

RAJNISH PANDEY

This notes are a lucid presentation of the contents of study material and some other reliable sources. It is human nature that no one is perfect, so if there is any fault and spell missing so I will be great full to those who apologies the same to me.

SHORT NOTES ON COMPANY LAW

CS - EXECUTIVE

CS HIMANSHU SRIVASTAVA

GIPS ACADEMY GEORGETOWN ALLAHABAD

Any 7 or more /
2 or more & 1
person

Their names to a MOA and
 otherwise complying with the
 requirements of the Act in
 respect of registration.

Form an Incorporated, with or without limited liability.

B.	DRAFTING OF MoA OR AoA
	☞ The Memorandum of Association is the charter of a company. ☞ It is a document, which amongst other things defines the area within which the company can act. ☞ It is, therefore, required to state the object for which the company has been formed, the business that it would undertake, the liability, the capital which it shall be allowed to raise, the nature of liability of its members, the name of the State where the registered office of the company shall be located etc.

	➤ Every Memorandum should be signed by each subscriber who should add his address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise add his address, description and occupation, if any. ➤ In case of companies having share capital, the subscribers to the Memorandum should at least take one share each and they have to state clearly the number and nature of shares taken by them. Where necessary one witness can attest the signatures of all subscribers.
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C.	Signing , Stamping or dating of MoA or AoA
	Every Memorandum should be signed by each subscriber who should add his address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise add his address, description and occupation, if any. In case of companies having share capital, the subscribers to the Memorandum should at least take one share each and they have to state clearly the number and nature of shares taken by them. Where necessary one witness can attest the signatures of all subscribers.

D.	STATUTORY DECLARATION
	Section 7(1)(b) requires that a declaration in e-Form INC-8 , by an advocate of the Supreme Court or a High Court, or an attorney or pleader entitled to appear before the High Court or a Secretary or a Chartered Accountant, practicing in India who is engaged in the formation of a company or by a person named in the Articles as a director, manager, or secretary of a company, that all the requirements of the Companies Act, 2013 and the rules there under have been complied with in respect of registration and matters precedent and incidental thereto to be filed with the Registrar. The Registrar may accept such a declaration as sufficient evidence of such compliance.

E.	DIRECTOR IDENTIFICATION NO. [DIN]
	Director's Identification Number (DIN) – MCA21 has introduced the concept of Director Identification Number (DIN) which is mandatory, unique and life time identification for all existing and prospective directors. 1. In the scenario of e-filing, DIN is a pre- requisite for filing of certain company related documents. 2. Any individual who is a director or intends to be a director of a company should apply for DIN first. 3. DIN has to be obtained by the directors of the company before commencing the procedure for incorporation of a company DIR – 3

F.	PERTICULAR DETAILS of members/subscribers
	The particular details of every member / subscriber or shareholders is also required for incorporation of a company in e form INC-7 Also with their signature and photograph in e-form INC-10.

G.	Registered office of Company
	The full details regarding address or place etc. of Registered office of company should be provided to RoC, so that he can easily communicate to the company Give the intimation of registered office of company to RoC. In e- form INC-22

H.	Directors consent
	The consent of the director that 'I am the director of such company or wanted to be a director in such company' is also required in e-form DIR-12.

I.	Corporate Identification No.
	After fulfilling all the above provisions related to registration if the registrar of companies is satisfied, he grants the CIN no. It should be preserved for lifetime or the company

J.	Verification of documents by the RoC
	Now the RoC will examine all the documents submitted for the registration or incorporation of the company and if he satisfies then he will grant a Certificate of Incorporation of company.

CHAPTER – 2

INTRODUCTION TO COMPANY

MEANING AND DEFINITION OF COMPANY –

As per section 2(20) of companies act, “A company may be formed or registered under this act or any existing company formed or registered under any other previous company law.

CHARACTERISTICS / FEATURES OF A COMPANY –

1. SEPRATE LEGAL ENTITY –

A company incorporated under this Act is vested with a corporate personality so it bears its own name, acts under name, has a seal etc. it is capable of owning property, incurring debts, borrowing money. It can be sued and can sue because it performs as a separate legal entity or is distinct from its members/subscribers.

Case law-

Salmon V/s Salmon Co. ltd.

In above case Salmon had 1 son, 4 daughter and his wife incorporated a company named Salmon Co. ltd. And after sometime he become secured creditor of the company and announced for unsecured creditor and a person Mr. X become so. After few years the company went into winding-up and unsecured creditor Mr. X gone to Court claiming his credit and saying that Salmon was liable and he has done all willingly.

The HOUSE OF LORDS said that the company is different from persons in the eyes of law so the case should be on company, not on Salmon. There Salmon States that the proper process of winding up was followed and there is nothing available to pay unsecured creditors.

CASE- LAW = Lee V/s Lee Air Farming ltd.

CASE- LAW = Abdul haq V/s Dasmal

2. LIMITED LIABILITY –

The liability of the company is limited up-to the face-value of shares or the amount guaranteed while in case of partnership firm the liability of partners is unlimited.

3. TRANSFERABILITY OF SHARES –

In case of any listed public company, there is no restriction on transferability of shares while a private company can-not do so to public but it can issue shares only to its employees, kith & keen etc.

4. Common seal –

A company is an artificial person so it can-not sign on important documents of the company so the substitute of the signature which is used in companies to sign on important document of company is known as common seal. In meeting one person is authorized by BoD to use the seal on behalf of company. E.g. C.A. C.S. etc.

AS PER COMPANIES AMENDMENT ACT – 2015 if any 2 directors of company signed on document, then it will be treated as common seal, so now it is not mandatory provision to prepare a common seal.

5. Perpetual succession –

The company is artificial person and it never dies a natural death. It is continue forever, whether the members of company may die, resigned, expelled, insolvent etc. but all of this have no effect on company, the company shall run forever without any break.

“Member’s may come, members may go, but a company remains forever.”

CASE – LAW = pro. Grover’s example.

6. Separate property –

A company has own personality, so it can own property or attach property in its own name and no members can claim on its property.

CASE – LAW = Macaura V/s Northern assurance company ltd.

7. Capacity to sue and be sued –

A company being an artificial person can sue in its own name and can be sued by others. It has capacity to sue and be sued.

8. Limitation by MoA and AoA –

The company or its members has some limitations imposed by MoA or AoA. The company can not act beyond these limits otherwise it will be ultra-virus or intra-virus, as the case may be.

LIFTING OF CORPORATE VEIL –

The separate personality of a company is a statutory privilege and it must be used for legitimate business purposes only. Where a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality. The Court will break through the corporate shell and apply the principle/doctrine of what is called as “lifting of or piercing the corporate veil”.

The Court will look behind the corporate entity and take action as though no entity separate from the members existed and make the members or the controlling persons liable for debts and obligations of the company.

There are 2 ways for lifting out of corporate veil –

- ✚ Lifting of corporate veil under statutory interpretation.
- ✚ Lifting of corporate veil under judicial interpretation.

UNDER JUDICIAL INTERPRETATION – In this case the power to lift out the corporate veil is given to the court as in the following situations –

1. Determination of enemy character.
2. Where the corporate veil has been used for committing fraud or improper conduct.
3. The conduct conflicts with public policy.
4. Avoidance of welfare legislations.
5. Protection of revenue or tax avoidance or evasion.
6. Company acting in a manner other than what it is.

Example Case-law =

- Re. sir Dinshaw manakjee petit ; or
- Kapila hingrani V/s State of Bihar ; or
- Daimler co. ltd V/s Continental tyre & rubber co. etc.

UNDER STATUTORY INTERPRETATION -

In this type of interpretation the power to lift out the corporate veil is given to company itself in such given cases –

1. Miss description of name of company.
2. Failure to refund the application money within 120 days.
3. Misrepresentation in prospectus of company.
4. Acts beyond MoA of the company.

If the 3RD point occurs then the penalty under section 447 of the Act will be applicable.

Imprisonment – 6 months to 10 years; or

Penalty - 3 times the amount involved in the fraud; or both

Where the fraud involves public interest then imprisonment should not be less than 3 years to the persons involved in making or drafting the prospectus –

1. Director.
2. Promoter.
3. Proposed director, if any.

ALSO KNOWN AS GOLDEN RULE OR GOLDEN LEGACY

ILLEGAL ASSOCIATION – A group of person is called association. There is a specified limit for partnership or other business association, which is 50. When this limit is exceeded then the association is called illegal association. [Section 464]

CONSEQUENCES –

1. Any illegal association can-not inter into any contract because of its illegality.
2. That association will not have any legal existence.
3. It can-not sue to anyone.
4. The members of such association will be charged with a fine of rupees 100000 and will be personally liable.
5. If the said type of association earns any income the same will be taxable.

The provisions contained under this section shall not be applicable to –

1. In case of minor.
2. In case of HUF or joint Hindu family.
3. This section is also not applicable on the firm of CA's /CS's etc.

COMPANY AS A PERSON –

Generally speaking a Company is not a natural person but there is few circumstances in which it acts as a natural person. Such as –

1. Having its own bank A/c.
2. Having borrowing capacity.
3. Having contractual capacity.
4. Can file suit and can be sued in its own name etc.

CITIZENSHIP OF A COMPANY – As per The Citizenship Act – 1955 a company is not covered under this Act, so the company is not a citizen. As per the constitution fundamental rights and duties are given to every citizen of India but in case of a company there is no such provision so we can say that a Company is not a citizen of INDIA.

CHAPTER – 3

TYPES OF COMPANIES

INTRODUCTION –

The Companies Act, 2013 provides for the kinds of companies that can be promoted and registered under the Act. The three basic types of companies which may be registered under the Act are:

- Private Companies;
- Public Companies; and
- One Person Company (to be formed as Private Limited).

SECTION 3. (1) OF THE COMPANIES ACT 2013 states that a company may be formed for any lawful purpose by—

- Seven or more persons, where the company to be formed is to be a public company;
- Two or more persons, where the company to be formed is to be a private company; or
- One person, where the company to be formed is to be One Person Company that is to say, a private company, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

A company formed under sub-section (1) may be either—

- A company limited by shares; or
- A company limited by guarantee; or
- An unlimited company.

CLASSIFICATION OF COMPANIES

❖ **PRIVATE COMPANY - section 2(68)**

In the last of the name of the company the word the Pvt. Ltd. Is used. As per **section 3 (1)**, a private company may be formed for any lawful purpose by two or more persons, by subscribing their names to a memorandum and complying with the requirements of this Act in respect of registration.

PROVISIONS –

1. There was requirement of rupees 100000 as paid up capital to incorporate a private company, which has been omitted by The Companies Amendment Act – 2015.
2. Minimum 2 members are required to incorporate a private company which may be extended to 200.
3. There are minimum 2 directors in a private company, which has no maximum limit as per the Act.

4. There is restriction on transfer of shares from one person to another in a private company.
5. The private company can-not accept deposits from public.

❖ **PUBLIC COMPANY –**

In the last of the name of a public company the word limited is used. As per **section 3 (1)**, a public company may be formed for any lawful purpose by seven or more persons, by subscribing their names to a memorandum and complying with the requirements of this Act in respect of registration.

PROVISIONS –

1. There was requirement of rupees 5,00,000 as paid up capital to incorporate a private company, which has been omitted by The Companies Amendment Act – 2015.
2. There are minimum 3 directors in a private company, which may be extended subject to maximum limit as per the Act which is 15. After passing a special resolution this limit can also be extended.
3. Minimum 7 members are required to incorporate a private company. There is no limit about maximum members.
4. There is no any restriction prescribed on transfer of shares from one person to another in a public company.
5. The public company can accept deposits from public.

❖ **ONE – PERSON COMPANY** **SECTION 2(62)**

This is a new concept introduced in the Companies Act – 2013 on the recommendations of J.J. Irani committee. The person who wants to incorporate an OPC should be Indian or resident in India. Only 1 person can incorporate a Single OPC.

INCORPORATION OF OPC –

The name of the promoter along with the name of nominee shall be mentioned in the memorandum & articles of the OPC and such nomination should be in form **INC – 2** along with the consent of the such nominee in form **INC – 3** and the prescribed fee.

Following documents shall be attached to registrar of companies for incorporation of an OPC-

- Memorandum and articles of the proposed company.
- Identity proof of the member.
- Residential proof of the member.
- Copy of the PAN card of the member.
- Consent of the nominee in form **INC – 3**.
- Affidavit from the subscriber in form **INC – 9**.
- Specimen signature in form **INC – 10**.

- Consent of the director or the person who wants to be director in form INC – 21.
- The other procedure are as same as to incorporation of public or private company discussed in chapter - 1.

OTHER TYPES OF COMPANIES –

THERE ARE MANY OTHER TYPE OF COMPANIES ARE ALSO DISCUSSED OR PROVIDED IN THE ACT, SUCH AS –

- Unlimited company; or
- Limited company; or
- Foreign company; or
- Dormant company; or
- Small company; or
- Government company; or
- Investment company; or
- Subsidiary/Holding and Associate company; or
- Association not for profit. Etc.

LIMITED COMPANY –

Limited company is a type of company in which the liability of the members is limited. There are **2 TYPES** of such company as provided in the Act.

- ❖ Company limited by shares; or
- ❖ Company limited by guarantee.

A company limited by share is a company in which the liability of the members is limited up to face value of shares held by them.

A company limited by guarantee is a company in which the liability of the members is limited as defined or agreed in articles or memorandum. It means the members will contribute in the assets or liabilities of the company as agreed in the articles or memorandum at the time of winding up of the company.

The contributory may be –

- Existing members or present members; or
- The members who were members within 1 year from the date of winding up.

UNLIMITED COMPANY –

Unlimited company is a type of the company in which the liabilities of the members is unlimited. In unlimited company, the members are not directly liable to creditors because whenever the company goes to liquidation then it will appoint an official liquidator and the members will liable to liquidator directly not to the creditors while in a partnership firm the partners are liable to creditors directly.

ASSOCIATION NOT FOR PROFIT –

It is also known as licensing company which is defined under section 8 of the Companies act – 2013 as a Company engaged in trust, cultural purposes, and social, religious, scientific and research purpose is called Association not for profit.

If anyone wants to incorporate a new association not for profit or licensing company/ section 8 company, he should apply to Central Government and if C.G. satisfied it will grant a license of the status of an Association not for Profit Company.

If any existing or old public/private company wants to convert itself into section 8 company, then it shall apply to C.G., if the Central Government is satisfied then the existing company will be licensed as a section 8 company i.e. association not for profit, the old company will remove Pvt. Ltd. / ltd. From end of its name, as the case may be.

Note – the central government is empowered to revoke the license at any time.

GOVERNMENT COMPANY

SECTION 2 (45)

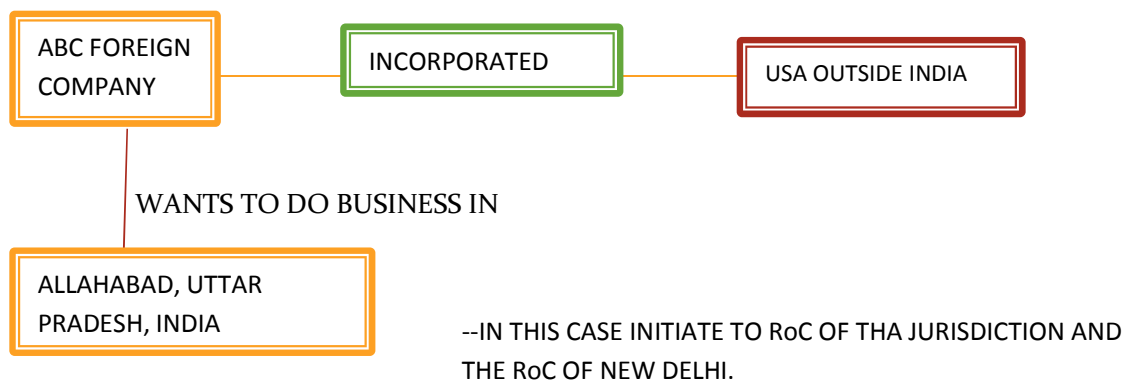
Any public company in **WHICH 51%** or more shares are held by Central Government, State Government or partly by Central Government and partly by State Government, is known as Government Company.

NOTE – Employees or workers of a government company are not government employees.

FOREIGN COMPANY

SECTION 2(42)

A company which is incorporated outside INDIA but which has a place of business in INDIA is called as a Foreign Company.



AND send the following documents to the RoC.

- MoA/AoA of the company.
- Address of the head office of the company.
- Address of the place of business in INDIA.
- Particulars of employees whether NRI or Resident.

- Particulars of the company secretary, if any.

HOLDING / SUBSIDIARY COMPANY AND ASSOCIATE COMPANY –

If any company holds 50% or more shares of any other company and controls the board of directors or management of the other company and holds 50% or more of the voting rights of the another company, then the company which is holding such powers/shares is called as HOLDING Company whereas the other is called SUBSIDIARY to it.

If any company holds 20% share capital of any other company then it will be associate company to that particular company.

INVESTMENT COMPANY –

It is a type of the company which main business as defined in its memorandum is to deal in securities (shares, debentures, bonds, mutual fund etc.), is known as Investment Company.

SMALL COMPANY –

Small company is just like a private company, which paid up capital is rupees 50 lakh or more but not exceeding 2 crores or which annual turnover is more than 2 crores but less than 20 crores.

DORMANT COMPANY –

Dormant company is a company which has been incorporated and it is inactive i.e. not carrying on any activities or business but which has a chance to do business in future.

CHAPTER – 4

MEMORANDUM OF ASSOCIATION & ARTICLE OF ASSOCIATION

MEMORANDUM OF ASSOCIATION

According to **Section 2(56)** of the Companies Act, 2013 “memorandum” means the memorandum of association of a company as originally framed and altered from time to time in pursuance of any previous company law or this Act.

The Memorandum of Association is a document which sets out the constitution of a company and is therefore the foundation on which the structure of the company is built. It defines the scope of the company’s activities and its relations with the outside world.

Section 4 of the Companies Act, 2013 deals with MOA. The Memorandum of a company shall contain the following;

1. Name Clause:

The name of the company with the last word “Limited” in the case of a public limited company, or the last words “Private Limited” in the case of a private limited company.

2. Situation Clause:

The State in which the registered office of the company is to be situated.

3. Object Clause:

The objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.

4. Liability Clause:

The liability of members of the company, whether limited or unlimited, and also state,—

(i) in the case of a company limited by shares— liability of its members is limited to the amount unpaid, if any, on the shares held by them; and

(ii) in the case of a company limited by guarantee—the amount up to which each member undertakes to contribute—

(A) to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and

(B) to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves;

(i) the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share; and

(ii) the number of shares each subscriber to the memorandum intends to take, indicated opposite his name; In the case of One Person Company, the name of the person who, in the event of death of the subscriber, shall become the member of the company.

The name stated in the memorandum shall not—

1. be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law; or
2. be such that its use by the company—
 - (i)** will constitute an offence under any law for the time being in force; or
 - (ii)** is undesirable in the opinion of the Central Government

A company shall not be registered with a name which contains—

1. Any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the Central Government, any State Government, or any local authority, corporation or body constituted by the Central Government or any State Government under any law for the time being in force; or
2. Such word or expression, as prescribed in the Companies (Incorporation) Rules, 2014. Un-less the previous approval of the Central Government has been obtained for the use of any such word or expression.

A person may make an application **in Form No. INC.1** along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 to the registrar for the reservation of a name set out in the application as-

- (a) The name of the proposed company;
- (b) The name to which the company proposes to change its name

The Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of sixty days from the date of the application.

If the company has not been incorporated, the reserved name shall be cancelled and the person making application shall be liable to a penalty which may extend to Rs.1,00,000 /-

If the company has been incorporated, the Registrar may, after giving the company an opportunity of being heard—

Either direct the company to change its name within a period of three months, after passing an ordinary resolution;

Take action for striking off the name of the company from the register of companies;

Make a petition for winding up of the company.

Form of Memorandum:

The memorandum of a company shall be in respective forms as outlined below

S. NO.	TABLE	PROVIDES FORM FOR
1	TABLE A	MOA of a company limited by shares
2	TABLE B	MOA of a company limited by guarantee and not having share capital
3	TABLE C	MOA of a company limited by guarantee and having share capital
4	TABLE D	MOA of an unlimited company and not having share capital
5	TABLE G	MOA of an unlimited company and having share capital

CONTENTS OF MEMORANDUM –

As per **Section 4(1)**, the memorandum of a limited company must state the following:

- The name of the company with “Limited” as its last word in the case of a public company; and “Private Limited” as its last words in the case of a private company;(Name Clause)
- The State place where the registered office of the company is to be situated;(Situation Clause)
- The objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;(objects clause)
- The liability of members of the company, whether limited or unlimited, —(Liability Clause)
- In the case of a company having a share capital,—(Capital Clause)
 - ☞ the amount of share capital with which the company is to be registered
 - ☞ the number of shares each subscriber to the memorandum intends to take, indicated opposite his name;
- In the case of a One Person Company, the name of the person who, in the event of the death of the subscriber, shall become the member of the company.

ALTERATION OF MEMORANDUM OF ASSOCIATION

Section 13(1) of the Companies Act, 2013 provides that save as provided in section 61a company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its memorandum. The memorandum of association of a company may be altered in the following respects:

- ☞ By changing its name [Sections 13(2)].

- ☞ By altering it in regard to the State in which the registered office is to be situated [Section 13(4) & (7)].
- ☞ By altering its objects [Section 13 (1) & (9)].
- ☞ By altering its share capital (Section 61).
- ☞ By reorganizing its share capital (Sections 230 to 237).
- ☞ By reducing its capital (Section 66).

ALTERATION OF NAME CLAUSE – The name of a company can be altered by a special resolution and with the prior approval of the central government in writing –

TYPE	VOLUNTARY CHANGE OF NAME	RACTIFICATION OF NAME
SITUATION	The company wants to change the name of company, voluntarily	Where a company is registered with a name which is – ☞ Identical or too closely resembles. ☞ Infringes a trademark and rectify the name
RESOLUTION	SPECIAL RESOLUTION	ORDINARY RESOLUTION
APPROVAL	Prior approval of C.G. after passing such resolution	Prior approval of C.G. after passing the ordinary resolution at general meeting.

ALTERATION OF REGISTERED OFFICE CLAUSE –

CASE	FROM	TO	RESOLUTION	PROCEDURE
1.	One premises of a city	Other premises in same City	BOARD RESOLUTION	Pass B.R. and give notice of change in INC-22 within 15 days of such change to RoC.
2.	One City or town	Another City or Town in same state	SPECIAL RESOLUTION	Pass S.R. and give notice of change in INC-22 within 15 days of such change to RoC along with form MGT-14
3.	One State	Another State	SPECIAL RESOLUTION	Pass S.R. and give notice of change in INC-22 within 15 days of such change to RoC along with form MGT-14 and also send an altered copy of MoA to RoC.
4.	One RoC	Another RoC IN same City [Maharashtra etc.]	Special resolution + Regional directors consent in INC- 23	Pass S.R. and give notice of change in INC-22 within 15 days of such change to RoC along with form MGT-14 and also send an altered copy of MoA to RoC.

ALTERATION OF OBJECT CLAUSE – If a Company wants to change or alter its object, then it is required to pass Special Resolution and define that why the object is to be altered.

Such as reason given below –

- Lack of demand of goods of the company.
- Lack of fuel to company.
- The market distance is more than usual.
- Lack of workers in the company.
- Any natural calamity arises.

ALTERATION OF LIABILITY CLAUSE –

According to **section 13(1)**, a company may, by a **special resolution** and after complying with the procedure specified in this section, alter the provisions of its memorandum. It means that a company can change the liability clause of its memorandum of association by passing a special resolution. Further **section 13(6) (a)** provides that a company shall, in relation to any alteration of its memorandum, file with the Registrar the special resolution passed by the company under section 13(1).

ALTERATION OF CAPITAL CLAUSE –

A limited company having a share capital may make the following types of alterations in its memorandum by an **ordinary resolution**, if so authorized by its articles, at its general meeting to **(Section 61)**

- Increase its authorized share capital by such amount as it thinks expedient ;
A company may at any time increase its authorized share capital by the alteration of its memorandum. Although, **section 61(1) (a)** of the Companies Act, 2013 refers to the issue of new shares, it really deals with a case of increase in the authorized share capital, and not increase of the issued share capital. The case of increase of the issued or subscribed capital is dealt with separately by **section 62** of the Act.
- Consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares:
- Convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;
- Sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that the proportion between the amount paid and unpaid shall remain the same.
- Cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

These alterations are required to be notified and a copy of the resolution should be filed with them Registrar within 30 days of the passing of the resolution along with an altered memorandum. [\[Section 64\(1\)\]](#)

ALTERATION OF MEMORANDUM OF ASSOCIATION

Name Clause change	✕ Pass Special Resolution ✕ Approval of Central Government ✕ To delete the word "PRIVATE" approval from Central Government is Not required in case of conversion of private company to public company.		
CHANGE IN REGISTERED OFFICE	Change within local limits	Change Of State	Change in jurisdiction of Registrar
	Pass Board Resolution. Notice of change to RoC in INC – 22 within 15 days of such change.	Pass Special Resolution. Notice of change in INC-22 within 15 days of such change to RoC along with form MGT-14 and also send an altered copy of MoA to RoC.	Special resolution + Regional director's consent in INC- 23 . Pass S.R. and give notice of change in INC-22 within 15 days of such change to RoC along with form MGT-14 and also send an altered copy of MoA to RoC
Change In Object clause	✕ Pass Special Resolution. ✕ From the date of filing Special Resolution the Registrar should within 30 days, certify the same.		
Change In Liability	◆ Needs Special Resolution to be passed. ◆ File the same with Registrar in form MGT. 14		
Change in Capital	▪ Alteration of capital clause to be authorized by the Articles of Association [section 61]; Ordinary Resolution. ▪ If by division or consolidation in capital the voting % gets affected then a confirmation from Tribunal is mandatory. ▪ Notify the alterations made and a copy of Resolutions passed shall be filed with Registrar within 30 days. ▪ Registrar shall record the notice and make alterations required.		

ARTICLES OF ASSOCIATION –

According to **Section 2(5)** of the Companies Act, 2013, ‘articles’ means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act. It also includes the regulations contained in Table A in Schedule I of the Act, in so far as they apply to the company.

In terms of **section 5(1)**, the articles of a company shall contain the regulations for management of the company. The articles of association of a company are its bye-laws or rules and regulations that govern the management of its internal affairs and the conduct of its business. The articles play a very important role in the affairs of a company. It deals with the rights of the members of the company inter se. They are subordinate to and are controlled by the memorandum of association. **The articles of a company are subordinate to and subject to the memorandum of association and any clause in the Articles going beyond the memorandum will be ultra vires.**

REGISTRATION OF ARTICLES –

S. NO.	TABLE	APPLICABLE FOR
1.	TABLE - F	Any Public Company.
2.	TABLE - G	Company Limited By Guarantee Having Share Capital.
3.	TABLE - H	Company limited by guarantee does not Having Share Capital.
4.	TABLE - I	Unlimited company having share capital.
5.	TABLE - J	Unlimited Company does not having Share Capital.

STATUTORY REQUIREMENTS –

The articles **must be printed, divided into paragraphs, numbered consecutively, stamped adequately, signed by each subscriber** to the memorandum and duly witnessed and filed along with the memorandum. The articles must not contain anything illegal or ultra vires the memorandum, nor should it be contrary to the provisions of the Companies Act, 2013.

CONTENTS OF ARTICLES –

The articles set out the rules and regulations framed by the company for its own working. The articles should contain generally the following matters:

- ☞ Adoption of preliminary contracts.
- ☞ Number and value of shares.
- ☞ Issue of preference shares.
- ☞ Allotment of shares.
- ☞ Calls on shares.
- ☞ Lien on shares.
- ☞ Transfer and transmission of shares, etc.

ENTRECHMENT PROVISIONS –

The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures that are more restrictive than those applicable in the case of a special resolution, are met or complied with. **[Section 5 (3)]**

Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed. **[Section 5 (5)]**

ALTERATION OF ARTICLES OF ASSOCIATION

A company has a statutory right to alter its articles of association. But the power to alter is subject to the provisions of the Act. A company can alter its article of association simply by passing a Special Resolution in General Meeting.

Section 8(4)(i) provides that a company registered under section 8 i.e. companies with charitable objects shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government. A company is not prevented from altering its Articles on the ground that such an alteration would be breach of a contract but an action for damages may lie against the company. [Southern Foundries v. Shirlaw , [1940] AC 701].

CONSTRUCTIVE NOTICE OF MEMORANDUM AND ARTICLES

The memorandum and articles, when registered, become public documents and can be inspected by anyone on payment of nominal fee. Therefore, every person who contemplates entering into a contract with a company has the means of ascertaining and is consequently presumed to know, not only the exact powers of the company but also the extent to which these powers have been delegated to the directors, and of any limitations placed upon the exercise of these powers. In other words, every person dealing with the company is deemed to have a “constructive notice” of the contents of its memorandum and articles. In fact, he is regarded not only as having read those documents but also as having understood them according to their proper meaning **[Griffith v. Paget, (1877) Ch. D. 517]**.

For example, if the articles provide that a bill of exchange to be effective must be signed by two directors, a person dealing with the company must see that it is so signed; otherwise he cannot claim under it.

DOCTRINE OF INDOOR MANAGEMENT

While the doctrine of ‘constructive notice’ seeks to protect the company against the outsiders, the principal of indoor management operates to protect the outsiders against the company. According to this doctrine, as laid down in **Royal British Bank v. Turquand**, (1856) 119 E.R. 886, persons dealing with a company having satisfied themselves that the proposed transaction is not in its nature inconsistent with the memorandum and articles, are not bound to inquire the regularity of any internal proceedings. In other words, while persons contracting with a company are presumed to know the provisions of the contents of the

memorandum and articles, they are entitled to assume that the provisions of the articles have been observed by the officers of the company. It is no part of the duty of an outsider to see that the company carries out its own internal regulations.

EXCEPTIONS TO THE DOCTRINE OF INDOOR MANAGEMENT –

- Where the outsider had knowledge of irregularity.
- No knowledge of memorandum and articles.
- The rule of indoor management does not extend to transactions involving forgery or to transactions which are otherwise void or illegal ab initio.
- The ‘doctrine of indoor management’, in no way, rewards those who behave negligently.
- The doctrine of indoor management does not apply where the question is in regard to the very existence of an agency.
- This Doctrine is also not applicable where a pre-condition is required to be fulfilled before company itself can exercise a particular power.

DOCTRINE OF ALTER EGO

It is used by the courts to ignore the status of shareholders, officers, and directors of a company in reference to their liability in their respective capacity so that they may be held personally liable for their actions when they have acted fraudulently or unjustly.

CHAPTER – 5

Contracts and Conversions

PRELIMINARY CONTRACTS –

Company being an artificial person can contract only through its agents. A contract will be binding on a company only, if it is made on its behalf by any person acting under its authority, express or implied. The powers of the company are defined by its Memorandum of Association and any contract made beyond the limits laid down in the Memorandum of Association, will be ultra vires to the company and void even if all the shareholders assent to it.

Pre-incorporation Contracts –

Preliminary contracts are contracts purported to be made on behalf of a company before its incorporation. Before incorporation, a company is non-existent and has no capacity to contract. Consequently, nobody can contract as agent on its behalf because an act which cannot be done by the principal himself cannot be done by him through an agent. Further even after incorporation such a purported contract cannot be ratified by the company. The persons purporting to act as agents on behalf of the company would be personally liable. Such contract is void-ab-initio.

For such contract –

- ☞ The company cannot be bind.
- ☞ The company cannot be sued.
- ☞ If any person done such type of contract, he will be personally liable.

Provisional Contracts –

In the case of a company having a share capital whether public or private, contracts made after incorporation but before the company becomes entitled to commence business in terms of section 11 are provisional and are not binding on the company until the company becomes so entitled after filing of the prescribed declaration by its director and verification of its registered office with the Registrar under that section. But after the company becomes entitled to commence business such contracts automatically become binding i.e. without any ratification.

CONVERSION OF A PRIVATE COMPANY INTO A PUBLIC COMPANY

As per Section 14(1), When a company being a private company alters its articles in such a manner that they no longer include any of the three restrictions and limitations which are required to be included in the articles of a private company. The company shall, as from the date of such alteration, cease to be a private company. It also ceases to have the privileges and exemptions conferred on it by the Act as a private company. It becomes a public company and

all the provisions of the Act applicable to such companies become applicable to it. It means to alter the articles of the company now pass a special resolution and apply the all provisions thereunder.

CONVERSION OF A PUBLIC COMPANY INTO A PRIVATE COMPANY –

The second proviso to Section 14(1) states that any alteration having the effect of conversion of a public company into a private company shall not take effect except with the approval of the Tribunal which shall make such order as it may deem fit. A public company can be converted into a private company only after the approval of the Central Government. It cannot be treated as a private company till the Central Government accords its approval.

Conversion of a public company into a private company will require:

- Passing of a special resolution authorizing the conversion and altering the Articles so as to include the matters specified in Section 3(1) (iii). In case of listed company the same has to be passed through postal ballot.
- Changing the name of the company by special resolution.
- Obtaining the approval of the Central Government.
- Filing of printed copy of the articles as altered within one month of the receipt of the approval.

As per section 2(71) of the companies act – 2013, a company which is subsidiary of a company, not being a private company, shall be deemed to be public company

Section 18(1) of the companies act – 2013 provides that a company of any class registered under this act may convert itself as a company of other class under this act by alteration of its MoA OR AoA of the company in accordance with the provision of chapter 2 of the act.

CONVERSION OF SECTION 8 COMPANY -

Section 8(4)(ii) provides that a company registered under section 8 i.e. companies with charitable objects may convert itself into company of any other kind only after complying with such conditions as may be prescribed.

Conditions –

- ✦ Conversion requires Special Resolution.
- ✦ The explanatory statement annexed to the notice convening the general meeting shall set out in detail the reasons for opting for such conversion send to shareholders or members.
- ✦ Certified copy of Special Resolution to be filed in **Form No MGT-14**.
- ✦ The company shall file an application in **Form No.INC. - 18** with the Regional Director with the fee along with a certified true copy of the special resolution.

- ✦ A copy of the application with annexures as filed with the Regional Director shall also be filed with the Registrar.
- ✦ The company shall, within a week from the date of submitting the application to the Regional Director, publish a notice in news-paper.
- ✦ The Board of directors shall give a declaration to the effect that no portion of the income or property of the company has been or shall be paid or transferred directly or indirectly by way of dividend or bonus.
- ✦ No objection certificate from relevant authorities, in case of special status.
- ✦ The company should have filed all its financial statements and Annual Returns upto the financial year preceding the submission of the application to the Regional Director.
- ✦ Attach certificate of compliance for conversion.
- ✦ Company to give up concessions enjoyed or being enjoyed.
- ✦ On receipt of the approval of the Regional Director, the company shall convene a general meeting of its members to pass a special resolution for amending its memorandum of association and articles of association.
- ✦ The Company shall thereafter file with the Registrar.-
 - A certified copy of the approval of the Regional Director within thirty days from the date of receipt of the order in Form **No.INC.20** along with the fee;
 - Amended memorandum of association and articles of association of the company.
 - A declaration by the directors that the conditions, if any imposed by the Regional Director have been fully complied with.
- ✦ On receipt of the documents referred above, the Registrar shall register the documents and issue the fresh Certificate of Incorporation.

CONVERSION OF OPC TO PUBLIC COMPANY OR PRIVATE COMPANY –

It should be done according to RULE – 6 of Companies incorporation rules – 2014. For such conversion following conditions must be satisfied –

- ⊗ If the paid-up capital of an OPC exceeds Rs 50, 00,000.
 - ⊗ If its annual turnover of the relevant period exceeds Rs 2,00,00,000 .
- Then it shall cease to be entitled as a OPC. Minimum no. of members or directors has to be increased accordingly. Other provisions related to private/public company will be also applicable as the case may be.
- The One Person Company shall alter its memorandum and articles by passing a resolution to give effect to the conversion and to make necessary changes incidental thereto. The One Person Company shall within period of sixty days from the date of

applicability, give a notice to the Registrar in Form No.INC.5 informing that it has ceased to be a One Person Company.

CONVERSION OF PRIVATE COMPANY INTO ONE PERSON COMPANY –

A private company other than a company registered under section 8 of the Act having paid up share capital of fifty lakhs rupees or less or average annual turnover during the relevant period is two crore rupees or less may convert itself into one person company by passing a special resolution in the general meeting.

- ❖ Before passing such resolution, the company shall obtain No objection in writing from members and creditors. The company shall file an application **in Form No.INC.6** for its conversion.
- ❖ The one person company shall file copy of the special resolution with the Registrar of Companies within thirty days from the date of passing such resolution in **Form No. MGT.14.**
- ❖ The directors of the company shall give a declaration by way of affidavit.

CHAPTER – 6

CONCEPT OF SHARE CAPITAL

MEANING OF THE TERM “CAPITAL –

In relation to a company limited by shares, the word “capital” means the share capital i.e., the capital in terms of rupees divided into specified number of shares of a fixed amount each. For e.g. share capital of a company is 1,00,000 which can be divided into 10,000 shares of `10 each or 1,000 shares of `100 each, whichever is feasible to the company.

In Company Law, the “Capital” is the share capital of a company, which is classified as:

- ◆ **Nominal, authorized or Registered Capital:** - “authorized capital” or “nominal capital” means such capital as is authorized by the memorandum of a company to be the maximum amount of share capital of the company.
- ◆ **Issued Capital:** - “issued capital” means such capital as the company issues from time to time for subscription. It is that part of the authorized or nominal capital which the company issues for the time being for public subscription and allotment.
- ◆ **Subscribed Capital:** - “subscribed capital” means such part of the capital which is for the time being subscribed by the members of a company. It is that portion of the issued capital which has been subscribed for or taken up by the subscribers of shares in the company.
- ◆ **Called up Capital:** - “called-up capital” means such part of the capital, which has been called for payment. It is that portion of the subscribed capital which has been called up or demanded on the shares by the company.
- ◆ **Paid-up Share Capital:** - “paid-up share capital” or “share capital paid-up” means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company.
- ◆ **Preference and Equity Share Capital:** -
 - “equity share capital”, with reference to any company limited by shares, means all share capital which is not preference share capital;
 - “preference share capital”, with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right over equity share capital with respect to—
 - ⊖ payment of dividend,
 - ⊖ repayment, in the case of a winding up etc.\

Nature of a Share –

- A share is a right to a specified amount of the share capital of a company, carrying with it certain rights and liabilities;

- A share is the interest of a shareholder in the company measured by a sum of money,
- A share is a right to participate in the profits made by a company,
- A share is not a sum of money but a bundle of rights and liabilities. These rights and liabilities are regulated by the articles of a company.

Section 43 of the Companies Act, 2013 permits a company limited by shares to issue two classes of shares,

(a) Equity share capital—

1. with voting rights; or with differential rights as to dividend, voting or
2. Otherwise in accordance with such rules as may be prescribed.

(b) Preference Share Capital.

PREFERENCE SHARES COMPARED WITH EQUITY SHARES –

Preference share capital	Equity share capital
Preference shares are entitled to a fixed rate of dividend.	The rate of dividend on equity shares depends upon the amount of profit available and the funds requirements of the company for future expansion etc.
Dividend on the preference shares is paid in preference to the equity shares.	The dividend on equity shares is paid only after the preference dividend has been paid.
In case of winding up, preference share holder get preference over equity share holders with regard to the payment of capital.	In case of winding up, equity share holder get payment of capital after the payment of capital to preference shareholders.
Dividend on preference share may be cumulative.	The dividend on equity shares is paid only after the preference dividend has been paid and it is not cumulative
A preference shareholder can vote only when his special rights as a preference shareholder are being varied	An equity shareholder can vote on all matters affecting the company.
No bonus shares/right shares are issued to preference shareholders.	A company may issue rights shares or bonus shares to the company's existing equity shareholders.
Redeemable preference shares may be redeemed by the company.	Equity shares cannot be redeemed except under a scheme involving reduction of capital or buy back of its own shares.
Voting right of a preference shareholders on a poll shall be in proportion to his share in the paid-up preference share capital of the company.	Voting right of an equity shareholders on a poll shall be in proportion to his share in the paid up equity share capital of the company.

A company may issue securities at a premium when it is able to sell them at a price above par or above nominal value. The Companies Act, 2013, does not stipulate any conditions or restrictions regulating the issue of securities by a company at a premium. However, the Companies Act does impose conditions regulating the utilization of the amount of premium collected on securities.

Utilization of Securities premium –

In accordance with the provisions of **Section 52(2)** of the Act, the securities premium can be utilized only for:

- ❖ issuing fully paid bonus shares to members;
- ❖ writing off the balance of the preliminary expenses of the company;
- ❖ writing off commission paid or discount allowed, or the expenses incurred on issue of shares or debentures of the company;
- ❖ for providing for the premium payable on redemption of any redeemable preference shares or debentures of the company; or
- ❖ for the purchase of its own shares or other securities under section 68.

ISSUE OF SWEAT EQUITY SHARES –

According to **SECTION 2(88)**, sweat equity shares mean equity shares issued by a company to its directors or employees at a discount or for consideration, other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

Conditions for Issue of Sweat Equity Shares –

Section 54(i) provides that a company can issue sweat equity shares, of a class of shares already issued, if the following conditions are satisfied:

- ❖ The issue has been authorized by a special resolution passed by the company in the general meeting.
- ❖ As on the date of issue, at least one year should have elapsed from the date on which the company had commenced business.
- ❖ A company whose shares are listed on a recognized stock exchange issuing sweat equity shares should comply with the regulations made in this behalf by SEBI.
- ❖ A company whose shares are not so listed should issue sweat equity shares in compliance with the rules made in this behalf by the Central Government.
- ❖ the following are clearly specified in the resolution:
 - (a) number of shares;
 - (b) current market price;
 - (c) consideration, if any; and
 - (d) class or classes of directors or employees to whom such equity shares are to be issued.

SHARES WITH DIFFERENTIAL VOTING RIGHTS –

Section 43 enables companies to issue a variety of equity shares with differential rights etc. Rule 4 of Companies (Share Capital and Debentures) Rules, 2014 states the following conditions regarding shares with differential voting rights.

- The articles of association of the company authorizes the issue of shares with differential rights;
- Pass an ordinary resolution at a general meeting /When the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot ;
- The shares with differential rights shall not exceed twenty-six percent of the total post-issue paid up equity share capital.
- The company having consistent track record of distributable profits for the last three years;
- The company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year.
- The company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures.
- The company has not defaulted in payment of the dividend on preference shares or repayment of any term loan.
- The company has not been penalized by Court or Tribunal during the last three years of any offence under any law.

ISSUE AND REDEMPTION OF PREFERENCE SHARES –

Section 55. (1) states that no company limited by shares shall, after the commencement of this Act, issue any preference shares which are irredeemable. **Section 55(2)** further states that a company limited by shares may, if so authorized by its articles, issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue subject to such conditions as may be prescribed.

<u>Type of business of company</u>	<u>Normal business</u>	<u>Company engaged in infrastructure business</u>
<u>Redemption period</u>	20 years	30 years Subject to redeem 10% every year after expiry of 20 years

BONUS SHARES –

section 63

A company may, if its Articles provide, capitalize its profits by issuing fully-paid bonus shares. The issue of bonus shares by a company is a common feature. When a company is prosperous and accumulates large distributable profits, it converts these accumulated profits into capital and divides the capital among the existing members in proportion to their entitlements. Members do not have to pay any amount for such shares. They are given free. The bonus shares allotted to the members do not represent taxable income in their hands.

Conditions for issue of Bonus Shares –

In terms of section 63(2), no company shall capitalize its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—

- it is authorized by its articles;
- it has, on the recommendation of the Board, been authorized in the general meeting of the company;
- it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
- the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;

EMPLOYEE STOCK OPTION SCHEME –

As per **Section 2(37) of companies Act 2013**, “employee stock option” means the option given to the directors, officers or employees of the company or its holding company or subsidiary company or companies, if any, which gives such mentioned persons, the benefit or right to purchase or subscribe for, the shares of the company at a future date at a pre-determined price.

Any promoters, outsider or any Directors which holds more than 10% of shares in company, are not covered under this scheme. It is an open ended scheme or regular nature of scheme, perpetual scheme and continuous scheme.

1. It is required to pass a Special Resolution in general meeting to issue ESOS.
2. There is minimum one year's vesting period in ESOS.
3. The company offering such scheme is free to determine lock-in period.
4. If the company issues more than 1% of its share capital to anyone under this scheme, then the same must be disclosed in General Meeting.
5. The compensation committee is established to watch the ESOS.
6. Till the exercise of the scheme, there is no right of any voting or dividend in ESOS.

7. It is required to maintain a Register of this scheme in form no. SH-6.
8. Whenever the company allots the shares, now file the return of allotment to RoC in e-form no. PAS – 3.
9. Deliver the share certificates to shareholders of ESOS within 2 months from such allotment.
10. Now inform to depositaries.

EMPLOYEE STOCK PURCHASE SCHEME –

It is just like employee stock option scheme but the following points differs –

1. It is a close ended scheme, which is part of public issue.
2. It can be issued to outsiders.
3. There is a fixed lock-in period of 1 year.
4. Other provisions are same as ESOS.

CHAPTER – 7

ALTERATION OF SHARE CAPITAL

ALTERATION OF SHARE CAPITAL –

Section 61 of the Companies Act, 2013 provides that a company limited by shares or guarantee and having a share capital may, if so authorized by its articles, alter, by an ordinary resolution, its memorandum in the following ways:

- ❖ It may increase the authorized share capital by such amount as it thinks fit.
- ❖ It can issue new shares in the market, i.e. further issue of shares.
- ❖ It can consolidate its existing shares into larger denomination.
- ❖ It can sub-divide its existing shares into smaller denomination.
- ❖ It can convert all or any of its fully paid-up shares into stock or vice-versa.
- ❖ It may cancel shares which have not been taken up nor agreed to be taken by anyone and diminish the amount of shares capital by the amount so canceled.

And all other provisions as specified in the Act should be followed.

DIFFERENCE B/W SHARES AND STOCK –

SHARES		STOCK	
1.	Shares in physical form bear distinct numbers.	1.	Stocks are the consolidated value of share capital.
2.	Shares may or may not be fully paid-up.	2.	Stock is always fully paid-up.
3.	Shares have a nominal value.	3.	Stock does not have any nominal value.
4.	All shares are of equal denomination.	4.	Denomination of stocks varies.
5.	It is not possible to transfer shares into fraction.	5.	Stock is divisible into any amount required. Thus, it is possible to transfer even into fraction.
6.	Shares comes into existence before the stock and it is issued initially.	6.	Stock comes into existence after conversion of shares into stock and on conversion of shares into stock, the provisions of the Act governing the shares shall cease to apply to the share capital as it is converted into stock.

REDUCTION OF SHARE CAPITAL (SECTION 66) (SECTION 66 IS YET TO BE NOTIFIED) –

As per companies act – 1956 this is to be done because section 66 of the Companies Act -2013 is yet to be notified.

- ❖ Reduction of share capital means reduction of issued, paid-up, subscribed capital of the company.
- ❖ The reduction must be authorized in the articles of the company.
- ❖ Pass a special resolution in general meeting for reduction of share capital.
- ❖ It is required to get sanction of court/tribunal to complete the reduction of share-capital.

Reduction of share-capital can also be completed without sanction of court in following cases –

- Surrender of shares.
- Forfeiture of shares.
- Buy-back of shares.
- Redemption of preference share.
- Diminution of share-capital.

BUY – BACK OF SECURITIES –

SECTION 68

Buy – back is to be done -

- ✚ To improve earnings per share; or
- ✚ For the defense mechanism of the company

SOURCES OF BUY BACK –

According to section 68(1) of the companies act – 2013, a company may purchase its own shares or other specified securities out of –

- Its free reserves;
- The securities premium A/c;
- The proceeds of any shares or other specified securities.

CONDITIONS FOR BUY BACK –

- ❖ The primary requirement is that the articles of association of the company should authorize buyback.
- ❖ Board can authorize buy back up-to 10% equity capital and free reserves in a resolution passed at the Board Meeting.

- ❖ Shareholders can authorize buy back by special resolution up-to 25% of the total paid-up capital and free reserves of the company and in a financial year, up-to 25% of total equity capital in that year.
- ❖ More than 25% of paid-up share capital + free reserves can-not be buy backed.
- ❖ There must be 1 year gap between two consecutive buy back.
- ❖ All the shares or other specified securities for buy-back are to be fully paid-up.
- ❖ After buy back the debt : equity ratio should be 2:1.
- ❖ The whole procedure of buy back must be completed within 1 year from the date of passing of special resolution.
- ❖ After completion of buy back destroy the shares within 7 days, which are buy backed.
- ❖ Now inform to the stock – exchange where the securities of the company is listed.
- ❖ File the letter of offer to the registrar of companies in form **SH – 8**, within 30 days.
- ❖ After completion of buy back the company can-not issue same kind of shares till 6 months.
- ❖ Declaration of solvency by board of directors in e – form **SH – 9** after passing a board resolution must be filed with the registrar of companies.
- ❖ File the return of buy back to the registrar of companies in form **SH – 11** and to the SEBI in form **SH – 15** duly signed by at-least 2 directors of the company.

PENALTY –

If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board, in case of listed companies, the **company** shall be punishable with fine which shall not be less than **one lakh rupees but which may extend to three lakh rupees** and **every officer** of the company who is in default shall be punishable **with imprisonment for a term which may extend to three years or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.**

CIRCUMSTANCES PROHIBITS BUY-BACK

(SECTION 70(1))

No company shall directly or indirectly purchase its own shares or other specified securities—

- ❖ Through any subsidiary company including its own subsidiary companies;
- ❖ Through any investment company or group of investment companies; or
- ❖ If the company has defaulted in -
 - Section 92 – filling of annual return.
 - Section 123 – declaration of dividend.
 - Section 127 – distribution of declared dividend.
 - Section 129 – financial statements.
 - Repayment of deposits/ payment of interest/ redemption of preference shares/ redemption of debentures/ repayment of any loan.

DIFFERENCE IN ALTERATION OF SHARE CAPITAL AND REDUCTION OF SHARE CAPITAL –

The main point of distinction between alteration and reduction are as following –

ALTERATION OF SHARE CAPITAL		REDUCTION OF SHARE CAPITAL	
1.	Alteration of share capital is governed by the provisions of section 61 of the Companies Act, 2013.	1.	Reduction of share capital is governed by the provisions of section 66 of the Companies Act, 2013.
2.	Alteration of share capital is required to be done by ordinary resolution.	2.	Reduction of share capital is required to be done by special resolution.
3.	Alteration of share capital is not required to be confirmed by the Tribunal.	3.	Reduction of share capital is to be confirmed by the Tribunal.
4.	Alteration of share capital may be done in the following manner:- ➤ Increasing its nominal capital by issuing new shares ➤ Consolidating and dividing all or any of its share capital into shares of large denomination ➤ Converting fully paid up shares into stock or vice versa ➤ Sub dividing its shares or any of them into shares of smaller amount ➤ Canceling shares which have not been taken up and diminishing the amount of share capital by the amount of the shares so cancelled.	4.	Reduction of share capital may be done in the following manner: ➤ Extinguishing or reducing the liability of members in respect of the capital not paid-up ➤ Writing off or canceling any paid up capital which is in excess of the needs of the company ➤ Paying off any paid up share capital which is in excess of the needs of the company

CHAPTER – 8

PRIVATE PLACEMENT & PROSPECTUS

MEANING AND DEFINITION OF PROSPECTUS –

Section 2(70) of the Companies Act, 2013 defines a prospectus as “any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.”

According to section 23 (1) of the companies act 2013 a company may issue securities:-

- To public through prospectus;
- Through private placement;
- Through a right or bonus issue.

Section 23(2) again lays down that a private company may issue securities:-

- By way of right issue or bonus issue;
- Through private placement.

PRIVATE PLACEMENT –

Section 42(2), "private placement" means any offer of securities or invitation to subscribe securities to **a select group of persons** by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in section 42.

- ❖ Private placement is not issued to outsiders.
- ❖ Private placement is issued to existing employees for subscription of securities.
- ❖ It is issued to selected group of persons but not more than specified limit.
- ❖ The company has to issue private – placement offer letter in **e- form PAS-4**.
- ❖ If a company wants to issue securities through private-placement then it is required to pass a Special Resolution for such issue.
- ❖ The securities should be allotted within 60 days from the date of receipt of application money.
- ❖ Money received shall be kept in a separate bank A/c in a scheduled bank.
- ❖ The offer-letter should be made to specifically addressing people.
- ❖ There should be no public advertisement for private placement.
- ❖ Return of allotment of securities along with details of subscribers, file to RoC in form PAS-3.
- ❖ Maintain a complete record of private-placement in form **PAS-5**.

If there is any contravene of the above mentioned provisions, then the promoters, director of company shall be liable to a penalty which may extent to the amount involved or 2 Crore, whichever is higher.

WHAT IS PUBLIC OFFER?

Section 23 states that, "public offer" includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus.

DEEMED PROSPECTUS

Section 25(1) states that when a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public,

- ❖ Any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company; and
- ❖ All enactments and rules of law as to the contents of prospectus, shall apply with the modifications specified in subsections (3) and (4) and shall have effect accordingly, as if the securities had been offered to the public for subscription and as if persons accepting the offer in respect of any securities were subscribers for those securities, but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.

MATTERS TO BE STATED IN THE PROSPECTUS

Section 26(1) states that every prospectus issued by or on behalf of a public company shall be dated and signed and shall state the information given below –

- ❖ Names and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed;
- ❖ Dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time;
- ❖ a statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilized and unutilized monies out of the previous issue in the prescribed manner;
- ❖ Details about underwriting of the issue
- ❖ The consent in writing of the directors, the auditors, bankers to the issue, expert's opinion, if any, all the persons named in the prospectus and of such other persons, as may be prescribed;

- ❖ The authority for the issue and the details of the resolution passed therefor;
- ❖ Procedure and time schedule for allotment and issue of securities;
- ❖ Capital structure of the company in the prescribed manner;
- ❖ Main objects of public offer, terms of the present issue and such other particulars as may be prescribed;
- ❖ Main objects and present business of the company and its location, schedule of implementation of the project;
- ❖ Minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash;
- ❖ Disclosures in such manner as may be prescribed about sources of promoter's contribution;
- ❖ Details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed.

TYPE OF PROSPECTUS –

There are various types of prospectus mentioned under the companies act, main type of prospectus are as following.

- Red-herring prospectus.
- Shelf prospectus.
- Abridged prospectus.
- Deemed-prospectus.

RED-HERRING PROSPECTUS-

Section 32 of the Act deals with Red Herring Prospectus. "Red Herring Prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

Red herring prospectus is issued during book building process. Red herring prospectus contains either the floor price of securities offered or a price band along with the range within which the Bids can move. The applicants bid for the shares quoting the price and the quantity that they would like to bid at.

SHELF PROSPECTUS -

"Shelf Prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. It is normally issued for 1 year. Accordingly as per Section 31—

Information Memorandum to be filed before the issue of a second or subsequent offer of securities under the shelf prospectus in PAS-2 and file it with the registrar of companies.

ABRIDGED PROSPECTUS –

section 2(1)

It is such as a short prospectus. It contains all the salient features of a prospectus. It accompanies the application form of public issue.

Where, there is no need to file abridged prospectus –

1. If a company does not issue securities to public.
2. In case of underwriting agreement.
3. If the company is issuing shares to existing shareholders.
4. If the whole work of company is performed by recognized stock-exchange.

GOLDEN RULE OR THE GOLDEN LEGACY–

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

This Golden Rule was *pronounced by Kindersey, V.C. in New Brunswick, etc., Co. v. Muggersidge* and has come to be known as the “golden legacy”. Public is invited to take shares on the faith of the representation contained in the prospectus. The public is at the mercy of company promoters. Everything must, therefore, be stated with strict and scrupulous accuracy. Nothing should be stated as a fact which is not so and no fact should be omitted. Everything stated should be as which is simply understandable by one person.

Where an untrue statement occurs in a prospectus, there may arise –

- Civil liability.
- Criminal liability.

Every person who is a director of the company at the time of the issue of the prospectus, every promoter of the company and every person, including an expert, who has authorized the issue of a prospectus, shall be liable.

REMEDIES FOR MISREPRESENTATION IN PROSPECTUS -

- ❖ The first remedy against the company is to rescind the contract.
- ❖ The second remedy against the company is to sue for damages for deceit.

Remedies against Directors or Promoters –

A person who subscribed for shares on the faith of a false prospectus may claim from directors or promoters:

1. Damages for fraudulent misrepresentation,
2. Compensation under Section 35 of the Act,
3. Damages for non-compliance with the requirements of Section 26 of the Act.

Criminal Liability for Mis-statements in Prospectus –

Section 447 provides that any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less **than six months but which may extend to ten years** and shall also be liable to fine which **shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.**

However, where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

CHAPTER - 9

CREATION AND REGISTRATION OF CHARGES

DEFINITION OF A CHARGE -

A charge is a security given for securing loans or debentures by way of a mortgage on the assets of the company. A company, like a natural person, can offer security for its borrowings. Normally, the debentures and other borrowings of the company are secured by a charge on the assets of the company. Where property, both existing and future, is agreed to be made available as a security for the repayment of debt and creditors have a present right to have it made available, there is a charge created.

According to Section 2(16) of the Act, “charge” means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

A charge on the property of the company as security for debts may be of the following kinds, namely:

- Fixed or specific charge;
- Floating charge.

*A charge is called **FIXED OR SPECIFIC** when it is created to cover assets which are ascertained and definite or are capable of being ascertained and defined, at the time of creating the charge e.g., land, building, or plant and machinery.*

*A **FLOATING CHARGE**, as a type of security, is peculiar to companies as borrowers. A floating charge is not attached to any definite property but covers property of a fluctuating type e.g., stock-in-trade and is thus necessarily equitable.*

Crystallization of Floating Charge -

A floating charge attaches to the company's property generally and remains dormant till it crystallizes or becomes fixed. The company has a right to carry on its business with the help of assets over which a floating charge has been created till the happening of some event which determines this right. A floating charge crystallizes and the security becomes fixed in the following cases:

- ❖ When the company goes into liquidation;
- ❖ When the company ceases to carry on its business;
- ❖ When the creditors or the debenture holders take steps to enforce their security e.g. by appointing receiver to take possession of the property charged;

- ❖ On the happening of the event specified in the deed.

In the aforesaid circumstances, the floating charge is said to become fixed or to have crystallized. Until the charge crystallizes or attaches or becomes fixed, the company can deal with the property so charged in any manner it likes.

On crystallization, the floating charge converts itself into a fixed charge on the property of the company. It has priority over any subsequent equitable charge and other unsecured creditors.

Postponement of a Floating Charge

The floating charge is postponed in favour of the following persons if they act before the crystallization of the security:

- ❖ A landlord who distrains for rent;
- ❖ A creditor who obtains a garnishee order absolute;
- ❖ A judgement creditor who attaches goods of the company and gets them sold (But if the goods are not sold and the debenture holders take action in the meantime, the floating charge has priority);
- ❖ The employees of the company, as well as other preferential creditors in the event of winding-up of the company;
- ❖ The supplier of goods to the company under a hire-purchase agreement on terms that goods are to remain the property of the seller until they are paid for in full.

❖ **Postponement means the property gets free from floating charges.**

Form no.	Purpose of the form
CHG - 1	Creation / modification of charges.
CHG - 2	Certificate of registration of charges.
CHG - 3	Certificate of modification of charges.
CHG - 4	Intimation of satisfaction to registrar of companies.
CHG - 5	Issue of certificate of satisfaction by registrar of companies.
CHG - 6	Appointment of receiver.
CHG - 7	Register of charges.
CHG - 8	Application for condonation of delay to the Central Government.
CHG - 9	Charges related to debentures.
CHG - 10	Application for condonation of delay to the Registrar of companies.

A floating charge remains afloat until a winding up commences, unless it has already crystallised through the intervention of the debenture holders or the creditors. Also, a floating charge is valid only against the unsecured creditors, whether in a winding- up or otherwise.

Difference between Mortgage and Charge

S. no.	MORTGAGE	CHARGES
1.	A mortgage is created by the act of the parties.	A charge may be created either through the act of parties or by operation of law.
2.	A mortgage requires registration under the Transfer of Property Act, 1882.	A charge created by operation of law does not require registration But a charge created by act of parties requires registration.
3.	A mortgage is for a fixed term.	The charge may be in perpetuity.
4.	A mortgage is a transfer of an interest in specific immovable property.	A charge only gives a right to receive payment out of a particular property.
5.	A mortgage is good against subsequent transferees.	A charge is good against subsequent transferees with notice.
6.	A simple mortgage carries personal liability unless excluded by express contract.	In case of charge, no personal liability is created. But where a charge is the result of a contract, there may be a personal remedy.
7.	A mortgage is a transfer of an interest in a specific immovable property.	There is no such transfer of interest in the case of a charge. Charge does not operate as transfer of an interest in the property and a transferee of the property gets the property free from the charge provided he purchases it for value without notice of the charge.

- ❖ **Section 77(1)** states that it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, with the Registrar within thirty days of its creation.
- ❖ **Section 77(1)** states that the Registrar may on an application by the company in e-form **CHG – 10** allow registration of charge within three hundred days of creation or modification of charge on payment of additional fee.
- ❖ If company fails to register the charge even within this period of three hundred days, it may seek extension of time in accordance with **Section 87** from the Central Government in e-form **CHG- 8**.
- ❖ According to **Section 77(2)**, when a charge is registered with the Registrar, Registrar shall issue a **certificate of registration of charge in Form No.CHG-2** and for registration of **modification of charge in Form No.CHG-3** to the company and to the person in whose favour the charge is created.
- ❖ According to **section 82** read with the rules, the company shall give intimation to the Registrar of the payment or satisfaction in full of any charge within a period of thirty days from the date of such payment or satisfaction in **Form No.CHG-4** along with the fee.
- ❖ Where the Registrar enters a memorandum of satisfaction of charge in full in pursuance of section 82 or 83, he shall issue a certificate of registration of satisfaction of charge in **Form No.CHG-5**.

- ❖ In accordance with section 81 and the rules the Registrar of Companies shall maintain a register containing particulars of the charges registered in respect of every company. The particulars of charges maintained on the Ministry of Corporate Affairs portal (www.mca.gov.in/MCA21) shall be deemed to be the register of charges for the purposes of section 81 of the Act.
- ❖ **Section 84** provides that if any person obtains an order for the appointment of a receiver of, or of a person to manage, the property, subject to a charge, of a company or if any person appoints such receiver or person under any power contained in any instrument, he shall, within a period of thirty days from the date of the passing of the order or of the making of the appointment, give notice of such appointment to the company and the Registrar.

Company's Register of Charges

Section 85 read with rule 10 provides that every company shall keep at its registered office a register of charges in Form No. CHG.7 which shall include therein all charges and floating charges affecting any property or assets of the company or any of its undertakings, indicating in each case such particulars as may be prescribed.

All the entries in the register shall be authenticated by a director or the secretary of the company or any other person authorized by the Board for the purpose.

The register of charges shall be preserved permanently and the instrument creating a charge or modification thereon shall be preserved for a period of eight years from the date of satisfaction of charge by the company. A copy of the instrument creating the charge shall also be kept at the registered office of the company along with the register of charges.

CHAPTER – 10

Allotment of Securities And Issue of Certificates

SECURITIES

According to 2(81) of Companies Act, 2013 “securities” means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956.

As per Section 2(h) of the Securities Contracts (Regulation) Act, 1956 “securities” include—

- ❖ shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
- ❖ derivative / units or any other instrument issued by any collective investment scheme to the investors in such schemes;
- ❖ Government securities;
- ❖ rights or interests in securities;

GENERAL PRINCIPLES REGARDING ALLOTMENT

“Allotment” of shares means the act of appropriation by the Board of directors of the company out of the previously un-appropriated capital of a company of a certain number of shares to persons who have made applications for shares.

The following general principles should be observed with regard to allotment of securities:

- ❖ The allotment should be made by proper authority, i.e. the Board Directors of the company, or a committee authorized to allot securities on behalf of the Board.
- ❖ Allotment of securities must be made within a reasonable time.
- ❖ The allotment should be absolute and unconditional.
- ❖ The allotment must be communicated.
- ❖ Allotment against application only
- ❖ Allotment should not be in contravention of any other law.

Provisions relating to allotment of securities – Companies Act 2013

- ❖ Section 39(1) states that no allotment of any securities of a company offered to the public for subscription shall be made unless the amount stated in the prospectus as the minimum amount has been subscribed = 90%.
- ❖ Application money should not be less than 5% of the nominal value of the shares.

- ❖ If the stated minimum amount has not been subscribed within a period of thirty days from the date of issue of the prospectus, or such other period as may be specified by the Securities and Exchange Board, the amount so **received shall be returned within 15 days from the closure of the issue**. If any such money is not so repaid within such period the directors of the company who are officers in default shall jointly and severally be liable to repay that money with **interest at 15% P.A.**
- ❖ Whenever a company having a share capital makes any allotment of securities, it shall file with the Registrar a return of allotment in **Form PAS-3**.
- ❖ In case of any default, the company and its officer who is in default shall be liable to a penalty, for each default, of **1000 rupees for each day** during which such default continues **or rupees 100000, whichever is less**.

ISSUE OF SHARE CERTIFICATE –

In terms of Section 46(1) of the Act, a certificate under the common seal of the company is prima facie evidence of the title of the person to the shares specified therein. The certificate is the only documentary evidence of title in the possession of the shareholder. But it is not a warranty of title by the company issuing it.

The power to issue share certificate Is given to the board of directors of the company.

ISSUE OF SHARE CERTIFICATE	ISSUE OF RENEWED OR DUPLICATE SHARE CERTIFICATE
Pass board resolution	Renewal to be made only on surrender of old certificate
Letter of offer surrendered to company if the letter is lost or destroyed the board may impose reasonable terms	Company may charge fee for duplicate share certificate as the board decides but not exceeding rupees 50 per certificate.
Certificate shall be issued in Form No. SH-1 and shall specify the name of person in whose favour the certificate is issued	Company shall not issue any duplicate share certificate in lieu of those lost or destroyed without the prior consent of Board
Certificate shall be issue under the common seal of the company	If the company is listed then the duplicate share certificates shall be issued within 15 days and if the company is unlisted it shall issue the certificates in 3 months
Particulars of shares certificates to be entered in the Register of Members.	The particulars of renewed and duplicate share certificate to be entered in Form No. SH.2
	The register to be kept at registered office of the company
The certificate shall be signed by – ❖ Two directors duly authorized by the board if the composition of board permits at least one of the aforesaid two directors shall be a person other than managing or whole time director ❖ The secretary or any person authorized by the board	❖ On fraudulent issue the company shall be punishable with: fine which shall not be less than five times the face value of of shares involved which may extend to ten times ❖ Officer in default shall be liable under section 447

Calls -

A company issuing shares to its members may call the money due on shares at intervals depending upon the requirements for funds for implementing the project and the shareholders also prefer to pay the nominal value on their shares in installments as and when demanded by the company.

- ❖ The power to make calls is exercised by the Board in its meeting by means of a board resolution [Section 179(3) (a)].
- ❖ Give 14 days prior notice to the shareholders regarding the call money.
- ❖ There should be 2 months gap between two calls.
- ❖ At once only $1/4^{\text{TH}}$ of the nominal value of shares can be called.
- ❖ If some persons had taken shares jointly, they will be personally liable to call.
- ❖ The all calls made should be bona-fide to the company.
- ❖ The board of directors can postpone or revoke the call by passing a board resolution at board meeting.
- ❖ If any-one defaulted in the payment of a valid call, there will be no voting rights to such defaulter.
- ❖ In case the call is not paid at time, interest will be charged or it can be forfeited.

Forfeiture of Shares –

Forfeiture of shares means taking back of shares by the company from the shareholders. If the shareholder makes default in payment of calls on shares, then the company can use the option of forfeiting the shares. For a valid forfeiture, satisfaction of following conditions is necessary:

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- ❖ Articles of Association must authorize the forfeiture of shares.
- ❖ Article 30 of the Table F provides that if the defaulting shareholder does not pay the amount within the specified time as required by the notice, the directors may pass a board resolution forfeiting the shares.
- ❖ Before the shares of a member are forfeited, a proper notice to that effect must have been served. Regulation 29 of Table F provides that a notice shall name a further day (not less than 14 days from the date of service of the notice) on or before which the payment is to be made.
- ❖ Power of forfeiture must be exercised bona fide and for the benefit of the company.

The forfeited shares can be reissued to anyone. In case, the defaulting shareholder approaches the Board to cancel the forfeiture, the Board is empowered to cancel such forfeiture and claim the due amount with interest. Where the forfeited shares are re-issued, the new shareholders will not only be liable for the balance amount remaining on the shares but he will also not be entitled to voting rights so long as calls payable by the original shareholder remain unpaid, if the company's articles so provide, as stated in Section 106.

Surrender of shares –

A company cannot accept a surrender of its shares “as every surrender of shares, whether fully paid-up or not involves a reduction of capital which is unlawful...forfeiture is a statutory exception and is the only exception”. [Bellerby v. Rowland and Marwood's S.S. Co. Ltd., (1902) 2 Ch 14].

But a surrender may be dealt directing that the shares be held in the name of a nominee as trustee for the company.

However, a surrender can be accepted in circumstances absolutely parallel to the requirements of a forfeiture, the only difference being that instead of going to the length of the formalities of a forfeiture, the company accepts in good faith in its own interest the shares which the shareholder is voluntarily surrendering. The other advantage to the company is that the shareholder becomes estopped from questioning the validity.

[Collector of Moradabad v. Equity Insurance Co. Ltd., AIR 1948 Oudh 197].