii) A Company which announces its bonus issued after the approval of the board of directors must implement the proposal within a period of 6 months from the date of such approval.
(viii) There should be a provision in the Articles of association of the company for capitalisation of reserves.
* No bonus issue shall be made which will dilute the value or rights of the holders of debentures convertible fully or partly.

VARIATION OF SHAREHOLDERS RIGHTS

- **Section 106** provides that where the share capital of a company is divided into different classes of shares the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three- fourths of the issued of that class or with the sanction of special resolution passed at their meeting. However this variation is possible only if provision for such variation is contained in the Memorandum or Articles of the company and in the absence of such a provision, if the variation is not prohibited by the terms of issue of the shares of that class.
- **Section 107** provides that if the holders of 10 per cent of the issued shares of that class who had not assented to the variation apply to the court within 21 days of the date of consent or the passing of the special resolution, the Tribunal may after hearing the interested parties either confirm or cancel the variation. The company must within 30 days of the service of the Tribunal order forward a copy of the order to the Registrar. In the event of a default the company and every officer in default is liable to fine up to Rs. 500.

  The decision of the court on any such application shall be final.

Chapter 9 ***Membership***

Definition of a member (Section 41)

(i) The subscribes of the Memorandum of a company shall be deemed to have agreed to become members of the company and on its registration shall be entered as members in its register of members.
(ii) Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members.
(iii) Every person holding equity share capital of a company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a member of the concerned company.

Member and Shareholder

1. In the following three situations the member will cease to be a shareholder though he continue to be the member.
   (a) On Sale
   (b) On death
   (c) On Becoming Insolvent
2. A person who is holding a share warrant is a shareholder but he is not a member.
3. A person who subscribes to the memorandum of association immediately becomes the member even though no shares are allotted to him.
4. In the case of Guarantee Company or an Unlimited Company having no share capital there be only 'members' but not 'shareholders'.

Mode of Acquiring Membership

(i) By subscribing to the memorandum of association.
(ii) By agreement in writing.
   * Upon application and allotment
   * By transfer
   * By transmission
(iii) By estoppel. This arises when a person holds himself out as a member or knowingly allows his name to remain his name on register of member when actually has parted his with his shares.
(iv) By agreeing to purchase qualification shares.

Who may become a member?

(a) Minor: In case of fully paid shares, minor's may be admitted in the register of members, if he happens to acquire the same by way of transfer or transmission. ***Devan Singh v. Minerva Films Ltd.*** held that there is no legal bar to a minor becoming a member of a company by acquiring shares provided the shares are fully paid up.
(b) Company: A Company being an artificial person and separate legal entity may become a member of another company.
(c) A Partnership Firm: A partnership firm is not a separate legal entity from the partners, cannot be registered as member. However firm may become a member of a company registered under Section 25 of the Companies Act, 1956. but on dissolution of partnership it will cease to be member of the company.
(d) A Foreigner: A foreigner can enter in to contracts and therefore can purchase shares in a company but this is subject to the provisions of Foreign Exchange Management Act. 1999.

Joint Membership

Some provisions relating to joint membership, worth nothing are:
(i) Only one share certificate is issued;
(ii) All the members are jointly and severally liable to make payment of calls ;
(iii) A person whose name appears first in the order in which the names stand in the Register of members, shall be entitled to vote.

(iv) A document may be served by the company on the joint holder named first in the Register of members in respect of the share.
(v) The names of the joint holders may be entered in the Register of Members in the order in which they appear in the application form or in the Share Transfer Form.

Termination of Membership
A person may cease to be a member if a company when:
(i) He transfers his shares ;
(ii) His shares are forfeited ;
(iii) He surrenders his shares ;
(iv) His shares are sold by the company to enforce its lien ;
(v) He dies and his legal representative gets his own name registered ;
(vi) He is adjudged insolvent and the official received / official assignee either transfers the shares to a third party
(vii) He was holder of redeemable preference shares. Which have been redeemed.
(viii) He rescinds the contract of membership on the ground of fraud or misrepresentation.
(ix) His shares are purchased ;
(x) He has got share warrants issued in exchange for share certificates ;

Rights of a Member
(i) To have the certificate of shares;
(ii) To have his name entered in the Register of members;
(iii) To transfer shares;
(iv) To receive notices of meetings;
(v) To inspect various resisters and get extract therefrom;
(vi) To obtain copy of MOA & AOA;
(vii) To participating in the election of directors;
(viii) To get a copy of the B/S & P&L account
(ix) To apply to the court to have any variation of shareholders' right'
(x) To obtain, on request, minutes of proceeding at general meetings ;
(xi) To participate in the removal of directors
(xii) To petition to the Court for prevention of mismanagement and oppression ;
(xiii) To petition to the Court for an order of injunction;
(xiv) To petition for compulsory winding up;
(xv) To participate in passing a special resolution for voluntary or compulsory winding up;
(xvi) To participate in the surplus assets;

CALLS ON SHARES
A member of a company is bound to pay the nominal amount of shares which he has purchased. As noted earlier. **Section 69** provides that not less than five percent of the nominal value of a share can be called by way of application money. The Company may ask for some payment at the time of application for shares and another sum at allotment. The balance may be payable as and when called for.

Requisites of Valid Call
In making a call must be taken that:
1. (i) the directors making it are duly appointed and duly qualified:
   (ii) The meeting of the Board of directors has been duly convened;
   (iii) the proper quorum is present;
   (iv) the resolution making the call is duly passed the specifies the amount of the call and time and place of payment;
   (v) A proper entry is made in the minutes.
2. Calls on shares of same class must be made on uniform basis [Section.91]
3. Call to be made bona fide in the interest of the company

Forfeiture of shares
Shares cannot be forfeited unless Authorised by the Articles
(i) In accordance with the articles.

(ii) Proper notice a notice requiring payment of the amount due together with any interest accrued must be served. The notice must also mention that in the event of non-payment the shares will be liable to forfeiture.
(iii) Resolution for forfeiture.
(iv) Bona fide. The power to forfeit is in the nature of a trust and must, therefore be exercised for the benefit of the company.

Effect of forfeiture
(i) The holder ceases to become a member.
(ii) Liability for unpaid calls remains even after forfeiture.
(iii) The former holder shall remain liable as a past member to pay calls if liquidation takes place within one year of forfeiture.

Re-issue of forfeited shares
The forfeited shares may bee re-issued provided that the total of sum paid by the former holder together with the amount paid on re-issue and the amount remaining unpaid on share is not less than the par value because if it were, this would amount to an issue at a discount.
If the shares are reissued at a price more there face value, the excess is a premium and must transferred to the security premium account.

LIEN ON SHARES
A lien, like a mortgage or pledge is a form of security. Article provides that company will have lien on shares of a member for his debts and liabilities to companies is valid.

Enforcement of lien
A Company can enforce its lien on shares by sale in case the member defaults in payment of the amount due against him. In case the amount received on Sale of such shares is more than the amount due the excess be paid to the owner. But a company cannot enforce the lien by forfeiting the shares.

Surrender of shares
- There is no provision for the surrender of shares either in the Companies Act or in Table A but the Articles of some companies may allow it as short cut to long procedure of forfeiture.
- Since shares can be surrendered only where forfeiture is justified. A company can accept surrender of partly paid up shares only. The only exception where fully paid up shares may accepted is when shares are surrendered-in exchange for new shares of the same nominal value.
- Surrendered shares may be reissued in the same way as forfeited shares.

TRANSFER OF SHARES
Section 108 requires the transfer to be in a proper instrument of transfer known as share Transfer from which is required to be presented to the Registrar of Companies before it is signed and filled up by the transferor. The registrar will stamp or otherwise endorse thereon the date on which it is so presented to him.

Time of Stamping the Transfer Deed
It is necessary that stamps be affixed before transfer deed is excited or they could be affixed any time before delivery.
Lodging the Transfer
1. In the of shares dealt in or quoted on recognised stock exchange at any time before the date on which the register of members is closed, for the first time after the date endorsed by the registrar or within 12 months from the date of such endorsement whichever is later.
2. In any other case, within two months from the date of such endorsement.

Transfer When Complete
Transfer becomes complete and the transferee becomes a shareholder only when the transfer is registered in the company register.
Notice of refusal
Where a Company refuses to register a transfer whether in pursuance of any power of the Company under its articles or otherwise it shall within two months from the date on which the instrument of

transfer was delivered to the Company, sent notice of refusal to the transferee and the transferor, giving reasons for such refusal [Section 111(1)].

Appeal against refusal

1. The transferor or transferee may appeal to the Tribunal against any refusal or against any failure on its part within the period of 2 months, either to register the transfer or to send notice of its refusal to register the same [Section 111(2)].
2. An appeal under sub-Section (2) shall be made within two months of the receipt of the notice of such refusal or, where no notice has been sent by the company, within four months from the date on which the instrument of transfer was delivered to the company [Section 111(3)].
3. The Tribunal while dealing with an appeal against refusal to register the transfer may, after hearing the parties, either dismiss the appeal or, by order, direct that the transfer shall be registered by the company and the company shall comply with such order within ten days of the receipt of the order [Section 111(5)].
4. The Tribunal while acting under sub-Section (5), may, at its discretion, make (a) such interim order, including any orders as to injunction or stay, as it may deem fit and just; (b) such orders as to costs as it thinks fit; and (c) incidental or consequential orders regarding payment of dividend or the allotment of bonus or rights shares [Section 111(6)].
5. If default is made in giving effect to the orders of the Tribunal under Section 111, the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs. 10,000 and with a further fine which may extend to Rs. 1,000 for every day after the first day after which the default continues [Section 111(9)].
6. Further, if default is made in complying with any of the provisions of Section 111, the company and every officer of the company who is in default, shall be punishable with fine which may extend to Rs. 500 for every day during which the default continues.

Transfer of Shares under Depository System

1. The Depositories Act, 1996 has paved the way for an alternate mode of effecting transfer of shares. Investors will however have the choice of continuing with the existing share certificates and adopt the existing mode of effecting their transfer.
2. The depositories Act provides for the establishment of one or more depositories. Every depository will be required to be registered with the SEBI and receive a certificate of commencement of business.
3. Investors opting to join the system will be required to be registered with one or more 'participants' who will be agents for the depositories. The participants will be custodial agencies like banks, financial institutions as well as large corporate brokerage firms.
4. Upon entry into the system Share certificates belonging to the investors will be "dematerialised" and their names entered in the books of participants as beneficial owners. The investors names in the register of companies concerned will be replaced by the name of depository as the registered owner of the securities.
5. The investors will however continue to enjoy the economic benefits from the Shares as well as voting rights on the Shares concerned.
6. Shares in the depository mode shall cease to have distinctive numbers. Issuers of new securities will give investors the option either to receive physical securities or to join the depository mode.
7. Ownership changes in the depository system will be made automatically on the basis of delivery vs. Payment. There will be a regular, mandatory flow of information about the details of ownership in the depository's record to the company concerned. If the latter has any reservations about the admissibility of share acquisition by any person on the ground that the transfer of the security conflicts with the provisions of SICA, 1985, the company will be entitled to make an application to the Tribunal Tribunal for rectification of the ownership re- cords with the depository. During the pendency of company's application with the TRIBUNAL, the transferee would be entitled to all the rights and benefits of the shares except voting rights which will be subject to the orders of the TRIBUNAL.
8. The Act provides for detailed regulations to be framed by SEBI as well as detailed bye-laws to be framed by the depositories with the approval of SEBI. The bye-laws will crystallise the rights and obligations of participants and beneficial owners as well as procedures for ensuring adequate safeguards to protect the interests of investors. Any loss caused to beneficial owners due to the negligence of the depository or the participant will be required to be indemnified by the depository.

Remedies against refusal of registration of transfer in case of Public Companies [Section 111A]

1. Subject to the provisions of this Section, viz., Section 111A, the shares or debentures and any interest therein of a company, other than a private company and a deemed public company shall be freely transferable [Section 111A(2)]
2. However, if a company, without sufficient cause, refuses to register transfer of. shares within 2 months from the date on which, the instrument of transfer or the intimation of transfer, as the case may be, is delivered to the company, the transferee may appeal to the Tribunal and it shall direct such company to register the transfer of shares.
3. The Tribunal, on an application made by a depository, company, participant or investor shall direct the company or depository, as the case may be, to rectify its register if the transfer of shares or debentures is in contravention of the provisions of the SEBI Act, 1992 ,Or Regulations made thereunder or the SICA or any other Law for the time being in force. This application shall be made within 2 months, from the date of transfer of any shares or debentures held by a Depository or from the date on which the instrument of transfer or the intimation of the transmission was delivered to the Company, as the case may be. The Tribunal will issue the direction after carrying out such inquiry as it thinks fit [Section 111A (3)].
4. The Tribunal while acting under sub-Section (3) may, at its discretion, make an interim order as to suspend the voting rights before making or completing such enquiry [Section 111A(4)].
5. The provisions of this Section shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures. Any person acquiring such shares or debentures shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal [Section 111A (5)].
6. Notwithstanding anything contained in this Section, any further transfer, during the pendency of the application with the Tribunal, of shares or debentures shall entitle the transferee to voting rights unless the voting rights in respect of such transferee have also been suspended [Section 111A(6)].

Nomination of shares Section 109A

(i) Every holders of shares or debentures may nominate a person to whom his shares or debentures shall be vested in the event of his death.
(ii) In case of joint holders nomination shall be made by all.
(iii) The nominee shall on the death of the shareholder or holder of debentures of the company or as the case may be on the death of the joint holders become entitled to all the rights in the shares or debentures.
(iv) Where the nominee is a minor it shall be lawful for the holder of shares or debentures to make the nomination to appoint in the prescribed any person to become entitled to shares in or debentures of the company in the event of his death during the minority.

Section 109B: Transmission of shares

(i) Any person who becomes a nominee by virtue of the provision of Section 109A.' upon the production of such evidence, either-
  * To be registered himself as holder of the share or debenture or
  * To make such transfer of the share or debenture.

(ii) If the person being a nominee, elects to be registered as holder shall deliver to the company a notice in writing signed by him stating that he so elects and such notice shall be accompanied with the death certificate.
(iii) All the limitations restrictions and provisions of this Act relating to the right to transfer and the registration of transfer shall be applicable to any such notice as if the death of the member had not occurred.
(iv) A nominee becoming entitled to share or debenture by reason of the death of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder.
Provided that the board may at any time give notice requiring any such person to elect either to be registered himself or to transfer. If the notice is not complied with within ninety days, the board may thereafter withhold payment of all dividends bonus.

Forged transfer:

1. A transfer deed on which the signature of the transferor is forged is called a forged transfer deed. Any transfer of shares effected through such transfer deed is called a forged transfer.
2. (i) A forged transfer is a nullity.
   (iii) The original owner of the shares continues to be the shareholder.
   (iv) The company is bound to restore the name of the original owner in the register of members.
3. If the company has issued a share certificate to the transferor and he has sold the shares to an innocent buyer, the company is liable to compensate such a buyer if it refuses to register him as a shareholder.
4. If the company has suffered any loss on account of the forged transfer, it may recover the loss from the person who procured registration, even though he might have acted in good faith.

Blank Transfer:

A bank transfer is an instrument of transfer signed by the transferor in which the name of the transferee is not tilled.

Besides, the convenience of transfer stamp duty and registration fee is saved. Only the last transferred has to these expenses. Further this also helps in avoiding or reducing liability of tax thereon since the sale of share by the intermediate transferees may not be shown at all and thereby the profit, earned thereon may not reported or brought in the books.

Transfer	Transmission
* It is a deliberate act of the holder. * It requires exception of an instrument of transfer. * Stamp duty is payable on its execution.	* It results by operation of law * It requires an evidence showing the entitlements of the transferee. * No stamp duty is payable in this case.

Service of document on company

- A document may be served on a company or an officer thereof by sending it to the company or officer at the registered office of the company by post under a certificate of posting or by registered post, or by leaving it at its registered office:
- Provided that where the securities are held in a depository, the records of the beneficial ownership may be served by electronic mode or by delivery of floppies or discs.

Service of documents on registrar

A document may be served on a Registrar by sending it to him at his office by post under a certificate or posting or by registered post, or by delivering it to, or leaving it for, him at his office.

SERVICE OF DOCUMENTS BY A COMPANY

- Under Section 53, a company may serve a document on its members either personally or by sending it by post to him to his registered address; or if he has no registered address in India to the address (if any) within India supplied by him to the company for giving notices to him [Section 53(1)].
- If a person residing abroad has not supplied to the company an address within India for the purpose of giving notice to him, then a document advertised in a newspaper circulating in the neighbourhood of the registered office of the company [Section 53(3)].
- In the case of joint holders of a share, notice may be served on the joint holder named first [Section 53(4)].
- When a shareholder dies, it becomes the duty of the legal representative to furnish their address and if they fail, the company is entitled to serve at the address which is recorded with it.[Section 53(5)].
- Where a document is sent by post, it is enough if the letter containing the document is properly addressed and sent by ordinary post. But at the request of any member, notice must be served by registered post or under certificate of posting, provided the member has deposited adequate money to meet the expenses [Section 53(2)(a)].

Where a document is served by post, service shall be deemed to have been effected:

(i) In the case of notice of a meeting at the expiration of 48 hours after the letter containing the same is posted, and

(ii) In any other case at the time at which the letter would be delivered in the ordinary course of post.

Chapter 10 **Debenture**

Meaning and Nature of a Debenture

Section 2(12) of the Act defines: "Debenture includes debenture stock, bonds and other securities of a company whether constituting a charge on the company's assets or not."

Features of a Debenture

The usual features of a debenture are as follows:

(i) A debenture is usually in the form of a certificate (like a share certificate) issued under the common seal of the company.
(ii) The certificate is an acknowledgement by the company of indebtedness to a holder.
(iii) A debenture usually provides for the payment of a specified principal sum at a specified date. But that is not essential.
(iv) A debenture usually provides for payment of interest until the principal sum is paid back. But this again is not essential. Interest may be made payable subject to contingencies of uncertain nature.
(v) A debenture is, as a rule, on of a series, although a single debenture is not uncommon.
(vi) A debenture generally contains a charge on the undertaking of the company, or on some class of its assets or on some part of its profits. Again, this is riot an essential element.

Kinds of Debentures

Debenture may be of different kinds as follows:

(i) Redeemable Debentures;
(ii) Perpetual or Irredeemable Debentures;
(iii) Registered and Bearer Debentures: Registered debentures are made out in the name of a particular person, whose name appears on the debenture certificate and who is registered by the company as holder of the register of debenture holders. Such debentures are transferable in the same manner as shares. Bearer debentures, on the other hand, are made out to bearer and are negotiable instruments, and so transferable by mere delivery like share warrants.
(iv) Secured and Unsecured or Naked Debentures;
(v) Convertible Debentures: Section 81(3)(b) takes issue of shares in pursuance of a convertible clause in a debenture issue or a loan taken out of the purview of the whole Section if the following conditions are fulfilled:
   * Convertibility clause in respect of debentures or loans is approved by the Central Government before the issue of debentures or raising of the loan or is in conformity with the rules made by the Central Govt.; and
   * In case of debenture issued to, or loans taken from, parties other than the C.G. or any institution specified by the Central Covt., the convertibility clause was approved by a special resolution of the company before issue of debentures or raising of the loan.

Issue of Rights Debentures

Sometimes, companies issue Rights Debentures which are offered to the equity shareholders, at the first instance, on rights basis. If the entire issue is not taken up by the shareholders, the unsubscribed debentures can be offered to general public as well.

Re-issue of Redeemed Debentures

Section 121 allows redeemed debentures to be re-issued. According to this Section if there is any provision to the contrary in the articles, or in the conditions of the issue, or if there is no resolution showing an intention to cancel the redeemed debentures, the company shall have the power to keep the debentures, alive for the purpose of reissue. The company may re-issue its redeemed debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

Debenture Trust Deed
A trust deed is made under which some of them are appointed as trustee, whereby the properties of the company are mortgaged or charged to the trustee. The trust may also give power to trustee to nominee a director on the Board of directors of the company.

Advantages of a Trust Deed
(i) The Trustees hold the title deeds of the mortgaged property which, prevents the company from misusing the title deeds for any purpose.
(ii) The Trust are given power under the trust deed so that the property mortgaged is kept insured and is maintained in proper condition.
(iii) The company can with the consent of the trustees, enjoy a number of powers over the property charged, e.g. by way of sale, exchange or lease thus enabling the company to put the property to advantageous use without jeopardising the interest of the debenture holders.
(iv) In case of default by the company, the trustees can take necessary steps to realise the security without the aid of the Court.
(v) The legal estate is vested by the deed in the trustees and thus a subsequent mortgage cannot have priority.
(vi) The turstee is usually authorised to enter into possession of the property or appoint a receiver for carrying on the business of the company, if there is need.

Section 117A, 117B and 117C of the Act – Debenture Trust Deed, Appointment of Debenture Trustees and Liabilities of companies to create security and debenture redemption reserve,
- Three separate Section, viz., 117A, 117B, and 117C have been introduced in the Act dealing of debenture Trust and duties of Debenture Trustees and liabilities of company to create security and Debenture Redemption Reserve.
- This Section states that a trust deed for securing any issue of debenture shall be executed within such period as may be prescribed.
- This Section further states that no company shall issue a prospectus or a letter of offer for subscription of its debentures unless the company has, before such issue appointed one or more debenture trustees for such debenture and the company has, on the face of the prospectus or the letter of offer, stated that the debenture trustees have given that consent to the company to be so appointed
- The Section further states that if the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the liabilities due to the debenture holders, the debenture trustee may file a petition before Tribunal for passing necessary orders imposing such restrictions on the incurring of any further liabilities by the company in the interest of the debenture holders.
- The Section further states that where a company issue debentures it shall create a debenture redemption reserve for redemption of such debenture from out of the profit of the company.

Liability of Trustee to Debenture Holders
Section 119 of the Act provides that any provisions in the trust deed or any contract with the debentures holders securing the debentures which has the effect of exempting a trustee from liability for breach of trust or indemnifying him against liability for breach of trust is void except in the following cases:
(i) Where the trustee can show that he took such care and diligence as required of him as a trustee having regard to the powers, authorise and discretions conferred on him by the trust deed.
(ii) Where a majority of not less than **¾ in value** of debenture holders present and voting in person or by proxy (where proxies are permitted) agree, act a meeting summoned for the purpose, with respect to specific acts or omissions or on the trustee dying or ceasing to act.
(iii) Where any provision in the trust deed exempting the present or future trustee was in force at the commencement of the Companies Act, 1956.
(iv) Where such exemption may has already accrued to the turstee by the commencement of the Act.

Remedies of Debentures Holders
If debentures are unsecured and the principal or any interest due in respect of a debenture is in arrears, the debenture holder may;
1. Sue the company according up of the terms of issue as an unsecured creditor; and or

2. Present a petition for winding up of the company and prove his debt in the winding up as an unsecured creditor for the amount due.

If debentures are secured on the assets of the company, the debentures holder may;

(i) Sue on behalf of him and all other debenture holders to obtain payment or to enforce his security by sale. The court will appoint a receiver and order the sale of these property;
(ii) Present a petition for the winding up of company; this is so even if the debentures are bearer debentures;
(iii) Sell the assets charged as security, if an express power to do so is contained in the issue of debentures;
(iv) Appoint a receiver, if the conditions of the issue of debentures give him power to do so. The receiver will sell the property charged and the sale proceeds will be utilised for the payment of the debentures;
(v) Apply to the Tribunal for a fore closure order. The effect of the is to terminate the company's interest in the assets charged, the debenture holders becoming the owners of them. This may extend to the uncalled capital.
(vi) Have the property sold by the trustee if the debenture trust deed permits such sale;
(vii) If the company is insolvent and his security is insufficient, value his security and prove for the whole debt.

Chapter 11 *Registration of Charge*

Definition of a Charge

A charge is a security given for securing loans or debentures by a mortgage on the assets of the company. According to **Section 124** of the Act, 'charge' includes a mortgage. Charge also includes a lien and an equitable charge whether created by an instrument in writing or by the deposit of title deed.

Fixed or Specific Charges

A fixed or specific charge is one which attaches to a particular piece of property which is identified when the charge is created, and the identity of the property does not change during the subsistence of the charge.

Floating Charge

- A floating charge, as a security, is peculiar to companies as borrowers. A floating charge does not attach to any definite property but covers property of a fluctuating type.
- It is of the essence of such a charge that it remains dormant until the undertaking charged ceases to be a going concern until the person in whose favour the charge is created, intervenes.
- The governing idea of a floating security is to allow a going concern to carry on its business in the ordinary course, as if no charge has been created.

Crystallisation of Floating Charge

(i) When the company ceases to carry on business.
(ii) Upon the commencement of the winding up of the company; or
(iii) If the debenture holder, having become entitled to realise their intervene for that purpose. Mere right to intervene is not enough,

Charges requiring Registration

(i) A charge for the purpose of security any issue of debentures;
(ii) A floating charge;
(iii) A charge on uncalled share capital ;
(iv) A charge on calls made but not paid;
(v) A charge on any immovable property, wherever situated, or any interest therein;
(vi) A charge on ship or any share in a ship ;
(vii) A charge on any book debts of the company;
(viii) A charge on goodwill, on a patent or a Licence under a patent; on a trade mark or on a copyright or a Licence under a copyright ;
(ix) A charge, not being a pledge, on any movable property of the company.

Consequences of Non-registration

(i) The charge will be against the liquidator & creditor.
(ii) The charge is good as against the company
(iii) An unregistered charge is not void from its inception and would be binding on the company so long as it is a going concern.
(iv) The company may find a subsequent valid mortgage on same assets.
(v) During liquidation, a creditor with an unregistered charge assumes the status of an unsecured creditor, as the charge is void against the liquidator.
(vi) An equitable charge whose charge is void in the ground of non-registration has no lien on the title deeds, as the deposit is only ancillary to the void charge
(vii) where a charge becomes void by non-registration, the money becomes immediately payable;
(viii) Omission to register of charges is punishable with fine. The company and every officer of the company in default shall be liable to fine up to Rs. 5000 for everyday of default.

Procedures for Registration or Charges

(i) The prescribed particulars together with copy of the instrument creating the charge or modification thereof or satisfaction of charges shall be filed with the Registrar in **Form 8, or Form 10, or Form 17** as the case may be, in triplicate.
(ii) **Form 13** shall be filed in triplicate, along with the relevant form 8 or Form 10, or form 17, as the case may be, with a fee of rupees ten.
(iii) **Form 8, or Form 10, or Form 13, or form 17**, as the case may be, shall be signed on behalf of the company and the charge-holder.
(iv) For the purpose of Section 132, the Registrar shall affix stamp on the relative Forms and accompanying instrument with the word 'Registered' under his signature with date and a copy thereof be delivered to the company and the charge- holder.
(v) The register kept under Section 130(3) shall be open for inspection by any person on payment of a fee of rupees ten for each inspection.

Modification of charge (Section 135)

Whenever the terms or condition or extent and operation, of any charge registered are modified, it shall be duty of the company to send the registrar the particulars of such modification in form No.8 within 30 days of modification.

Satisfaction of charge (Section 138)

- The company is required to give intimation to the registrar of the payment or satisfaction, in full, of any charge relating to the company and requiring registration under the companies Act, within 30 days from the date of payment or satisfaction.
- On receipt of information regarding satisfaction of charge, the Registrar shall invite objection, if any, within specified time (not exceeding 14 days).
- If no objection is received, the Registrar shall order that a memorandum of satisfaction be entered in the resister of charges.
- Notwithstanding that no intimation has been received from the company the Registrar can, under Section 139 of the Act, register satisfaction with respect to any registered charge if he is satisfied on the evidence produced before him that (a) the debt for which the charge was given has been paid or satisfied in whole or in part; or (b) part of the property of undertaking charged has been realised from the charge or has been released from the charge of has ceased to form part of the company's property or undertaking.

Power of Central Govt. to **extend time for Registration**

Under Section 141 of the Act, the Central govt. has powers to grant extension of time for filing of particulars of any charges or any modification thereof or for giving of any intimation about the payment or satisfaction of change, if the board is satisfied that the omission to do so within the prescribed time.

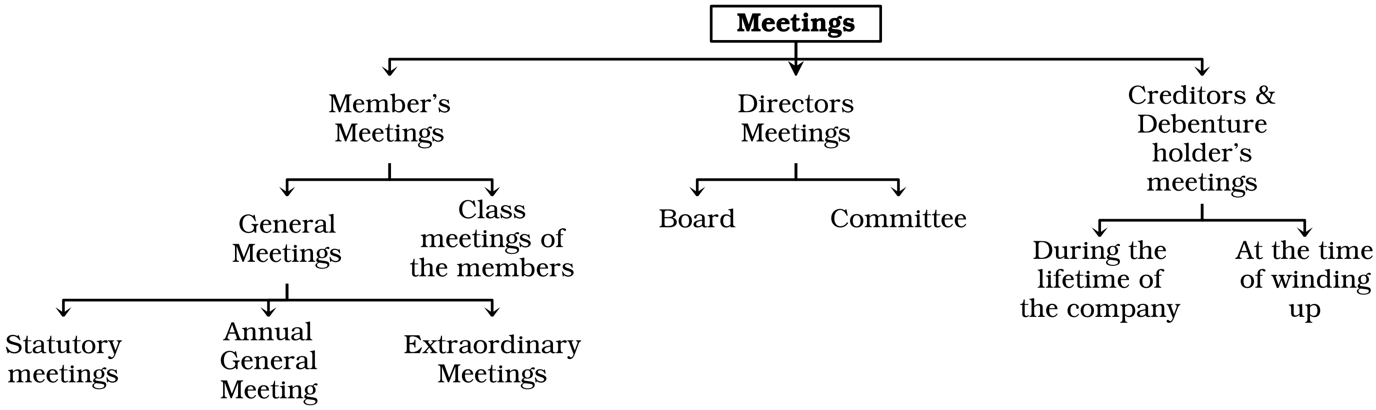
(i) is accident; or
(ii) is due to inadvertence; or
(iii) is not of a nature as to prejudice the position of creditors or shareholders of the company; or
(iv) it is just and equitable to grant relief on other grounds.

Procedure for making Application to the CG

The petition will be accompanied by the following documents:

1. Copy of the agreement creating, modifying the charge, as the case may be
2. Copy of the resolution envisaged by Section 292(1) (b) or (c) and Section 293(1) as the case may be.

Chapter 12 General Body Meeting



Requisites of a valid meeting
(a) It must be properly convened.
(b) It must be legally constituted.
(c) It must be properly conducted.

Properly convened
(a) Board of directors: The Articles of association of a company normally empower the board of directors to convene general meetings.
(b) By shareholders
- (i) By such number who at the date of deposit of requisition are the holders of 1/10th of the total voting power.
- (ii) The requisition must state the object of the meeting **[Section 169 (2)]**
- (iii) The requisition must have been deposited at the registered office of the company **[Section 169(3)]**
- (iv) Requisition be signed by the requisitionists **[Section 169 (2)]**
- * Board must within 21 day of the receipt of the requisition proceeds to call the meeting giving 21 days notice fixing the meeting within 45 days of the receipt of the requisition.
- * If the board fails to call the meeting, the meeting may be called by the requisitionists or the requisitionists as represent majority of paid up capital or 1/10th of paid up capital within 3 months from the date of the requisition.

(c) Tribunal (Section 186)
- * If it is impracticable to call a meeting of the company other then AGM or hold or conduct the meeting the Tribunal may either –
  - (i) Suo moto or
  - (ii) On the application of the director of the company or of any members of the company entitled to vote at the meeting.
- * Order a meeting to be called and conducted. The direction given under this Section may also include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.
- * It may be noted that the power of the Tribunal under Section 186 is exercisable only where the holding of a general body meeting has become impracticable. The word impracticable

should be interpreted in a reasonable manner and from the common sense point of view. Thus, where the directors failed or refused to call and hold an EGM against a valid requisition, the requisitionists could themselves call and hold the meeting. Instead- of exercising their rights under Section 169(7), as aforesaid. they cannot rush to Tribunal to secure an order for calling and holding EGM (B. *Mohandas v. A.KM.N Cylinders (P.) Ltd.* [1998].

* **Central Govt. Section 167**
  - If the default is made In holding AGM Central Govt. has overriding power on application of a member to call and direct holding of meeting
  - Direction may include one member present in person or proxy can hold valid meeting.

* Giving proper notice
  - 21 clear days' notice must be given. 'Clear days' means the days must be calculated excluding the day on which the notice is served, 48 hours (i.e. 2 days) for postal transit and the day on which the meeting is to be held. Thus, where notice is sent by post, 21 clear days will in effect, mean 25 days.
  - 21 clear days' notice has been made mandatory.
  - In case of newspaper notice, the same shall be deemed to be served on the day of its publication (Section 53). However, newspaper notice is not a substitute for individual notices to be served to every member.
  - In case of joint shareholdings the notice served on the joint holder named first in the register of member shall be sufficient. (Section 53)

Effect of Shorter Notice

The valid meeting may be held at a notice shorter than 21 clear days if the same is ratified:
(i) In the case of the annual general meeting by all the members entitled to vote there at and
(ii) In the case of any other meeting by members of the company
  (a) Holding if the company has a share capital, hold not less than 95 per cent of such part of the paid-up share capital, or
  (b) Having if the company has no share capital not less than 95 per cent of the total voting power.

Where any members of a company are entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the aforesaid purpose in respect of the former resolution or resolutions and not in purpose in respect of the latter.

Section 25 Companies may hold a valid meeting by giving 14 clear days' notice instead of 21 clear days' notice.

Notice to be given to whom: As per Section 172, notice of every General meeting must be sent to:

1. Every member at his registered address in India.
2. The legal representative (s) of a deceased member.
3. The official assignee or official of an insolvent member.
4. The auditor (s) of the company.

However, an accidental omission to give notice to or the non- receipt of notice by any member or any other person to whom it should be given shall not invalidate the proceedings of the meeting [Section 172(3)].

Contents of the notice: Notice must contain particulars regarding place, day and time of the meeting.
Agenda: The notice must be accompanied by a statement of business transacted at the meeting (called agenda).

1. **Meeting to be legally constituted and conducted, i.e.**
   (a) It must be chaired by a proper person.
   (b) Proper quorum must be present and
   (c) It should be conducted in accordance with the provisions of the companies act and Articles of association.

Chairman
Unless the articles otherwise provide, the members personally present at the meeting shall elect one amongst themselves to be chairman of the meeting on a show of hands **[Section 175 (1)]**

Regulation 50: The chairman if any of the Board shall preside as chairman at every general meeting of the company.
Regulation 51: If no chairman is designated beforehand or he is not present within 15 minutes of the appointed time of the meeting or is unwilling to act as chairman if the meeting the directors present shall elect one amongst themselves to the chairman of the meeting.
Regulation 52: If however no director is willing to act as chairman or if no director is present within 15 minutes after the appointed time the members present may elect one amongst themselves to be chairman of the meeting.

Powers of Chairman
- To maintain the order and decorum.
- To give ruling on points of order
- To decide priority of speakers
- To maintain relevancy and order in debate
- To adjourn a meeting

Where the majority of the members present at the meeting votes against adjournment the chairman shall not be empowered to adjourn the meeting except.
(i) Where so authorised under Articles.
(ii) On ground of absence of quorum.
In case of statutory meetings the adjournment shall be decided not by the chairman buy by the majority of the members present.
- To exercise a casting vote, if so authorised by the Articles [Reg. 54 of Table A contains such an authorisation]
- To ascertain the sense of a meeting and declare the results of voting.

Duties of Chairman
- To see that the meeting is properly convened and duly constituted.
- To see that the proceedings are properly conducted as per the order set out in the agenda.
- To maintain order and decorum in the meeting.
- To act judicially, i.e., giving equal opportunity to all the members to express their views.
- To see that the sense of the meeting is properly ascertained on each and every motion.
- If poll is demanded, to see that the same is taken as per the provision of the Act.
- To exercise his casting vote bone fide in the interest of the company.
- To exercise judicially his power of adjournment.

Quorum
Quorum means the minimum number of members required to constitute a valid meeting. Section 174 provides that unless Articles provides for a larger the quorum shall be
- 5 members personally present in case of a public company
- 2 members personally present in case of a private company
- In case the quorum is not present within 30 minutes the meeting was scheduled:
  (a) The meeting, if called upon the requisition of the members shall be dissolved.
  (b) In any other case the meeting shall be adjourned to the same day in the next week at the same time and place or at such time and places as the Board of Directors may determine and notify accordingly. [However, Reg.53(3) of Table 'A' provides that notice shall be necessary only where meeting is adjourned beyond 30 days].
- In case the quorum is not present at the adjourned meeting also within half an hour of the appointed time, the members present (at least 2) shall be the quorum.

Rules Regarding Quorum
1. Only members personally present are to be counted. Even Articles cannot provide otherwise.
2. The joint holders are to be treated as a single member.

3. If a body corporate is a member of a company, it may authorise a person by a resolution of its Board of Directors to act its representative. A person so authorised shall be deemed to be a member personally present **[Section 187].**
4. Where the President of India or the Govt. of a State holds shares of a company, the representative appointed by him shall be deemed as a member present in person **[Section 187 A].**
5. A member present in 2 or more capacities shall be considered as that many members personally present.

Where the total number of members of a company is reduced below the quorum fixed by the Articles the rule as to quorum will be deemed to be satisfied if all the members of the company attend the meeting in person

QUORUM WHEN TO BE PRESENT

As per Regulation 49 of Table A, quorum is required at the time when the meeting proceeds to business. Articles may, however, provide that quorum must be present throughout the meeting or it must be present at the time of passing of a resolution.

Rules in respect of voting

1. **Voting rights of equity shareholders**
   (a) Every holder of equity shares carrying voting rights shall have a right to vote on any matter G.M. (Section 87).
   (b) The right of such equity shareholder to vote cannot made conditional to the effect that he must have held his shares for certain period before the meeting or on any other ground (Section - 182) except
      (i) On non-payment of-calls by a member, or
      (ii) On non-payment of other sums due against a member in the capacity of a member, or
      (iii) Where the company has exercised the right of lien on his shares.

2. **Voting Rights of Preference Shareholders**

Preference shareholders-shall have the right to vote only on resolutions which directly affect the rights attached to the preference shares held by them.

Again, preference shareholders will have a right vote where their dividends are in arrears:

(a) In case of cumulative preference shares for an aggregate period of at least 2 years;

(b) In case of non-cumulative shares, if dividends are in arrears for the 2 financial years immediately proceeding the meeting or for any 3 years during a period of preceding 6 years.

The voting rights of preference shareholders shall be in the proportion which the capital paid up on his shares bears to the total equity share capital of the company.

3. **Effect of pledge or attachment**

Voting rights of a member are not affected by the fact that his shares have been attached or pledged *[Bal Krishan Gupta vs. Swadeshi Polylex Ltd.(1985)].*

Poll Voting

Voting in the first instance shall be by show of hands (Section 177).

Demand for Poll - Section 179 provides that the poll may be ordered by the chairman:

i) Of his own motion;
ii) On a valid demand by a person or persons specified.

The valid demand for poll can be made:

(a) In the case of a public company having-a share capital, by any member or members present in person or by proxy and holding shares in the company:
   (i) Which confer a power to vote on the resolution not being less, than 1/10th of the total voting were in respect of the resolution or
   (ii) On which an aggregate sum of not less than fifty thousand rupees has been paid up;

(b) In the case of private company having a Share capital; By one member present in person or by proxy, if up to seven members are personally present, and by *two members* present in person or by proxy, *if more than* seven members are personal y present;

(c) *In the case of* any *other company,* by any member or members present in person or by proxy and having not less than 1/10th of the total voting power in respect of resolution.

Time of taking poll - On a valid demand for poll having being made, the chairman must order the poll to be taken forthwith where demand for poll relates to: (i) Adjournment (Section 180); (ii) Erection of Chairman of meeting [Section 175].
Where demand for poll relates to any other question, a poll must be taken at such time not being later than forty-eight hours- from the time when the demand was made.

Proxy (Section 176)
A proxy is a person, being a representative of a shareholder at a meeting of the company, who may be described as his agent to carry out what the shareholder has himself decided upon.

1. Appointment of proxy must be made by a written instrument signed by the member or his duly authorised attorney.
   A member of unsound mind or in respect of whom an order has been made by any Court having jurisdiction in lunacy may vote, whether on a show of hands or a on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll *vote by proxy* [Regulation 58 of Table A].
2. The Instrument appointing a proxy should be in the form prescribed under Schedule IX. Even if Articles provide for a more elaborate proxy form proxy submitted in the form prescribed under Schedule IX shall be valid.
3. Proxy must be deposited with the company 48 hours before the meeting. Any provision in the Articles seeking deposit of proxy more than 48 hours before the meeting should be read as 48 hours. However as per Reg. 61 of Table 'A', in case of poll, the proxy form may be deposited not less than 24 hours before the time appointed for taking of the poll.
4. Unless Articles otherwise provide:
   - A member of a company having no share capital cannot appoint a proxy;
   - A member of a private company cannot appoint more than one proxy to attend on the same occasion;
   - A proxy shall not be entitled to vote except on a poll.
5. For each meeting separate proxy shall be required.
6. Notice of the meeting must mention with reasonable prominence:
   (i) That a member entitled to attend and vote is entitled to appoint a proxy or proxies;
   (ii) That a proxy needs not be a member.
7. A proxy cannot vote except on a poll. However, Articles may permit a proxy to vote on a show of hands also. But Articles cannot provide that a proxy shall be allowed to speak at the meeting.
8. Proxy by joint holders – As per Regulation 57 of Table A, in the case of joint holders, the vote of the senior who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the order joint holders.
9. A member entitled to vote can inspect the proxies, if notice of at least 3 days is given to the company. Inspection can, however, be done during the period beginning 24 hours before the commencement of the meeting and may continue till the conclusion of the meeting.
10. Proxy appointed later will have precedence over former provided the same is deposited before 48 hours of the meeting.

Subject to Articles, proxy may be revoked unless made irrevocable for valuable consideration (say, sale of shares).

Proxies at Adjourned Meeting
- Proxy deposited in time before the original meeting also valid for the adjourned meeting.
- Subject to Articles, proxy may be appointed for the adjourned meeting though the member himself attended the original meeting.

Effect of Death/ insanity of the Member
- A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or insanity or the revocation of the proxy or of the authority under which the proxy was executed or the transfer of the shares in respect of which the proxy is given.

- Provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the company at its office-before-the- commencement: of the meeting or adjourned meeting at which the proxy is used [Regulation 63 of Table *A*].

Invitation to members prohibited

Any invitation to any member to appoint a proxy out of a list supplied to him, shall punishable with fine Rs.10,000/-. However supply of a list of persons ready to act as proxies shall not entail any punishment provided a request in writing was made by the member and provided that the list is supplied to every member who asks for it.

Resolutions

General Body Resolutions are of three kinds; namely,
1. Ordinary Resolution
2. Special Resolution and
3. Resolution requiring Special Notice

Ordinary Resolution [Section l89 (1)]

An ordinary resolution means which satisfies the following criteria:
a) It is a resolution passed at a general meeting of members;
b) Notice of the meeting as per the Act must have been duly given;
c) The votes cast (whether on show of hands or on poll) in favour of the (resolution (including the casting Chairman) exceed the votes, if any, cast against the resolution;
d) The votes may be cast in person or by proxy.

All matters which are not required by the Companies Act or the company's articles to be done by a special resolution can done by means of an ordinary resolution. Some of the cases in which only ordinary resolution is required are: alteration of authorised cap declaration of dividend, appointment of auditors (other than the appointment covered by Section 224A) and fixation of their remuneration, election of directors.

Special Resolution [Section 189(2))

A resolution is a special resolution where it satisfies the follows criteria:
(a) The intention to propose the resolution as a special resolution has been duly specified in the notice calling general meeting or other intimation given to members;
(b) The notice required under the Companies Act (i.e., at least 21 clear-days' notice) has been duly given of the general meeting;
(c) The votes cast in favour of the resolution (whether by show of hands or on poll), by members present in person or by proxy are not less than 3 times the number of votes, if any, cast against the resolution. Abstentions, if any, are not to be taken into account.

Some of the matters for which special resolution is required to be passed are:
(1) To alter objects clause of memorandum:
(2) To change the registered office of the company from one State to another:
(3) To reduce share capital of the company; and
(4) To alter Articles of Association.

Resolution Requiring Special Notice (Section 190)

The expression means a resolution of which special notice is required to be given. 'Special Notice' mean that notice of the intention to move the resolution should be given to the company at least 14 days before the meeting and the company in turn must inform all the members at least seven days before the meeting either through individual notices of, it that is not practicable, *through advertisement* in a newspaper having an v. appropriate circulation *or in any other manner permitted by the Articles.*
Special notice is required to move, besides the resolutions mentioned in the Articles, the following resolutions:
(1) A resolution appointing an auditor other than the retiring [Section 225].
(2) A resolution providing expressly that the retiring auditor shall not be reappointed [Section 225].

(3) A resolution purporting to remove a director before the expiry of his period of office [Section 284]; and
(4) A resolution to appoint another director in place of the removed director [Section 284].

ORDINARY BUSINESS AND SPECIAL BUSINESS (Section 173)

(a) In the case of an annual general meeting, all business to be transacted at the meeting shall be deemed special, with the exception of business relating to
   (i) The consideration of the accounts, balance sheet and the reports of the Board of directors and auditors,
   (ii) The declaration of a dividend,
   (iii) The appointment of directors in the place of those retiring, and
   (iv) The appointment of and the fixing of the remuneration-of, the auditors; and.

(b) In the case of any other meeting, all business shall be deemed special.

Explanatory Statement

- Where any items of business to be transacted at the meeting are deemed to be special as aforesaid, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning each such :tem of business, including in particular the nature of the concern or interest, if any, therein, of every director, and the manager, if any:
- ***Provided*** that where any item of special business as aforesaid to be transacted at a meeting of the company relates to, or affects, any other company, the extent of shareholding interest in that other company of every director, and the manager, if any, of the first-mentioned company shall also be set out in the statement if the extent of such shareholding interest is not less than 20% of the paid-up share capital of the company.

Passing of Resolution by Postal Ballot (Section 192A) *(including voting by electronic mode)*

The Section allows casting of votes by a member through postal ballot in certain cases and subject to certain conditions. The provisions of the Section are as fellow:

(1) Notwithstanding anything contained in the foregoing provisions of this Act., a listed public company may, and in ease of resolutions relating to business as the Central Government may by notification declare to be conducted only by postal ballot, shall, get any resolution passed by means of a postal ballot, instead of transacting the business in general meeting of the company.
(2) Where a company decides to pass any resolution by resorting to postal it shall send a notice to all the shareholders, with a draft resolution explaining the reasons there for and requesting them to send their assent or dissent in writing on a postal ballot within a period of thirty days from the date of posting of the letter.
(3) The notice shall be sent by registered post acknowledgement due, or by any other method as may be prescribed by the Central in this behalf, and shall include with the notice a postage pre-paid envelope for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period.
(4) 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.
(5) If a shareholder sends under sub Section (2) his assent or dissent in writing on a postal ballot and there after any person fraudulently defaces or destroys ballot paper or declaration of identify of the shareholder such person shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.
(6) If a default is made in complying with sub-Sections (1) to (4), the company and every officer of the company, who is in default shall be punishable with fine which may extend to fifty thousand rupees in respect of each such default.

Explanation –
For the purposes: of this Section, "postal ballot" includes voting by electronic mode.
Central govt. has notified following resolution:
(1) Alteration of object clause of MOA
(2) Alteration of articles
(3) Buy-Back up shares
(4) Issue of differential rights share
(5) Change of registered office outside the local limit of city, town, village.
(6) Giving loan or guarantee or security in access of limit prescribed u/s 372 A
(7) Appointment of director by small shareholders.

CIRCULATION OF MEMBERS' RESOLUTION / STATEMENT (SECTION 188)

Circulation of Resolution *(Relevant on/y in respect of AGM)*

When certain members propose to circulate are solution intended to be moved at the next AGM, the company must give-the members a notice of such resolution provided the following conditions are satisfied:

1. *Minimum number of members* who must sign the-requisition are:
   (a) Members having 1/20, i.e., 5% of the total voting rights; or
   (b) Members numbering 100 (having right to vote on the resolution) and holding shares on which not less than Rs. lakh has been paid.
2. *A copy* of the resolution is deposited at the registered office of the company at least 6 weeks before the meeting.
3. *A sum* reasonably sufficient to meet the expenses of the requisition is deposited with the company (unless the company resolves otherwise).

Circulation of Statements (Relevant in respect of any meeting)

- The company must do so provided the aforesaid conditions (as noted in respect of resolution) are satisfied in so far as they relate to minimum number of members and depositing of expenses in respect thereof with the company is concerned.
- A copy of the requisition (statement) should, however, be deposited at least 2 weeks before the meeting (as against 6 weeks in case of resolution)
- The statement should not comprise more than 1000 words.
- In Ernakulam Financiers & Kuries (P) Ltd. v. Joseph Chandy [1998] responders holding not less than 1/10th of the company's paid – up capital requisitioned the company to convene EGM for removal of the existing directors and wanted the company to circulate requisition among all the members. The company did not convene extraordinary meeting and got interim order for not circulating requisition. The requisitionists by issuing notice to all members. The company filed application seeking relief under Section 188 for not circulating the requisition.
- Held that from the spirit of requisition, it was evident that the said requisition was neither a resolution introduced by members at the AGM nor a statement at any general meeting in respect of any resolution or business proposed at that meeting and, consequently, did not fall either under clause (a) or (b) of sub-Section (1) of Section 188. On the other hand, requisition was a requisition under Section 169 (1) to call an EGM of the company. By virtue of requisition and explanatory statement the respondents invoked the provisions of Section 169, and acted accordingly by means of requisition, as admitted by the company. The applicant could not, therefore, seek any relief under Section 188.
- The provision of Section 188 with respect to circulation of members' resolution are applicable only in connection with an AGM and not in respect of a requisitioned Extraordinary General Meeting – Karedla Suryanarayana v. Ramadas Motor Transport Ltd. [1999].

Execeptions: Section 188 authorises a company not to circulate a resolution or statement of the requisition in the following cases:

(a) The Tribunal, on the application of the company or any other aggrieved party, if satisfied that the right so conferred so being abused to secure needless publicity for defamatory matters.
(b) The board of Directors of a banking company considers that the circulation of the statement would injure the interests of the company.

Registration of Certain Resolution and Agreements [Section 192]

A Copy of the following resolutions or agreements must within thirty days after their passing to the Registrar of Companies who shall record the same:

(a) Special resolution ;
(b) Resolution which have been agreed to by all the members of a company, but which if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;
(c) Any resolution of the board of directors or agreement executed by a company, relating to the appointment, reappointment, or renewal of the appointment, or variation of the terms of appointment of a managing director;
(d) Resolutions or agreements which have been agreed to by all the members of any class of shareholders but which, if not so agreed to would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner;
(e) All resolution or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members;
(f) Resolutions passed by a company conferring power under section 293 (1)(a), (d) and (e) upon its director, namely:
  (i) To sell or lease the whole or substantially the whole of the company's undertaking, or
  (ii) To borrow money beyond the sum total of paid –up capital and reserves of the company, or
  (iii) To contribute to charities beyond Rs. 50,000 or 5% of the average net profits of last three financial years, whichever is greater
(g) Resolutions approving the appointment of sole selling agents under Section 294 or 294 AA;
(h) Resolutions requiring a company to wound up voluntarily in pursuance of Section 484 (1);
(i) Copies of the terms and conditions of appointment of a sole selling agent appointment under Section 294 or of a sole selling agent under Section 294AA.

- The resolution should be accompanied by an explanatory statement of material facts.
- If default is made in complying with the above requirements the company and every officer of the company who is to default shall be punishable with fine which may extend to Rs. 200 for every day during which the default continues.

KINDS OF GENERAL BODY MEETINGS

General meetings may be classified into
1. Statutory Meeting
2. Annual General Meeting (AGM)
3. Extraordinary General Meeting (EOM), and
4. Class Meetings

Section 165: Statutory meeting and statutory report of company

(1) Every company limited by shares and every company limited by guarantee and having a share capital, shall,
  - Within a period of not less than month nor more than six months from the date which is the company is entitled to commence business,
  - Hold a general meeting of the members of the company, which shall be called "the statutory meeting".

(2) The Board of directors shall at least twenty-one days before the day on which the meeting is held forward "the statutory report" to every member of the company.
Provided that if the statutory report is forwarded later if it is so agreed to by all the members entitled to attend and vote at the meeting.

(3) The statutory report shall set out-
  - The total number of shares allotted, and the consideration for which they have been allotted;
  - The total amount of cash received by the company in respect of all the shares allotted, an abstract of the receipts of the company and of the payments made there out upto a date within seven days of the date of the report,
  - The names, address and occupations of the directors of the company and of its auditors; and also, manager, and secretary; and the changes if any, which have occurred in such names, addresses and occupations since the date of the incorporation of the company;

- The particulars of the any contract which or the modification or the proposed modification of which, is to be submitted to the meeting for its approval,
- The extent, if any, to which each underwriting contract, if any has not been carried out, and the reasons therefor;
- The arrears, if any, due on calls from every director; and from the manager; and
- The particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares or debentures to any director or to the manager.

(4) The statutory report shall be certified by not less than two directors of the company one of whom shall be a managing director, where there is one.
The auditors shall, certify so far as the report relates to the shares allotted by the company, the cash received and payment.
(5) A copy of the statutory report to be delivered to the Registrar.
(6) The board shall cause a list showing the names, addresses and occupations of the members of the company, and the number of share held by them respectively, to be produced at the commencement of the statutory meeting and to remain open and accessible to any member of the company during the continuance of the meeting.
(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not;
But no resolution may be passed of which notice has not been given in accordance with the provisions of this Act.
(8) The meeting may adjourn from time to time, and at any adjourned meeting, any resolution of which notice has been given whether before or after the former meeting, may be passed; **and the adjourned meeting shall have the same powers as an original meeting.**
(9) If default is made in complying with the provisions of this Section, every director or other officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees.
(10) This Section shall not apply to a private company.

- The following companies are not required to hold a statutory meeting:
  (a) Private companies
  (b) Public companies not having share capital (i.e., pure guarantee companies)
  (c) Unlimited liability public companies, and
  (d) Government companies.

ANNUAL GENERAL MEETING (AGM)
Section 166

(1) Every company shall in each year general meeting as its manual general meeting
Provided that a company may hold its first annual general meeting within a period of not more than eighteen months from the date of its incorporation; and if such general meeting is held within that period, it shall not be necessary for company to hold any annual general meeting in the year if its incorporation and in the following year;
Provided further that the Registrar may, extend the time within which any annual general meeting (not being the first annual general meeting) shall be held, by a period not exceeding three months.]
(2) Every annual general meeting shall be called for a time during business hours, on a day that is **not a public holiday,** and shall be held either at the registered office of the company or at some other place **within the city, town or village** in which the registered office of the company is situate.
Provided *that the Central Government may exempt a class of companies.*

Section 210: Annual accounts and balance sheet

(1) At every annual general meeting of a company held in pursuance of Section 166. the Board of directors of the company shall lay before the company-
  (a) A balance sheet as at the end of the period specified in sub-Section (3); and
  (b) A profit and loss account for that period.
(2) In the case of a company not carrying on business for profit, an income and expenditure account shall be laid before the company at its annual general meeting instead of a profit and loss account,
(3) The profit and loss account shall relate-

(a) In the case of the first annual general meeting of the company, to the period beginning with the incorporation of the company and ending with a day which shall not precede the day of the meeting by more than nine months; and
(b) In the case of any subsequent annual general meeting of the company, to the period beginning with the day immediately after the period for which the account was last submitted and ending with a day which shall not precede the day of the meeting by more than six months, or in cases where an extension of time has been granted by more than six months and the extension so granted.]

(4) The period to which the account aforesaid relates is referred to in this Act as a "financial year" and it may be less or more than a calendar year, but it shall not exceed fifteen months :
Provided that it may extend to eighteen months where special permission has been granted in that behalf by the Registrar.

(5) If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of this Section, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

Every company public or private is required to hold such meetings

- The first AGM must be held:
  1. Within 18 months of incorporation (Section166) &
  2. Within 9 months of closing of the financial year (Section 210)

Whichever is earlier?

- With respect to subsequent AGMs, the following provision may be noted:
  (a) There must be held an AGM every calendar year. However, where the first AGM was held within 18 months of incorporation, there need not be held another AGM in the year of incorporation or in the year immediately following.
  (b) Gap between two AGMs must not exceed 15 months.
  (c) AGM must be held within 6 months of the close of the financial year.
- ROC may extend the time of holding an AGM (other than first AGM) upto 3 months provided the extension is applied for before the expiry of the statutory period.
- In case annual accounts are not ready, the Department of Company Affairs has advised that the proper course shall be to hold the meeting and then adjourn the same to a suitable date for considering the account and the related matters.
- The adjourned meeting must be held within the maximum time limit as aforesaid.
- A meeting beyond the statutory period shall, however be not void or illegal, the only effect shall be that the directors shall be subjected to increasing penalty @ Rs. Rs. 2500 per day. The fine shall be levied upon the company and every officer of the company in default [Section 168].
- The Board of directors may postpone or cancel a convened AGM for bona fide and proper reasons. The Board of Directors of **Premier Automobiles Ltd.,** for example, called of its AGM without transacting any business since the Board sought time for addressing various queries raised by shareholders [Times of India May 2001]

Minutes of proceedings of general meetings and of Board and other meetings:

- Section 193: Every company shall cause minutes of all proceedings of every general meetings, Board meeting, Committee meetings, to be kept by making within 30 days of the conclusion in the meeting.
- Each page of every such book shall be initialed or signed and the last page of the record of proceeding of each meeting in such books shall be dated and signed-
  (a) In the case of minutes of Board or committee meeting by chairman of said meeting or the next succeeding meeting.
  (b) In case of general meeting by the chairman of the same meeting or in the event of death inability of the chairmen by the director dully authoirsed by the board. It must be signed within 30 days.
- No pasting or attaching to any such book as allowed.
- All the appointment of officer made at any of the meeting aforesaid shall be included in the minutes of the meeting.
- Minutes contain names of directors present for board meeting.

- In the case of Board or Committee meeting the minutes shall contain-
  (a) The names of the directors present at the meeting and
  (b) In the case of each resolution passed at the meeting name of the directors not concurring in the resolution.
- Nothing containing shall be included which in the opinion of the Chairman
  (a) Is or could reasonably be regarded as defamatory of any person;
  (b) Is irrelevant or immaterial to the proceedings; or
  (c) Is detrimental to the interests of company.
- Section 194. Minutes of meetings kept in accordance with the provisions of Section 193 shall be evidence of the proceedings recorded therein.
- Proceeding at a meeting are entered in the minutes book is not conclusive that the proceeding were regular & does not preclude the court from inquiring into validity of meeting (or notice). *Betts and Company v. Machaghten*
- Section 195 provided to the same effect and states that where minutes of the proceedings of any meeting have been kept in accordance with the provision of Section 193, they are unless the contrary is proved, presumed to be correct, and show presumptive evidence that the meeting was duly called and held, and all proceedings thereat to have duly taken place, and on particular all appointments of directors or liquidations made at he meeting shall be seemed to be valid.
- Section 196 provides that the minute books of the proceedings of general meetings must be kept at the registered office of the company. Any member has a right to inspect, free of cost during business hours at the registered office of the company, the minutes books containing the proceedings of the general meeting of the company. Further any member shall be entitled to be furnished, within 7 days after he has made a request to the company, with a copy of any minutes on payment of Rupee One for very hundred words or fraction thereof. If any inspection is refused or copy not furnished within the time specified every officer in default shall be punishable with fine up to Rs. 5000 for each offence. The National Company Law Tribunal can also by order compel an immediate inspection or furnishing of a copy forthwith.
- D.C.A. unless articles otherwise provide, A shareholders no right of inspection or of obtaining copy of the minutes of its Board meeting.
- Minute book must be bound book & must be hand written.

  Amal Kuamr Mukherjee v. clarian Advertising serves Ltd. (Cal H.C.)

  D.C.A.
  1. Permitted loose-leaf minute books provided companies takes appropriate safeguard against interpolation or manipulation & bounded at regular internal say **six months.**
  2. It con not be type written & pasted in bound book.
  3. Entering minute in bound book by chemical process is permissible provided the original signature of chairman is given on each page.

  D.C.A.

  Minutes of Board meeting. It cannot be insisted up on that the minute of Board meeting have to be signed within 30days, Instance can be made only as to writing within 30 days.

  Confirm

  Decision one arrived at do not need confirmation and practice confirming minutes has no legal significance – D.C.A.

  Karnataka Bank Ltd. v. A.B. Dolar

If there be something recorded in earlier meeting which is not acceptable at letter meeting the proper procedure is to pass a subsequent- Minute rescind the terms old meeting. The old minute should not be deleted or crossed out at the confirming meeting.

MOTION

Motion is a proposal submitted for a discussion and a decision by means of a resolution. A motion because a resolution only after the requisite majority of the members has adopted it. A motion should be in writing and signed by the mover and put to the vote of the meeting by the chairman. In case of company meetings, only such motions are proposed as are covered by the agenda. However, certain motions may arise out of the discussion at the meeting without proper notice in writing. There is no provision a either in common law or under the Companies Act, which provides that a motion should be proposed and seconded though this is the commonly accepted practice.

Amendments
- The amendment should always be worded in the affirmative and should be in writing.
- It should be seconded.
- It should never be a counter proposal and therefore the person moving an amendment should ensure that it is relevant to the main motion.
- Amendments are incorporated in the main motion by chairmab of the meeting only after the amendments have been carried.
- When the amended motion is put to the meeting, it becomes a substantive motion, and after a sufficient discussion if passed it becomes a resolution.
- If the substantive motion is lost, the original motion to which an amendment was moved cannot be revived.
- All the amendments are placed before the meeting by the chairman in such order as would affect the main motion.
- All amendments pertaining to the same motion are put to the meeting by the chairman for discussion in the order in which they have been moved.
- When discussion on one amendment is going on and the decision to the effect is not yet taken on member is either amendment may be allowed to be moved.
- The mover of a motion with due consent of the meeting can withdraw it before it is put to vote and have a right to reply to the raised during the discussion on the motion moved by him.

A point of order: Is a question regarding the procedure of a meeting.
Formal motion : Is a motion relating to the procedure at a meeting and it moved for the purpose of interrupting or delaying or speeding up the discussion on a motion.

Formal Motion: A formal motion is a relating to the procedure at a meeting and is moved for the purpose of interpreting or delaying or speeding up the discussion on a motion. It is also known as procedural or dilatory motions. Types of formal motions are:
(j) The closure
(k) Previous question
(l) Next Business
(m) Adjournment

Closure: This motion is moved in order to close a prolonged and useless discussion on a motion.
Any member may move closure motion. After it is seconded if the motion is carried discussion on the main motion immediately stops. If the closure motion is lost, discussion on the main motion is resumed.
Previous question: The object of moving this motion is to prevent a vote benign taken on the main motion under discussion. This motion can be moved regard to a main motion only.

Next Business: This motion is moved in order to shelve discussion on the main motion before the meeting. Any member may move that the meeting to proceed to the next business.

Adjournment: The object of moving this motion is to suspend either en tiredly or partially the proceeding of the meeting either for a particular period or indefinitely (i.e., sine die). This motion may be also used to postpone discussion on a motion. Any member may move that the meeting be now and hourned. After seconding the motion is pout to vote. If the motion is carried the proceedings of the meeting cases forthwith. The date time and place at which adjourned meeting will be resumed are generally fixed at the same meeting unless it is adjourned sine die.

Postponement of meeting is to put off or defer the holding of a meeting before the date originally fixed for the merely suspended but exhausted.

Chapter 13 **Register & Return**

Some of the important statutory books are:
(i) Register of Investments not held in Company's name (Section 49).
(ii) Register. of Fixed Deposits (Section 58-A).
(iii) Register of Mortgages and Charges (Section 1.43).
(iv) Register and Index of Members (Secs. 150 & 151).
(v) Register and Index of Debenture holders (Secs. 152 & 154).
(vi) Foreign Register of Members & Debenture holders (Section 158).
(vii) The Annual Return (Secs. 159 & 161).
(viii) Minute Books (Secs. 193 & 194).
(ix) Books of Accounts (Secs. 209 & 210).
(x) Register of Contracts in which Directors are Interested (Section 301).
(xi) Register of Directors, Manager, etc. (Section 303).
(xii) Register of Directors' Holdings in Shares and Debentures (Section 307).
(xiii) Register of Loans (Section 370).
(xiv) Register of Investments in shares of other Companies (Section 372).

Register of Members

1. ***Particulars to be recorded:*** Section 150 of the Companies Act requires *every company maintain a Register of Members* in one or more books. The Register must contain the prescribed particulars, *viz.*, name, address occupation, shares or stock held, date of becoming member, date of ceasing to be a member.
2. ***Closing of Register :*** The Register may be closed by giving 7 days' notice. But in no case shall it be closed for more than 45 days aggregate period in a year. Non-compliance of these provisions entails fine against the company as well as every officer in default. The fine may extend to **Rs. 5000** for every day during which the register is so closed.
3. ***Place of keeping the Register :*** The Register shall be kept at the registered office of the company or any other place in the same city, provided such other place has been approved by a special resolution in general meeting and the Registrar has been given an advance copy of the proposed resolution **(Section 163).**
4. ***No notice of trust to be recorded :*** No notice of trust, express or implied or constructive, shall be entered on the Register of members.
   However, Section 187C requires that if a shareholder has no interest in the shares held by him, he should declare to the company the name of the beneficial holder and the extent of his interest in such shareholding. Even a duty is cast upon the beneficial holder to make a declaration to the company.
5. ***Insepection:*** The Register must be kept open for inspection of .any member or debenture holder free of charge and of any other person on payment of the prescribed fee for at least 2 hours on every working day during business hours (Section 163).
6. ***Copies:*** A certified copy of any Portion of the Register must be supplied on payments requisite fee to any person applying for it within 10 days of the application (Section 163).

Foreign Register:

1. ***Meaning:*** Under Section 157, a company which has a share capital or which has issued debentures may, if so authorised by its Articles, keep in any State or country outside India a branch register of members or debenture holders resident in that State or country. Such a register, if kept, is called the 'Foreign Register [Section 157 (1)].
2. ***Notice of Place of the Register:*** The Company must within 30 days from the date of the opening of any foreign register, file with the Registrar notice of the situation of the office where such register is kept. In the event of any change in the situation of the office or of its discontinuance, it must within 30 days file notice of change or discontinuance, as the case may be, with the Registrar [Section 157 (2)].

3. ***Penalty:*** In case default is made in complying with the requirements of sub-Sections (2), the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs. 500 for every day during which the default continues [Section 157 (3)].
4. ***Foreign Register to be part of the Principal Register :*** According to Section 158, a foreign register shall be deemed to be part other company's register (called 'principal register') of members or of debenture holders, as the case may be.
5. ***Inspection:*** A 'foreign register' shall be kept, open to inspection and may be closed, and extracts may be taken therefrom and copies thereof may be required, in the same manner as is applicable to the principal register (as noted in the aforesaid paragraphs).
6. ***Transmission of entries to Principal Register :*** The company must :
   (a) Transmit to its registered office in India a copy of every entry in any foreign register as soon as may be after the entry is made; and
   (b) Keep at such office a duplicate of every foreign register duly entered up from time to time.
7. ***Discontinuance of Foreign Register:*** *The* company may discontinue the keeping of any foreign register, and thereupon all entries in that register shall be transferred to some other foreign register kept by the company in the same part of the world or to the principal register.

Register of Debenture holders

- Every company is required to maintain in one or more books a register of debenture holders. The register is required to be kept only in respect of registered debentures and not with regard to bearer debentures. The register shall contain the following particulars: *(a)* name, address and occupation, *(b)* the debentures held by each holder, *(c)* the date on which the name of each holder was entered in the register, and *(d)* the date when he ceased to be a debenture holder.
- Every company having more than 50 debenture holders must also maintain an index of debenture holders, unless the register is in itself an index.
- Regarding closing of the register of debenture holders, the same provisions as are applicable in case of register of members apply to it.

Register of charges

1. ***Place where to be kept:*** Every company must keep a register of charges at its registered office.
2. ***Entries in the register:*** In the register of charges are to be entered all, charges specifically affecting property of the company and all floating charges on the undertaking or on any property of the company, giving in each case-
   (i) A short description of the property charged;
   (ii) The amount of the charge; and
   (iii) Except in the case of securities of bearer, the names of the persons entitled to charge.
3. ***Penalty:*** If any officer of the company knowingly omits or willfully authorised or permits the omission of any entry required to be made he shall be punishable with fine up to Rs. 5000.
4. ***Inspection:*** The register of charges must be kept open for inspection at the registered office for at least 2 hours every working day, by creditors and members free of charge and by any other person on payment of such sum as may be prescribed.
5. The National Company Law Tribunal may also, by order, compel an immediate inspection of register of charges.
6. If Inspection of the register is refused, the company and every officer the company who is in default shall be punishable with fine which may extend to Rs. 50 and with a further fine which may extend to Rs. 200 for every day during which the refusal continues.

Register of Fixed Deposits:

Under Section 58-A, non-banking and non-financial companies are allowed to accept deposits from the public or/and its members, subject to the limits, manner and conditions prescribed by the Central Government in this behalf.

The register of deposits must be kept at the registered office of the company.

The particulars required to be stated are:

(i) Name and address of the depositor;
(ii) Date and amount of each deposit;
(iii) Duration of the deposit and the date on which each deposit is repayable;
(iv) Rate of interest;
(v) Date or dates on which payment of interest will be made; and

(vi) Any other particulars relating to the deposit

The aforesaid register or registers of deposits shall be preserved in good order for a period of not less than eight calendar years from the financial year in which the latest entry is made in the register.

Register of Renewed and Duplicate Certificates

- Sub-rule (2) of Rule 4 of the Companies (Issue of Certificates) Rules, 1960 requires that no certificate of any share or shares shall be issued either in exchange for those which are sub-divided or consolidated or in replacement of those which are defaced, torn, or old, decrepit, worn out or where the cages in the reverse for recording transfers have been duly utilised, unless the certificate in lieu of which it is issued is surrendered to the company.
- Sub-rule (3) of Rule 4 of the Companies (Issue of Share Certificates) Rules, 1960 provides that no duplicate share certificate shall be issued in lieu of those that are lost or destroyed without the prior consent of the Board or without payment of such fees, if any, not exceeding Rs. 2, and on such reasonable terms, if any, as to evidence and indemnity and the payment of out-of-pocket experises incurred by the company in investigating evidence as the Board thinks fit.
- Sub-rule (2) of Rule 7 provides that particulars of every share certificate issued in accordance with Rule 4, sub-rules (2) and (3) shall be entered in a Register of Renewed and Duplicate Share Certificates indicating against the name(s) of the person(s) to whom the certificate is issued, the number and date of issue of the share certificate in lieu of which the new certificate is issued and the necessary changes indicated in the Register of Members by suitable cross references in the 'Remarks' column.
- All entries made in the register shall be authenticated by the Secretary or such other person as the Board of directors may appoint for the purpose of, sealing and signing the certificate.

Register of Investments not held in Company's name

- Sub-Section (7) of Section 49 provides that where any shares or securities in, which investments have been made by a company are not held in its own name, the company shall forthwith enter the following particulars in a register maintained for this purpose:
  (i) The nature, value and such other particulars as may be necessary fully, I to identify the shares or securities in question; and
  (ii) The bank or person in whose name or custody the shares or securities are held.
- Sub-Section (8) provides that the register kept under sub-Section (7) shall be open to the inspection by any member or debenture holder of the company without charge, during business hours, for not less than 2 hours in each day.

Question: Advice the company as regards keeping of registers and returns at a place other than the registered office.

Ans.: Under provisions of Section 163 of the Companies Act, 1.956, register and index of members, register and index of debenture holders and if copies of all annual returns should be kept at the registered office of the company. The registers and returns can be kept at the place other than the registered office of the company within the city, town or village in which the registered office is situated if–

(1) such other place has been approved for this purpose by a special resolution passed by the company in general meeting; and
(2) the Registrar has been given in advance a copy of the proposed resolution. After such a special resolution is passed a copy of the same has to be filed with the Registrar of. Companies as necessary under Section 192 of the Companies Act.

Preservation of Books of Accounts:

Sub-Section (4) of Section 209 provides that the books of account of a company relating to a period of not less than 8 years immediately preceding the current year, together with the vouchers relevant to entry in such books of account must be preserved in good order. In case of a company incorporated less than 8 years before the current year, the books of account for the entire period preceding the current year, together with relevant vouchers must be preserved in good order.

Annual return

- Every company *having a share capital* must file an Annual Return with the Registrar. The Annual Return must be filed within 60 days of the annual general meeting [Section 159 (1)].
- The Annual Return of every company must be prepared in the form prescribed in Part II of Schedule V of the Act or as near thereto as possible and must contain the particulars regarding:
  - *(i)* Registration details (including registration No., State code, registration date);
  - *(ii)* Whether shares are listed on recognised stock exchange(s) or not; *(iii)* date of AGM ;
  - *(iii)* Registered office;
  - *(iv)* Capital structure of the company;
  - *(v)* Information regarding its directors, manager, secretary (past and present);
  - *(vi)* Details of shares/debentures held at date of AGM including transfers since date of AGM; and
  - *(vii)* Indebtedness of the company (secured loans including interest out- standing accrued but not due for payment).
- If any of the five immediately preceding returns has given, as at the annual general meeting with reference to which it was submitted, the full particulars required as to past and present members and the shares held and transferred by them, the return m question may contain only such of the particulars as relate to persons ceasing to be or becoming members since that date and to shares transferred since that date or to changes as compared with that date in the number of shares held by a member.

Signing of Annual Return

- The copy of the Annual Return filed with the Registrar must be signed by a director and by the manager or secretary, or where there is no manager or secretary, by two directors including the managing director where there is one.
- Where the annual return is filed by a company whose shares are listed on a recognised stock exchange, the copy of such annual return shall also be signed by a secretary in whole-time practice.) [Section 161 (1)]
- Along with the return a certificate, signed by both the signatories of the return, must also be filed with the Registrar stating that the return states the facts as they stood on the date of the last return and all issue and transfer of shares and debentures have been properly recorded in the books.
- In the case of a private company, the certificate must also state that it has not issued any invitation to the public for subscription and its membership, excluding present and past employee shareholders, does not exceed fifty [Section 161 (2)].
- *A company not having a share capital* is also required to file an annual return within 60 days of each annual general meeting, giving the address of the registered office, names of members with dates of becoming and ceasing to be members since the preceding annual general meeting and particulars of its directors, manager and secretary (Section 160). This return is also to be signed by a director and manager or secretary or two directors including the managing director where there is one.
- *Place where annual return must be kept:* The annual return must be kept at the registered office of the company or any other place within the same city provided that other place has been approved by a special resolution of the general meeting and an advance copy of the resolution has been filed with the Registrar.
- *Inspection:* The annual return must be open to inspection of members, debentures holders and other persons and coping of the returns may be taken by members, etc., in the same manner as in the case of Register of Members (Section 163).

Return as to Allotment

- Section 75 of the Companies Act provides that, whenever *a company having a share capital* makes any allotment of shares, it must, within 30 days thereafter, file with the Registrar a return of allotment in Form No.2 stating therein-
  - *(i)* The number and nominal amount of the shares comprised in the allotment;
  - *(ii)* The names, addresses and occupations of the allottees; and
  - *(iii)* The amount, if any, paid or due and payable on each share.
- However, a company shall not show in such return any shares as having been allotted for cash if cash has not actually been received in respect of such allotment.

- *In case of shares allotted or consideration other than cash,* the return must state *(i)* the number an nominal amount of Shares so allotted, *(ii)* the extent to which they are to be treated as paid up; and *(iii)* the consideration for which they have been allotted.

- *In case of bonus share,* the company must file with the Registrar a return stating *(i)* the number and nominal amount of such shares comprised in the allotment; *(ii)* the names, addresses and occupations of the allot tees. Along with the return, a copy of the resolution authorising the issue of bonus shares must also be filed.
- The Return of the allotments must be duly dated and signed by a director or the secretary.
- *Penalty*: If default is made in complying with the provisions of Section 75, as noted above, every officer of the company who is in default shall be punishable with fine which may extend to Rs. 5000 for every day during which the default- continues. However, where the default comprises of showing in the return that shares have been allotted for cash, then such is not the case, every promoter and the company who is guilty of contravention shall be punishable with fine which may extend to Rs. 50000 [Section 75 (4)].
- Under Section 81 (4), the Central Government is empowered to direct a company that any debenture or loan or any part thereof shall be converted into shares in a company. Section 94-A provides that where the said order has the effect of increasing the nominal share capital of the company, the same shall stand increased by an amount equal to the amount of the value of the shares into which such debentures or loans or part there of has been converted.
- Similarly, where a public financial institution exercises its options to convert debentures issued or loans raised by a company from such institution into shares in the company and the Central Government directs that the conditions of Memorandum of such company shall stand altered, the order will have the effect of increasing the nominal share capital of the company by an equivalent amount [Sub-Section (2) of Section 94 *A*].
- On receipt of the order from the Central Government, the company must file a return in the prescribed form with the Registrar, within 30 days from the date of such receipt, with regard to the increase of share capital [Sub-Section ('1' of Section *94-A*].
- The return is to be filed along with Form No.5 of the Companies (Central Government's) General Rules and Forms, 1956.

Chapter 14 *Remuneration to Director*

Meaning of remuneration: 'Managerial remuneration' includes remuneration to its directors and manager. [Section 198(1)]
'Remuneration' shall include the following [Explanation to Section 198(4)]
(a) Any expenditure incurred by company in providing any rent-free accommodation or any other benefit or amenity in respect of accommodation free of charge to its director and manager .
(b) Any expenditure incurred by company in providing any other benefit or amenity free of charge or at a concessional rate to its director and manager
(c) Any expenditure incurred by the company in respect of any obligation or service, which, but for such expenditure by the company, would have been incurred by the director and manager
(d) Any expenditure incurred by the company to effect any insurance on the life of, or to provide any pension, annuity or gratuity for director or manager, his spouse or child.
This definition is 'inclusive' definition. Thus, any remuneration or allowance paid directly is obviously covered in the definition of 'remuneration'. In short, any payment made directly or indirectly to directors or manager is 'managerial remuneration'.

Will 'remuneration' cover ESOS or ESOP?
- As per clause (b) above, any expenditure' incurred by company in providing any other benefit or amenity free of dirge or at a concessional rate to its director and manager. There seems no doubt that sweat equity' or 'ESOP' free or at lower cost to director is a 'benefit'. The question is whether providing ESOP or ESOS can be termed as 'expenditure incurred by the company, as company does not incur any direct expenditure.
- Thus, 'expenditure' is something 'paid out' or 'spent'. - - It is true that as per Accounting Policy of ESOP as per SEBI guidelines, the accounting value of the options granted is treated as employee compensation in accounting. However, company has not paid out, any amount to the directors and there was no 'expenditure'. Hence, legally, such amount may not be held as 'remuneration to director'.
- Another view is that considering the legislative intent and considering that the definition of 'remuneration' is 'inclusive' and not 'exhaustive', such sweat equity or ESOP may be held as 'remuneration' to director.

Sweat equity as 'remuneration' - If sweat equity shares are issued to direct/ manager for non-cash consideration, which does not take form of asset in balance sheet and is expensed in P&L account, it will be treated as 'managerial remuneration' purpose of Sections 198,309,310,311 and387 of Companies Act. [Para 11 of SEBI(of Sweat Equity) Regulations, 2002].

Ceiling of total remuneration - The total managerial remuneration payable by a public company to its directors and manager shall not exceed 1196 of net profits Iii company, computed in accordance with Sections 349 and 350, except that remuneration of the directors shall not be deducted from the gross profits. [Section 198(1)]. Ceiling on remuneration payable to MD /WD together shall not exceed 5% if there is only one MD/WD. If there are more than one MD /WD, the remuneration shall not exceed 10% of net profits for all of them together.

Remuneration to non-executive (part time) directors based on profits- Directors are paid 'sitting fees' for attending Board meetings or committee meetings. This is considered part of 'remuneration'. In addition to sitting fees, the part time directors may be paid remuneration by way of share of 'net profit'. Such remuneration is payable only if there is provision in the Articles of the company or by a resolution in the general meeting. All the non-executive directors together can get remuneration either (a) on monthly / quarterly / yearly basis with approval of Central Government, or (b) by way of commission. Remuneration by way of commission is payable only when special resolution is passed. The upper ceiling on such remuneration is as follows - (a) upto of net profits; if the company has managing Director, whole time Director or manager. (b) upto 3% net profit if the company does not have any MD, whole time director or manager. Remuneration in excess of 1% 3% is payable only with approval of Central government.[Section 309(4)]. This percentage is exclusive of sitting fees. [Section 198(2)]. 'company is not making profits, remuneration to non-executive directors can be made only

with approval of Central Government. However, the sitting fees are payable even if the company is incurring loss. [Section 198(4)].
Company cannot pay remuneration which is free of income tax, i.e. the remuneration object to income tax at the hands of the director. [Section 200]

Calculation of 'Net Profit'

- While determining net profits, additions and deductions are made as per provisions of Section 349. Thus, from the profit & loss account of the company, first 'gross profit' will be calculated by adding back or deducting the sums which are permissible/not permissible as per Section 349. The sums allowed will be deducted to arrive at 'Net profit' as required under Section 198. The 'Net Profit' calculated will be different from 'Net profit as is available for dividend.
- It may be noted that the details of calculations for purpose of managerial remuneration has to be shown in the balance sheet of the company. Many loss making companies pay the minimum remuneration and hence usually do not disclose 'net profit' for purpose of managerial remuneration. Strictly legally, this is not correct.

Sitting fees to directors - Directors (other than whole time directors and Managing Director) work only on part time basis. These directors are entitled to get fees for attending the Board meetings or Committee meetings. The fees are called 'Sitting Fees'. These are payable at the rates that may be prescribed in Articles of the Company. [Section 309(2)]. As per rule l0B of Companies General Rules (as amended on 24-7-2003), maximum sitting fees payable per meeting of Board of directors or committee is as follows - (a) Rs. 20,000 if paid up capital plus free reserves are Rs.10 crore or more or turnover is Rs 50 crore or more [Since word used is ' or', it is sufficient if one of the conditions is satisfied] (b) Rs 10,000 in other cases. In addition, they are entitled to get reimbursement of all reasonable expenses incurred in attending the Board meeting, as per regulation 65(2)(a) as per model Articles Table A.
Company cannot pay remuneration which is free of income tax, i.e. the remuneration is subject to income tax at the hands of the director. [Section 200]
No indemnity against Liability for negligence - Section 201 recognises that an officer or auditor of the company can be responsible for his negligence, default, misfeasance, breach of duty or breach of trust of which he may be guilty in relation to the company. A company cannot indemnify him against any liability which the officer may incur on account of such negligence, default, misfeasance, breach of duty or breach of trust Any provision in Articles of the company to indemnify him against any such liability is void.

Chapter 15 Dividend

- Dividend is the shares of the company's profits distributed among the members. "In the case of winding up, it means a division of the realised assets among creditors and contributors according to their respective rights."
- However issue of bonus shares by capitalising accumulated profits is not construed as dividend.

Meaning of Divisible Profits:

- Only those profits which can legally be distributed to the shareholders of the company in the form of dividend are called as divisible profits. However specific definition of divisible profits has not been laid down even by the Companies Act.
- Section 205 no dividend shall be declared or paid except out of profits of the company arrived at after providing for depreciation or out of moneys provided by the Central of Stage Government for the payment of dividends in pursuance of a guarantee given by the Government.
  - (a) If a company has not provided depreciation for any year or years which fall after Companies Amendment Act., 1960, it shall be provided out of profits of the company before declaring any dividend.
  - (b) If a company has not provided loss for any year or years which fall after Companies Amendment Act., 1960, then depreciation provided for that year or years and loss whichever useless, shall be provided out of profits of the company before declaring any dividend.
  - (c) However dividend can be declare before providing depreciation with prior permission of Central Govt.
  - (d)

Basis for providing depreciation

- According to Section 205(2) one of the following basis for calculation of the depreciation can be adopted
  - (i) To the extent specified in Section 350. This Section says that depreciation is to be calculated at the rate specified in Schedule XIV; or
  - (ii) Depreciation to be provided should be arrived at by dividing ninety five per cent of the original cost of the depreciable asset by the "specified period" in respect of such asset. The Central Government can also specify any other basis which has the same effect.
- If the Act makes no provision for a particular kind of asset, the Central Government is empowered to approve the basis for providing depreciation on that asset.

Section 205

[1A] The Board of directors may declare interim dividend and the amount of dividend including interim dividend shall be deposited in a separate bank account within five days form the date of declaration of such dividend.

[1B] The amount of dividend including interim dividend so deposited under subSection [1A] Shall be used for payment of interim dividend.

[1C] The provision contained Section 205, 205A, 205C, 206 and 206A and 207 shall as far as may be also apply to any interim dividend.

Out of Capital

In case dividends have been paid out of capital, the following consequences follows:

1. Directors who knowingly paid dividends out of capital shall be held personally liable to make the amount goods to the company.
2. If the members who received dividends know that they have been paid out of capital the directors may have a right of indemnity against such members to the extent that they have respectively received dividends.
3. Where an interim dividend has been paid out of capital owing to a bona fide mistake and the directors propose to recoup such dividend out of profits before distributing any further dividends, a members who has received such dividend cannot maintain an action against the directors.
4. When dividends improperly paid out of capital have been made good out of subsequent profits, liability cases to attach to the directors.

Distribution of Capital Profits:
Capital profits to be distributable should fulfil the following requirements;
1. They must be realised.
2. They must exist after taking into consideration value of the total assets and liabilities of the business.
3. The memorandum and Articles must permit such a distribution.

Dividends out of reserves i.e., profits of the company for any previsions financial year or years and transferred to reserve, the following conditions are to be satisfied.

1. The rate of the dividends declared does not exceed the average of the rates at which dividend was declared by it in the 5 years immediately preceding that year or 10% of its paid-up capital whichever is less.
2. The total amount be drawn from the accumulated profits earned in previous years and transferred to the reserves does not exceed an amount equal to $1/10^{th}$ of the sum of its paid up capital and free reserves and the amount so drawn must first be utilised to set off the losses incurred in the financial year before any dividend in respect of preference or equity shares is declared.
3. The balance of reserves after such drawal does not fall below 15 per cent of its paid-up share capital,

Transfer to Reserves
Transfer to reserves Sub-Section (2A) to Section 205 lays down that no dividend shall be declared or paid by a company in any years out of its current profits [after providi1lg for depreciation as per Section 205 (2)] without transferring to its reserves such percentage of the profits, not exceeding 10 per cent as follows :

(i) Not less than 2.5 per cent of current profits, where the proposed dividend exceeds 10 per cent but does not exceed 12.5 per cent of the paid-up capital.
(ii) Not less than 5 per cent of the current profits, where the proposed dividend exceeds 12.5 per cent but does not exceed 15 per cent of the paid up capita;
(iii) Not less than 7.5 per cent of the current profits, where the proposed dividend exceeds 15 per cent but does not exceed 20 per cent of the paid up capital; and
(iv) Not less than 10 per cent of the current profits, where the proposed dividend exceeds 20 per cent of the paid-up capital.

A Company can make a transfer of more than 10 per cent to reserves voluntarily provided it ensures the minimum distribution specified in Rule 3 of the Companies (Transfer of profits to reserves) Rules-1975.

Rule 3
(a) Where a dividend is declared by the company in that financial year a minimum distribution sufficient to maintain rate of dividend equal to the average are of dividend declared by it over the three immediately preceding years is ensured.
(b) Where bonus shares have been issued in the year in which the dividend is declared or in the three immediately preceding years, A company can transfer a higher percentage of profits to reserves provided a minimum distribution of dividend to shareholders at a amount equal to the average amount of dividend to declared over the three immediately preceding years is maintained.

Where however the net profits after tax for the financial year are lower by 20 per cent or more than the average net profits after tax of the last two financial years, it will not be necessary to ensure the minimum distribution,

Payment of dividend in proportion to amount to paid up.
A company may, if so authorised by its articles, pay dividends in proportion to the amount paid-up on each share where a larger amount is paid-up on some shares than on others.

Unpaid dividend:
- Section 205 A mean any dividend the warrant in respect whereof has not been encashed or which has otherwise not been paid or claimed.
- Where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of declaration to any shareholders entitled to the payment the company shall within 7 days from the date of expiry of the said period of 30 days transfer the total amount of

dividends which remains unclaimed to a special account to be opened by the company in the behalf in any scheduled Bank to be called Unpaid Dividend Account of. Company Ltd.

- If default is made in transferring the unpaid or unclaimed dividend to the said account, the company shall pay interest from the date of default @ 12% p.a. Such interest hall be paid to the members of the company in proportion to the amounts remaining unpaid to them, any amount transferred to the unpaid dividend account of the company which remains unpaid of unclaimed for a period of 7 years from the date of such transfer is transferred by the company to the Investor Education and Protect on Fund.
- If the company fails to comply with any of the aforesaid requirements the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs. 500 for every day during which the default continues.

Dividend in abeyance

- Section 206 A : Dividend can be kept in abeyance only where the shares to which it relates have been delivered to the company but the same have not yet been registered in the transferee's name.
- The dividends kept in abeyance can be withdrawn by the transferee only of an authorisation to that effect is made in his favour by the transferor. Alternatively the procedure relevant for withdrawal form Unpaid Dividend, Accounts shall be have to be followed.

Investor education and protections and Protection Fund (Section 205C)

Amounts to be transferred

(a) Amounts in the unpaid dividend accounts of companies;
(b) The application moneys received by companies for allotment of any securities and due for refund;
(c) Matured deposits with companies;
(d) Matured debentures with companies;
(e) The interest accrued on the amounts referred to in clauses (a) (d);
(f) Grants and donations given to the Fund by the Central Government/State Governments, companies or any other institutions for the purposes of the Fund; and
(g) The interest or other income received out of the investments made from the fund [Section 205 C (2)].

However, the aforesaid amounts shall be transferred to Fund only if the same have remained unclaimed and unpaid for a period of 7 years from the date they became due of payment [Section 205 C (2).

The sums which are so transferred to the Fund cannot be claimed.

Purpose for which moneys to be used

- The Fund shall be utilised for promotion of investor awareness and protection of the interests of investors in accordance with such rules as may be prescribed [Section 205 C (3)].
- Administration of the fund The Central Government shall, by notification in the Official Gazette, specify an authority or committee, with such members as the Central Government may appoint, to administer the Fund. Such authority/committee shall also maintain separate accounts and other relevant records in relation to the Fund in such *form* as the Central Government may prescribe in consultation with the comptroller and auditor General of India [Section 205 C (4)]
- The authority/committee shall be entitled to spend money out of the Fund for carrying out objects for which the fund is established.

Procedure for the payment of interim dividend:

(i) Ensure that the Articles empower the company.
(ii) Ascertain whether profits for the part of the financial year up to the time of proposed declaration are sufficient to justify payment of interim dividend.
(iii) Intimate the stock exchange(s) about the Board meeting to considers the payment of interim dividend.
(iv) Resolution of the Board of directors should state the rate of dividend, record date of posting of dividend, warrants, etc.
(v) Inform the stock exchange of the date of the closure of Register of Members.
(vi) At least 7 days before the closure of the Register of Members or the record date fixed, publish a notice in this regard in a newspaper circulating in the district in which the registered office of the company is situate.

(vii) Open a separate interim dividend
(viii) Account with the bank and issue necessary instructions to the bank.
(ix) Post dividend warrants within 30 days from the declaration of interim dividend.

Interest can be paid out of capital
Section 208 where any shares of a company are issued for the purpose of raising money to defray expenses of the construction of any work or building or the provisions of any plant, which cannot be made profitable for a long period the company may -
(a) Pay interest on so much of that share capital as is for the time being paid up and
(b) Charge the sum so paid by way of interest to capital as part of the cost of construction of the work of building, or the provision of the plant.

Conditions
1. No such payment shall be made unless it is authorised: (a) by the articles or by a special resolution, and (b) by the Central Government.
2. The payment of interest shall be made only for such period as may be determined by the Central Govt. and that period shall in no case extend beyond the close of the half year next after the half year during the work or building has been actually completed or the plant provided.
3. The rate of interest shall, in no case, exceed 4 per cent per annum or such other rate as the Central Government may. By notification in the official Gazette direct.
4. The payment of interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

Penalty for failure to distribute dividends within thirty days (Section 207)

- Where a dividend has been declared by a Company but has not been paid, or the warrant in respect thereof has not been posted within thirty days from the date of declaration, to any shareholder entitled to the payment of the default, be punishable with simple imprisonment for a term which any extend to three years and shall also be liable to a fine of one thousand rupees for every day during which such default continuous and the Company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues:
- Provided that no offence shall be deemed to have been committed within the meaning of the foregoing provisions in the following cases, namely : -
  (a) Where the dividend could not be paid by reason of the operation of any law;
  (b) Where a shareholder has given directions to the Company regarding the payment of the dividend and those directions cannot be complied with;
  (c) Where there is a dispute regarding the right to receive the dividend;
  (d) Where the dividend has been law fully adjusted by the Company against any sum due to it from the shareholder; or
  (e) Where for any reason the failure to pay the dividend or to post the warrant within the period aforesaid was not due to any default on the part of the Company.