COMPANY LAW

COMPANY - Meaning

A company means an association of individual formed for some common purpose. But it is a voluntary association of persons. It has capital divisible into parts, known as shares, an artificial person created by a process of law and it has a perpetual succession and a common seal.

Characteristics of a Company

1. **Separate Legal Entity**

   A company formed and registered under the companies act is a distinct legal entity. It is a creation of law and is sometimes called artificial person having invisible and intangible. It is a fiction of law with legal, but no natural or physical existence.

2. **Perpetual Succession**

   A company is an artificial person, as such it never dies. Its life does not depend on the life of its members. It may not affected by insolvency, mental disorder or retirement of its 2 members. It is created by law and can be put an end to only by the process of law. Even the earthquake, flood or hydrogen bomb cannot destroy it. It continues to exist even if all its human members are dead. Unlike a natural person a company never dies. It is an entity with a perpetual succession. Its existence is not affected by the death, lunacy and insolvency of its members.

3. **Limited Liability**

   In a company limited by shares, the liability of members is limited to the unpaid value of the shares. If the face value of a share in a company is Rs.10 and a member has already paid Rs.7 per share, he can be called upto to pay not more than Rs.3 per share during the lifetime of the company. In a company limited by guarantee, the liability of members is limited to such amount as the members may undertake to contribute to the assets of the company in the event of its being wound up.

4. **Common seal**

   A company is a juristic person with a perpetual succession and a common seal. Since the company has no physical existence, it must act through its agents and all such contracts entered into by its agents must be under the seal of the company. The common seal acts as the official signature of the company. Every company mush has a seal with its name engraved on it.

5. **Transferability of shares**

The capital of a company is divided into parts, called shares. These shares are, subject to certain conditions, freely transferable so that no shareholder is permanently or necessarily wedded to the company. When the joint stock companies were established, the great object was that the shares should be capable of being easily transferred.

6. **Capacity to sue and be sued**

A company can sue and be sued in its corporate name. It may also inflict or suffer wrongs. It can in fact do or have done to it most of the things which may be done by or to a human being. On incorporation, a company acquires separate and independent legal personality. As a legal person, it can sue and be sued in its name.

7. **Separate Property**

A company, as already observed, is a legal person distinct from its members. It is therefore capable of owing, enjoying and disposing of property in its own name. Although, the capital and assets of the company are contributed by its shareholders, they are not the private and joint owners of the property of the company. The property of the company is not the property of the shareholders; it is the property of the company.

Distinction between Company and Partnership

The principal points of distinction between a company and a partnership are:

1) Legal status

A company is a distinct legal person. A partnership firm is not distinct from the several members who compose it.

2) Property

In partnership, the property of the firm is the property of the members comprising it. In a company, it belongs to the company and not to the members comprising it.

3) Mode of creation

A company comes into existence after registration under the Companies Act, 1956, while registration is not compulsory in case of a partnership firm.

4) Agents

Partners are the agents of the firm, but members of a firm are not its agents.

5) Contracts

A partner cannot contract with his firm, whereas a member of a company can.

6) Transferability of shares

A partner cannot transfer his share and make the transferee a member of the firm without the consent of other partners whereas a company's share can easily be transferred unless the Articles provide otherwise and the transferee becomes a member of the firm.

7) Liability

A partner's share is always unlimited whereas that of a shareholder may be limited either by shares or a guarantee.

8) Perpetual succession

-The death or insolvency of a shareholder or all of them does not affect the life of the company, whereas the death or insolvency of a partner dissolves the firm, unless otherwise provided.

9) Audit

A company is legally required to have its accounts audited annually by a chartered accountant, whereas the accounts of the partnership are audited at the discretion of its members.

10) Number of members

The minimum number of partners in a firm is 2 and maximum is 20 in any business and 10 in banking business. In case of a private company the minimum number of members are 2 and maximum is 50. In case of a public company the min number of members are 7 and no max limit.

11) Dissolution

A company can only be dissolved as laid down by law. A partnership firm can be dissolved at any time by an agreement.

PROMOTER

Promoter who gets the idea of starting a company and undertakes all the preliminary work necessary for its formation. In other words, the promoter of a company is a person who does the necessary preliminary work incidental to the formation of the company.

Functions of a promoter

1.He settles the company's name and ascertains that it will be accepted by the Registrar of Companies.

2. He also settles the details of the company's Memorandum and Articles, the nomination of directors, solicitors, bankers, brokers, auditors and secretary and the registered office of the company.

3. He arranges for the printing of the Memorandum and Articles, the registration of the company, the issue of prospectus, if a public issue is necessary

Duties of Promoters

- Instruct the solicitors to prepare necessary documents
- Secure the services of directors
- Provide registration fees
- Arranging for advertisement, circulation of prospectus, investment of capital.
- Involved in business activities

INCORPORATION / FORMATION OF COMPANY

1. **Approval for the proposed name:** A company can choose any name but it should not closely resemble the name of an existing company. Hence the promoter has to get the approval from the registrar for the proposed name of the company.

2. Filing of Documents :The promoter has to get prepared the following documents and file them with the registrar of companies of the State in which the registered office of the company is situated.

i) Memorandum of Association :This document which is of fundamental importance defines the scope of activities of the company. It should contain the name, the place where the registered office is situated, authorized capital and the objects of the business. It should be printed and duly stamped, signed and witnessed. A minimum of two persons in the case of a private limited company and seven in the case of a public limited company must sign the document.

ii) Article of Association :This contains the regulations connected with the internal management of the company. This document must also be duly stamped and signed by the signatories to the memorandum and witnessed.

iii) Original letter of approval :Original letter of approval of name be obtained from the Registrar and be filed.

iv) A list of directors:A list of directors who have consented to be its directors must be filed.

v) Written consent to act as directors: The directors have to give their consent in writing to act asits directors. They should also undertake to take the necessary qualification shares and pay for them.

vi) Notice of the address of the registered office

vii) Statutory declaration : A declaration stating that all the requirements of law relating to registration have been complied with is to be filed. This declaration must be given by an Advocate of the Supreme Court or High Court, or by a Chartered Accountant who is engaged in the formation of the company or by a person named in the Articles as a director or secretary of the company.

viii) The registrar will scrutinize all the documents and if he finds them in order, he will issue the certificate of incorporation This certificate is a conclusive evidence of the fact that the company has been duly registered. A private limited company can commence business on getting the certificate of incorporation, but a public company has to take some more steps for getting another certificate known as certificate for commencement of business.

3.**Issue of Prospectus**

The Board of directors should arrange for drafting a prospectus when it wants to approach the public for securing capital. A prospectus contains all essential points which would induce the investing public to apply for shares in the company. A copy of the prospectus must bedelivered to the Registrar before issuing to the public.

4. Minimum Subscription

A company can proceed to allot shares only if minimum subscription specified in the prospectus has been collected in cash.

5. Statement in Lieu of Prospectus

Where the promoters raise the entire capital through private arrangement, there is noneed to issue a prospectus. However, a statement in lieu of prospectus, the contents of which are similar to a prospectus, must be prepared and filed with the Registrar at least three days before allotment.

6. Filing of further documents

The following documents are also to be filed with the Registrar;

i) A declaration that the minimum subscription stated in the prospectus has been collected in cash

ii) A declaration stating that each director has paid in cash for the application and allotment on the shares taken up by them

iii) A declaration that no money has become refundable to applicants because of its failure to obtain permission for shares or debentures to be dealt in on any recognized stock exchange

iv) A statutory declaration by the secretary or one of its directors stating that the above requirements have been complied with. If the Registrar is satisfied that these documents are in order, he will issue a certificate entitling the company to commence business. It is only on getting this certificate; a public limited company can start its business.

Certificate of Incorporation

On registration, the Registrar will issue a certificate of incorporation whereby he certifies that the company is incorporated. For the date of incorporation mentioned in the certificate, the company becomes a legal person separate from its shareholders and secures a perpetual succession. Hence it is the birth certificate of the company.

Certificate of commencement of business

A private company may commence its business immediately on incorporation but a public company cannot commences business immediately after incorporation, unless it has obtained a certificate of commencement of business from the Registrar.

MEMORANDUM OF ASSOCIATION (MOA)

MOA is one of the core documents, which has to be filed with the Registrar of companies at the time of incorporation of a company. It is a document, which sets out the constitution of the company and is really the fundamental conditions upon which alone the company is allowed to be incorporated. In other words, it contains the fundamental conditions upon which alone the company is allowed to be incorporated. It defines the activities the company is permitted to undertake. Any act done which is outside the scope outlined in its memorandum is ultra vires (beyond the power of)the company and is not binding on it.

Contents of Memorandum

1.Name Clause

A company may be registered with any name it likes. But a name, which in the opinion of the Central Government is undesirable, and in particular which is identical or which too nearly resembles the name of an existing company shall register no company. Every public company must write the word ‘limited’ after its name and every private company must write the word ‘private limited’ after its name clause.

Rules regarding name

i) undesirable name to be avoided

ii) ii) identical name to be avoided

iii) ii) injunction if identical name adopted

iv) iv) limited or private limited as the last word or words

v) v) prohibition of use of certain names

vi) vi) restriction on use of certain key words as part of name

2.Registered Office Clause This clause states the name of the state where the registered office of the company is to situate. The registered office clause is important for two reasons. First, it ascertains the domicile and nationality of a company. Second, it is place where various registers relating to the company must be kept and to which all communications and notice must be sent. **3. Object Clause** The object clause is the most important clause in the memorandum of association of a company. It is not merely a record of what is contemplated by the subscribers. But it serves a twofold purpose; 1) it gives an idea to the prospective shareholders the purpose for which their money will be utilized; 2) it enables the persons dealing with the company to ascertain its powers.

4.Liability Clause

This clause states that the liability of the members of the company is limited. In the case of a company limited by shares, the members are liable only to the amount unpaid on the shares taken by him. In the case of a company limited by guarantee, the members are liable to the amount undertaken to be contributed by them to the assets of the company in the event of its being wound up.

5.Capital Clause

The memorandum of a company limited by shares must state the authorized or nominal share capital, the different kinds ofshares, and the nominal value of each share. The chief point to consider in regard to this clause is what funds are necessary to set the business going or, if it is proposed by an existing concern, what sum is needed to pay its price and what, in addition, is wanted to keep the business going.

6.Association Clause or Subscription Clause

This clause provides that those who have agreed to subscribe to the memorandum must signify their willingness to associate and form a company. The memorandum has to be signed by each subscriber in the presence of at least one witness who must attest the signature. Each subscriber must write opposite his name the number of shares he shall take.

ARTICLES OF ASSOCIATION

'Articles' means the Articles of Association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act. The articlesof association are the rules and regulations of a company frame d for the purpose of internal management of its affairs. The articles are framed for carrying out the aims and objects of the Memorandum of Association.

Contents of Articles of Association

1. Adoption of preliminary contracts
2. number and value of shares
3. allotment of shares
4. calls on shares
5. lien on shares
6. transfer and transmission of shares
7. forfeiture of shares
8. alternation of shares
9. shares certificate
10. conversion of shares into stock
11. voting rights and proxies
12. meetings
13. directors, their appointment etc
14. borrowing powers
15. accounts and audit
16. dividends and reserves
17. winding up
18. issue of redeemable preference shares.

Prospectus meaning

1. The prospectus is a legal document, which outlines the company's financial securities for sale to the investors.
2. According to the companies act 2013, there are four types of the prospectus, abridged prospectus, deemed prospectus, red herring prospectus, and shelf prospectus.

Prospectus Definition

The prospectus is a legal document for market participants and investors to pursue, detailing the features, prospects, and promise of a financial product.It is mandated by the law to be supplied to prospective customers.

Prospectus Example

In an IPO, the prospectus tells potential shareholders about the company's plans and business model.

For insurance and investment fund customers, a prospectus lists out the objective of the product, inclusions, and exclusions, fees, etc.

For an ETF, a prospectus informs likely investors of the fund's goals, history, portfolio, fees and costs, and other financial details.

Prospectus and its importance:

The company provides prospectus with capital raising intention. Prospectus helps the investors to make a well-informed decision because of the prospectus all the required information of the securities which are offered to the public for sale.

Whenever the company issues the prospectus, the company must file it with the regulator. The prospectus includes the details of the company's business, financial statements.

1. To notify the public of the issue
2. To put the company on record with regards to the terms of the issue and allotment process
3. To establish accountability on the part of the directors and promoters of the company.

Types of prospectus

According to Companies Act 2013, there are four types of prospectus.

Deemed Prospectus – Deemed prospectus has mentioned under Companies Act, 2013 Section 25 (1). When a company allows or agrees to allot any securities of the company, the document is considered as a deemed prospectus via which the offer is made to investors. Any document which offers the sale of securities to the public is deemed to be a prospectus by implication of law.

Red Herring Prospectus – Red herring prospectus does not contain all information about the prices of securities offered and the number of securities to be issued. According to the act, the firm should issue this prospectus to the registrar at least three before the opening of the offer and subscription list.

Shelf prospectus – Shelf prospectus is stated under section 31 of the Companies Act, 2013. Shelf prospectus is issued when a company or any public financial institution offers one or more securities to the public. A company shall provide a validity period of the prospectus, which should not be more than one year. The validity period starts with the commencement

of the first offer. There is no need for a prospectus on further offers. The organization must provide an information memorandum when filing the shelf prospectus.

Abridged Prospectus – Abridged prospectus is a memorandum, containing all salient features of the prospectus as specified by SEBI. This type of prospectus includes all the information in brief, which gives a summary to the investor to make further decisions. A company cannot issue an application form for the purchase of securities unless an abridged prospectus accompanies such a form.

Prospectus and its contents:

The prospectus contents are specified in the Companies Act. The prospectus must touch over the following content points:

1. Details of the company, such as name, registered office address, and objects
2. Details of signatories to the Memorandum and their shareholding particulars
3. Details of the directors
4. Details of shares offered and the class of the issue as well as voting rights
5. Minimum subscription amount
6. The amount payable on application, on allotment, and on further calls
7. Underwriters of the issue
8. Auditors of the company
9. Audited reports regarded profit and losses of the company

Ultra-vires

It is a Latin term made up of two words “ultra” which means beyond and “vires” meaning power or authority. So we can say that anything which is beyond the authority or power is called ultra-vires. In the context of the company, we can say that anything which is done by the company or its directors which is beyond their legal authority or which was outside the scope of the object of the company is ultra-vires.

Doctrine of Ultra-Vires

Memorandum of association is considered to be the constitution of the company. It sets out the internal and external scope and area of company’s operation along with its objectives, powers, scope. A company is authorized to do only that much which is within the scope of the powers provided to it by the memorandum. A company can also do anything which is incidental to the main objects provided by the memorandum. Anything which is beyond the objects authorized by the memorandum is an ultra-vires act.

Basic principles regarding the doctrine

1. Shareholders cannot ratify an ultra-vires transaction or act even if they wish to do so.
2. Where one party has entirely performed his part of the contract, reliance on the defense of the ultra-vires was usually precluded in the doctrine of estoppel.
3. Where both the parties have entirely performed the contract, then it cannot be attacked on the basis of this doctrine.
4. Any of the parties can raise the defense of ultra-vires.
5. If a contract has been partially performed but the performance was insufficient to bring the doctrine of estoppel into the action, a suit can be brought for the recovery of the benefits conferred.
6. If an agent of the corporation commits any default or tort within the scope of his employment, the company cannot defend it from its consequences by saying that the act was ultra-vires.

Exceptions to the doctrine

1. Any act which is done irregularly, but otherwise it is intra-vires the company, can be validated by the shareholders of the company by giving their consent.
2. Any act which is outside the authority of the directors of the company but otherwise it is intra-vires the company can be ratified by the shareholder of the company.
3. If the company acquires property in a manner which is ultra-vires of the contract, the right of the company over such property will still be secured.
4. Any incidental or consequential effect of the ultra-vires act will not be invalid unless the Companies Act expressly prohibits it.
5. If any act is deemed to be within the authority of the company by the Company's Act, then they will not be considered as ultra-vires even if they are not expressly stated in the memorandum.
6. Articles of association can be altered with retrospective effect to validate an act which is ultra-vires of articles.

Types of ultra-vires acts and it can be ratified?

Ultra-vires acts can be generally of four types:

1. Acts which are ultra-vires to the Companies Act.
2. Acts which are ultra-vires to the Memorandum of the company.
3. Acts which are ultra-vires to the Articles of the company but intra-vires the company.
4. Acts which are ultra-vires to the directors of the company but intra-vires the company.

Doctrine of Indoor Management

The doctrine of indoor management is an exception to the earlier doctrine of constructive notice. It is important to note that the doctrine of constructive notice does not allow outsiders to have notice of the internal affairs of the company. Hence, if an act is authorized by the Memorandum or Articles of Association, then the outsider can assume that all detailed formalities are observed in doing the act. This is the Doctrine of Indoor Management or the Turquand Rule. This is based on the landmark case between *The Royal British Bank and Turquand*. In simple words, the doctrine of indoor management means that a company's indoor affairs are the company's problem.

Therefore, this rule of indoor management is important to people dealing with a company through its directors or other persons. They can assume that the members of the company are performing their acts within the scope of their apparent authority. Hence, if an act which is valid under the Articles, is done in a particular manner, then the outsider dealing with the company can assume that the director/other officers have worked within their authority.

Qualifications of Directors

The Companies Act of 2013 does not prescribe specific educational or professional qualifications of directors. Additionally, the Act does not enforce any mandatory qualifications to directors. In the absence of relevant provisions within a company's articles of association, there is no obligatory requirement for a director to hold shares in the company, unless they choose to do so willingly. However, articles generally support a minor percentage of eligibility.

Disqualifications

The rules for becoming a director are explained in Section 274. There are certain situations where someone cannot become a director:

1. If a person is not mentally well and a court acknowledges this.
2. When a director is declared financially unstable.
3. If a director doesn't pay for the required shares within 6 months of becoming a director.
4. If a director is sentenced to at least 6 months in prison for misbehavior, and this sentence doesn't go beyond 5 years from the end of their sentence.
5. If a director is proven to be involved in fraudulent activities under Section 203.
6. If a person is unable to repay their debts that are more than what they own. Or if a company has taken legal action against the director.

If a private company isn't an assistant of a public company, it can be more lenient with certain disqualifications. In simpler words, a public company and its leaders don't have the same freedom to be lenient with other disqualifications.

Appointment of Directors at General Meeting

According to Section 152(2), every director needs to be elected by the company in a public meeting, unless Act gives otherwise.

- **Appointment of directors if it is a private company** – In cases where the documentation regarding the designation of directors within a private company is unclear or lacks provisions for director appointments except for a general assembly, the process of electing directors should occur during a shareholder meeting that is open to the public.
- **Rotation Manner**– Section 152(6)(c) states that the initial annual gathering of a public company should occur subsequent to the assembly in which the inaugural directors are nominated. Following this, in every subsequent yearly meeting, directors will step down systematically. In situations where the count of directors does not amount to three or a multiple of three, approximately one-third of the directors will relinquish their positions.
- The directors retiring in these annual meetings should be the ones who have been in the position the longest since their last appointment. However, if multiple directors were appointed on the same day, and they have an agreement among themselves, they can choose which among them will retire. [Reference: Section 152(6)(d)]

The main duties of a director as taken from the statutory statement of director's duties.

1. **Act within their powers**

A director must act within his powers under the company's constitution and only exercise his powers for the purpose for which they were conferred (CA 2006, s171).

2. **Promote the success of the company**

A director must 'act in a way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole' (CA 2006, s172). This duty applies to all directors' actions, not just those exercised at board meetings. When making decisions, directors must ensure they have regard to the likely consequences of the decision over the long term, which means they must take account of the:

- interests of employees
- impact on the community and environment
- need to foster business relationships with suppliers, customers and others
- need to act fairly between members
- a need to maintain a reputation for high standards of business and conduct

3. Exercise independent judgement

A director must exercise independent judgement (CA 2006, s173). This duty largely codifies the requirement in common law for directors to exercise their powers independently, without subordinating their powers to the will of others and without fettering their discretion.

4. Exercise reasonable care, skill and diligence

A director must exercise such reasonable skill, care and diligence as would be exercised by a reasonably diligent person with:

• the general knowledge, skill and experience that could reasonably be expected from a person carrying out the director's functions; and

• the director's actual general knowledge, skill and experience (CA 2006, s174).

5. Avoid conflicts of interest

A director has a statutory duty to avoid any situations in which he has, or could have, a direct or indirect interest that conflicts, or could conflict, with the interests of the company (CA 2006, s175). This applies in particular to the exploitation of property, information or opportunity regardless of whether the company could take advantage of it. It applies to a conflict of duty, as well as a conflict of interest and includes the interests of 'connected persons'.

6. Not accept benefits from third parties

A director has a statutory duty not to accept a benefit from a third party which is given because of the position held by the director or because of anything the director has done in his capacity as a director (CA 2006, s176). In brief, acceptance of benefits is not subject to any 'de minimis' limit and is only permitted where the matter is approved by the company's members or it can reasonably be regarded that it will not give rise to a conflict of interest with the company.

7. Declare interests in transactions or arrangements

A director of a company has a statutory duty to disclose any direct or indirect interest he has in a proposed transaction or arrangement with the company (CA 2006, s177). Furthermore, the director has a duty under CA 2006, s182 to declare any interest held, direct or indirect, in an existing transaction or arrangement.

Kinds of Companies

According to mode of incorporation
- Statutory Company
- Registered Company

According to number of members
- Private Company
- Public Company
- One person Company

According to liability of members
- Company limited by shares
- Company limited by guarantee
- Unlimited Company

Other kinds of Companies
- Companies not for profit
- Foreign Company
- Government Company
- Holding Company and Subsidiary Company
- Associate Company
- Small Company
- Dormant Company
- Producer company

PRIVATE COMPANY	PUBLIC COMPANY
Minimum no. of members - 2 Maximum no. of members-200	Minimum no. of members -7 Maximum no. of members- No limit
There must be restrictions on transfer of shares of the company.	No restrictions on transfer of shares.
Any invitation to public to subscribe for any securities of the company is prohibited.	A public company can invite public for subscription of its securities.
It can issue securities only through private placement, or by way of rights or bonus issue	It can issue securities to public through prospectus, private placement or by way of rights or bonus issue
It can allot shares without receiving the minimum subscription	It cannot allot shares without receiving minimum subscription
A private company must have atleast 2 directors	A public company must have atleast 3 directors
Directors are not required to retire by rotation. All its directors can be permanent.	Atleast 2/3 directors of a public company shall be rotational directors .
It is not required to appoint independent directors.	A public company which is listed or otherwise prescribed must appoint independent directors

PRIVATE COMPANY	PUBLIC COMPANY
It may by its AOA, provide special disqualifications for appointment of directors .	It cannot prescribe additional disqualifications in its AOA for appointment of directors.
No restriction on payment of remuneration to directors, managing directors etc.	Overall maximum managerial remuneration is fixed at 11% of annual net profits of a public company.
Exempted from constituting committees like Audit Committee, Nomination and Remuneration Committee.	Public companies (listed/prescribed) are required to constitute Audit Committee, Nomination and Remuneration Committee
Exempted from Secretarial Audit	Public companies(listed/prescribed) are required to get Secretarial audit by a practicing Company Secretary
Not required to rotate auditor/ audit firm	Public companies (listed/prescribed) required to rotate auditor/ audit firm
Unless AOA provide for a larger no., quorum for general meeting -2 members personally present	Quorum shall be 5 to 30 members personally present depending upon the number of members in the co.
Must have word 'Pvt./Private' in its name.	Name must end with word 'Lmt./Limited'

Conversion of private co. into public co.& vice versa (Delibrate conversion)

PRIVATE CO. CONVERSION INTO PUBLIC CO.	PUBLIC CO. CONVERSION INTO PRIVATE CO.
Passing of SR deleting from AOA the three compulsory restrictions u\s2(68)	Passing of SR incorporating into AOA the three compulsory restrictions u\s2(68) + Obtaining sanction of CG on alteration of articles
Filing with ROC the copy of SR and copy of altered AOA within 15 days of SR	Filing with ROC, the copy of SR within 15 days of SR +copy of altered AOA and approval letter of CG within 15 days of approval
Company becomes public from date of passing SR altering AOA	Company becomes private from date of approval from CG
ROC will close the former registration and issue a new Certificate of Incorporation	ROC will close the former registration and issue a new Certificate of Incorporation.
Company will have to increase the number of members to at least 7; increase directors to at least 3; and delete word 'Private' from its name and make other necessary alterations in MOA	Company will have to reduce members to 200; and add the word 'Private' in its name

Conversion of private co. into public co.& vice versa (Automatic conversion)

PRIVATE CO. CONVERSION INTO PUBLIC CO.	PUBLIC CO. CONVERSION INTO PRIVATE CO.
Takes place by operation of law and such company is not required to comply with any legal formalities as are prescribed for deliberate conversion.	NOT ALLOWED
Takes place when a private co. makes default in complying with the restrictions specified in Sec.2(68) of the Act (i.e.if its membership >200 or it allows free transfer of shares or invites public subscription of its securities)	
Such a company can no longer enjoy privileges and exemptions conferred on a private co. & be regulated like a public company.	
However, if Tribunal (NCLT) is convinced that the default took place due to inadvertence or accident or some sufficient cause, it may relieve the co.from being treated like a public company	
Where automatic conversion takes place, the company may retain characteristics of a private company i.e. can have restrictions pertaining to membership, or transferability or public subscription, may continue to have 2 members or directors. Only the exemptions and privileges are withdrawn.	

FORMATION OF COMPANY...

STEPS INVOVED:-

- Promotion
- Incorporation
- Raising of Capital
- In case of PUBLIC LIMITED COMPANY, securing a certificate for commencement of business.

STAGES IN FORMATION OF A COMPANY

Promotion of a Company : The promotion of a company refers to all those steps which are taken from the time of having an idea of starting a company to the time of actual starting of the company business.

Who is a promoter?

1. People who think of forming a company and take necessary steps in its formation are known as "Promoters" or "Company Promoters".
2. The person who conceives such an idea is called "Company Promoter".

FUNCTIONS OF PROMOTERS:

- To discover an idea for establishing a company.
- To make detailed investigations about the demand for the product, availability of power, labour, raw material.
- To investigate the idea and know whether the formation of the company is possible and profitable.
- To find out suitable persons who are willing to act as first directors of the company.
- To settle the name of company.

- To select bank, legal advisor, auditor, underwriter for the company.
- To submit all the documents required for incorporation with the registrar.
- To meet all the preliminary expenses for floating of a company.
- To make contracts with vendors, underwriters, and managing directors of the company.
- To arrange for the loan etc. from various financial resources.
- To make proper arrangement for the office of the company.

DUTIES AND OBLIGATION OF PROMOTERS

- The promoters must disclose fully all the material facts regarding the formation of a company.
- The promoters must faithfully disclose all the facts relating to the property which they want to sell to the company.
- The promoters must not make an unfair use their position.
- To disclose the liability and pay the secret profits if promoters have earned.
- The prospectus of the company should contain the true statements.
- Liability on statutory mistakes or frauds in the property.

IMPORTANT DOCUMENTS BEFORE APPROACHING THE REGISTRAR :-

- AN INDUSTRIALIST LICENCE IF THE PROPOSED BUSINESS IS COVERED BY INDUSTRIES ACT 1951
- AN IMPORTANT LICENCE IS REQUIRED IF MACHINERY IS IMPORTED
- APPROVAL OF GOVT. IN CASE OF FOREIGN COLLABRATION
- APPROVAL OF GOVT. UNDER MONOPOLIES AND RESTRICTIVE TRADE PRACTICE ACT 1961, IF NECESSARY

DOCUMENTS NEEDED :-

- MEMORANDUM OF ASSOCIATION
- ARTICLES OF ASSOCIATION
- LIST OF THE DIRECTORS
- CONSENT LETTER FROM DIRECTORS
- STATEMENT OF CAPITAL
- STATUTORY DECLARATION

Prospectus

[prə-'spek-təs]

A formal document required by and filed with the Securities and Exchange Commission (SEC) that provides details about an investment offering to the public.

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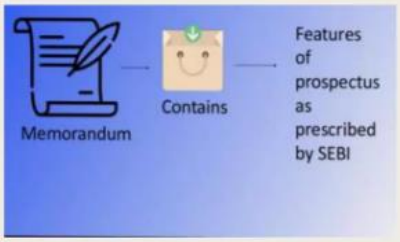
TYPES OF PROSPECTUS

- ***ABRIGED PROSPECTUS:***

It means a memorandum containing salient features of prospectus as prescribed.

A Copy of the prospectus shall, on a request being made by any person before the closing of the subscription list and the offer, be furnished to him.

If a company makes any default in complying with the above provisions, it shall be liable with a penalty of fifty thousand rupees for each default.



- ***DEEMED PROSPECTUS OR PROSPECTUS BY IMPLICATION:***

In this type of Prospectus offer of sale of shares or debentures are made through Issue houses.

The company makes an agreement with the issue house, Its the issue house that advertises.

Any document which offers the sale of securities to the public is deemed to be a prospectus by implication of law.

- ***RED HERRING PROSPECTUS:***

It is a prospectus which does not contain all particulars on the price and quantam of securitues offered.

This type of prospectus is issued to check the demand for securities.

It is issued atleast three days prior to the opening of offer.

- ***SHELF PROSPECTUS AND INFORMATION MEMORANDUM:***

It is issued by any financial instituatio or bank for one or more issue of securities, in one specified prospectus.

Shelf prospectus shall be valid for 1 year from the date of opening of the first offering of the prospectus.

The company shall not required to file fresh prospectus with the registrar at every stage of offer of securities but has to submit information memorandum

Information Memorandum contains all important information and the changes made if any.

Contents of the Prospectus

- It contains the following details about the company:
  1. Name and Address of the Registered Office
  2. Name of the Stock Exchange where the application for the listing is made
  3. Details related to the Minimum Subscription
  4. Capital Structure of the Company
  5. Terms of the present issue.
  6. Particulars about the Issue.
  7. Company Management and the Project.
  8. Financial Information of the company.
  9. Statutory information as per the provisions of Section 56 of the Companies Act,1956

Statement in Lieu of Prospectus (SLOP)

When the public company does not invite public to subscribe for its shares, but arrange to get money from private sectors, it need not issue a prospectus to the public. In such a case, the promoters are required to prepare a draft prospectus known as "Statement in Lieu of Prospectus"

Who is a director

- An appointed or elected member of the board of directors of a company.
- He has the responsibility for determining and implementing the company's policy.
- A company director need not
  - ✓ to be a shareholder or
  - ✓ an employee, and

  may hold only the office of director under the provisions of the Act.
- Directors derive their powers emanating from board resolutions
- Unlike shareholders, directors cannot participate through proxy.
- Unlike employees, cannot absolve themselves of their responsibility for the delegated duties.

General Rules about appointment of Directors

- Directors should be individuals, i.e. natural persons
- Minimum and maximum number of directors

Private	Public	OPC
• 2 • 15	• 3 • 15	• 1 • 15

- The maximum limit of 15 directors can be increased by passing a special resolution.

  (Earlier the limit was 12 directors and approval of Central Government was required for raising the limit)

Winding Up & Dissolution

Generally, the terms 'winding up' and 'dissolution' used to mean the same thing, but according to Companies Act, these two terms are quite different by their legal procedures. The differences between them are as below:

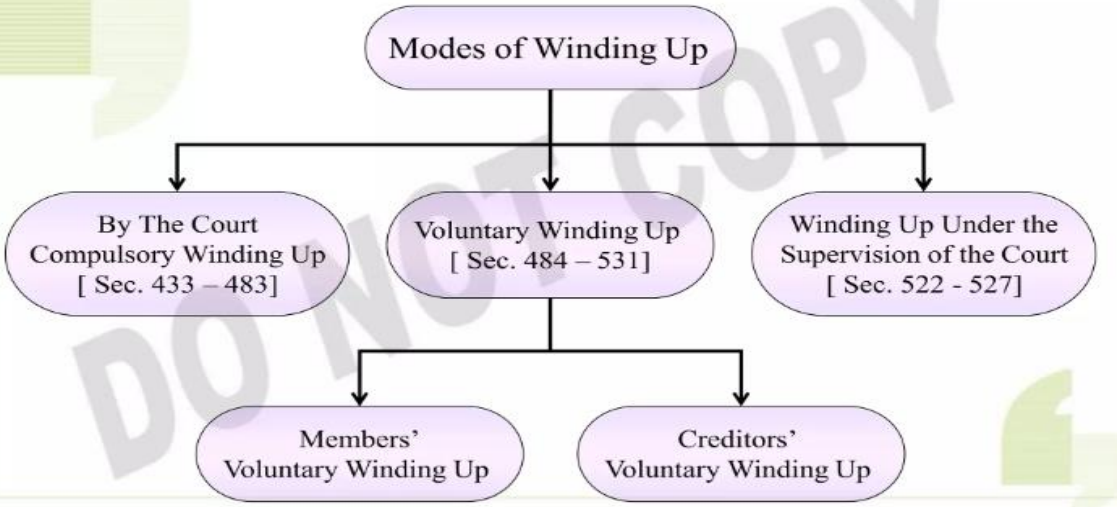
Points	Winding Up	Dissolution
Main Feature	The first stage and involves realising of assets, paying off liabilities & distribution of surplus if any.	The second stage in which a company is finally dissolved.
Proceedings	Carried out by the liquidator appointed by the company/court.	Order can be issued only by the court.
Liquidator's Duties	Liquidators represents the company.	Liquidator can not represent company.
Debt	Creditors can prove their debts.	Creditors cant prove their debts.

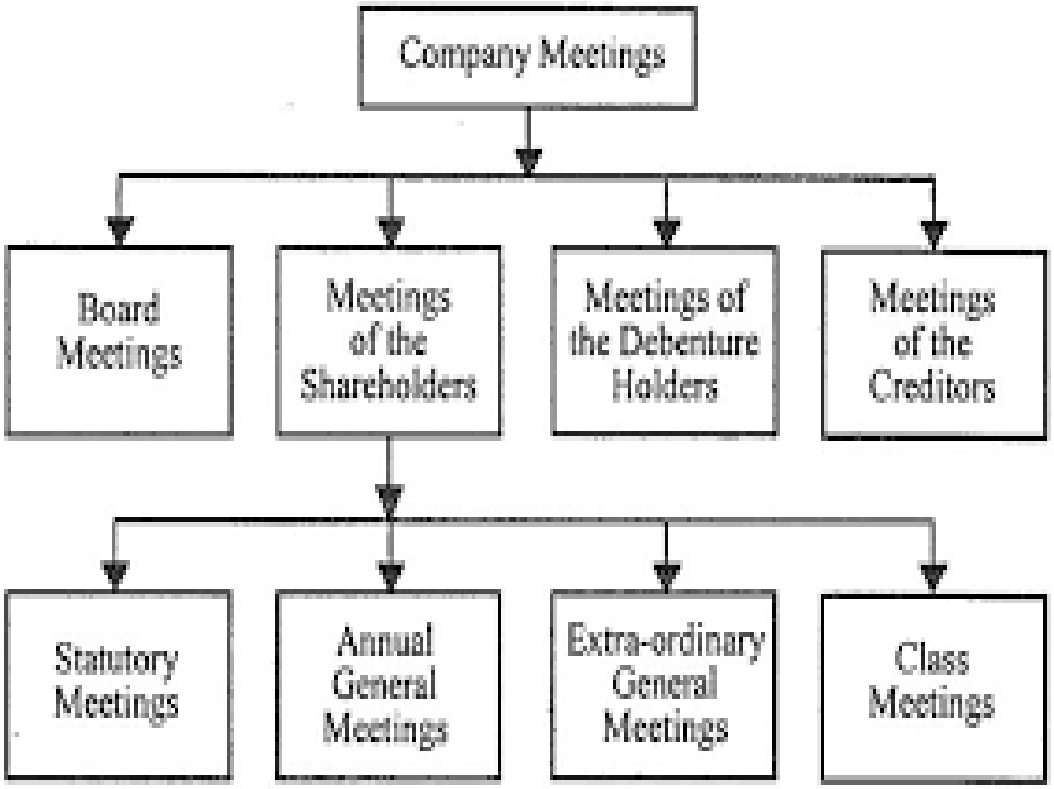
Reasons for Winding Up A Company

The winding up of the company may arise by any one or more of the following reasons:

1. If the object of the company for which it was established have been accomplished.
2. If company unable to carry out its main object.
3. If company has to dispose of its business or the undertaking to another company or an individual.
4. If company is unable to pay its creditors in full.

Modes of Winding Up A Company





QUESTION BANK

UNIT I

1. A company is a **Legal person** separate from its members.
2. The **Common seal** is considered as the official signature of the company.
3. A company is an artificial person with a **Perpetual succession** and a common seal.
4. A company comes into existence after **Registration** under the Companies Act 2013.
5. The liability of the members of a company is **Limited**.
6. The shares of a company are **Easily transferrable .**
7. A company created by a Special Act of legislature is called a **Statutory** company
8. A company in which not less than 51% of paid up capital is held by the Central Government or any State Government or partly by the Central Government and partly by the State Government is called a **Government** company.
9. A Company incorporated outside India and having a place of business in India is called a **Foreign** Company.
10. Companies which are established by special royal charters are called **Chartered** Companies.
11. The audit of the accounts of the statutory companies is conducted by the **Auditor General of India**.
12. The minimum number of members of a public limited company is **Seven**.
13. The minimum number of members of a Private Limited Company is**Two**.
14. There is no restriction on maximum number of members of a **Public** company.
15. Identifying the company with its members is known as **Lifting the corporate veil**.
16. The maximum number of members of a private company is **200**.
17. The liability of the members of a company limited by shares is limited to the amount **Unpaid on shares**.

18. A private Company shall have a minimum number of **Two** directors.
19. When one company has control over another company it is called **Holding** company.
20. According to Sec 2 (62) of the Companies Act 2013, a company which has only one person as a member is called **One man** company.

UNIT II

1. The three stages in the process of formation of a company are promotion, registration and **Commencement of business.**
2. The contracts entered by the promoters of a company before its incorporation are called **Pre-incorporation** contracts.
3. The person who takes all necessary steps to create a company is called as a **Promoter.**
4. In pre-incorporation contracts, the promoter acts as an **Agent** of the company.
5. The Second stage in the formation of a company is the **Registration or Incorporation**
6. The names of the public company should end with the word **Limited**.
7. The name of the private limited company should end with the word **Private Ltd**.
8. It is essential to obtain the approval of the registrar to the **Proposed name** of the company before it is registered.
9. The **Name of the company** can be changed by passing a special resolution and with the approval of the Central Government.
10. A promoter has no legal right to claim promotional expenses for his services unless there is a **Valid contract**.
11. A promoter is neither an agent nor a **Trustee** of the company.
12. A promoter occupies a **Fiduciary** position in relation to the company.
13. A person who merely acts in a **Professional** capacity on behalf of a promoter and who is paid for the same is not a promoter.

14. The **Board of Directors** constitute the top administrative organ of the company
15. Form **DIR12** gives particulars of first Directors of a company.

UNIT III

1. The preparation of **Memorandum of Association** is the first step in the formation of a company.
2. Memorandum of Association is the **Charter** of the company .
3. The **Situation** clause determines the domicile and nationality of the company.
4. A company may change its name by a **Special resolution** and with the approval of the Central Government.
5. The third compulsory clause in the Memorandum set out the **Objects** for which the company has been formed.
6. A company cannot issue **Share capital** more than what is mentioned in capital clause.
7. **Liability** clause cannot be altered to make the liability of the members unlimited.
8. Memorandum of Association of a Private Company must be signed by at least **Two** members.
9. Memorandum of Association of a Public Limited must be signed by at least **Seven** members.
10. The term **Ultra vires** means doing of an act that is beyond the legal power and authority of the company.
11. The Articles of Association are the rules, regulations and bye-laws for the **Internal management** of the affairs of a company.
12. The Alteration of Articles should not be against the provisions of the **Memorandum.**
13. An act is said to be ultra vires a company when it is beyond the **Powers of the Company.**
14. A company **Limited by shares** need not have Articles of its own.
15. Any clause in the Articles that restricts alteration of Articles is **Invalid**.

16. Any act of the company which is ultravires the Memorandum is **Void** and cannot be ratified.
17. A memorandum of Association is a document, which sets out the **Constitution** of a company.
18. **Articles of Association**is subordinate to the Memorandum of Association.
19. Doctrine of **Indoor management** protects outsiders against the company.
20. Doctrine of **Constructive notice** protects the company against the outsiders.

UNIT IV

1. An advertisement inviting the public to buy the shares, debentures of a public company is known as **Prospectus.**
2. A **Private limited** company cannot issue a prospectus.
3. A prospectus cannot be issued by a company before its **Incorporation** .
4. The prospectus must be issued to the public within **90** days of its registration.
5. Statement in lieu of prospectus is similar to **Prospectus.**
6. Chapter V of the companies Act 2013 deals with prospectus and **Allotment of securities**.
7. If the prospects contains an untrue statement, the liability of the persons who authorized the issue can be classified into **Civil liability** and **Criminal liability**.
8. The statement issued by a Private limited company to raise capital from directors and their relatives is called **Statement in lieu of prospectus.**
9. The aggrieved shareholder who purchases shares by relying the misleading prospectus has two remedies namely **Rescission of contract** and **Damages for fraud**.
10. When a company issues shares or debentures to the public, it should raise at least 90% of the issue within **120 days** from the date of opening the issue.
11. A prospectus issued for one or more class of securities specified in the prospectus is called **Shelf prospectus**.

12. A prospectus which does not include complete particulars of the quantum or price of the securities is called **Red herring prospectus**.
13. **Underwriting** means guaranteeing to subscribe to an agreed number of shares or debentures for a certain consideration.
14. In **Pure underwriting** underwriters undertake to subscribe for shares to a certain limit only when the offer made to the public is not fully subscribed for.
15. In **Firm underwriting** the underwriters agree to make an outright purchase of shares.
16. **Green shoe** option is introduced to enhance the efficiency and competitiveness of the fund raising process for IPOS.
17. Under **Book building** method the investors have to bid for the shares within the price range quoted.
18. Investments in shares and debentures can be held in **Electronic form** in a depository.
19. **Depository** is an entity which holds securities of investors in electronic form at the request of the investors.
20. A **Depository participant** is an agent through which investors maintain and operate their account.

UNIT V

1. **Ordinary** resolution is enough for appointing or reappointing a director.
2. The Board may appoint required number of **Additional directors**, subject to the provisions in the Articles.
3. When the directors make contract on behalf of the Company, they act as **Agents** of the Company.
4. The Directors are considered as the **Trustees** of the company as regards to the company's money and property.
5. The directors of a Public Company have the powers to fill **Casual vacancy** of directors.

6. The duties of the directors are classified into **Statutory** duties and non-statutory duties..
7. **Shareholders** are the real owners of the Company.
8. The Collective Body of the directors of the company is called **Board of Directors**.
9. The Directors can be held liable to the company for damages both during the **Life time** and after the life time of the company.
10. No company shall appoint or reappoint any person as its whole time director or manager for a term exceeding **5 years**.
11. The remuneration payable to any one managing Director or whole time Director or manager shall not exceed **5%** of the net profits of the company.
12. Every public company shall have a minimum **Three Directors** in the Board of Directors..
13. As per sec 196 of the companies Act 2013, no company shall appoint or employ a managing Director or **Manager** at the same time.
14. A whole time key managerial personnel shall not hold office in more than **one** company.
15. Expand DIN **Directors Identification Number**.
16. **Winding Up** refers to the last stage in the life of a company.
17. Winding up of a company under the order of the National Company Law Tribunal is known as **Compulsory Winding Up.**
18. In the members voluntary winding up **Declaration of solvency** is an important document.
19. **Creditors Voluntary Winding up** takes place only when the company is in an insolvent condition and unable to discharge its liabilities in full.
20. In case of winding up an administrator called **Liquidator** is appointed to take the control of the company.