COMPANIES ACT 1956

Definition and meaning of 'Company':

The word company is the most widely used word in the world of commerce these days. This word has been derived from the combination of two Latin words, namely, 'com' and 'panis'. The word 'com' means together and 'panis' means bread. Thus, initially the word company referred to an association of persons who took their meals together. The people took advantage of these festive gatherings to discuss their business matters. Therefore, a company means a voluntary association of individuals formed for some common purpose. It has no strictly technical and legal meaning. It is a legal device for the attainment of common social or economic objectives. It is the outcome of the deficiencies of other forms of organizations like sole trade and partnership and gives a perfect solution to the problems being confronted by these forms of organization.

The following are some of the definitions of company given by and scholars of law:
"Company means a company formed and registered under this Act or an existing company. Existing company means a company formed and registered under the previous company laws."
- **Companies Act, 1956 Sec. 3 (i & ii)**

"A company is a association of persons united for a common object."
- **Justice James**

"A joint stock company is a voluntary association of individuals for profit, having a capital divided into transferable shares, the ownership of which is the condition of membership."
- **L. H. Haney**

"A joint stock company is an artificial person-invisible, intangible and existing only in the eyes of law."
- **Justice Marshal**

"A joint stock company means a company having permanent paid up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock and no other persons. Such a company when registered with limited liability under
this Act, shall be deemed to be a company limited by shares."
-**Section 566 of the Companies Act, 1956**

Thus, a company is a means of co-operation in the conduct of an enterprise. It is legally an entity apart from its members, is capable of rights and duties of its own and endowed with the potential of perpetual succession. Finally, it can be said that a company is an incorporated association, which is an artificial legal person having an independent legal entity with a perpetual succession, a common seal, a common capital comprising transferable shares and having limited liability. At present, the companies in India are incorporated under the Companies Act, 1956.

CHARACTERISTICS OF COMPANY

Company is an artificial person created by law for some common purpose of which the capital is divisible into parts, known as shares and with a limited liability. It enjoys the following special characteristics for advantages in comparison with other forms of organization :

1. Artificial Person

A company is an artificial person existing in the eyes of law only. It is invisible, intangible, immortal and lacks the physical attribute possessed by natural persons which means that a company does not eat food, cannot marry and can not be sent to prison. The law treats it as a legal person as it can conduct lawful business and enter into contracts with other persons in its own name. It can sell or purchase property. It can sue and be sued in its name. It cannot be regarded as an imaginary person because it has a legal existence. Thus company is an artificial person created by law.

2. Independent Corporate Existence

A company has a separate independent corporate existence. Its entity is always separate from its members. The property of the company belongs to it and not to the shareholders. It must be utilized for the benefit of the company and not for the personal benefits of the shareholders. The company cannot be held liable for the acts of the members and the members can not be held liable for the acts or wrongs or misdeeds of the company. The company's debts are the debts of the company and the shareholders can not be compelled to pay them. Thus, once a company is incorporated, it must be treated like any other independent person.

3. Perpetual Succession

A company is created by law and it can be brought to an end by law. The life of the company does not depend upon the life of its members. Members may come and members may go but the company goes on forever until dissolved. Its continuance is not affected by the various incapacities from which its individual members may suffer such as death, illness, mental or physical disability etc.

4. Common Seal

A company is an artificial person and is competent to enter into contracts. But it does not have any physical existence and it can not sign any documents personally. It has to act through a human agency known as directors. Therefore, every company must have a seal with its name engraved on it. The seal of the company is affixed on the documents which require the approval of the company. The two directors must witness the affixation of the seal. Thus, the common seal is the official signature of the company.

5. Limited Liability

The liability of the members of the company is limited up to the unpaid value of their shares. In any case a shareholder cannot be called upon to pay more than the amount of his holdings. For example, if a person is having 50 shares of Rs.10/- each and he has already paid Rs.5/- per share at the time of application and allotment, his unpaid liability comes to Rs.250/- which he has to pay at any time the company calls for that payment. He is not required to pay more than Rs.250/- in any case. In case the company is limited by guarantee also, the members undertaking the guarantee have to pay the guarantee money at the time of winding up of the company. Thus, on account of the principle of limited liability, the share holders do not incur the risk of losing their personal property in the event of the company's inability to pay its debts.

6. Transferability of Shares

The shares of a public company are freely transferable. Section 82 of the Companies Act

declares that the shares or other interests of any member in a company shall be movable property transferable in the manner provided by the Articles of the company. Thus, a member is free to sell his shares in the open market and to get back his investment without having to withdraw the money from the company. This provides liquidity to the investor and stability to the company. A private company, however, restricts the right to transfer its shares under section 3(1) (iii) of the Companies Act, 1956.

7. Separate Property

A company can own, manage, control and dispose of property in its own name. The company becomes the owner of its capital and assets. The shareholders are not the private or joint owners of the company's property. Thus the property of the company is not the property of the shareholders; it is the property of the company. The shareholders do not have any legal interest in the property of the company.

8. Right to Sue

A company, being a legal person, can enforce its rights through suits and by the same token, it can be sued for breach of its legal duties e.g. a company was engaged in the manufacturing of television sets. It purchased certain electronic components from another company, named Gupta Company and paid the price for the same. But Gupta Company supplied the components of poor quality. In this case the company which purchased the electronic components may file a suit against Gupta Company for the recovery of the damages. Similarly, if Gupta Company supplies the components of good quality but the purchasing company fails to pay the price, then the Gupta Company can file a suit against it for the recovery of the price of the electronic components.

9. Professional Management

Management is separated from ownership in the case of the company form of organization. Due to this factor, the corporate sector is capable of attracting the growing cadre of professional managers. The managers are experts in the field of management because of their specialised knowledge of the subject and they function independently and without any interference. Such an atmosphere of independence gives them an opportunity to develop extraordinary managerial capacities. Thus, the company form of organization attracts young professional managing personnel to conduct its affairs effectively and efficiently.

TYPES OF COMPANIES

Company is a legal device for the achievement of some common social and economic objectives. It can be defined as an association of persons established by law, having a separate entity from its members and aiming at a common objective. It has a perpetual succession and the liability of its members is limited. The company form of organization is the strongest pillar of the grand edifice of modern business and industrial world. It has eliminated the limitations of sole trade and partnership forms of organization. These companies may be classified on different bases, which are described below:

A. According to Incorporation

The act of forming a corporation or company is called incorporation. It is the process of uniting a group of persons into a legal body by following the prescribed procedure. According to the mode of incorporation, companies may be divided into the following three categories :

1. Chartered Companies

These companies are incorporated under the Royal or a special charter granted by the British King or Queen. The powers and nature of business of the companies of this type are defined in the charter. The sovereign has the power to put an end to the charter if the company fails to follow its terms. The objective of these companies was generally to rule over certain territories, perpetuate army control or to hold trade. The East India Company, which was incorporated by a charter of Queen Elizabeth on 31st December, 1600 with the objective of holding trade with India and which established the British rule in India, is an example of this type of companies. Bank of England, Standard Chartered Bank, the British Broadcasting Corporation and Dutch East India Company of Holland are other examples of chartered companies.

2. Statutory Companies

These companies are incorporated by a special act passed by central or state legislature. The objective or objectives, scope, rights and responsibilities of these companies are clearly mentioned in the Act under which these are incorporated. These companies are formed to undertake business of public welfare and national importance. The Reserve Bank of India, The State Bank of India, The Life Insurance Corporation of India and the Food Corporation of India are governed by their respective acts and need not have either the Memorandum of Association or Articles of Association. They also need not use the word 'Limited' with their names. These companies are in many ways like the companies formed and registered under the Companies Act, 1956. The provisions of this act are also applicable to these companies provided they are not inconsistent with the provisions of the special act under which they are formed.

3. Registered Companies

Companies formed by registration under the Companies Act 1956 are known as registered companies. Most of the companies in India belong to this type. Any existing company which had been formed and registered under any of the earlier Companies Acts, is also included in this category. It must be noted that such companies come into existence only when they are registered under the Act and a certificate of incorporation is granted to them by the Registrar of Companies. The registered companies are governed by the provisions of the Companies Act, 1956 and by the rules and regulations laid down in 'memorandum' and 'articles' of association of the companies. The liability of the members of this type of company is limited up to the unpaid value of their shares or the amount of guarantee undertaken by them.

B. According to Liability

The liability of members of a company is the second basis on which the companies can be divided into different kinds. Liability here means, the unpaid amount of money a member of the company has to pay for the shares held by him and the amount of guarantee undertaken by him which he has to pay at the time of winding up of the company. The members are liable only upto a limit and beyond that limit they can not be asked to contribute anything towards

the payment of company's liabilities. Thus, if in the event of winding up of a company, the

assets of the company are not sufficient to pay its liabilities, then the private property of the members cannot be utilized for making payment for the company's liabilities. It is appropriate to note here that a limited company is required to 'add' the word 'limited' after its name. On this basis, there are the following three types of companies :

1. Companies limited by shares

When the liability of the members of a company is limited up to the unpaid value of their shares, it is called a limited liability company or a company limited by shares. This liability or unpaid amount may be called up at any time during the lifetime of company or at the time of its winding up. For example, if a person holds 100 shares of the value of Rs.10 each and has paid Rs.5 per share with the application and allotment of shares, his total liability will be Rs.500 only which can be called up at any time. In no case can he be required to pay more than this amount.

2. Companies limited by Guarantee

The liability of a member in these companies is limited to the amount undertaken to be contributed by him at the time of winding up of the company. The amount of guarantee is mentioned in the memorandum of association. As per section 13(3), the memorandum of a company limited by guarantee shall also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for payment of debts and liabilities of the company or of such debts and liabilities of the company as may have been contracted before he ceases to be a member, as the case may be, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributors among themselves, such amount as may be required, not exceeding a specified amount.

3. Unlimited Companies

An unlimited companies is that company which has no limit on the liability of its members. It means that its members are liable to contribute to the debts of the company in proportion to their respective interests. In case a member is unable to contribute his share, his deficiency is shared by the rest of the members in proportion to their capital in the company. If the assets of such a company are not sufficient to pay off its liabilities, the private assets of the members can be utilized for this purpose.

C. According to number of members

There are two types of companies according to the number of the persons who form the company : private company and public company.

1. Private Company

Private company means a company which by its articles -
a) Restricts the right of members to transfer its shares, if any
b) Limits the number of its members to 50. This number excludes the past or present employees of the company who are its members.
(c) Prohibits any invitation to the public to subscribe for any shares or debentures of the company.

The words 'if any' in clause (a) indicate that share capital is not a must for this company.It may

also be mentioned here that the number of debenture holders can exceed fifty because the provisions dealing with private company are silent in this regard. (Sec.3(1)(iii)).

If a private company is not having share capital, the articles need not contain provisions for restricting the right of members to transfer shares. (Sec.27(3)).

2. Public Company

According to the Companies Act, a public company is a company which is not a private company. Thus, it is a company which by its articles does not :

a) Restricts the right of members to transfer its shares, if any

b) Limits the number of its members to 50.

c) Prohibits any invitation to the public to subscribe for any shares or debentures of the company.

The minimum number of members of a public company is seven but there is no upper limit on its membership. Its shares are freely transferable. The word 'Ltd.' may be appended to its name. It can invite the general public to subscribe for its shares. (Sec.3(1)(iv).

D. According to control and management

Control and management of a company refers to the composition of its board of directors or holding of majority of shares. On this basis, companies can be divided into two classes - Holding Company and Subsidiary Company.

1. Holding Company

The Company Law defines a holding company as a company, which controls another company. A company is deemed to be a holding company of another company, if:

a) It controls the composition of the board of directors of another company which means that it has the power to appoint or remove all or majority of its directors.

b) It holds more than half the nominal value of the equity share capital of another company.

c) Any company becomes a subsidiary of another company which itself is a subsidiary of the controlling company. (Sec.4(4)).

To illustrate this point, if company A is a subsidiary of company B and the company B is subsidiary of another company C, the company A will also become the subsidiary of Company C. Therefore, it means that the subsidiary of your subsidiary is also your subsidiary.

2. Subsidiary Company

A subsidiary company is a company which is controlled by another company. It is deemed to be controlled by another company, if

a) The composition of its board of directors is controlled by another company which means that another company has the power to appoint or remove all or majority of its directors.

b) Another company holds more than half the nominal value of its equity share capital.

c) It becomes a subsidiary company of another company which itself is as ubsidiary of the controlling company. (Sec.4(1))

E. According to ownership

Companies can be distinguished from one another on the basis of their ownership also. The word ownership here implies the proportion of capital held. The following are the two types of companies on this basis :

1. Government Company

The Companies Act defines a government company as a company in which not less than 51 per

cent of the paid up share capital is held by:

a) The Central Government or

b) Any State Government or

c) Partly by the Central Government and partly by one or more State Governments.

It should be noted carefully that a company which is a subsidiary of a government company shall be considered a government company. (Sec.617).

2. Non-Government Companies

All those companies which are registered and incorporated under the Companies Act but which are not government companies are known as non-government companies. It implies that if 51 per cent or more of the paid up share capital is held by the private sector, it is called a non government or private sector company. Tata Iron and Steel Company Ltd. (TISCO), Reliance Industries Ltd. (RIL) and Hindustan Lever Ltd. (HLL) are a few examples of private sector companies.

F. According to Nationality

The company also has a nationality like a citizen although it can not be called a citizen. The nationality of a company is determined by the place of its incorporation. On this basis, there can be two types of companies - Foreign Companies and Indian Companies.

1. Foreign Companies

Foreign companies are those companies which are incorporated outside India but which have a place of business within India. (Sec.591(1)). Place of business here means an identifiable place where it carries on business such as office, store house, godown etc. Share transfer or share registration office shall also be considered a place of business.

If 50 per cent or more of the paid up share capital of a foreign company is held by Indian Citizens and or by companies incorporated in India whether singly or jointly, it shall be treated as an Indian Company in respect of its business in India. It means that such a company has to comply with the provisions of the Companies Act as if it were an Indian company. (Sec.591(2))

2. Indian Companies

All the companies which are not foreign companies according to the provisions of the Act as mentioned above are native or Indian Companies.

Some other kinds of companies

One-Man company

One-man company is usually a private company though legally speaking, there can be no one man company. It is a company in which one man holds practically the whole of its share capital. In order to meet the statutory requirement of minimum number of members, some dummy members comprising mostly friends or relatives are included. Such members hold just one or two shares each. The member holding the bulk of the share capital exercises absolute control over the company. It is nothing more than a family company.

A one-man company is a legal entity and is perfectly valid, like any other company. The law does not prohibit friends or relatives from being the members of a company. Nor does it bother

about the motives of a promoter so long as the objects stated by him in the memorandum are legal.

INCORPORATION OF A COMPANY

It is the second stage in the formation of a company. The act of forming a corporation or company is called incorporation. It is the process of uniting a group of persons into a legal body by following the prescribed procedure. According to section 12 (21) of the Companies Act, any seven or more persons, or where the company to be formed is a private company, any two or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability. Such a company may be either a company limited by shares or a company limited by guarantee or an unlimited company. However, the purpose for which a company is proposed to be established must be lawful. It must not be in contravention of the general laws of the country. Before applying for registration and submitting the necessary documents, it must be ascertained from the Register of companies whether the proposed name has been approved by the Registrar.

The following documents as per section 33 of the Companies Act shall be presented for registration to the Registrar of the State in which the registered office of the company is to be situated

1. The memorandum of association duly signed by the subscribers.
2. The articles of association, if any. It is important to note that a public company limited by shares need not prepare and file a copy of the articles if it has adopted table A given in the schedule to the Act.
3. The agreement, if any, which the company proposes to make with an individual for appointment as its managing or whole time director or manager.
4. A statutory declaration that all the legal requirements of the Act precedent to incorporation have been complied with. It must be signed by an advocate of the Supreme Court or High Court or an attorney or pleader entitled to appear before a High Court or a company secretary or a chartered accountant in whole time practice who is engaged in the formation of the company or by a person named in the Articles as a director, manager or secretary of the company.
5. A list of persons who have consented to become the directors of the company and their written consent to act as such and to take up the qualification shares as per section 266.
6. According to section 146(2), within 30 days of the incorporation of the company, a notice situation of the registered office of the company shall be given to the Registrar.

If the Registrar is satisfied that all the aforesaid requirements have been complied with by the company, he will register the company and issue the certificate of registration. On the registration of the memorandum of a company, the Registrar shall certify under his hand that the company is limited. From the date of incorporation mentioned in the certificate of incorporation, the subscribers to the memorandum and any other persons, who may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of

its being wound up as is mentioned in this Act.

Conclusiveness of the certificate of incorporation

Section 35 of the Act provides that a certificate of incorporation given by the Registrar in respect of any association shall be a conclusive evidence that all the requirements of this Act have been complied with in respect of registration and matters precedent and incidental thereto, and that the association is a company authorized to be registered and duly registered under this Act.

Once the certificate of incorporation has been granted, no one can question the regularity of the incorporation. Thus the validity of the certificate cannot be disputed on any ground whatsoever.

However, where the company is registered with illegal objects, the certificate would not validate them. Once the company has been created, the only method to extinguish it is to resort to the provisions for winding up.

1. The company becomes a distinct legal entity. Its life begins from the date mentioned in the certificate of incorporation.
2. It acquires perpetual succession.
3. The memorandum and articles of association become binding on the members as if they had been signed by the company and by each member.
4. The liability of the members of a limited company becomes limited.

MEMORANDUM OF ASSOCIATION (MOA)

The Memorandum of Association is the principal document in the formation of a company. It is called the charter of the company. It contains the fundamental conditions upon which the company is allowed to be incorporated or registered. It defines the limitations of the powers of the company. The purpose of memorandum is to enable the shareholders, creditors and those who deal with the company to know what is its permitted range of activities or operations. It defines the relationship of the company with the outside world.

The Memorandum of Association usually contains the following six clauses:

(a) Name Clause: It contains the name by which the company will be established. As you know, the approval of the proposed name is taken in advance from the Registrar of the companies.

(b) Situation Clause: It contains the name of the state in which the registered office of the company is or will be situated. The exact address of the company's registered office may be communicated within 30 days of its incorporation to the Registrar of Companies.

(c) Objects Clause: It contains detailed description of the objects and rights of the company, for which it is being established. A company can undertake only those activities which are mentioned in the objects clause of its memorandum.

(d) Liability Clause: It contains financial limit upto which the shareholders are liable to pay off to the outsiders on the event of the company being dissolved or closed down.

(e) Capital Clause: It contains the proposed authorised capital of the company. It gives the

classification of the authorised capital into various types of shares, (like equity and preference shares) with their numbers and nominal value. A company is not allowed to raise more capital than the amount mentioned as its authorised capital. However, the

company is permitted to alter this clause as per the guidelines prescribed by the companies Act.

(f) Subscription Clause: It contains the name and address of at least seven members in case of public limited company and two members in case of a private limited company, who agree to associate or join hands to get the undertaking registered as a company.
It contains a declaration by persons who are desirous of being formed into and agree to subscribe to the number of shares mentioned against their names.

ARTICLES OF ASSOCIATION (AOA)

The Articles of Association of a company contains the various rules and regulations for the day to day management of the company. These rules are also called the bye-laws. It covers various rights and powers of its members, duties of the management and the manner in which they can be changed. It defines the relationship between the company and its members and also among the members themselves. The rules given in the AOA must be in conformity with the Memorandum of Association.
Articles of Association of a company generally contain rules and regulations with regard to the following matters:

1. Share capital, rights of shareholders, payment of commissions, share certificates;
2. Lien on shares;
3. Calls on shares;
4. Transfer of shares;
5. Transmission of shares;
6. Forfeiture of shares;
7. Conversion of shares into stock;
8. Share warrants;
9. Alteration of capital;
10. General meetings and voting rights of members;
11. Appointment and remuneration of directors, board of directors, managers and secretary;
12. Dividends and reserves;
13. Accounts and audit and borrowing powers;
14. Capitalization of profits; and
15. Winding up.

A company can register its own Articles of Association or adopt Table A, which contains a model set of rules as given in the Schedule I of the Companies Act.
After knowing about the meaning and the contents of Memorandum of Association and Articles of Association you must be thinking, how these two documents are different from each other. Let us have a comparison between these two.

DIFFERENCE BETWEEN MOA AND AOA

Differences based on	Memorandum of Association	Articles of Association
(a) Subject Matter.	It contains aims and objectives of the company	It contains rules for implementation of the aims and objectives contained in the Memorandum of Association.
(b) Relationship	It defines the relationship between the company and its outsiders	defines the relationship between the company and members.
(c) Amendment	It is very difficult to amend the aims and other provisions of the Memorandum Association.	The rules given in the articles can be easily amended by a special resolution.
(d) Limitations	The provision given in the Memorandum of Association cannot be outside the scope of Companies Act.	The rules given in the Articles of Association can neither be Outside the scope of companies Act nor of the Memorandum of Association.
(e) Obligation	It is obligatory for a company to prepare and submit this document to Registrar of Companies.	It is not obligatory to submit this document to the Registrar Companies. The company may adopt Table A of the companies Act

PROSPECTUS

After getting the Certificate of Incorporation or Registration a public limited company invites the public to subscribe to its shares. This is done by issuing a document called Prospectus. Under the Companies Act, a prospectus has been defined as "any document described or issued as a prospectus and includes any notice, circular, advertisement or other document, inviting deposits from the public or inviting offers from the public for the subscription or purchase of shares or debentures of a company or body corporate".

The main objectives of issue of a prospectus are:

(a) To inform the public about the company;

(b) To induce people to invest in the shares or debentures of the company; and
(c) To provide an authentic information about the company and the terms and conditions of issue of shares and debentures.
The prospectus usually contains the following information, which is considered important

for the prospective investors of shares and debentures of the company and it contains:
(a) General information regarding the name, office of the company, stock exchange where shares are to be listed, date of opening and closing of the issue, credit rating information, name of underwriters, brokers and bankers.
(b) Capital structure of the company.
(c) Terms of payment and application procedure.
(d) Company management and details of the project and project report.
(e) Other listed companies under the same management.
(f) Outstanding litigations and defaults.
(g) Management perception of risk factors.
The prospectus must be prepared with great care because on the basis of its details the public subscribes to the capital of the company. No facts should be withheld in this. It must not contain even an idea of falsehood. It should contain only truth, complete truth and nothing but truth. The future schemes and bright futures of the company are presented through this.
Companies which do not want to issue a prospectus may submit a statement in lieu of prospectus to the Registrar of Companies. It is a copy of the prospectus but is not issued to the public

DOCTRINE OF ULTRA VIRES

The object clause of the memorandum of the company contains the object for which the company is formed. Any action of the company must not be beyond the object clause otherwise it will be ultra vires and therefore, void and cannot be approved even if all the member wish to approve it. This is called the doctrine of ultra vires. The expression "ultra vires" consists of two words: 'ultra' and 'vires'. 'Ultra' means beyond and 'Vires' means powers. Thus, the expression ultra vires means an act beyond the powers. Here the expression ultra vires is used to indicate an act of the company, which is beyond the powers conferred on the company by the objects clause of its memorandum. An ultra vires act is void and cannot be ratified even if all the directors wish to ratify it. Sometimes the expression ultra vires is used to describe the situation when the directors of a company have exceeded the powers delegated to them. Where accompany exceeds its power as conferred on it by the objects clause of its memorandum, it's not bound by it because it lacks legal capacity to incur responsibility for the action, but when the directors of a company have exceeded the powers delegated to them. This use must be avoided for it is apt to cause confusion between two entirely distinct legal principles.
The ultra vires act or transaction is different from an illegal act or transaction, although both are Void. An act of a company, which is beyond its objects clause, is ultra vires and, therefore, void, even if it is illegal. Similarly, an illegal act will be void even if it falls within the objects clause.
In India it has been held that the company has power to carry out the objects as set out in the objects clause of its memorandum, and also everything, which is reasonably necessary to carry out those objects. For example, a company which has been authorized by its

memorandum to purchase land had implied authority to rent it and if necessary, to sell it. However it has been made clear by the Supreme Court that the company has, no doubt, the power to carry out the objects stated in the objects clause of its memorandum.

DOCTRINE OF CONSTRUCTIVE NOTICE

The Memorandum and Articles, on registration, assume the character of public documents. The office of the Registrar is a public office and documents registered there are open and accessible to the public at large. Therefore, every outsider dealing with the company is deemed to have notice of the contents of the Memorandum and Articles. This is known as Constructive Notice of Memorandum and Articles.

Under the doctrine of 'constructive notice', every person dealing or proposing to enter into a contract with the company is deemed to have constructive notice of the contents of its Memorandum and Articles. Whether he actually reads them or not, it is presumed that he has read these documents and has ascertained the exact powers of the company to enter into contract, the extent to which these powers have been delegated to the directors and the limitations to such powers. He is presumed not only to have read them, but to have understood them properly. Consequently, if a person enters into a contract, which is ultra vires the Memorandum, or beyond the authority of the directors conferred by the Articles, then the contract becomes invalid and he cannot enforce it, not-withstanding the fact that he acted in good faith and money was applied for the purposes of the company.

DOCTRINE OF INDOOR MANAGEMENT

The doctrine of indoor management follows from the doctrine of 'constructive notice' laid down in various judicial decisions. The hardships caused to outsiders dealing with a company by the rule of 'constructive notice' have been sought to be softened under the principle of 'indoor management'. It provides some protection to the outsiders against the company.

According to this doctrine, after satisfying themselves that the proposed transaction is intra vires (Within the powers as provided in the MoA and AoA) the memorandum and articles, persons dealing with the company are not bound to enquire whether the internal proceedings were correctly followed. They are entitled to assume that the internal proceedings relating to the contract are regular as per the memorandum and articles. When an outsider enters into a contract with the company, he is presumed to have knowledge of the provisions of memorandum and articles as per the doctrine of constructive notice. However, he is not required to go beyond that and to enquire whether the internal proceedings required by these documents have been regularly followed by the company. They need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner. This is known as the Doctrine of Indoor Management.

The doctrine of indoor management was first propounded by Lord Hatherlyin the celebrated case Royal British Bank vs. Turquand. The directors of the Bank had issued a bond to Turquand. The company was empowered by its Articles to issue such bonds provided it was authorized by a resolution of the company in general meeting. In this case no such resolution had been passed. It was held that Turquand could recover the amount of

bond from the company on the ground that he was entitled to assume that the necessary resolution had been passed by the company.

Exceptions to the Doctrine of Indoor Management.

A person under the following circumstances can claim no benefit under the doctrine of indoor management:

- Where a person dealing with the company has actual or constructive notice of any irregularity in the internal proceedings of the company.
- Where a person did not in fact consult the Memorandum and Articles of the company and consequently did not act on knowledge of these documents.
- Where a person dealing with the company was negligent and, had he not been negligent, could have discovered the irregularity by proper enquiries.
- Where a person dealing with the company relies upon a forged document or the act done by the company is void.
- Where a person enters into a contract with an agent or officer of the company and the act of the agent/officer is beyond the authority granted to him.

MEETINGS

Meaning of meeting – Members get together periodically to discuss the problems relating to the association and take decisions by common consent or by the consent of majority. Such meetings have become an integral part of the modern democratic set-up.

➢ Meetings of company

1. Members meeting

A. General meetings

i. Statutory meeting – this is the first meeting of the shareholders of a public company and is held only once during the lifetime of a company within a period of not less than 1 month nor more than 6 months from the date of which the company is entitled to commence business. ***Annual general meeting*** – every company must in each year hold in addition to any other meeting a general meeting as its annual general meeting. There must not be an interval of more than 15 months between one annual general meeting and the next. A company may, however hold its first annual general meeting within a maximum period of not more than 18 months from the date of incorporation. The registrar may for any special reason, extend the time for holding any annual general meeting(not being the first AGM) by a period up to 3 months.

ii. Extraordinary meeting –It is called for transacting some urgent or special business which cannot be postponed till the next annual general meeting. The board of director may call an extraordinary general meeting whenever it thinks fit.

B. Class meeting of members - where a company has more than one class of shareholders i.e., equity and preference shareholders, separate meeting must be convened of each class when any proposal affecting their respective rights and privileges are put forward.

2. Directors meetings

***i.* Board meeting –**The directors meet at regular intervals of four months to discuss and decide questions of policy and to review the affairs and progress of the company. These meetings of the directors are known as board meetings.

ii. Committee meeting - the articles usually empower the directors to delegate their powers to small committees of the directors to investigate and report on various matters relating to the management and administration of the company.

3. Creditors and debenture holders meeting – the meeting of creditors or debenture holders may be held for the purposes of securing their support in effecting some scheme of compromise or arrangement or at the time of reorganization, reconstruction or amalgamation or at the time of winding up.

RESOLUTIONS

Resolutions mean decisions taken at a meeting. A motion, with or without amendments is put to vote at a meeting. Once the motion is passed, it becomes a resolution. A valid resolution can be passed at a properly convened meeting with the required quorum. There are broadly three types of resolutions :-

1. Ordinary Resolution:

An ordinary resolution is one which can be passed by a simple majority. I.e. if the votes (including the casting vote, if any, of the chairman), at a general meeting cast by members entitled to vote in its favour are more than votes cast against it. Voting may be by way of a show of hands or by a poll provided 21 days notice has been given for the meeting.

2. Special Resolution:

A special resolution is one in regard to which is passed by a 75 % majority only i.e. the number of votes cast in favour of the resolution is at least three times the number of votes cast against it, either by a show of hands or on a poll in person or by proxy. The intention to propose a resolution as a special resolution must be specifically mentioned in the notice of the general meeting. Special resolutions are needed to decide on important matters of the company

3. Resolution requiring Special Notice:

There are certain matters specified in the Companies Act, 1956 which may be discussed at a general meeting only if a special notice is given regarding the proposal to discuss these matters at a meeting. A special notice enables the members to be prepared on the matter to be discussed and gives them time to indicate their views on the resolution. In case special notice of resolution is required by the Companies Act, 1956 or by the articles of a company, the intention to propose such a resolution must be notified to the company at least 14 days before the meeting.

ROLE & DUTIES OF PROMOTERS

Who is a Promoter?

"A promoter is the one, who undertakes to form a company with reference to a given object and sets it going and takes the necessary steps to accomplish that purpose."

— Justice C.J. Cokburn

The company's formation can be divided into four segments. First, is called Promotion. Second is registration. Third is Floatation and fourth is Commencement of business. Promotion means preliminary steps taken for the purpose of registration and floatation of the company. The person who undertakes these phases are called promoters. A Company may have more than one promoter.

Generally, a promoter is any person who complies with the necessary formalities of company registration, finds directors and shareholders for the new company, acquires business assets for use by the company, and negotiates business contracts on behalf of the company. In order to be regarded as promoter, it is not necessary that the person should be involved in every stage of company's formation.

Roles and Duties

The eminence of a promoter is generally, terminated when the Board of Directors has been formed and they start governing the company. Technically, the first persons who control the company's affairs are its promoters. When we speak of their part in the establishment of the company, we need to keep in mind that, it is the promotor who conceives the idea of forming the company, and it is they who take the necessary steps to incorporate it.

They carry out the necessary investigation to find out whether the formation of a company is possible and profitable. Thereafter, they organize the resources to convert the idea into a reality by forming a company. In this sense, the promoters are the originators of the plan for the formation of a company. They are the ones who arrange or find ones who can arrange the share and loan capital and other financial resources. Promoters are the one who arrange for the company to acquire the business which the company is to conduct or the property or assets from which it is to derive its profits or income, when these things have been done, the promoter hand over the control of the company to its director, who are themselves under a different name.

On handling the control of the company to the directors, he has no more extensive duties in dealing with the company than a third person who is unconnected with it.

Thus where a promoter disclosed the profit which he made out of a company's promotion to the persons who provided it with the share capital with which it commenced business. He was under no further duty to disclose the profit to persons who were invited to subscribe further capital a year later, and so the company could not recover the profit from him for his failure to do so.

Nevertheless, a promoter may remain subject to fiduciary and other duties to the company if he becomes a director or agent of it, but the duties are then owed only in that other

capacity.

MEMBERS

The terms members refer to a person whose name appears on the register of the company. On the other hand, the term 'shareholders' refer to a person who holds shares in a company.

Section-41 of the companies act defines a member as:

1. The subscriber of the memorandum of a company shall be deemed to have agreed to become members of the company and on its registration shall be entered as member in its register of members.
2. Every other person who agrees in writing to become a member of a company and whose name is entered in its register of member shall be a member of the company.
3. Every person holding equity share capital of a company and whose name is entered as beneficial owner in the records of the depository shall be deemed to a member of the concerned company.

Liabilities of a Promoter:

Following are the liabilities of a promoter:

(i) A promoter should not make secret profits out of the dealings of the company.

(ii) He must deposit with the company all money received on its behalf.

(iii) He must exercise due diligence and care while performing the work of a promoter.

(iv) He will be personally responsible for all the preliminary contracts till all these are approved by the company.

(v) He will compensate any person who made investments in the company on the basis of untrue statements made by the promoter.

TRANSFER AND TRANSMISSION OF SHARES

The capital of a company is divided into a number of undividable units of a preset amount called 'shares'. Transferability is an important feature of a share in a company registered under the Companies Act, from which comes another feature of a company- perpetual succession. It gives a company with perpetual and continuous existence. Upon incorporation, a company acquires its own independent legal personality and legal entity in the company. Section 82 states that the share shall be a movable property and transferable in a manner provided by the articles of the company.

Transfer of Shares

While shares in a private company are not freely transferable and are subject to the restrictions imposed by the articles of the company, shares in a public company are freely transferable. One of the most important features of a Company is that its shares are transferable. Rights of a shareholder to transfer his share are always subject to provisions in

Articles of Association.

Transferring a share involves a series of steps, first an agreement to sell, then execution of a deed of transfer and finally registration of the transfer. Section 108 lays down the procedure for transfer. As per section 113, a company is required, within 2 months after the application for transfer, to deliver the share certificates duly transferred. Until the company has registered the transfer, the name of the transferor continues to appear in the register of

members and thus he continues to be the lawful owner but transferee is the beneficial owner.

Transmission of Shares

Transmission of shares takes place, when the registered shareholder dies; or when he is declared an insolvent; or where the shareholder is a company it goes into liquidation. On the death of a shareholder, his shares vest in his legal representative. The legal representative may transfer the shares delegated upon him by transmission. According to s.109 a transfer share or other interest in a company of a deceased member made by his legal representative is not a member, is valid as if he had been a member at the time of the execution of the instrument of transfer. Similarly, any person entitled to a share due to the death or insolvency of a member, may either decide to be registered himself as a member; or alternatively, transfer the shares to someone else.

Transfer V/s Transmission of Shares

Transfer is by the act of the parties. Transmission is by transfer by law, i.e. death or bankruptcy. In transmission of shares, no procedures are required to be followed unlike in transfer of shares.

APPOINTMENT OF DIRECTORS

Section 2(13) of the Companies Act, 1956 defines a ‘director’ as including “any person occupying the position of a director by whatever name called “. Thus, it is not the name by which a person is called but the position he occupies and the functions and duties which he discharges that determine whether in fact he is a director or not. According to Section 253, only an individual can be the director of a company. No company or firm or association can be appointed as a director.

Appointment of First Directors:

The first directors are usually appointed by name in the articles or in the manner provided therein. Where the articles do not provide for the appointment of first directors, the subscribers to the memorandum, who are individuals, shall be deemed to be the first directors of the company subject to the regulations of the company’s articles. The first directors can hold office until the directors are duly appointed.

Appointment of Directors at general meeting:

According to section 255, the director must be appointed by the company in general meeting. In the case of a public company or of a private company which is a subsidiary of a public company, at least two-third of total number of directors must be persons whose period of office is liable to determination by rotation. In other words, only one third of the total number of directors can be non-rotational directors.

Appointment of Additional Directors:

If the Articles authorize, the Board may appoint additional directors. Such additional director together with the directors constituting the Board should not exceed the maximum number fixed by the articles. Also, the additional directors are entitled to hold office only up to the date of the next annual general meeting of the company

Restriction on appointment of Directors:

A person shall not be capable of being appointed a director by the articles or named as a director unless he or his agent in writing has signed and filed with the registrar consent in writing to act as such director and has:

(a) Signed the memorandum for his qualification shares; or
(b) Taken his qualification shares from the company and paid or agreed to pay for them; or
(c) Signed and filed with the registrar an undertaking in writing to take from the company his qualification shares and pay for them; or
(d) Field with the registrar an affidavit that his qualification share, if any, are registered in his name.

Duties of a Director

In the words of Bowen, LJ.:
"Directors are described sometimes as agents, sometimes as trustees and sometimes as managing partners. But each of these expressions is used not as exhaustive as their powers and responsibilities but as indicating useful points of view from which they may tor the moment and for the particular purpose be considered."
Thus, a Director has to act in accordance with AOA and his duties may be summarized as under:

1. A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members.
2. A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
3. A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
4. A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates

5. A director of a company shall not assign his office and any assignment so made shall be void.

Liabilities of Directors:

It is very difficult to describe the liabilities of directors. The directors cannot delegate their authority which specifically imposed on them, which involve the exercise of judgment and discretion. Some of the liabilities can be mentioned as below:

1. Liability for illegal acts
2. Director receiving secret commission or bribe
3. Liability for negligence
4. Liability for breach of warranty of authority
5. No personal liability under contracts signed for company Liability for fraud
6. Liability in respect of breach of trust
7. Liability for personal profits
8. Liability in case of statutory violations
9. Liability under Pollution Laws
10. Liability under ESI, EPF, Gratuity and Minimum Wages Act

WINDING UP OF A COMPANY

MEANING OF WINDING UP - Winding up or liquidation of a company represents the last stage in its life. It means proceeding by which a company is dissolved. The term winding up and liquidation are used indiscriminately.

DEFINITION OF WINDING UP – According to Prof. Gower, winding up of company is the process whereby its life is ended and its proper administered for the benefit of its creditors and members. An administrator, called liquidator, is appointed and he takes control of the company, collects its assets, pay its debts and finally distributes any surplus among the members in accordance with their rights.

MODES OF WINDING UP

1. **Winding up by tribunal** – winding up of a company under the order of a tribunal is also known as compulsory winding up. Grounds for winding up by the tribunal are :- (1) special resolution of the company. (2) Default in holding statutory meeting. (3) Failure to commence business. (4) Reduction in membership (5) inability to pay its debts. (6) Just and equitable. (7) Default in filing balance sheet. (8) Action against sovereignty.

2. **Voluntary winding up** – voluntary winding up means winding up by the members or creditors of a company without interference by the tribunal. The object of a voluntary winding up is that the company, i.e. the members as well as the creditors, are left free to settle their affairs without going to the tribunal. They may however apply to the Tribunal for any directions, if and when it is necessary.

a. **Members voluntary winding up**- in voluntary winding up if a declaration of solvency is made in accordance with the provision of sec 488, it is a members voluntary winding up.

b. **Creditor's voluntary winding up** – a voluntary winding up in which a solvency declaration is not made is referred to as creditor's voluntary winding up. Or when liquidator appointed by the company is of the opinion that the company will not be able to pay off its debts completely within the period as mentioned in declaration of the solvency.

FOR INTERNAL CIRCULATION ONLY