Company Law Fast track Revision

Exclusively for Team CA Students

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This is an effort made to make your Revision time effective, before Reading this students are advised to go through whole companies act .further it does not contains all the relevant provisions , this is only for revision purpose. Efforts are made to avoid any mistakes , further Love to have your suggestions. Thanks

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Basics of Company Law

Incorporated Association

Artificial person

Separate legal entity

Perpetual Succession

Limited liability

Common seal

Transferability of shares

Separate Management

Separate property

Capacity to sue & be sued.

Lifting of corporate veil

Meaning:- by fiction of law a company is seen as a distinct entity, this fiction is created by a fictional veil i.e the corporate veil.

Effect of corporate veil:-Only a company is liable for the acts done in the name of company, even though members, directors ,and any officer had acted on the behalf of the company.

Lifting of corporate veil:-

(1) it is permitted by statue,
(2) there is clear evidence of abuse of the device of incorporation,
(3) Court has discretion

- ***Protection of Revenue***
- ***Prevention of fraud or improper conduct***
- ***Determining whether enemy company***
- ***Check avoidance of welfare legislation***

COMPANY LIMITED BY SHARES- means a company having the liability of its members limited by the memorandum to the amount, if any unpaid on the shares respectively held by them.

COMPANYLIMITED BY GUARANTEE- means a company having its liability limited by its MOA to such amount as the members respectively undertake to contribute in the event of winding up.

UNLIMITED COMPANY- means a company which does not have limit on liability of its members.

FOREIGN COMPANY

Foreign company means any company or body corporate incorporated outside india which-

(a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

Conducts any business activity in India in any manner

DORMENT COMPANY

A company may make application to the registrar so as to obtain the status of dormant company in the following two cases –

(1) It was formed and registered under companies' act **2013 for a future project or to hold assets or intellectual property** and it has **no significant accounting transaction.**
(2) It is **an inactive** company.

BODY CORPORATE OR CORPORATION

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

(1) A co-operative society registered under any law relating to co-operative societies; and
(2) Any other body corporate (not being a company as defined in this act) ,which CG may by notification, specify in this behalf.

SUBSIDIARY COMPANY means a company in which holding company-

(1) Controls the composition of the board of directors; or
(2) Exercise or controls more than one-half of the total share capital either at his own or **together with one or more** of its subsidiary companies

Incorporation of Companies

Conditions for sec.8 company

The objects of the company are to promote commerce, art, science, sports, education, research, social welfare, religion, charity, and protection of environment or such other object.

The company intends to apply its profits in promoting its objects; and

They intend to prohibit the payment of dividend to its members

Revocation of licence by CG

CG may revocate the licence issued to the company if,

The provisions of sec. 8 are not complied. or

Company contrivances to any condition subject to which licence was granted., or The affairs of company prejudicial to the interest of the public.

ROOBH shall be given.

Position of promoters:

Neither an agent nor a trustee of company Fiduciary capacity to company.

Duties of the promoters: Not to make secret profits.-

The fact that the promoters have made a profits must be **disclosed to an independent board of directors.**

Full & fair disclosure of interest- in every transaction or contract with the company in which he is directly or indirectly interested.

Remedies available to the companies against the promoters:

Rescission- the company may rescind the contract, even though the company has adopted the contract and communicated this to other party, but it should be within reasonable time.

Recovery of secret profit.Suit for breach of trust.

Right of promoters to receive remuneration or reimbursement:- The promoters shall have **No right to receive the remuneration** from company, unless there is contract for the **same after**

Formation of company

Legal Requirements for formation of company:-

1. **Lawful Purpose**
2. **Subscription to memorandum**
3. **Filing of documents.**
   - **The memorandum and articles of the company**
   - **A declaration**
   - **An affidavit signed by**
   - **Details W.r.t every subscriber to MOA**
   - **Details W.r.t every 1st director in articles**
   - **Registration by the registrar**
   - **Allotment of corporate Identity numbers[CIN]**

1. **Maintenance of documents by company.-** at its registered office ,till the dissolution.
2. **Consequences for furnishing false information.-** liable under sec. 447.

One person company

- The MOA shall state the name of a person as Nominee
- Consent of nominated person
- Withdrawal of consent
- **Prohibition on Minor..**

Prohibition on voluntary conversion.- unless 2years have passed from the date of incorporation.

Compulsory conversion if T/O or Paid up capital exceed.

Pre Incorporation or preliminary contracts- a contract entered into by the promoters on behalf of the company, i.e before incorporation of the company. Generally, made by promoters to acquire some property or right for the property

When Pre-Incorporation contract binding on Company- The promoters entered into the **contract before incorporation** of company.**& contract on behalf of company.**

The contract falls within any of clauses of Object Clause.

The company **has accepted** the contract after incorporation of the company.

The company has **communicated such acceptance** to other party of contract.

fresh contact in terms of pre-incorporation contact.- The pre-incorporation contact shall stand discharged and accordingly the liability of promoters comes to end.

.**MEMORANDUM**

Meaning –

It contains the object for which company is framed. It identifies the possible scope of its operations.

CONTENTS OF MEMORANDUM

Name clause -name of company

Situation clause –Name of the state in which registered office .

Objects clause – it shall state the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.

Liability clause

Capital clause –amount of authorised capital &the division of authorised capital .**Subscription clause**

Nominee clause

ARTICLES

- **Meaning-** articles are the rules and regulation framed by company for its own governance company.
- **Provision for entrenchment -**Certain specified provisions of articles can be altered only by complying with such conditions or procedure as are more restrictive than special resolution.

ALTERATION OF MEMORANDUM

Capital clause –

- Authorisation from Articles.
- Ordinary resolution in general meeting

Name clause

- By passing a special resolution.
- CG approval ,not required for change due to conversion.

Situation clause (one state to another)

- **By passing SR.**
- **the CG approval**
- The company shall at least 14 days before the date of hearing-
  a. Advertise the application in 2 newspapers.
  b. Serve individual notices on each debenture-holder and creditor of company.
  c. Serve a notice to ROC.

Objects clause

- by passing SR.
- If a company has raised money from public by issue of prospectus and such money remains unutilised shall not change unless-**it gives advertisement and give exit opportunity.**

Articles Alteration- By passing SR However it cannot override **Act And MOA**

Application for reservation of name- any person on payment of prescribed fees.

1. **Name of company not to be identical or similar**
2. **Prohibition on certain names-**
   - Name which is **undesirable in the opinion of the central government.**
   - Name which **is unlawful or illegal** under any act.
   - Name which gives impression that **company is anyway connected to CG,SG or local**
3. **Company dissolved or name struck off – identical Name not allowed for certain period**
4. **Change in activities to be reflected in name of company**
5. **Display of name outside place of business**

- **Mandatory to have registered -** office within 15 days of its incorporation and all the times thereafter.
- **All the communications and notices -** to be sent at registered office of company.
- **Verification of registered office –**company shall file with the registrar a verification of its registered office .within 30 days of incorporation.
- **Registered office is changed within the same city.**
- Approval from shareholder by passing a special resolution in general meeting.
- **Registered office is changed outside the city having different ROC**

- **SR + regional director**

Conversion of a company into another class of company

1. **Legal requirement for conversion**
- Alteration of MOA & AOA.
- Making application to ROC
2. **Issue of fresh Certificate of incorporation-** When ROC is satisfied, he shall
a. Close the former registration of company.
b. Register the documents filed with it.
c. Issue a fresh certificate of incorporation.
3. **Effect of fresh registration** -Fresh registration shall not affect any debt, liability, and obligation or contracts incurred or entered into by company prior to such conversion

Conversion of public company into private company

1. By altering its articles (by passing a SR) to Add the 3 restriction contained in the articles.
2. By obtaining approval **of tribunal.**

Conversion of private company into OPC

1. **Conditions for conversion**
   a. Its paid up capital is less than Rs. 50 lakh,or
   b. Its average annual T/O is less than Rs. 2cr.
2. **Requirements for conversion**.
   a. SR is passed in GM.
   b. Before passing SR, the company shall obtain a "No objection letter" in writing from members and creditors.
   c. **The company shall file with ROC within 30 days**
- A copy of SR
- The list of creditors and members
- The latest audited Balance sheet and P&L.
- The copy of NOC.

1. **BINDING FORCES OF MEMORANDUM AND ARTICLES**
- **COMPANY IS BOUND TO MEMNBERS**
- **MEMBERS ARE BOUND TO COMPANY**
- **MEMBERS ARE NOT BOUND** inter se
- **COMPANY IS NOT BOUND TO OUTSIDERS**

2. **Doctrine of ultra vires**
- Ultra means 'beyond' or 'in excess of' and vires means 'powers' . thus, ultra vires means an act or transaction beyond or in excess of the powers of the company.
- **an act shall be ulra vires if –**
- **-** it is not permitted or authorised by the company act 2013
- **-** It falls outside the objects clause of memorandum; and
- -its attainment is not incidental or ancillary to the attainment of main objects.

1. **Effects of ultra vire transaction**

(1) Transaction is void ab initio
(2) Void and of no legal effect.
(3) Neither company nor other party derives any right
(4) No ratification can be make, it can't be a valid contact
(5) No ratification
(6) Injunction against the company
(7) Personal liability of directors

DOCTRINE OF CONSTRUCTIVE NOTICE

(it works in favour of the company)

Once registered memorandum and articles becomes public documents therefore , every person dealing with the company is presumed to have read the moa & aoa .furthwer it is presumed that he has understood the provisions of memorandum and articles correctly,i.e right sense.

DOCTRINE OF INDOOR MANAGEMENT OR TURQUAND'S RULE (in favour of outsiders)

As per this doctrine ,outsiders dealing with the company are not required to enquire into the internal management of company.

Outsiders dealing with the company are entitled to assume that as far as internal proceedings of the are concerned, everything has been done regularly. It is a presumption.

Exceptions

- **knowledge of irregularity**
- **Negligence- suspicious circumstances or unusual magnitude of transactions**
- **No knowledge of articles**
- **Forgery**
- **Illegal transaction**

PROSPECTUS

PRIVATE PLACEMENT (SEC.42)

MEANING – means any offer of securities or invitation to subscribe securities to a select group of persons by a company

(1) **Maximum number of persons to whom securities can be offered in an financial year-** 200 persons
(2) **Recording of records of names, and filing of complete information.**
(3) **Cash not to be accepted**
(4) **Allotment to made within 60 days of receiving application money**
(5) **Company cannot make further offer of securities unless under the earlier offer allotment has been completed or it has been withdrawn**
(6) No public advertisement
(7) **Filing of return of allotment to ROC which shall contain the following details.**
- Full names and address of security holders.
- Number of securities allotted, and
- Any other information.

(8) **Consequences of contravention**
(a) Rs. 2 crore, or
(b) The amount involved in the offer
Further the company will have to refund the money to all subscribers in 30 days.
(9) **Requirement of special resolution-**
(10) **Justification of price-** in the notice
(11) **Minimum investment size** shall be 20000 Rs.

Public offer

If, a company makes an offer to allot, or invites subscription, or enters into an agreement to allot the securities to more than the prescribed number of persons,

If any offer of securities fails to comply with the conditions of section 42 it shall deemed to be a public offer

DEFINITION OF PROSPECTUS

MEANS any document described or issued as a prospectus

INCLUDES –Shelf prospectus, Red herring prospectus, any notice, circular, advertisement or other document inviting offers from the public for subscription or purchase of any security of a body corporate.

ABRIDGED PROSPECTUS- A memorandum containing such salient features of a prospectus as may be specified by the SEBI.

- **Abridged prospectus must be attached** to every application form.
- **Furnishing of prospectus** on demand

SHELF PROSPECTUS AND INFORMATION MEMORANDUM (SEC.31) 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.

- **Filing of shelf prospectus- at the time of 1st issue**
- **Validity period of shelf prospectus**, company is not required to issue further prospectus.
- **Information memorandum**
  Prior to issue of 2nd or subsequent offer
- This **shall contain the following information-**New charges, Change in financial position

RED HERRING PROSPECTUS- Does not include complete particulars **of quantum or price** of the securities included therein.

- file it at least 3 days before to ROC
- On closing of offer the company shall file a prospectus to ROC an SEBI.
- Any variations between RHP and prospectus shall be highlighted in the prospectus.
- **The prospectus shall state**-The closing price, Total capital raised, Any other information which is not in RHP.

ADVERTISMENT FOR PROSPECTUS The content from MOA-Object of the company**,** The liability of the members**,** The amount of share capital**,** Names of the signatories of MOA and number shares subscribed by them**,** Capital structure of the company.

PROSPECTUS

DEEMED PROSPECTUS (OFFER FOR SALE)where a company allots or agrees to allot any securities With a view to all or any of those securities being offered for sale to public

OFFER OF SALE OF SHARES BY CERTAIN MEMBERS OF COMPANY

- **Members to authorise the company**
- **Document for offer for sale deemed to be prospectus**

VARIATION IN TERMS OF CONTARCT OR OBJECTS IN PROSPECTUS

a special resolution &the justification for change shall be published in the 2 newspapers

DELIVERY OF PROSPECTUS TO ROC- before its publication

TIME LIMIT FOR ISSUE OF PROSPECTUS- prospectus is to be issued within 90 days of ROC filing.

(CIVIL LIABILITY FOR MIS-STATEMENT IN PROSPECTUS)SEC 35- Where a person has subscribed for securities of a company acting on any statement included in prospectus which is misleading ,or omission of any matter in the prospectus which is misleading and has sustained any loss damage as a consequence thereof

PERSONS LIABLE FOR MIS-STATEMENT

Company, Directors at the time of issue of prospectus, Promoters, Every person who authorise his name to be included in the prospectus, expert

PUNISHMENT- To compensate the loss or damage, Liability under section 36

DEFENCES

- **WITHDRAWAL OF CONSENT**
- **PROSPECTUS ISSED WITHOUT HIS CONSENT**

CRIMINAL LIABILITY FOR MISSTATEMENT IN THE PROSPECTUS.(SECTION 34) – Where the prospectus contains any misstatement, or omission of any fact which lead to misstatement in prospectus.

Who is liable? – Every person who has authorised the issue of prospectus.

Punishment - liable under section 447.

Defences-

Where it is proved that misstatement is immaterial. Or

Where the statement was true at the time of issue has they has reasonable ground for believe that.

Liability for fraudulently inducing person to invest the money company (section 36)– liable under section 447.

Liability in case of fraud.(section 447)

GLOBAL DEPOSITORY RECIEPT (section 41)

Board resolution by board of directors.

Authorisation from shareholders in general meeting.

Appointment of overseas depository bank and a domestic custodian bank.

Appointment of a merchant banker/CA/CS who shall ensure the compliance with the provisions of RBI/FEMA etc. And give a compliance report to board of directors.

Liability in case of fraud.(section 447)

Allotment of shares

Minimum subscription – Minimum subscription as stated in prospectus is received.

Amount of application money – shall not be less than 5% of the nominal amount of securities.

Time limit for minimum subscription – amount stated in prospectus must be subscribed and received by company in 30 days of issue of prospectus or such time as may be specified by SEBI.

Return of allotment – to filed with Registrar of companies.

Application moneys to be kept in separate bank account. –

What if minimum amount of subscription not received in 30 days- repay in next 15 days otherwise interest at 15% p.a.

Application for permission for listing – every company before making offer to public for subscription of securities shall make application to one or more stock exchange for listing of securities.

Disclosure in prospectus – about the name of stock exchange, where securities are to be listed.

Underwriting

(1) commission- authorised by articles.

(2) It may be paid out of (1) profits of company or (2) proceeds of fresh issue.

(3) Rate of commission shall not exceed –

In case of shares – 5% of the price of share or rate authorised by articles.

In case of debentures- 2.5% of price or Rate authorised by articles.

(4) Prospectus shall disclosure

- Name of underwriter.
- Rate and amount of commission.
- Number of securities

REASONS	COSEQUENCES
1. Public offer without issuing prospectus	Sec. 450- company and every officer upto rs. 10000 and 1000 per day 9if continue)
2. Prospectus not as per section 26. 3. Prospectus issued without delivering its copy to registrar.	Company – minimum fine 50000 Maximum fine – 300000 Every person Maximum imprisonment – 3 years Fine 50000-300000
4. Minimum subscription not received and allotment made. 5. Application money received is less than 5 % of nominal value. 6. Return of allotment not filed.	1000 each day Or Rs. 100000 (whichever is lower)
7. Public offer without first obtaining permission for listing. 8. Money not kept in separate account.	Company 5,00,000 to 50,00,000 Every officer Maximum imprisonment 1 yr. Or fine rs.50000- 300000 Or BOTH

Shares and share capital

SHARES WITH DIFFRENTIAL RIGHTS

- Authorised by Article.
- Ordinary resolution
- Maximum shares - 26% of total post issue equity capital.
- Company should have track record of distributable profits in last 3 yrs.
- No default w.r.t payment of declared dividend ,repayment of matured deposits, redemption of debentures or interest thereon, redemption of preference share capital.
- No default w.r.t repayment of term loan, statuary payments and transfer to investor education and protection funds.
- The company is not penalised by any court or tribunal for any default under RBI act, SEBI act, Securities contact act, and FEMA act.
- The existing shareholders cannot be converted.
- **Disclosures in explanatory statement in notice of GM.**

VOTING RIGHTS OF SHAREHOLDERS

EQUITY SHAREHOLDERS :- right to vote on every resolution

PREFERENCE SHAREHOLDER :- right to vote

(1) Which directly affect his right
(2) Winding up of company
(3) Repayment or reduction of share capital
If no dividend is paid for 2 years – right to vote

ISSUE AND REDEMPTION OF PREFERNCE SHARE

1. Term shall not exceed 20 years.
2. Authorisation is required.

CONDITIONS FOR REDEMPTION OF PREFERENCE SHARE

(1) only if they are fully paid.
(2) **Sources of redemption-** out of profits or out of fresh issue
(3) Premium on redemption-
- Out of the profits
- Out of securities premium.

(4) **Creation of CRR –** mandatory if redeemed out of profits
(5) Amount to be transferred – nominal value of preference share redeemed.
(6) Utilisation of CRR -Only for issuing fully paid bonus shares.
(7) All provisions relating to reduction of capital shall apply if utilised for any other purpose.
(8) A notice shall be to ROC within 30 days**.**

REDUCTION OF SHARE CAPITAL

Reduction in unpaid capital- company may of any share which are not fully paid up.

Cancellation of paid capital – capital which is unrepresented by any asset.

Paying off excess paid up capital- company payoff capital which is in excess of wants of company, either with or without extinguishing or reducing liability of any shares.

<u>**Procedure for reduction**</u>

a. **Powers in articles**
b. **Special resolution**
c. **Approval of court is required**
d. **Court shall secure the interest of creditors**
   - The creditors may object the reduction.
   - Court shall ensure that the creditors objecting reduction
   - have given their consent ,or
   - Have been discharged.
   - Has given sufficient security.
e. **Power of the court to approve the reduction is discretionary**
   - Before giving approval court shall satisfy that the reduction will fair to all class of shareholders and will not be prejudicial to interest of creditors.
   - The court may approve on such conditions as thinks fit.

ISSUE OF SHARES AT PREMIUM

a. Without any authorisation from AOA or Shareholder by way of resolution.

b. UTILISATION OF PREMIUM

1. fully paid bonus shares

2. Writing off preliminary expenses, expenses of, or commission paid, or discount allowed on issue of share and debentures of company.

3. providing for premium payable on redemption of any preference shares

4. for buy back of shares u/s 68

5. In case of such classes of companies whose financial statement comply with AS prescribed u/s 133

- issuing fully paid bonus share

- For writing off the expenses, commission or discount on issue of shares.

- Buy back u/s 68

c. Utilisation of premium for other purposes

- if the security premium is utilised for any other purpose than it shall be treated as reduction of share capital. And all the provisions of company as are applicable on reduction shall be applicable.

PROHIBITION ON ISSUE OF SHARES AT DISCOUNT sec.53- if issued, issue shall be void.

ISSUE OF SWEAT EQUITY SHARES

Shares issued to its directors, employee

- At a discount
- For consideration other than cash
- For providing know how or making available rights in nature of intellectual property rights.

CONDITIONS FOR ISSUE OF SWEAT EQUITY SHARE

1. It must belong to class of shares already issued.
2. **AUTHORISATION FOR ISSSUE**
   - A special resolution
   - **The SR passed by company must specify*****
   - Number of shares to be issued
   - Current market price of shares
   - Consideration if any to be received on such shares.
   - Class of director or employee of the company to whom shares are to be issued.
3. **COMPETION OF 1 YEAR** – from commencement of business.
4. **COMPLIANCE OF RULES OR REGULATIONS**
   - Listed company- with SEBI
   - Unlisted- with CG

They shall rank pari passu with holders of equity

<u>Giving financial assistance</u> (sec 67)

(1) no company shall give financial assistance for purchase of its own shares or of its holding company.

(2) whether directly or indirectly, whether by way of loan,guarantee,provision of security.

Exception :-

(a) Lending of money by banking company

(b) by passing a special resolution give financial assistance to trustees for purchasing shares for the benefit of its employees.

(c) Loans to employees up to 6 months of salary (Not KMP)

BUY BACK OF SECURITIES

- Power in articles
- <u>**board resolution**</u> –up to 10% of paid up equity share capital and free reserves
- ➢ <u>**Special resolution- 25%**</u>
- ➢ **Debt – equity ratio:-** 2:1 post buy back
- ➢ **Sources of buy back**
  a. Free reserves
  b. Security premium account
  c. Proceeds of fresh issue (shall not be made out of proceeds of same kind of shares)
- ➢ **Completion of buy back :-** with in 1 year
- ➢ Declaration of solvency ,only fully paid shares, Extinction of shares in 7 days, No buy

Shares and share capital

CALLS IN ADVANCE

1. power is required from **articles**
2. **Interest on call in advance-**
3. **subject to maximum of 12% P.A**
4. **No voting** rights shall be available in respect of Call in advance.

✓ **amount is non-refundable**.

Dividend shall be paid generally in proportion of nominal value **but articles may provide that it will paid in proportion to amount paid up capital.**

FURTHER ISSUE OF SHARES

1. **Offer of further shares to existing shareholders (right shares)**
2. **Offer of further shares to employees**

(a) Under ESHOP

(b) By passing SR

3. **Offer of further shares to any person**
   (a) If price of such shares is determined by a registered valuer who is registered with SEBI or a practicing CA
   (b) It is authorised by SR
4. **Allotment of shares on account of conversion of loans or debentures into shares** (a) the terms of issue of such debentures or the terms of raising such loan contained a term regarding conversion.& the terms of issue were approved by passing SR.

ISSUE OF BONUS SHARES LEGAL REQUIRMENTS

(1) Power in articles
(2) Recommendation of the board
(3) Ordinary resolution in general meeting
(4) Sources of issue(a) free reserves (b) security premium account(c) CRR,It cannot be issued out of revaluation reserve.
(5) No default in debts
(6) No default in statutory dues
(7) Issue to existing members
(8) Bonus shares must be Fully paid.
(9) Existing shares to be fully paid up.
(10)Not to be in lieu of dividend

DEPOSITORY SYSTEM or DEMATERIALISATION OF SHARES

National securities depository limited(NSDL), AND central Depository services limited (CDSL)

Registered holder, beneficial owner and member

LIEN ON SHARES

✓ Specific provision in **article**s is required
✓ **Effect of lien-** such shares cannot be sold by shareholder
✓ **Loss of lien –** if shareholder whose share are subject to lien apply for transfer and company register such transfer of shares .in such case transferee's title shall be free from lien

FORFEITURE OF SHARES

✓ **Legal requirements for forfeiture**
✓ Authorisation required from articles
✓ Valid call is made specifying the time limit and shareholder does not pay the amount , company gives a clear notice of warning of forfeiture.
✓ **Notice must clearly specify**
✓ -Last date up to which unpaid call can paid .
✓ -Amount payable by shareholder
✓ -Clear warning of forfeiture if not paid (not less than 14 days)

Transfer and transmission

A. Procedure for transfer of shares

- **Transfer deed** –
- -it must be **stamped & dated**. it should be **signed** by both parties.
- **Submission to company –**within 60ndays of execution.

If transfer deed is lost or not delivered within 60 days The Company may register transfer of shares after obtaining such indemnity as the board may deem fit

When transfer deed is submitted to company by the transferor. And the shares are **partly paid up. in such a case company is required to give notice to transferee**

B. Procedure for Transmission of shares

- way **operation of law**
- **NO transfer deed** is required.

Transfer of securities by legal representative – in case death of holder of security, the transfer of such security by legal representative of deceased shall be valid-Even though he is not holder of such security, thus **on receipt of a transfer deed signed by legal representative**, the company is required to register the

. REFUSAL TO REGISTER TRANSFER OR TRANSMISSION OF SECURITIES

By a private company – by the reason of provision in articles or otherwise.

By a public company- without any sufficient cause

- ✓ **Appeal against refusal**
- **To whom? –** Tribunal
- **By whom?** – Transferee ,or person giving intimation of transmission
- **Time limit** –
  1. **Private company** - within 30 days of receipt of notice of refusal, in case No notice is given by the company, the appeal may be filed within 60 days of delivery of transfer deed.
  2. **Public company**- within 60days of refusal, or 90 days in case No notice is given.
- ✓ **Order of tribunal**
- Tribunal shall hear the parties and tribunal may dismiss the appeal, or may direct that the transfer or transmission shall be registered & company shall comply with such order within 10 days. Tribunal may also order to pay damages to party aggrieved.

RECTIFICATION OF REGISTER OF MEMBERS

1. Right to appeal for rectification of register of members

- **Grounds for appeal**

  Without sufficient cause-

  1. Name of any person is entered in the register of members; or

  2. Name of person is omitted from register of members; or

  3. Default or unnecessary delay is being made in entering in the register of member , the fact of any person having become a member; or
- To tribunal
- **Order of tribunal**
  1. Tribunal shall hear the parties
  2. Tribunal may dismiss the appeal
  3. Tribunal may by order direct rectification of register or records of depository.
  4. Tribunal may also direct the company to pay the damages

2. **Application to tribunal to set right the contravention of any law**

- **Applicability –** where the transfer of securities is effected by the company , but such transfer was in contravention of provisions of-The companies act ,The securities contact act. SEBI act. Any other law.
- **Application by whom?** The company, The depository, SEBI, The holder of securities
- **To whom?- to tribunal**
- **Order of tribunal-** the tribunal may direct the company or the depository to set right the contravention &rectify its records.

NOMINATION OF SECURITIES

- ✓ **Applicability -** all companies, nomination is optional
- ✓ **Consequences in case of death**
- ✓ All rights shall vest in nominee.
- ✓ In case of **joint holding** right shall **vest if all joint holders die**
- ✓ No person other than nominee shall be entitled to any right in securities notwithstanding anything contained in-**Any other law** for the time being in force.**Any will** made by the holder of securities.

FORGED TRANSFER

- ✓ **MEANS** transfer of shares made on the basis of a transfer deed on which the transferor's signatures are forged.

Effects of forged transfer – is void ab inito

(a) Where a company has registered the transferee as a member on the basis of a forged transfer , the following consequences shall follow-

(1) The original owner can compel the company to restore his name on the register of members.

(2) Company shall cancel the share certificate issued to transferee ,

(3) Where the transferee has already transferred the shares to an innocent purchaser, then company shall refuse to register the new purchaser of shares however, the new purchaser of shares have right to claim damages from company

(4) **Meaning of 'blank transfer deed' –** where a shareholder with an intention of transferring his shares, fills up his name in the transfer deed and signs it as a transferor and delivers such transfer deed to a buyer of shares , but does not mention the name of buyer as a 'transferee' in such transfer deed, such a transfer deed is termed as 'blank transfer deed' .**Procedure for 'blank transfer'**-The shareholder delivers to the buyer Share certificate, and Blank transfer deed.

HOW TO BECOME A MEMBER

- **By subscribing MOA**
- **By allotment of shares**
- **By transfer**
- **By transmission**
- **By becoming owner of shares**
- **By estoppels or acquiescence**

WHO CAN BECOME A MEMBER

(1) Minor

1. Consequences where a company allots shares to a minor-

- not liable to pay any calls
- Guardian cannot be compelled to pay the call.
- Minor can repudiate the allotment
- Company can repudiate the allotment.

2. **Consequences where minor attains majority.** On attaining majority, the minor does not automatically becomes a member in a company,

3. **A minor can hold fully paid shares –**

(2) Company- a company can be a member if authorised by MOA

(3) Co-operative society- yes it is a legal person.

(4) Trade union- yes it is a legal person.

(5) Partnership firm- No, since it is not a legal person. Cannot hold in its own name. However a firm may become member in a sec.8 company.

(6) **HUF-** no ,**Trust-** no

(7) **Joint holders-** yes, **Foreigner-** yes but as per FEMA., **Government-** yes

HOLDING SHARES BY A COMPANY IN ITS HOLDING COMPANY- Prohibition except in 3 situations

1. Shares held as legal representative
2. Shares held as a trustee
3. Shares held before a company become a subsidiary

In case depository system- the beneficial owner of share is Member.

Borrowing powers

1. **Power to borrow-** company is empowered to borrow money if-
   (a) Object clause permits,or
   (b) It is a trading company

Who has power to borrow- by board at board meeting –**board resolution**.

Limit on borrowings- board shall not borrow money **exceeding the aggregate of paid up capital and free reserves** of company ,except with the consent of the company by **a special resolution**.

Meaning of 'borrowings ultra virus the company

-by a non- trading company shall be ultra vires the company if the power to borrow money is not expressly stated in the memorandum.

-If borrowing are made for the purpose which is outside the object clause of memorandum.

Effects of borrowings ultra vires the company

- Void ab initio
- Shareholders cannot, even if acting unanimously, ratify the ultra vires borrowing.
- Lender shall not be entitled to any securities received under ultra vires borrowings.
- **Although, no valid contact subsists between the lender and the company, the lender may be allowed the following rights on the principles of equity:**
- If it is possible to trace money, then court may restrain company from using such money.
- If used in discharge of lawful debt, the lender shall become creditor of company.
- Where borrowing is spent by company in acquisition of any asset , the lender shall have a charge on such asset.

Charges

Legal provisions relating to registration of charge by the company

- **duty of company to register such charge**.
- Charge shall be registered with **company within 30 days** of its creation.
- It should be in prescribed form and with prescribed fees and particulars of charge should be signed by company and charge holder.
- Instrument creating charge if any should be filled with company.
- **Condo nation of delay for non filling within 30 days**
  - Where a charge is not created within 30 days of creation then company may apply to registrar for condo nation of delay.
  - Registrar may allow company to register but within 300 days and with additional fees.
- **Effects of subsequent registration**
- Where a charge is not registered within 30days of its creation, but is registered subsequently, any such subsequent registration **shall not prejudice any right acquired by any person before the charge is actually registered.**
- **Certificate of registration**
- **Issued by registrar** to company and charge-holder.
- **Effects of non registration**
  It shall not be taken into account by liquidator or any creditor of the company, unless it is duly registered.
- **Deemed notice of charge**
  Where a charge on any property of the company is registered u/s 77, then any person acquiring such property or any interest in such property, shall be deemed to have notice of charge from the date of such registration.

REGISTRATION OF CHARGE BY CHARGE-HOLDER

- **When** - Where a company fails to register any charge within 30 days of its creation, the charge-holder may make an application to the registrar for registration of charge.
- Registrar shall give notice of such application to the company,Registrar may within 14 days, allow the registration of charge.

Charges

REGISTER OF CHARGE

To be maintained by Registrar, and The company

APPOINTMENT OF RECEIVER OR MANAGER

- **Notice of appointment of receiver or manager-** Then such person shall **within 30 days, give notice to a company** and the registrar **along with a copy of such order or such instrument**; and registrar shall register the same.
- **Notice of cessation**

COMPANY TO REPORT SATISFACTION OF CHARGE- Where a registered charge is paid or satisfied in full, the company shall give intimation to the registrar. Within 30 days in prescribed form.

On receipt of intimation, the registrar shall give a **show cause notice to charge holder** as to why the satisfaction of charge should not be recorded.

POWER OF REGISTRAR TO RECORD SATISFACTION OF CHARGE

If registrar is satisfied (on the basis of evidences produced before him)that in relation to a registered charge-The debt has been paid in full, or The property has been released from charge. or The property ceased to be property of company**.**

Than registrar may record the satisfaction of charge, without any intimation from company. The registrar shall within 30 days give a notice to the affected parties

POWER OF CG TO CONDONE THE DELAY AND ORDER RECTIFICATION OF REGISTER OF CHARGES- Beyond 300 days

Types of charges- Fixed charge or specific charge, Floating charge

Crystallisation of a floating charge

Means that the right of the company to deal in the asset, which are subject of floating charges, comes to end.

Debentures

A company may issue secured debentures by complying with following conditions –

(a) For a maximum period of 10 years however it may exceed 10 yrs. But not 30 years if the company is engaged in setting up infrastructure projects or infrastructure finance company or infrastructure debt fund non banking financial institution.
(b) It shall be secured by creating charge on assets of company having a value sufficient for the due repayment of principle and interest.
(c) Company shall appoint debentures trustee and execute a debentures deed with them.
(d) Charge shall be created in favour of trustees on any specific movable property of company or any immovable property of company.
(a) DRR equivalent to 25% of the value of debentures
(b) (b) in case of partly convertible debentures, DRR is required only for non convertible portion of debentures.

Appointment is mandatory if company issue debentures by way public issue to more than 500 persons by issuing prospectus.

Any provision which has effect of exempting or indemnifying the debentures trustee against any liability shall be void, whether contained in trust deed or any other contract

However they may be provided exemption if it is agreed by a majority **of not less than ¾ th in value.**

The company shall on or before the 30th of April in each year, invest or deposit a sum not less than 15% of the amount of debentures maturing up to the 31st day of March of next year. in-Deposit with any scheduled bank, free from any charge; or Unencumbered securities of CG or any SG.

Meeting of debenture holders -Requisition in writing signed by debentures holders holding at least 1/10th in value of debentures for the time being outstanding

General meeting

ORDINARY BUSINESS.

(a) Consideration and adoption of financial statement, auditors report and board report.
(b) Declaration of dividend
(c) Retirement of directors and appointment of directors in the place of those retiring
(d) Retirement of auditors and appointment of auditors in place of those retiring and fixing there remuneration.

Provisions relating to special business

(a) Full text of resolution must be given in the notice.

Explanatory statement must be annexed to notice

- Material facts
- Nature of concern or interest of -
  -every director and manager,kmp and relatives of them.

-any other information and facts that may enable members to understand the meaning, scope and implications.

Any GM may be called by giving at least **21 days clear*** notice, ***21 clear days** means the day on which notice is deemed to be served and the day of general meeting is in addition to 21 days.

<u>SHORTER NOTICE</u>

Shorter notice is sufficient if consent is given for such shorter notice by at least 95% of the members entitled to vote at such GM

Number of members as on date of meeting	**Required quorum**
Upto 1000	5 members **personally present***
More than 1000 but upto 5000	15 members personally present
Exceeds 5000	30 members personally present

(1) In case of private company

-2 members personally present.

-Article may provide for larger quorum

Votes may be cast by way of –

(a) Show of hands
(b) Poll
(c) Electronically
(d) Postal ballot

Duty to order poll if a demand for poll is made by-

(1) In case company having share capital

Any member(present or proxy)

-1/10 of the total voting power

-paid up share capital of not less than 500000.

(2) in case of any other company

Any member(s) having 1/10 th of voting power.

What are requirement for special notice?

If a special notice is required to move a resolution at a GM ,then the notice of intention to move such resolution shall be given to company –

(a) Not earlier than 3 months but at least 14 days before GM (excluding the day on which such notice is given and the day of GM)
(b) Signed by –
(1) member(s) holding not less than1% of total voting power ;or
(2) Members holding paid up share capital of not less than rs. 500,000.

MINUTES OF GM (sec.118)

Minutes means record of the proceeding that takes place at general meeting.

Manner of preparation

All appointment made at any meeting shall be included in the minutes.

It should be in book form and page to be consecutively **numbered.**

It must be prepared and signed **within 30 days** of conclusion of meeting; or passing of resolution by postal ballot.

Discretion of chairman

The chairman shall **exercise absolute discretion** with regards to inclusion or non-inclusion of any matter in the minutes on following grounds-

(a) If the chairman is of opinion that it is defamatory of any person; or
(b) Irrelevant or immaterial; or
(c) Detrimental to interest of the company

Nature of minutes book	Signing by whom?
Minutes of board meeting and committee meeting	Chairman of same meeting and chairman of next meeting
Minutes of GM	-Chairman of same meeting

ANNUAL GENERAL MEETING (sec.96)

Last day for holding 1st AGM

-To be *held within 9 months* of close of 1st financial year.

-If the 1st AGM is held, there is no need to hold AGM in the year of incorporation .

(Registrar has no power to grant any extension for holding the 1st AGM)

Last date for holding of any other AGM

(1) To be held *within 6 months* of close of the relevant **financial year.**

(2) Not *more than 15 months* shall elapse between the date of one AGM and that of the next AGM.

(3) AGM to be held in *each calendar year.*

(A company has to follow all the three limits)

Registrar may for any special reason, extent the time limit for holding the AGM by any period not exceeding 3 months.

EGM – BOD has sue motu power to call

Eligible members to call-

Company having share capital –members holding 1/10th or more of paid up equity share capital.

Company having no share capital – members having 1/10th of voting power

Legal requirement for valid requisition

(a) Requisition shall specify the matters for consideration of which EGM was called.but remember there is no need to show reasons.
(b) Signed by all the requisitionists or person duly authorised by them
(c) To be deposited at registered office of the company.
(d) It may be in writing or by electronic mode.
(e) It should be deposited at least 21 clear days before such proposed date of holding EGM.

On receipt of such the board shall within 21 days proceed to call an EGM to be held within 45 days from the date of deposit of requisition

REPORT ON AGM (sec 121)

Every listed company shall prepare a report on each AGM which shall confirm that AGM was convened, held and conducted as per the provisions of this act.

It shall be filed within 30 days of conclusion of AGM .

It shall be in addition to minutes of AGM and shall contain Fir and correct summary of AGM.

CONTENT OF REPORT.

(a) The day, date ,hour and venue of the AGM
(b) Confirmation w.r.t appointment of chairman of meeting.
(c) Number of members who attended AGM.
(d) Confirmation of quorum.
(e) Business transacted at meeting.
(f) Particulars w.r.t adjournment, postponement or change of venue.

Confirmation w.r.t compliance of act and rules

VOTING THROUGH ELECTONIC MEANS (sec108)

- ✓ Listed companies
- ✓ -all companies having 1000 or more members.

These companies shall provide to its members facility to excercise their right to vote through electronic mode.

- ✓ **Disclosure in notice sent to members by**

PASSING OF RESSOLUTION BY POSTAL BALLOT sec110

Normally a resolution is discussed and passed at a GM, but postal ballot is a mechanism through which resolutions are passed through post or electronic mode. And after such there is no need to consider such resolution at GM. If a resolution is assented majority by means of postal ballot, it shall be deemed to have been duly passed at GM convened in that behalf.

- ✓ **Postal ballot mandatory for certain business**

(a) Alteration of objects clause of AOA
(b) Alteration of AOA for insertion or removal of 3 restrictions.
(c) Change in registered office of company outside the local limits of any city
(d) Change of object for which money was raised and it remains unutilised
(e) Issue of share with differential rights
(f) Buy back of shares
(g) Election of small shareholder director
(h) 186

One person company and companies having shareholder upto 200 need not to pass a resolution through postal ballot.

- ✓ **Postal ballot is optional for any other business except**

(a) Ordinary business
(b) Any business in respect of which auditors and directors have right to be heard.

- ✓ **Notice to be sent by the company**
- ✓ **MAINTENANCE AND INSPECTION OF DOCUMENTS IN ELECTRONIC FORM (sec.120)**

Every listed company

A company having not less than 1000 security holder .

May maintain their records in e-form.