Q. Define a Company. Explain the essential features of a Company.

Section 3(1) of the Companies Act, 1956 defines a company as "An association of individuals form for some purpose and registered under the present Companies Act or an earlier Indian Companies Act."

The following are the essential features of a company

1) **Separate Legal Entity** - A company on registration has a separate identity of its own which is different and distinct from the members who constitute it. This principle of independent corporate personality was laid down in the case of **Salomon vs. Salomon & Co. Ltd.** In this case Mr. Salomon was carrying on shoe manufacturing business on proprietorship basis. He sold his business to a company Salomon & Co. Ltd. for 30,000 pounds. Salomon received consideration in the form of shares for 20,000 pounds of one pound each and got debentures worth 10,000 pounds. The company had seven members, consisting of Mr. Salomon, Mrs. Salomon, four sons and a daughter. All the other members of the company had only one share each. After sometime the company had to be wound up on account of financial difficulties. The assets realized were 6,000 pounds while the liabilities were 10,000 pounds to Salomon as a secured creditor and 7,000 pounds to outsiders who were unsecured creditors. The creditors claim priorities over Salomon (Secured Creditor) on the ground that Salomon and Salomon & Co. were one and the same. It was however, observed that the company on incorporation has a different personality different from the subscribers. Therefore the identity of the subscriber is immaterial. Hence Mr. Salomon was paid first as he was a secured creditor.

2) **Limited Liability –** The liability of the shareholders is limited to the face value of the shares held by them. Once the full amount of the shares is paid, they cannot be called upon to bare the loss from there personal property.

3) **Artificial Legal Person –** Company on registration becomes a legal person capable of entering into contracts in its own name.

4) **Perpetual Succession –** A company enjoys perpetual existence. Its is created by law and can be put to an end only by the process of law. Professor Grover highlights these feature by saying that even a bomb cannot destroy a company.

5) **Holding and Disposal of Property –** A company can hold and dispose of property in its own name. Property of the company cannot be treated as members property and vice versa.

6) **Transferability of Shares –** The shares of a company are freely transferable in case of a public limited company.

7) **Capacity to sue and to be sued –** A company having its own independent existence, can sue in its name to enforce any of its statutory or contractual rights and be sued in its name by others, if it commits breach of contract or fails to discharge its duties.

Q. Explain the various types of Companies

The companies may be classified into the following :-

1) **Chartered Companies** :- These are the companies which are incorporated under a special charter granted by the King or Queen or the Head of the State. For e.g. East India Company these are no longer present in India.

2) **Statutory Companies** :- These are companies which are created by a special act of the legislature. For e.g. Reserve Bank Of India.

3) **Registered Companies** :- These are companies which are formed and registered under the Companies Act, 1956 or some earlier Companies Act. They are :-
   a) **Companies limited by shares** :- In these companies there is a share capital and each share has a fixed value. The liability of each member is limited to the face value of the share he holds. A company limited by shares may be a public company or a private company.
   b) **Companies limited by guarantee** :- Where the liability of a company is limited by the memorandum to such an amount as the members undertake to contribute to the assets of the company in the case of its winding up, the company is called a company limited by guarantee. Companies limited by guarantee are not formed for the purpose of profit but for the promotion of art, science, culture, charity or for similar purpose. They may or may not have share capital.
   c) **Unlimited companies** :- Where the liability of the members of a company is unlimited, it is known as an unlimited company. Every member of such a company is liable for its debts, as in an ordinary partnership, in proportion to his interest in the company. Such a company may be a public company or a private company.

Q. Distinguish between Private Limited Company and Public Limited Company.

Points	Private Limited Company	Public Limited Company
1. Number of Members	A private company cannot have less than two and more than fifty members	A public Company cannot have less then seven members; no maximum has been fixed for it.
2. Restriction on transfer of shares	If a private company has a share capital it imposes some restrictions on the right of its members to transfer their shares it the company.	In a public company there need not be any such restriction.
3. Restriction on invitation to public	A private company cannot invite the public to buy its shares or debentures	A public company may do so.
4. Restriction on name	A private company must add the words, “Private Limited” at the end of its name (Section 13).	There is no such restriction.
5. Prospectus or a statement	A private company has not to file a prospectus or a statement in lieu of prospectus, with the Registrar [Section 70(3)]	A public company must file a prospectus, or a statement in lieu of prospectus, with the Registrar.
6. Issue of New Shares	A private company can issue new shares to outsiders.	A public company must offer new shares first to the existing equity share holders pro rata, unless the members in a general meeting decide otherwise.
7. Privileges	It enjoys a number of privileges, i.e. exemptions from certain provisions of the Companies Act, 1956.	It does not enjoy any privileges.
8. Number of directors	It must have a minimum of two directors.	It must have a minimum of three directors.
9. Legal Controls	There are less legal controls.	There are too many legal controls.
10. Remuneration to directors	Restrictions are far less.	Remuneration of directors are restricted to not more than rupees six lakhs per annum.
11. Borrowing of loans	Directors can borrow fro private companies.	Directors cannot borrow from public companies.

Q. Write short notes on

A] Foreign Companies

Any company incorporated outside India and having a place of business within India is called a Foreign Company. The following are the rules applicable to a foreign companies :-

1. **Documents –** ***Section 592*** requires that every foreign company which establishes a place of business in India shall within thirty days of the establishment of such place of business, file with the registrar; a) A certified copy of the charter, statute, Memorandum and Articles of the company b) The full address of the Registered or Principle Office of the company c) A list of Directors and Secretary of the company d) The name and address of any person resident in India authorize to accept notices on behalf of the company e) The full address of the principle place of business in India.

2. **Accounts –** The provisions of ***Section 209*** regarding Books of Accounts to be kept by a company shall also apply to a foreign company so far as it concerns its business in India.

3. **Name –** A foreign company shall display on the outside of its office the name of the company, together with the name of the country where it is incorporated in English and in one local language.

4. **Registration of Charges –** The provisions relating to the registration of charges ***(Sections 124 to 145)***, Annual Returns ***(Section 159)***, Books of Accounts ***(Section 209A)***, Special Audit in certain cases ***(Section 233A)***, in so far as they apply to its Indian business shall apply to foreign companies also.

5. **Requirements as to prospectus –** Section 603 specifies the following particulars to be mentioned in prospectus. a) Name of the company in English b) Name of country in which it is incorporated c) Whether the liability of the members is limited d) Particulars regarding its constitution, Date and Country of incorporation and the law under which it was incorporated abroad e) The address of its registered office or principle place of business f) Other matters required to be included in prospectus of any Indian company.

6. **Winding Up –** if a foreign company ceases to carry on such business in India it may be wound up as an unregistered company.

B] Government Companies

A Government Company means any company in which not less than 51 percent of the paid-up share capital is held by the Central Government, and or by any State Government or Governments, or partly by the

Central Government and partly by one or more State Governments. The subsidiary of a government company is also a Government company (Section 617).

The following are special rules for government company:-

1) **The appointment of Auditor** :- The auditor of a government company is appointed or reappointed by the Central Government on the advise of the Comptroller and Auditor General of India. The auditor is required to submit a copy of his audit report to the Comptroller and Auditor General of India who has aright to review and comment on the audit report. Any such comments must be placed before the Annual General meeting of the company.

2) **Audit Report to be placed before Parliament** :- Where the Central Government is the member of the government company, an annual report on the working and affairs of the company must be prepared within three months of its Annual General meeting before which the Audit Report is placed. The report must also be submitted to both houses of parliament. Similar provisions are present in case of Trade Government.

3) **Applicability of Section 619** :- The provisions of ***Section 619*** shall apply to a company in which not less than 51% of paid-up share capital is held by one or more of the following or any combination thereof i.e. the Central Government, State Government, Government Companies, Corporations owned or controlled by Central Government or State Government.

4) **Certain Provisions not to apply** - The Central Government may notify that any of the specified provisions of the companies act shall not apply to any government company.

C] Illegal Association

No company, association or partnership constituting of more than 10 persons for the purpose of carrying on banking business and of more then 20 persons for the purpose of carrying of any other business that has for its objects the acquisition of gain, can be legally formed unless it is registered as a company under the companies Act, 1956 ***(Section 11)***. Thus any organization having more than 10 persons in case of banking or 20 person in case of other business as owners has to be register as a company. Any association or partnership in violation of the above mentioned provision is termed as illegal association.

A Joint Hindu Family carrying on a business which has more than 20 members is not termed as illegal association as it is governed by Hindu Law.

The following are the consequences or disabilities of an illegal association;

1. It cannot sue or be sued of debts due to it or from it from carrying the business.

2. Every member of an illegal association is personally liable for all liabilities incurred in the business and is punishable with fine extending upto Rs. 1,000/-
3. It cannot enter into any contract as it has no legal existence.
4. It cannot be wound up under the companies act.

Q. What do you mean my Memorandum of Association and what are its contents?

Section 2 (28) of the act defines Memorandum as "Memorandum means the Memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this act".

Memorandum of association is the document which contains the rules regarding constitution and activities and objects of the company. It is fundamental charter of the company. Its relation towards the members and the outsiders are determined by this important document.

Section 13 of the act lays down the contents or the clauses required in the memorandum of association which are as under :-

1. **Name Clause** : - the memorandum must specify the full name of the company with "limited" as the last word of the name in case of public company and with "private limited" as the last word of the name in case of private company.

2. **State Clause** : - the state in which the registered office of the company is to be situated must be mentioned in the memorandum of association.

3. **Object Clause** :- the object of a company should be clearly set forth in the memorandum. The clause must be divided in to 2 major portion viz.
   (a) The main object of the company to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of main object.
   (b) The other object of the company not included in the above clause.

4. **Capital Clause** :- the capital clause in the memorandum of a company, having share capital, must state the amount of the share capital with which the company is to be registered and the division of the share capital into shares of a fixed amount. This share capital is called Authorised or Nominal capital.

5. **Liability Clause** : - this clause states the nature of liability of the members incase of a company with limited liability, it must state the liability of the members is limited whether by shares or by

guarantee. In absence of this clause in the memorandum the liability of its members shall be unlimited.

6. **Association Clause** : - this clause is a declaration made by the subscribers who have signed the memorandum of their intention to form a company. This clause is also called subscription clause.

Q. Explain the doctrine of '*Ultra Vires*'.

The Object Clause of the Memorandum specifies the activities which a company can under take everything else is ultra vires to the company. Ultra means beyond and vires means power. The term ultra vires means the doing of the act which is beyond the legal powers of the company. Any thing that a company does which is ultra vires i.e. beyond the object clause is null and void. This doctrine was laid down in **Ashbury Railway Carriages and Iron Co., Vs. Riche**. In this case the objects of the company provided to make and sell or lend or hire railway carriages and wagons and all kinds of railway plants, to carry on the business of mechanical engineers and general contractors etc., the company contracted with Riche to finance the construction of railway line in Belgium. The directors repudiated the contract on the ground that it was ultra vires. Riche brought an action for damages containing that the contract fell within the scope of the words "General Contractors" and further the contract was ratified by a majority of share holders. It was observed by the House of Lords that the memorandum of association has tow fold effect – an ***affirmative*** which states the extent of power of the company and ***negative*** that nothing shall be done beyond that ambit. It is to be specific and the term general contractors cannot be so widely interpreted. Since the act was ultra vires even majority of shareholders cannot ratify the said act.

Effect of Ultra Vires Transactions

1. **Contract Void** : - Ultra vires transactions render the contract void giving no legal rights to the company or the outsiders. Such contracts can never be ratified.

2. **Property acquired under ultra vires transaction** : - if a company acquires property under an ultra vires transaction, the company's right over the property shall be protected because assets so acquired represents corporate capital.

3. **Injunction** :- Any member obtain an order of injunction from the court to restrain the company from persisting in ultra vires act.

4. **Ultra vires borrowing** : - in case of an ultra vires borrowing, the lender has no right of action in respect of he loan to the company. But he has certain rights in respect of money received by the

company. But he has certain rights in respect of money received by the company provided the same is traceable. But the money lent by a company not authorized to lend can be recovered by it because the debtor will be stopped from pleading that the company had no power to lend.

5. **Directors personally liable** : - Directors who part with the company's money or property for ultra vires object will be personally liable to restore to the company the funds used for such purpose.

6. **Liabilty for torts** :- A company can be made liable for any tort, if the following two conditions are satisfied viz.
   (a) in course of which the tort has been committed, falls within the scope of the Memorandum of Association.
   (b) The servant of the company must have committed the tort within the course of his employment.

Q. Define the Articles of Association and explain its contents.

Section 2 (2) of the companies act defines articles as "Articles means Articles of Association of a company as originally framed or altered from time to time in pursuance of any previous law or of this act including so far as they apply to the company the regulations contain as the case may be in Table A to Schedule I of this act"

The Articles contain rules and regulations for the internal management of the company. They are framed with the object of carrying out the aims and object of the memorandum of association and also to monitor that the same are carried as prescribed.

The Model contents of the Article of association as per Table 'A' are as under

1. the business of the company;
2. the amount of capital issued and the classes of shares into which the capital is divided; the increase and reduction of the share capital;
3. the rights of each class of shareholders and the procedure for variation of their rights;
4. the execution or adoption of a preliminary agreement, if any;
5. the allotment of share; calls and forfeiture of shares for non – payment of calls;
6. transfer and transmission of shares;
7. company's lien on shares;
8. exercise of borrowing powers including issues of debentures;
9. general meeting, notices, quorum, proxy, poll, voting, resolution, minutes;
10. number, appointment and powers of directors;

11. dividends –interim and final – and general reserves;
12. accounts and audits;
13. keeping of books – both statutory and others;
14. regulations as to seal;
15. regulation as to winding up.

Q. Distinguish between Memorandum and Articles of Association

Criteria	Memorandum	Articles
1. Fundamental Conditions or internal regulations	The Memorandum contains the fundamental conditions upon which alone company is allowed to be incorporated. The conditions are introduced for the benefit of the creditors, the shareholders and the outside public.	The Articles of Association are internal regulations of the company. They provide the manner, in which the company is to be carried and its proceedings disposed of.
2. Dominant or subordinate	The memorandum is a dominant instrument as its states the purpose for which the company has come into existence.	The Article are always held to be subordinate to Memorandum because they are mere internal regulations of the company.
3. Methods of Alteration	Section 13 provides that some of the conditions of incorporation, contained in the Memorandum, such as the object clause, cannot be alerted except by the special resolution of the company and with the sanction of the Company Law Board or of a Court of Law.	Section 31 on the other hand, provides that the Articles of Association can be altered simply by a special resolution. It does not require the sanction of the Company Law Board or of a Court of Law.
4. Effect of acts done in contravention	If a company does something outside the scope of its objects stated it the Memorandum, it is absolutely null and void and incapable of ratification.	If a company does something in contravention of the provisions of its Articles, it is only an irregularity and can always be confirmed by the shareholders, and thus rectified.

Q. Define a ‘member’ and explain the modes of acquisition of membership of a company.

Section 41 of the companies act defines a member as Member of a company means a person –

(a) Who has subscribed his name to the memorandum.
(b) Any other person who has agreed in writing to become a member and whose name is entered in the register of member.
(c) Every person holding Equity share capital of a company and whose name is entered as beneficial owner in the records of the depository.

The modes of acquisition of membership are as under : -

1. **Membership by Scribing**: - the subscribers to the memorandum of association are deemed to have agreed to become members of the company on its incorporation. When the company is registered there names are automatically entered in the registered of members.

2. **Membership by Qualification Shares –** before a person can be appointed as a director of a public company he must take, and pay for the qualification shares if required by the articles.

3. **Membership by application and allotment –** an application for share is an offer to take shares and allotment is the unconditional acceptance of that offer by the company which results in a contract between the applicant and the company.

4. **Membership by transfer -** A person who takes shares from an existing member by the sale, gift or from some other transactions, acquires membership on his name appearing in the requester of members.

5. **Membership by transmission –** on the death of the share holder shares are transmitted to his or her legal representatives who becomes members of the company on their names being entered in the register of members.

Q. Enumerate the instances in which the membership of a company ceases.

A person may cease to be a member of a company in the following cases :

(a) If he transfers the shares to another person.
(b) If his shares are forfeited by the company.
(c) If the company sells his shares under some provisions in its articles as for example in the exercise of its rights to enforce a lien.
(d) If he validly surrenders shares to the company where surrender of shares is permitted.
(e) If he is adjudicated as insolvent and his shares vest in the official receiver or assignee.
(f) If he dies. The deceased member's estates liable until the shares are registered in the names of his

legal representatives.

(g) If redeemable preference shares are redeem.

(h) If he rescinds the contract to take shares on the ground of misrepresentation in the prospectus or of irregular allotment.

(i) If his shares are sold in execution of a Decree of the court.

(j) If the company is been wound up, a member remains liable as a contributor and is also entitle to share in the surplus assets, if any.

Q. What are the rights and liabilities of a member?

Rights of a Members

The following are the rights of a member :

(a) **Statutory Rights –** this are the rights which are conferred on the members by the Companies Act, 1956. This rights cannot be taken away or modified by the memorandum or article of association. Some of the statutory rights are as under :-

1. A member has a right of priority to have shares offered incase of increase of capital.
2. Right of receive notices of meeting, attend and vote at meeting.
3. Right to transfer share
4. Right to receive share certificate
5. Right to receive annual accounts of the company.
6. Right to inspect the register of members, debenture holders and copies of annual returns.
7. Right to apply to the central government for calling and annual general meeting if the board of directors fails to call such meeting.
8. Right to apply to the court for calling an extra ordinary general meeting.
9. Right to participate in appointments of directors and auditors in the annual general meeting.
10. Right to petition to the central government for ordering an investigation into the affairs of the company.
11. Right to petition to the High Court for relief in case of Opperation and mismanagement
12. Right to petition to the High Court for winding up of company.

(b) **Documentary Rights –** this are the rights given to the members by the memorandum or articles of associations.

(c) **Proprietary Rights –** Proprietary rights include the following rights

1. Right to be registered as a share holder
2. Right to be registered as a member in the register of member, subject only to valid and

authorize transfer of shares.

3. Privilege of immunity from personal liability of companies debt.
4. Right to participate in dividend distribution if ordered in the discretion of the directors
5. Right to participate in the distribution of assets in case of liquidation of the company

(d) **Remedial Rights –** Remedial rights includes the following rights.

1. Right to information and inspection of companies record.
2. right to bring representative suits on companies cause of action to prevent or remedy mismanagement or unauthorized act and to compel the company to enforce its right, and
3. common law, equitable and statutory remedies for infringement of individual rights.

Liabilities of Members

Liabilities of the Member depend upon the kind of company.

1. In case of a limited company, the liability of each member is linked to the face value of the share he has agreed upon.
2. In case of a company limited by guarantee, the liability of each member is to the extent of the guarantee agreed upon.
3. In case of a company with unlimited liability the liability of each member is unlimited.

Q. Define the term ‘prospectus’. Explain the liability for mis-statements contained in prospectus.

Section 2 (36) defines a Prospectus as “ Any document described or issued as prospectus and includes any notice, circular, advertisement or other documents inviting deposits from the public or inviting offer from the public for the subscription or purchase of shares in or debenture of a body corporate”.

Any document containing offer of shares or debenture for sale shall be deemed to be prospectus for and all the provisions shall apply. A document to be prospectus must have been issued to the public.

A Prospectus is a document which holds out to the public as to what the company is and what it proposes to do and what is its future prospectus.

Mis- statement in the Prospectus

The obligations imposed on those responsible for the issue of a prospectus are not only but to state accurately all the relevant facts but not to omit any fact which may be relevant. This is the Golden rule as to framing of prospectus which was laid down in **New Brunswick Rail. Co. Vs. Muggeridge.** If there is any misstatement of a material fact in a prospectus or if the prospectus is wanting in any material then the following liabilities could arise:

I] CIVIL LIABILITIES

1. **Remedy against the company –** If there is a misstatement or withholding of any material fact in a prospectus and if it has induced any shareholder to purchase the shares then he can –

    a) **apply to the Court for the rescission of the contract** – The Contract can be rescinded if the following conditions are satisfied :
        (i) The statement must be a material misrepresentation of fact.
        (ii) It must have induced the applicant to take the shares or debentures.
        (iii) It must be untrue.
        (iv) The applicant must have relied on the statement in the prospectus.
        (v) The omission of a material fact must be misleading before rescission must be granted.
        (vi) The proceedings for rescission must be started as soon as the shareholder or debenture-holder comes to know of a false or misleading statement in the prospectus.

    b) claim damages from the company – Any person induced by fraud to take shares or debentures is entitled to sue the company for damages. But before he does so, he must surrender the shares or debentures to the company. He cannot do both i.e. retain the shares or debentures and get damages against the company.

2. **Remedies against the directors, promoters and experts –** The persons who are liable to pay compensation for any loss or damage to persons who subscribe for shares or debentures on the faith of a prospectus containing untrue statements are :
    (a) Directors at the time of the issue of the prospectus
    (b) Promoters and
    (c) Persons who have authorized the issue of prospectus or who have authorized themselves to be named as directors in the prospectus.

3. **Liability under general Law –** Under the general law, a shareholder or debenture holder can hold all or any of the persons responsible for the issue of prospectus liable for mis-statement or fraud on their or his part if he was actually deceived by reason of his having acted on the faith of the mis-statement or fraud on the prospectus. But a person can only be liable in fraud where he makes a statements to be acted ipen by others, which is false and is made (a) knowingly or (b) without belief in its truth or (c) recklessly, not caring whether it was true or false.

II] Criminal liabilities – Where a prospectus contains any untrue statement, every person who authorized the issue of the prospectus is punishable with imprisonment, which may extend to 2 years, or with fine which may extend to Rs. 5,000/- or both. He will be discharged from the charges if he proves either –

(i) that the statement was immaterial or

(ii) that he had reasonable ground to believe, up to the time of the issue of prospectus, that the statement was true.

Q. Write short notes on

A] Director in a Company

Company is an artificial person incapable of acting by itself.

A company has no mind of its own, it has no eyes to see, no ears to hear, no hands to sign and no brain to think and take decisions.

Therefore directors are appointed to act on behalf of the company.

Separation of ownership from management.

The members do not participate in the management of the company since –

(a) they cannot interfere in day-to-day management of the company,

(b) they have neither time nor expertise to manage its day-to-day affairs;

(c) a large-sized company may numerous shareholders who are scattered throughout the country.

Therefore, directors are appointed by the members to manage the affairs of the company.

Meaning of Director [Section 2(13)]

"Director" includes any person occupying the position of director, by whatever name called;

The main criteria to determine whether a person is a director or not is to refer to the nature of his office, functions performed and discharged by him.

Shadow director –

A person in accordance with whose directions or instructions the Board of directors is accustomed to act is called as ‘deemed director’ or ‘shadow director’.

However, if the directions are given in professional capacity such person shall not be treated as director.

Only individuals to be directors (Section 253)

No body corporate, association or firm can be appointed as director.
Only an individual shall be appointed as director.

Position of directors

- Directors are appointed by the shareholders. Shareholders are also empowered to remove the directors.
- Overall control and supervision of affairs of the company is entrusted to directors.
- The Board of directors is entitled to exercise all the powers of the company except those powers which the Companies Act requires a company to exercise in General Meeting only.
- However, the power of directors can be restricted by articles of the company.
- Shareholders are authorized only to take decisions only to the extent specified in the Companies Act. They cannot interfere in day-to-day management of the company. The only thing they can do is to remove directors and appoint new ones; or to alter the articles to restrict the powers of the Board in respect of future transactions.
- Directors owe a duty to the shareholders to exercise care, skill and diligence in discharge of their functions.
- All the powers vested in the directors are exercisable by the directors collectively. (i.e. by passing a resolution at a Board meeting or by circulation). As an individual director, no director has the power to act on behalf of the company unless such powers have been delegated to him.

B] Director appointed by small shareholders

Small shareholder means a shareholder holding shares of nominal value of Rs 20,000/- or less. The Companies Act contains provisions regarding appointment of ***Small Shareholders' Director*** ('SSD').

1. **Applicability –** Conditions
   Nature of Company – Public Company;
   Paid up Capital – Rs 5 crores or more;
   Number of Small Shareholders – 100 or more

2. **Mode of Appointment**
   The Company may Suo motu appoint a SSD.
   If Notice is given by 1/10th or more small shareholder, the company shall be bound to act on such notice for appointment of SSD.

3. **Notice by small shareholders –** requirements

   The Notice shall be given at least 14 days before the AGM.

   The Notice shall specify the name, address & number of shares held & folio number of shareholders proposing the resolution; and the person whose name is proposed as SSD.

4. **Requirements and conditions**

- SSD has to be a small shareholder.
- A person can not become a SSD for more than 2 companies.
- SSD cannot be appointed as a Whole Time Director/ Managing Director.

5. **Tenure of SSD**

   The tenure of the SSD is for 3 years he has right for re-election for a maximum period of 3 years and he is not liable to retire by rotation.

6. **Disqualification of SSD**

   The grounds of disqualifications as applicable to other directors (i.e specified u/s 274) shall also apply to SSD and the grounds mentioned u/s. 274(1)(g) does not apply to the SSD.

7. **Grounds for vacation of office**

   The ground for vacation of office as applicable to any other director specified u/s 283 shall also apply to SSD.

8. **Exceptions**

   SSD shall vacate office if he ceases to be small shareholder.

   He is not required to obtain the qualification shares.

C] Nominee Directors

1. **Appointment**

   Nominee Directors are Directors appointed by Central Government u/s 408 or Financial institutions constituted under an Act of parliament.

   Following provisions shall apply to nominee directors appointed by Central Government u/s 408 and financial institutions constituted under the Act of Parliament:

- they are not required to retire by rotation
- they are not counted in the total number of directors
- they may be appointed even if there is no provisions in the articles for their appointment
- their appointment may result in increasing the strength of the Board beyond the 'Maximum number

of directors' as specified in the articles

- they are not required to hold qualification shares
- they can be removed only by the authority appointing them

2. Other provisions

All the provisions of Companies Act, 1956 shall apply to such directors, specifically, the following provisions must be checked:

- the articles of the company must specifically provide that nominee directors may be appointed
- the appointment of nominee directors must not result in a contravention of Section 255.

D] Removal of a Director

Procedure for removal of a director

1. Notice of removal of a director is given by a member to company. The notice must be a special notice.
2. A copy of notice is given by company to director.
3. Representation is given by director to company. The director ha a right to make representation to the company.
4. Representation given by company is sent by the company to every member. The company shall give a copy of the representation made by the director to every member. If the representation was not sent to the members, the representation shall be read at the GM.
5. The GM shall be held.
6. The director has right to be heard at the meeting. The right to make an oral representation is in addition to written representation.
7. The director shall be removed if an ordinary resolution is passed for his removal.
8. Any other person may be appointed at the place of the director removed, only if special notice of the new appointee was given to the company.

Director who cannot be removed u/s. 284

1. A director appointed u/s. 408.
2. A director appointed u/s. 265
3. A director of a private company holding office for life as on 1.4.1952
4. Nominee director appointed by a financial institution constituted under a special Act of Parliament.

Q. What are the disqualifications of Directors in a company?

The Grounds of disqualification of Directors applicable to every company are as under -

Following persons are disqualified to become a director:

(a) A person who has been found to be of unsound mind by a court of competent jurisdiction
(b) A person who is an undischarged insolvent.
(c) A person who has applied to be adjudicated as an insolvent
(d) A person who has been convicted by a court and the following conditions are fulfilled :
  (i) He is convicted for an offence involving moral turpitude.
  (ii) He is sentenced to imprisonment for 6 months or more
  (iii) 5 years have not elapsed from the expiry of sentence.
(e) A person who has not paid any call on shares and the default has continued for 6 months.
(f) A person who is disqualified by an order of court u/s 203 on the ground of fraud or misfeasance in relation to a company.

The Grounds of disqualification applicable to a public company are as under [section 274 (1) (g)] –

A director of a public company shall be disqualified from being appointed as a director in any other company, if the public company of which he is already a
director –

(b) does not file the annual accounts and annual returns for any continuous 3 financial years commencing on or after 1.4.1999 or
(c) fails to repay its deposits or interest thereon on due date or redeem its debentures on due date or pay dividend and such failure continues for 1 year or more.
(d) Where a public company fails to repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividend on the due date, all the persons who has been directors from the due date till the expiry of one year after the due date, shall be disqualified.

The disqualification u/s. 274)1)(g) shall remain in force for a period of 5 years. Even where the default made u/s 274(1)(g) is subsequently cured by the directors shall continue to remain disqualified.

Additional Grounds

The Articles of Association of a private company may provide additional grounds of disqualification of a director.