Share Capital and Shareholders

CHAPTER 4

Syllabus Mapping	Unit
Share, Share Capital – Types and Definition, Allotment and Forfeiture, Calls on Shares, ESOP, Buyback, Sweat Equity, Bonus, Right, Capital Reduction, Share Certificate, D-mat System, Transfer and Transmission, Redemption of Preference Shares, Debenture – Definition, Types, Rules Regarding Issue of Debenture	Unit 4: Share Capital and Debenture

Learning Objectives

- Share
- Equity shares
- Right shares
- Preference share
- Issue of shares
- Bonus share
- Capital reduction
- Share certificated-mat system
- Transfer and transmission of shares
- Debentures
- Stocks
- Lien of shares
- Underwriters' commission
- Brokerage
- Nomination of shares
- Transmission of shares

SHARE [SECTION 2(84)]

As per Section 2(84) of the Companies Act, 2013, 'share' refers to a share in the share capital of a company and includes stock. In other words, a share means a portion of the ownership of the company.

In the *Commissioner of Income Tax* vs *Standard Vacum Oil Company* (1966) case, the Supreme Court opined that 'by a share in a company is meant not any sum of money but an interest measured by a sum of money and made up of diverse rights conferred on its holders by the Articles of the company which constitute a contract between them and the company'.

Nature of Shares or Debentures [Section 44]

As per Section 44 of the Companies Act, 2013, the shares, debentures, or other interest of any number in a company shall be movable property transferable in the manner provided by the articles of the company.

Numbering of Shares [Section 45]

As per Section 45 of the Companies Act, 2013, every share in a company having a share capital shall be distinguished by its distinctive number. It is to be noted that this is not applicable for shares held in electronic form in a depository.

SHARE CERTIFICATED D-MAT SYSTEM

Dematerialization of shares means that shares are held in electronic mode in the depositary and not in physical form. Dematerialized shares neither have distinctive numbers nor share certificates. Although no share certificate is issued by the company, the shares held by the shareholders are kept on record by the depository. In d-mat form, all securities are identical and interchangeable and transfer of securities is done in electronic form by the National Securities Depository Limited (NSDL) or Central Depository Services (India) Limited (CDSL) which act as the depository and stock holding corporation of India. It functions as a depository participant for maintaining the shares in electronic form and transfers shares electronically.

TRANSFER AND TRANSMISSION OF SECURITIES [SECTION 56]

As per Section 56 of the Companies Act, 2013, a company shall not register a transfer of securities of the company. The interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company. Transferability is one of the most important features of a company. There are some restrictions on the transferability of shares, both in the case of private limited companies and public limited companies. In the case of private limited companies, a 'pre-emption' clause states that the transferor must offer his share to the existing members of the company before offering them to the non-members as long as they are willing to purchase with a fair price as determined by the articles. In the case of a public company, there may be some restriction on the rights of the members regarding transfer in case of partly paid shares and shares not accomplished by the certificate.

The procedure of transfer has to follow the following requirements:

1. Transfer must be made on the basis of proper instruments, that is, share transfer form.
2. The prescribed form must be filled and stamped.
3. Transfer has to be executed on behalf of the transferor or transferee.
4. Name, address, and occupation must be mentioned in the form.
5. The instrument of transfer, along with the certificate, must reach the registered office of the company in time.

As per Section 56 of the Companies Act, 2013, transmission of shares and debentures may occur in the following situations:

1. When the registered shareholder or debenture holder dies
2. When shareholders or debenture holders become insolvent

Refer to Table 4.4 for a clear understanding of the differences between transfer and transmission.

Table 4.4 Differences between transfer and transmission

Points of difference	Transfer	Transmission
Time	Transfer may occur voluntarily or deliberately.	Transmissions occur by law of operation.
Meaning	Transfer refers to the transfer of ownership of shares or debentures.	Transmission occurs at the time of death or insolvency.
Documentation	The transferor or transferee must require the instrument of transfer.	No instrument is required.

As per the decision in the case of *Smith Knight and Co*, it was decided that unless any restrictions was made by the articles, a shareholder has absolute rights to dispose of his shares.

Case Study

Mathrubhumi Printing and Publishing Co. Ltd vs Vardhaman Publishers Ltd

Year of judgement: 1992

Fact of the case: Right of share transferor and transferee

Judgement of the case: Shareholders' rights to transfer of shares is always based on the Articles of Association as well as Section 14 of the Companies Act, 2013. The transferee has no better right than that of the transferor and it cannot be against the provisions in the Articles of Association and relevant provisions of the Companies Act.

PUNISHMENT FOR IMPERSONATION OF SHAREHOLDER [57]

As per Section 57 of the Companies Act, 2013 if any person deceitfully impersonates the owner of any security or interest in a company or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or attempts to obtain any such security of interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner, he shall be punishable with imprisonment for a term which shall not be less than one year and which may extend to three years and with fine which shall not be less than ₹1,00,000 and which may extend to ₹5,00,000.

DEBENTURES [SECTION 2(30)]

As per Section 2(30) of the Companies Act, 2013, a debenture includes debenture stock, bonds, or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not.

Why Companies Issue Debentures

A debenture is one of the main sources of a long-term debt of the company. When a company requires fund expansion, diversification, modernization, or working capital, it takes the help of debentures. A debenture can be issued to the public or through private placement. It is one of the sources of long-term finance.

The underlying reasons for the issue of debentures are as follows:

1. The cost of debt capital is much lower than preference capital or equity capital.
2. As the interest cost is charged on profit, it reduces the tax burden and increases return on investment.
3. Debenture holders are not the owners of the concern. This is why it does not dilute control over the company.
4. Fixed interests with fixed earnings attract many investors.

5. It will help equity holders to increase trading on equity.
6. Debenture holders' interests are secured irrespective of the situation of the organization.
7. At the time of winding up, debenture holders get back their money before preference or equity holders.

Debentures possess the following characteristics:

1. Debentures bear fixed rate of interest.
2. Debentures are issued to the public or through private placements.
3. Banks, financial institutions, or insurance companies act as trustees and a trust deed is executed for this purpose.

Debenture Redemption Reserve

As per Section 71(4) of the *Companies Act, 2013*, where the debentures are issued by a company, the company shall create a debenture redemption reserve account out of the profits of the company and the sum available for payment of dividend and the amount credited to such accounts shall not be utilized by the company except for the redemption of debentures.

Classification

As per Section 71(1) of the *Companies Act, 2013*, a company may issue debentures with an option to convert such debentures into shares, either wholly or partly, at the time of redemption.

As per Section 71(2) of the *Companies Act, 2013*, no company shall issue any debentures carrying any voting right.

As per Section 71(3) of the *Companies Act, 2013*, secured debentures may be issued by a company subject to such terms and conditions as may be prescribed.

Different Types of Debentures and Rules regarding Issue of Debentures

Debentures can be issued as either *secured* or *unsecured*, and *redeemable* or *irredeemable*. At present, companies generally issue only secured and redeemable debentures; unsecured and irredeemable debentures are rarely issued.

The different debentures circulated in our country are classified as follows:

Registered Debentures

The name and address of the debenture holder are registered in the debentures' holder register. Interest or coupon of interest is given for these types of debentures.

Bearer Debentures

In the bearer debentures, the name of the debenture holders are not registered and like a promissory note, anyone can encash these debentures on maturity. The company does not keep any register of these types of debenture holders. Interest coupons are generally attached with these debentures and as per regular intervals, interests can be withdrawn with the help of these coupons. Otherwise, the value of the debenture is paid on maturity.

Redeemable Debentures

A redeemable debenture is one that is issued for a fixed period of time. On expiry of this period, the money invested by the debenture holders is returned to them. In other words, debenture holders can redeem their money on expiry of the date fixed for redemption of the debentures.

Irredeemable Debentures

An irredeemable debenture is one which is issued for a fixed period, but unlike a redeemable debenture, the money invested by the debenture holders is not returned to them. Only interest is paid at a regular interval. However, if the company ceases to function, their money is returned, even before that for equity holders.

Secured Debentures

A secured debenture may be issued by a company subject to such terms and conditions as may be prescribed in Rule 18 of the Companies (Share capital and debentures) Rules, 2014. A debenture is made secure through a mortgage of the company's assets. If the company goes into liquidation or fails to pay due interest on its debentures, these assets can be sold for clearing the company's debts to its debenture holders. These types of debentures are also called *debentures issued as collateral security*. In the balance sheet of the company these are mentioned as secured loans.

Unsecured Debentures or Naked Debentures

An unsecured debenture is one which does not carry any security like secured debentures. The company does not mortgage assets against these debentures. For this reason, it is also called naked debenture. However, sometimes, the interest rate for these debentures is higher than other debentures. In the balance sheet of the company, these are mentioned as unsecured loans.

Non-convertible Debentures

Those debentures which do not contain any provision for conversion into equity shares are called non-convertible debentures. These normally have a face value of ₹100 and earn a fixed interest of 14% to 16% per annum. These are usually redeemable after the expiry of five to seven years.

Non-convertible Debentures with Detachable Equity Warrants

These debenture holders have the option of buying a specific number of equity shares at a fixed value on expiry. There is a lock-in period for non-convertible debentures (NCDs), after which the debenture holder has to exercise his/her option for equity shares. If such an option is not exercised within the stipulated period, the company will be at liberty to dispose of the unapplied portion of shares in the market. The warrants (discussed next) attached to the NCDs can be converted into shares only if they are fully paid.

Convertible Debentures

Convertible debentures are those which, under specific terms and conditions, can be converted into equity shares of the same company. Convertible debentures can be converted either fully or in part, into equity shares of the same company. Where the conversion is to be made after 18–36 months, the conversion is optional as per SEBI. Convertible debentures may or may not carry interest.

A partly convertible debenture comprises two parts: convertible or non-convertible. The convertible portion is converted into shares after a certain period and the non-convertible portion redeemed after expiry.

The company was incorporated with the following objectives:

1. Investors must know the objectives of investing the money and their interest must be protected.
2. Companies' fund must be protected for creditors.

Effects of Ultra Vires

Void de initio The ultra vires Acts are considered as void de initio. This means the company cannot be bound by such type of Acts. [*Ashbury Railway Carriage and Iron Company* vs *Riche*]

Ultra vires of the directors If the Act of the company is ultra vires the directors of the company and the shareholders can ratify it with the help of a general resolution. If it is within the power of the company, this may be done with the consent of the shareholders. [Express Engineering Works Ltd]

Ultra vires of articles If the articles ultra vires the Act it can be ratified by taking a special resolution. The irregularity of the Act can be validated with the consent of the shareholders within the purview of the company.

Restraining of Ultra Vires Act Every member can get an order from the court for restraining the company from ultra vires activities. [*Attorney General* vs *G.R. Eastern Railway Company*]

Doctrines of Constructive Notice

Constructive notice indicates the notice which is assumed as per law. Every person deals with the company as deemed to having a constructive notice containing both Memorandum of Association and Articles of Association. Any one dealing with the company is presumed to have read the contents of the registered documents of the company. It is also presumed that the content should be fully understood. Thus, the doctrine of the constructive notice is a presumption operating in favour of the company.

The limitation of the constructive notice is called the doctrine of indoor management and is popularly known as 'Turquand rule' as per the judgement in the case of *Royal British Bank* vs *Turquand* (1856).

DOCTRINE OF INDOOR MANAGEMENT

After registration of the Memorandum of Association and Articles of Association, the documents become public documents and are available with the Registrar of Companies on payment of a substantive fee as determined by the Ministry of Company Affairs. A person dealing with the company who goes beyond the power of the company or any officer trying to enforce rules against the company will bear the consequences of such dealings. However, so far as internal proceedings are concerned, this is regularly done irrespective of outside dealings. This doctrine is called the doctrine of indoor management.

If a person comes into a contract with the company, it is presumed that he/she must know the provision of the memorandum and articles. It is also assumed that the officers of the company must observe the provisions of the articles. It is not the duty of the outsider to see whether the internal regulations are followed or not. This is the fundamental doctrine of indoor management. The doctrine of indoor management protects outsiders against the company, whereas the doctrine of constructive notice protects the company against the outsiders. The doctrine of indoor management and doctrine of constructive notice are diametrically opposite. This doctrine was first laid down in the famous case of *Royal British Bank* vs *Turquand* (1856).

Outside authority If an officer acts beyond his/her authority and any outsider deals with him/her without knowing the authority of the officer, he/she would not be able to take the benefit of the doctrine of indoor management as he/she has not enquired with the authority of the officer.

Case Study

Case: Anand Behari Lal vs Dinshaw and Co.

Date of judgement: NA

Fact of the case: The accountant of the company agreed to transfer the property to the plaintiff. The plaintiff could not prove the power of attorney offered by the company executed in favour of the accountant.

Judgement: The transfer made by the accountant was declared by the court as void as the power of transfer of the property did not fall within the apparent authority of the accountant.

DOCTRINE OF ALTER EGO

The Doctrine of Alter Ego ignores the liability of shareholders, officers, and directors. They can be personally held liable for their fraudulent or unethical course of action in the eyes of the law. This theory was propounded by Viscount Halden at the time of giving judgement on the case of *Lennards Carying Co.* vs *Asiatic Petroleum Co.* The House of Lords opined that 'directing mind and will of the company' is the task of the managing director and he will be held responsible for any wrongdoing on the part of the company.

CERTIFICATE OF INCORPORATION

As per Section 7 of the Companies Act, 2013, there shall be filed with the registrar within whose jurisdiction the registered office of a company is proposed to be situated the following documents and information for registration:

1. The memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed
2. A declaration in the prescribed form by an advocate, a chartered accountant, cost accountant, or company secretary in practice
3. An affidavit from each of the subscribers to the memorandum and from persons named as the first director
4. The address for correspondence until its registered office is established

On fulfilling documents for incorporation if the registrar is satisfied he/she may issue a Certificate of Incorporation called Corporate Identity Number (CIN) for identification of a company.

PROSPECTUS FORM AND CONTENT

Prospectus [Section 42]

According to Section 2(70) of the Companies Act, 2013, prospectus means, 'any document described or issued as a prospectus and includes a red herring prospectus referred to in Section 32 or self prospectus

misleading as a result of which there is loss or damage to the prospectus, the person responsible for the untrue statement will be liable for the same and pay compensation.

As per Section 35 of the Companies Act, 2013, the following persons are liable and punishable:

1. The director of a company at the time of issue of prospectus
2. The person authorized to issue the prospectus
3. The promoter of a company
4. Expert referred to in Section 26(5)
5. Every person who authorizes the issue of such a prospectus shall be liable under Section 447

Criminal Liability

As per Section 34 of the Companies Act, 2013, read with Section 447 of the Companies Act, 2013, every authorized person who makes an untrue statement in the prospectus can be convicted for a period not less than six months and which may extend to ten years and could also be fined an amount not less than that involved in the fraud and which may extend to three times the amount involved in the fraud.

According to Section 34 of the Companies Act, 2013, the following points have to be noted:

1. A statement included in the prospectus shall be considered as untrue or misleading if the form or context is considered as misleading.
2. Any matter (inclusion or omission) that is likely to mislead the people who authorizes the issue of such prospectus shall be liable for the same under Section 447.

Case Study

Case: Progressive Aluminium Ltd vs Registrar of Companies

Year of judgement: 1997

Fact of the case: The prospectus stated that Progressive Aluminium limited (PAL) is a large construction company. The promoter of PAL is a partner of Progressive Engineering Corporation (PEC) and the company expressed that they are experienced in the particular field.

Decision of the case: The partner of PEC, also the promoter of PAL, has sufficient experience and the statement made in the prospectus cannot be termed as untrue.

Case Study

Case: Re vs Lord Kylsant

Year of judgement: 1932

Fact of the case: All the statements included in the prospectus were true. The company gave financial information, in particular the trend in dividends, which was not on the trading profit but on capital profit that was not reflected in the prospectus. The material fact was not disclosed in the prospectus.

Decision of the case: The prospectus mentioned a false statement. Lord Kylsant, the MD and Chairman was held responsible for the same.

Punishment for Fraudulently Inducing Persons to Invest Money

Section 36 of the Companies Act, 2013, states any person who, either knowingly or recklessly, makes any statement, promise, or forecast which is false, deceptive, or deliberately cancels any material facts, to induce another person to enter into, or to offer to enter into (a) any agreement for acquiring, disposing of, subscribing for, or underwriting securities; (b) any agreement, the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or (c) any agreement for obtaining credit facilities from any bank or financial institution, shall be liable for action under Section 447.

Action by Affected Parties

As per Section 37 of the Companies Act, 2013, a suit may be filed or any action may be taken under Section 34 or Section 35 by any person, group of persons, or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus.

MINIMUM SUBSCRIPTION

In the case of a public company, the minimum amount of public subscription must be stated in the prospectus before commencement of business. Minimum subscription must be fixed by the directors or by a competent authority entitled to sign the memorandum by obeying the following conditions:

1. The purchase price of any property purchased or to be purchased
2. The preliminary expenses, including underwriters' commission payable on sale of shares
3. Repayment of money in relation to foregoing matters
4. Working capital
5. Any other expenses made for the same nature and purpose

No shares can be allotted until or unless 90% of the minimum subscription has been received within 90 days from the date of close of the issue. Refund will be made within 10 days from the end of the 90th day. If it exceeds 15%, an annual interest has to be paid on the refund amount.

DEMATERIALIZATION OF SHARES

'Depository' is defined in Section 2(1)(e) of the Depositories Act, 1996. As per Section 2(48) of the Companies Act, 2013, Indian depository receipt refers to any instrument in the form of a depository receipt created by a domestic depository in India, authorized in India, and authorized by a company incorporated outside India making an issue of such a depository.

Dematerialization of shares is a process by which the physical share certificates of an investor are converted to an equivalent of securities in electronic form and credited with the investors' depository participant (DP) account.

For the purpose of dematerialization of certificates, an investor will have to open an account with the depository participant with the approval of SEBI. DP is like a bank and holds securities such as shares, debentures, bonds, etc., in electronic form and also provides transaction services. As per SEBI regulations, banks, financial institutions, and members of stock exchanges registered with SEBI will act as DPs.

Companies Act, 2013

CHAPTER 3

Syllabus Mapping	Unit
Director (Concept and Definition), DIN, Qualification, Disqualification, Appointment, Position, Rights, Duties, Power, Resignation, Liabilities, Removal and Resignation of Director, Key Managerial Personnel (Definition, Appointment and Qualifications) – Managing Director, Whole-time Directors, the Companies Secretary, Chief Financial Officer, Resident Director, Independent Director, Women Director	Unit 3: Company Administration

Learning Objectives

- Company management
- Who is a director?
- Register of director and key managerial personnel
- Key managerial person
- Members' right to inspect
- Punishment
- Appointment of managing director, whole-time directors, or manager
- Defects in appointment of directors not to invalidated action taken
- Overall maximum managerial remuneration and managerial remuneration in case of absence of or inadequacy of profit
- Managing director
- Company secretary
- Chief financial officer
- Resident director
- Independent director
- Disclosure of interest by director
- Loan to directors
- Women directors of board
- Audit committee
- Nominee and remuneration committee
- Shareholders relationship committee
- Secretarial audit for bigger companies

COMPANY MANAGEMENT

A company is an artificial person that needs human intervention for its management. The structure prescribed by the Companies Act, 2013, necessitates a minimum of two directors for a private company and a minimum of three directors for a public company. In addition to directors, a company may appoint a managing director or manager for smooth functioning of the company. The nature of company management is democratic and members elect directors as their representatives. The Board of Directors, and not just a single director, have the powers of management. The Board may delegate substantial power to a single director called the manager. At least one-third of the elected directors must retire annually but are eligible for re-election. The managing director is also called the chief executive officer (CEO).

Board of Management

The Bhabha Committee was appointed to draft the new Company Bill in the post-independence era to ascertain the appropriate position of company management. A debate was going on to fix the position

of the managing agency. The then Finance Minister C.D. Deshmukh opined that, 'The Managing Agency system should be mended and not ended.' As a result, the foreign managing agency companies were gradually Indianized. But the managing agency system was abolished on 3 April 1970. These days, Indian companies are run by their directors. Professional management institutes are set up to train managers in a professional manner. Management consultancy services are also developed to assist and support the managers sitting at different levels.

WHO IS A DIRECTOR?

As per Section 2(34) of the Companies Act, 2013, a 'director means a director appointed by the Board of a company'. A 'director' is the position observed by Sir George Jessel in the Reforest of Dean Coal Mining Co. case. A person who acts as the director, but who has not been appointed lawfully, will be considered as the director. The duties he/she performs and the decisions he/she takes will be considered as determining factors which differentiate him/her from other managers or secretaries. The directors of a company are collectively called the 'Board of Directors' or 'The Board' and considered to be the highest decision-making body.

Only Individuals as Directors [Section 149]

As per Section 149 of the Companies (Amendment) Act, 2015, only individuals can be appointed as directors; neither the body corporate nor firm or association can be appointed as the director of a company. Only an individual can be so appointed.

It is difficult to fix responsibility if the body corporate, firm, or association be so appointed as taken in the decision of the case of *Oriental Metal Pressing Works Pvt. Ltd* vs *Bhaskar Kashinath Thakoor*.

Minimum number of directors

- Public company: Three directors
- Private company: Two directors
- One-person company: One director

Maximum number of directors Public company and private company: 15 directors

It is to be noted that more than 15 directors can be appointed after passing a special resolution. It is also to be noted that the company shall have at least one woman director.

Every listed company shall have at least one-third of the total number of directors as independent directors and the central government may prescribe the minimum number of independent directors for public companies.

Board of Directors

Directors who act together are termed as the Board of Directors. In the *Ram Autar Jalan* vs *Coal Products (Private) Ltd* case, the Supreme Court has opined that it is not that a person de facto can function as a director. Rather what is perceived in the eyes of the law, the minute's book, and returns submitted to the Registrar of Companies are important.

Board of Directors Mandatory [Section 149]

As per Section 149 of the Companies (Amendment) Act, 2015, every company shall have a Board of Directors consisting of individuals as directors and shall have

1. A minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a one-person company; and
2. A maximum of fifteen directors.

A company may appoint more than fifteen directors after passing a special resolution.

Such companies should have at least one woman director.

Every company shall have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year.

Every listed public company shall have at least one-third of the total number of directors as independent directors and the central government may prescribe the minimum number of independent directors in the case of any class or classes of public companies.

Minimum and Maximum Number of Directors in Public or Private Company

As per Section 149 of the Companies (Amendment) Act, 2015, every public company must have a minimum of three directors and every private company must have a minimum of two directors. One director is mandatory in the case of a one-person company.

For all types of companies, the maximum number of directors is fifteen. A company may appoint more than fifteen directors after passing a special resolution. As per Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014, every company shall have at least one woman director.

Office of Profit

Any position, other than that which is political, is filled either by election or nomination for which he/she deserves government salary. In *Jaya Bacchan* vs *Union of India* and other cases, the Supreme Court opined that, 'An office of profit is an office which is capable of yielding a profit or pecuniary gain.' The court also opined that, 'If the pecuniary gain is receivable in connection with the office then it becomes an office of profit, irrespective of whether such pecuniary gain is actually received or not.' The following three are essential:

1. A person holds an office;
2. The office is under the central or state government; and
3. The office is one of profit.

Appointment of Directors [Section 152] or Appointment of First Director by Members [Section 152]

As per Section 152 of the Companies (Amendment) Act, 2015, where no provision is made in the articles of a company for the appointment of the first director, the subscriber of the memorandum shall be deemed to be the first director of the company until a director is duly appointed; in the case of a one-person company, an individual member shall be deemed to be its first director.

No director shall be appointed as a director of a company unless he/she has been allotted the director identification number (DIN) as per Section 154 of the Companies Act, 2013.

As per Rule 8 of the Companies (Appointment and Qualifications of Directors) Rules, 2014, a person appointed as a director shall not act as a director unless he has given his consent in writing in Form DIR-2 to hold the office of the director and it has been filed with the Registrar of Companies

with DIR-12 within thirty days of his appointment along with the fees as provided in the Companies (Registration of Office and Fees) Rules, 2014.

The directors cannot prolong the tenure by not holding the annual general meeting (AGM) in time. They are automatically out of office after the expiry of tenure as in the decision of the case involving *B.R. Kundra* vs *Motion Pictures Association*.

Case Study

R.N. Viswanathan vs Tiffin'Barytes Asbestors and Paints Ltd

Year of judgement: 1953

Fact of the case: Tenure of director

Decision of the case: If the director retires by rotation, at the annual general meeting, they would cease to be the director on the last date, irrespective of whether the meeting is held or not.

Qualification of Director

The Act does not specify any share qualification for directors. As per Regulation 6 of Table A, a director must hold at least one share in a company. The share qualification is fixed by the Articles of a public company or private company being a subsidiary of a public company. As per Section 270, "The nominal value of the qualification shares shall not exceed five thousand rupees or the nominal value of one share where it exceeds five thousand rupees." It is also to be noted that a private company may or may not provide any share qualification in its articles.

Disqualification of Director [Section 164]

As per Section 164(1) of the Companies (Amendment) Act, 2015, a person shall not be eligible for appointment as a director of a company, if

(a) he is of unsound mind and stands so declared by a competent court;

(b) he is an undercharged insolvent;

(c) he has applied to be adjudicated as an insolvent and his application is pending;

(d) he has been convicted by a court of any offence; or

(e) there is an order for disqualification of appointment as a director.

Manner of Selection of Independent Directors and Maintenance of Data Bank of Independent Directors [Section 150]

As per Section 149(6) of the Companies (Amendment) Act, 2015, an independent director may be selected from a data bank, containing names, addresses, and qualification of persons who are eligible and willing to act as independent directors, maintained by any institute or association, as may be notified by the central government, having expertise in creation and maintenance of such data banks and uploading on their websites for use by the company making the appointment of such directors.

As per Section 152(2), the appointment of an independent director shall be approved by the company during the general meeting.

As per Section 150(1), the data bank referred to shall create and maintain the data of persons willing to act as an independent director.

The central government may prescribe the manner and procedure of selection of independent directors who fulfil the qualifications and requirements specified under Section 149.

Appointment of Director by Small Shareholders [Section 151]

As per Section 151 of the Companies (Amendment) Act, 2015, a listed company may have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed. It is to be noted that a small shareholder refers to a shareholder holding shares of nominal value of not more than ₹20,000 or such other sum as may be prescribed.

Appointment of First Director by Members [Section 152]

As per Section 152 of the Companies (Amendment) Act, 2015, the articles of the company at the time of incorporation may provide the name of the first directors. If no such provision is made in the articles, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company. In a one-person company, an individual who is a member shall be deemed to be its first directors.

Appointment of Additional Director, Alternate Director, and Nominee Director by Board [Section 161]

As per Section 161 of the Companies (Amendment) Act, 2015, appointment of additional directors, alternative directors, and nominee directors shall be made by the Board.

Additional Director

As per Section 161(1) of the Companies (Amendment) Act, 2015, the Articles of a company may confer on its Board of Directors the power to appoint any person as an additional director at any time who shall hold office up to the date of the next AGM or the last date on which the AGM should have been held, whichever is earlier.

Case Study

M.K. Srinivasan vs W.S. Subrahmanya Ayyar

Year of judgement: 1932

Fact of the case: To ascertain if the appointment of the additional director is valid or not

Judgement of the case: The question of appointment of the additional director will arise when shareholders have abstained from filling one or more of the sanctioned posts of directors.

Alternative Director

As per Section 161(2) of the Companies (Amendment) Act, 2015, the Board of Directors of a company may, if so authorized by its articles or by the resolution passed by the company during the general meeting, appoint a person to act as an alternative director for a director during his absence for a period of not less than three months from India. The alternative director must possess the necessary quality to be appointed as an independent director.

Nominee Director [Section 161]

As per Section 161(3) of the Companies (Amendment) Act, 2015, subject to the articles of a company, the Board may appoint any person as a director nominated by the institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the central government or the state government by virtue of shareholding in a government company.

Interested Director [Section 2(49)]

An interested director refers to a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement or proposed contract or arrangement, entered into or to be entered into or on behalf of a company.

Appointment of Director to be Voted Individually [Section 162]

Section 162 of the Companies (Amendment) Act, 2015 clearly states that 'a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote against it.' No body corporate, association, or firm shall be appointed director of a company; only an individual shall be so appointed. In the case of *Oriental Metal Pressing Works Private Ltd* vs *Bhaskar Kashinath Thakoor* (1961), it was decided that it will be difficult to fix responsibility in the case of the directors of a body corporate, association of persons, or a firm.

A resolution moved in contravention of 162(1) shall be void whether or not any objection was taken when it was moved.

A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as a motion for his appointment.

Option to Adopt Principal of Proportional Representation for Appointment of Directors [Section 163]

Section 163 of the Companies (Amendment) Act, 2015, notwithstanding anything contained in the Act, the articles of the company may provide for appointment of not less than two-thirds of the total number of directors of a company in accordance with the principal representation whereby a single transferable vote or a system of cumulative voting or otherwise and such appointments be made once every three years and casual vacancies be filled as per the provision of Section 164(4).

Application for Allotment of Director Identification Number [Section 153]

As per Section 153 of the Companies (Amendment) Act, 2015, every individual intending to be appointed as director of a company shall make an application for allotment of DIN to the central government in such form and manner and along with fees as may be prescribed.

Allotment of Director Identification Number [Section 154]

As per Section 154 of the Companies (Amendment) Act, 2015, the central government shall, within one month from the receipt of the application as per Section 153, allot a DIN to an applicant in such manner as may be prescribed.

Retirement of Directors [Section 152]

As per Section 152(4)(a) of the Companies (Amendment) Act, 2015, unless the articles provide for the retirement of all directors at every AGM, not less than two-thirds of the total number of directors of a public company shall be a person whose period of office is liable to determination by the retirement of directors by rotation; and save as otherwise expressly provided in this Act, be appointed by the company during the general meeting.

Illustration A company has 13 directors of which 4 are independent directors. Two-thirds of the remaining directors (of 9) equals 6. Out of these 6 directors, one-third, that is, 2 retire as a result of rotation every year.

Preferential Retirement [Section 152]

As per Section 152(4)(d) of the Companies (Amendment) Act, 2015, the directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who become directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

Directorship Holdings [Section 165]

As per Section 165(1) of the Companies (Amendment) Act, 2015, no person shall hold the office of director in more than 20 companies at the same time. The maximum number of public companies in which a person can be appointed as director shall not exceed 10.

As per Section 165(2) of the Companies (Amendment) Act, 2015, if a person accepts appointment as a director in connection with Section 165(1), he shall be punishable with fine which shall not be less than ₹5000 but which may extend to ₹25,000 for every day after the first contravention continues.

Position of Directors [Section 2(34)]

Section 2(34) of the Companies Act, 2013 provides the functional definition of the director. The position of the director may be described as follows:

Agent The company cannot do something on its own. The directors act as agents of the company. In the *Ferguson* vs *Wilson* (1866) case, it was decided that the director is merely an agent in the eyes of the law. They are the agents of the company and not the agents of individual members.

Trustee The directors are persons who manage the office on behalf of the company for the benefit of its members. They act as the trustees of the company, not the shareholders. This can be observed in the judgement that came out in the case of *Ramaswamy Iyer* vs *Brahmayya and Co.* (1966).

Employee If an employee is appointed as the director of a company, he may be called the executive director. The executive director is involved in the process of decision-making and execution.

Nominee Sometimes governments, banks, or financial institutions appoint directors as their nominees to protect the interest of the government or financer.

Right of Persons Other than Retiring Directors to Stand for Directorship [Section 160]

As per Section 160 of the Companies (Amendment) Act, 2015, a person who is not a retiring director shall be eligible for appointment to the office of a director at any general meeting. For this purpose ₹1 lakh has to be deposited. The amount may be refunded if the person is elected as director or secures more than 25% of the valid votes cast.

Duties of Directors [Section 166]

The duties of the directors laid down in Section 166 of the Companies (Amendment) Act, 2015, are as follows:

1. Subject to the provisions of this Act, a director of a company shall act in accordance with the Articles of the company [Section 166(1)].
2. A director of a company shall act in good faith in order to promote the objects of the company [Section 166(2)].
3. A director of a company shall exercise his duties with due and reasonable skill, care, and diligence and shall exercise independent judgement [Section 166(3)].
4. A director of the company must disclose the direct or indirect interest that conflicts the interest of the company [Section 166 (4)].
5. A director must not take any undue gain or advantage in his favour or in favour of friends or relatives [Section 166(5)].
6. A director of a company shall not assign his office and any assignment so made shall be void [Section 166(6)].
7. If a director contradicts the provision of Section 166, he will be penalized with a fine of not less than ₹1 lakh and which may extend up to ₹5 lakh.

Case Study

Registrar of Companies vs Orissa Paper Products Ltd

Year of judgement: 1988

Fact of the case: Directorship cannot be thrust upon a person.

Decision of the case: The person chosen to be the director must know his/her duties and should be able to identify what is right and wrong. He can't excuse himself stating that the wrong is not under his control.

Vacation of Office of Director [Section 167]

As per Section 167 of the Companies (Amendment) Act, 2015, the office of a director shall become vacant in the following cases:

1. If the person incurs any of the disqualifications mentioned in Section 164
2. If the person absents himself from all the meetings of the Board of Directors held during a period of 12 months with or without seeking leave of absence of the Board

3. If he acts in contravention of the provision of Section 184 relating to entering into contracts or arrangements on which he is directly or indirectly interested
4. If he becomes disqualified by an order of the Court or Tribunal
5. If he has been removed in pursuance of the provisions of the Act

Case Study

K. Venkat Rao vs Rockwool (India) Ltd

Year of judgement: 2002

Fact of the case: Disqualification occurred as per Section 283 of the Companies Act, 1956, corresponding to Section 167 of the Companies Act, 2013.

Judgement of the case: Disqualification is automatic but subject to fulfilment of conditions.

Powers or Rights of Board of Directors [Section 179]

Since a company is an artificial person, it acts through directors. All the power of management vested to the Board of Directors becomes the working organ of the company. The power of the Board was vested in accordance with the articles, through board meetings, and by the meeting of shareholders. The power of the Board deals with Section 179 of the Companies (Amendment) Act, 2015, as laid down below:

1. To make calls on shareholders in respect of money unpaid on their shares
2. To authorize buy-back of securities under Section 68
3. To issue securities, including debentures, whether inside or outside India
4. To borrow nominees
5. To invest the funds of the company
6. To grant loans, give guarantee, or provide security in respect of loans
7. To approve the financial statement and the board's report
8. To diversify the business of the company
9. To approve amalgamation, merger, or reconstruction
10. To take over a company or acquire a control

Restrictions on Power of Director and Power of Board [Section 180]

1. As per Section 180 of the Companies (Amendment) Act, 2015, the Board of Directors of the company shall exercise the following powers only with the consent of the company by a special resolution.
   (a) To sell, lease, or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertaking
   (b) To invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation

(c) To borrow money, where the money to be borrowed, together with the money already borrowed by the company, will exceed the aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business

(d) To remit or give time for the repayment of, any debt due from director

2. As per Section 180 of the Companies (Amendment) Act, 2015, the special resolution passed by the company during the general meeting in relation to the exercise of the powers referred to in Section 180(1)(c) shall specify the total amount up to which monies may be borrowed by the Board of Directors

3. As per Section 180 of the Companies (Amendment) Act, 2015, nothing contained in Section 180(1)(c) affects

(a) the title of the buyer or the other person who buys or takes on lease any property investment or undertaking as referred to in that clause, in good faith, or

(b) the sale or lease of any property of the company where the ordinary business of the company (or companies) consists of selling or leasing

4. Any special resolution passed by the company consenting to the transaction as referred to in Section 180(1)(a) may stipulate such conditions regarding the use, disposal, or investment of the sale proceeds which may result from the transactions

5. No debt incurred by the company in excess of the limit imposed by Section 180(1)(c) shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded.

Resignation of Director [Section 168]

As per Section 168(1) of the Companies (Amendment) Act, 2015, a director may resign from his office by giving a notice in writing to the company, and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in Form No. DIR-12 within 30 days from the date of receipt of notice of registration and shall also place the fact of such resignation in the report of directors laid immediately following the general meeting by the company.

As per Section 168(2) of the Companies Act, 2013, the resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

As per Section 168(3) of the Companies Act, 2013, where all the directors of a company resign from their offices, or vacate their offices under Section 167, the promoter or, in his absence, the central government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

Case Study

Registrar of Companies vs Orissa Paper Products Ltd

Year of judgement: 1988

Fact of the case: The director sent the letter of registration to a third party and not to the company.

Judgement of the case: Since the director sent his resignation to a third party (even if it is a government official) and not to the company, it has no validity. However, the acceptance of resignation is not required.

Liabilities of Director

The director possesses a fiduciary relationship with the company. The liabilities of the director as per Companies Act, 2013, are as follows:

Liability to Company

The directors are liable to the company under the following circumstances:

1. If the company incurs loss due to the negligence of the directors
2. If directors act ultra vires to the Act or against the notion of the company
3. If they perform tasks which amount to breach of trust
4. If they act with mala fide intention
5. If they do not perform their duties with diligence, care, and skill

Liability to Third Party

Civil liability for mis-statement in prospectus As per Section 35 of the Companies Act, 2013, where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person like the director of a company, an authorized person of the company, the promoter of the company, an authorized person for the issue of prospectors, or an expert mentioned in Section 26(5) can be held liable.

Criminal liability for mis-statement in prospectus As per Section 34 of the Companies Act, 2013, when a prospectus that is untrue or misleading is issued and circulated in a form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorizes the issue of such prospectus shall be liable under Section 447.

Failure to repay application money within stipulated time The company and its officers who are in default shall be liable to a penalty of ₹1000 (for each default) for each day during which such default continues or ₹1,00,000, whichever is less.

Liability for fraudulent conduct of business As per Section 339(3) of the Companies (Amendment) Act, 2015, when any business of a company is carried on with such intent or for such purpose as mentioned in subsection (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be liable for action under Section 447.

Liability for breach of trust As per Section 166(7) of the Companies (Amendment) Act, 2015, if a director of the company contravenes the provisions of this section, such director shall be punishable with fine which shall not be less than ₹1,00,000 and which may extend to ₹5,00,000.

Case Study

Weeks vs Propert

Year of judgement: 1873

Fact of the case: The Railway Company exercised its borrowing power in full. The company borrowed ₹500 from Weeks and offered a debenture but it was declared void as the company had exhausted its borrowing power.

Decision of the case: It was decided that the directors were liable for the damages as they are entitled to act on behalf of the company and the company had had the power to issue such a debenture.

Case Study

Daimler Company Ltd vs Continental Tyre and Rubber Co. Ltd

Date of judgement: 1916

Fact of the case: The company was incorporated in England for selling tyres manufactured in Germany by a German company. A majority of the shareholders were German and all the directors were German in origin and residents of Germany. During the First World War in 1914, due to rivalry between England and Germany, the English company took action against the aging trade debt.

Decision of the case: Both the decision-making bodies, the Board of Directors and the General Body of the shareholders were from Germany and considered the English company as an enemy company. The suit filed by the company was dismissed to recover the trade debts as it was made by the enemy company.

Removal of Directors [Section 169]

As per Section 169 of the Companies (Amendment) Act, 2015, the necessary conditions have to be followed for the removal, resignation, or vacation of office of the director:

A company, by ordinary resolution, can remove a director who has not been appointed by the Tribunal under Section 142 before the expiry of the period of office after giving him reasonable opportunity of being heard.

A special notice shall be required to remove a director or to appoint somebody in place of a director so removed, at the meeting at which he is removed.

A vacancy created by the removal of a director may be filled by the company during the general meeting or by the Board provided a special notice has been given.

A director so appointed shall hold office until the date up to which the predecessor would have held office if he had not been removed.

If the vacancy is not filled, it may be filled as a casual vacancy in accordance with the provision of the Act.

The director who was removed from office shall not be reappointed as a director by the Board of Directors.

REGISTER OF DIRECTOR AND KEY MANAGERIAL PERSONNEL [SECTION 170]

As per Section 170(1) of the Companies (Amendment) Act, 2015, every company shall keep at its registered office a register containing such particulars of its directors and key managerial personnel as may be prescribed, which shall include the detail of securities held by each of them in the company or its holding, subsidiary, subsidiary of company's holding company, or associate companies.

As per Section 170(1) of the Companies (Amendment) Act, 2015, a return containing such particulars and documents, as may be prescribed, of the directors and the key managerial personnel shall be filed with the Registrar within 30 days from the appointment of every director and key managerial personnel, as the case may be, and within 30 days of any change taking place.

KEY MANAGERIAL PERSON (KMP) [SECTION 2(51)]

As per Section 2(51) and Section 194 of the Companies (Amendment) Act, 2015, a key managerial person (KMP) refers to the following:

1. The CEO, managing director, or manager
2. The company secretary
3. The whole-time director
4. The CFO
5. Such other officer as may be prescribed

Key Managerial Personnel (KMP) [Section 170]

As per Section 170(1) of the Companies (Amendment) Act, 2015, every company shall keep at its registered office a register containing such particulars of its directors and key managerial personnel as may be prescribed, which shall include the details of securities held by each of them in the company or its holding, subsidiary, subsidiary of company's holding company, or associate companies.

As per Section 170(2) of the Companies (Amendment) Act, 2015, a return containing such particulars and documents as may be prescribed of the directors and key managerial personnel shall be filed with the registrar within thirty days from the appointment of every director and key managerial personnel as the case may be, within 30 days of any change taking place.

Qualifications of Key Managerial Personnel

A KMP shall be professional in the field of finance, law, management, and must be aware of the business scenario.

Appointment of Key Managerial Person (KMP) [Section 203]

As per Section 203(2) of the Companies (Amendment) Act, 2015, every whole-time KMP of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration. As per Section 203(3), a whole-time KMP shall not hold office in more than one company except in its subsidiary company at the same time. As per Section 203(4) of the Companies (Amendment) Act, 2015, if the office of any whole-time KMP is vacated, the

resulting vacancy shall be filled during the meeting of the Board members within a period of six months from the date of such vacancy.

MEMBERS' RIGHT TO INSPECT [SECTION 171]

As per Section 171(1), the register kept under Section 170(1)(a) of the Companies (Amendment) Act, 2015 shall be open for inspection during business hours and the members shall have a right to take extracts therefrom and copies thereof, on request by the members, be provided to them free of cost within 30 days.

As per Section 171(1), the register kept under Section 170(1)(b) shall also be kept open for inspection at every general meeting of the company and shall be made accessible to any person attending the meeting.

As per Section 170(2) of the Companies (Amendment) Act, 2015, if any inspection as provided in Section 171(1)(a) is refused or if any copy required under that clause is not sent within 30 days from the date of receipt of such request, the registrar shall on an application made to him order immediate inspection and supply of copies required thereunder.

PUNISHMENT [SECTION 172]

As per Section 170 of the Companies (Amendment) Act, 2015, if a company contravenes any of the provisions and no specific punishment is provided, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ₹50,000 and which may extend to ₹5,00,000.

Prohibition of Forward Dealings in Securities of Company by Director or Key Managerial Personnel

As per Section 194(1) of the Companies (Amendment) Act, 2015, no director of a company or any of its key managerial personnel shall buy the company, a holding, subsidiary, or an associate company.

If a director or any KMP of the company contravenes the provisions of sub-section (1), such director or KMP shall be punishable with imprisonment for a term which may extend to two years or with fine which shall not be less than ₹1,00,000 and which may extend to ₹5,00,000 or with both.

As per Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rule, 2014, if the office of any whole-time KMP is vacant, the resulting vacancy shall be filled by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

APPOINTMENT OF MANAGING DIRECTOR, WHOLE-TIME DIRECTORS, OR MANAGER [SECTION 196]

As per Section 2(53) of the Companies Act, 2013, a manager refers to an individual who is entrusted by the management to carry out his duties and perform under the helm of supervision, control, and direction of the Board of Directors whether under a contract of service or not.

DEFECTS IN APPOINTMENT OF DIRECTORS NOT TO INVALIDATE ACTION TAKEN [SECTION 176]

As per Section 196 of the Companies (Amendment) Act, 2015, no act done by a person as a director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that his appointment was invalid by reason of any defect, disqualification, or termination by virtue of any provision contained in this Act or in the articles of the company.

Case Study

Hindustan Co-operative Insurance Society Ltd vs Union of India

Year of judgement: 1961

Fact of the case: If no annual general meeting is called and the directors do not retire, their actions cannot be validated as per Section 290 of the Companies Act, 1956, corresponding to Section 176 of the Companies Act, 2013.

Decision of the case: A director who is due to retire by rotation at the AGM has to vacate the office at the earliest or the last date on which the AGM would have been called as per Section 290 of the Companies Act, 1956, corresponding to Section 96 of the Companies Act, 2013. He cannot continue to hold office on the plea that the meeting was not held.

OVERALL MAXIMUM MANAGERIAL REMUNERATION AND MANAGERIAL REMUNERATION IN CASE OF ABSENCE OR INADEQUACY OF PROFIT [SECTION 197]

As per Section 197 Of the Companies (Amendment) Act, 2015, the total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed 11% of the net profits of the company for that financial year except that the remuneration of the directors shall not be deducted from gross profit.

It is to be noted that the remuneration payable to directors who are neither managing director nor whole-tome directors shall not exceed

1. 1% of the net profits of the company, if there is a managing or whole-time director or manager; and
2. 3% of the net profits in any other case.

Recovery of Remuneration in Certain Cases [Section 199]

As per Section 199 of the Companies (Amendment) Act, 2015, without prejudice to any liability incurred under the provision of the Act or any other law for the time being, where a company is required to re-state its financial statements due to fraud or non-compliance with any requirement under this Act and the rules made thereunder, the company shall recover from any past or present managing director or whole-time director, manager, or CEO who, during the period for which the financial statements are required to be re-stated, received remuneration (including stock option) in excess of what would have been payable to him as per the restatement of financial statements.

Central Government or Company to Fix Limit with Regard to Remuneration [Section 200]

As per Section 200 of the Companies (Amendment) Act, 2015, the central government or a company according to the approval of Section 196 to any appointment or to any remuneration under Section 197 in respect of cases where the company has inadequate or no profit, fix the remuneration within the limit prescribed in the Act, at such amount or percentage of profits of the company as it deems fit and while fixing remuneration the central government or the company shall bear the financial position of the company, professional qualification, and experience of the individual concern and remuneration or commission drawn by the individual concern.

Compensation of Loss of Office of Managing or Whole-time Director or Manager [Section 202]

As per Section 202(1) of the Companies (Amendment) Act, 2015, a company may make a payment to a managing or whole-time director or manager but not to any other director by way of compensation for loss of office or as considered for retirement from office or in connection with such loss or retirement.

As per Section 202(2), no payment shall be made as per Section 202(1) in the following cases:

1. Where the director resigns from office as a result of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate and is appointed as the managing or whole-time director, manager, or other officer of the reconstructed company or of the body corporate resulting from the amalgamation
2. Where the director resigns from office other than because of the reconstruction of the company or its amalgamation as aforesaid
3. Where the office of the director is vacated as per Section 167(1)

MANAGING DIRECTOR [SECTION 2(54)]

As per Section 2(54), a managing director refers to a director who, by virtue of the articles of a company, an agreement with the company, a resolution passed during its general meeting, or by the Board of Directors is entrusted with the substantial powers of the government of the affairs of the company during the general meeting or by its Board of Directors or, by virtue of its memorandum or Articles of Association, is entrusted with substantial powers of the management and includes a director occupying the position of managing director, whatever the name of the position.

The features revealed by the aforementioned definition are as follows:

1. A person who is not a director must not be appointed as a managing director and if he ceases to be a director his appointment is automatically terminated.
2. The managing director also includes a director.
3. The managing director must have substantiate power to manage the affairs of the company and not the whole power of the company.
4. A substantial amount of the managing director's duties does not include routine work.
5. The managing director must exercise power under the surveillance of the Board.

Appointment of Managing Director [Section 203]

As per Section 203 of the Companies (Amendment) Act, 2015, every company shall have the following whole-time key managerial positions:

1. Managing director, CEO, or manager and in their absence a whole-time director
2. Company secretary
3. CFO

Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions including remuneration.

As per Section 196 of the Companies (Amendment) Act, 2015, no company shall appoint or employ at the same time a managing director and a manager. No company shall appoint or re-appoint any person as its managing director, whole-time director, or manager for a term exceeding five years at a time.

As per Section 197 of the Companies (Amendment) Act, 2015, the total managerial remuneration payable by a public company, to its directors, including managing director and whole time director, and its manager in respect of any financial year shall not exceed 11% of the net profits of that company for that financial year computed in the manner laid down in Section 198 except that the remuneration of the directors shall not be deducted from the gross profits.

As per Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rule, 2014, in the following cases, KMPs have to be appointed:

1. For listed companies
2. For public companies having a paid-up share capital of ₹10 crore or more

Case Study

Craven–Ellis vs Canons Ltd

Year of judgement: 1936

Fact of the case: The Article of the company empowered the director to appoint the managing director. Accordingly, Craven–Ellis was appointed as managing director by the Board of Directors. Craven–Ellis acted as the managing director without the qualifying shares.

Decision of the case: It was decided that Craven–Ellis' appointment as managing director was invalid on the pleas that he did not hold the qualified number of shares.

Disqualification [Section 164]

As per Section 164 of the Companies Act, 2013, a person cannot be appointed as managing director or whole-time director of a company if he possesses the following disqualification:

1. If he is insolvent, discharged insolvent, or adjudged insolvent
2. If he suspends or has suspended the payment of creditors
3. If he is convicted by the court for moral turpitude
4. A person who has been disqualified from the post of director cannot be appointed again as a director

5. A person appointed as the manager or managing director of a private company or public company cannot be the manager or managing director of a private or public company that is a subsidiary of the public company without passing a resolution

Rights [Section 179]

The managing director has to exercise power through the Board of Directors. As per Section 179, the Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and tasks, as the company is authorized to exercise and do. The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at the meetings of the Board.

1. To make calls on shareholders in respect of money unpaid on their shares
2. To authorise buy-back of securities under Section 68
3. To issue securities, including debentures (both inside and outside India)
4. To borrow monies
5. To invest in the funds of the company
6. To grant loans, give guarantee, or provide security in respect of loans
7. To approve financial statements and the Board's report
8. To diversify the business of the company
9. To approve amalgamation, merger, or reconstruction
10. To take over a company or acquire a controlling or substantial stake in another company
11. Any other matter which may be prescribed

Powers

1. He/She supervises the organization at the helm and controls the Board of Directors of the company.
2. He/She is responsible for effectively and efficiently introducing managerial decisions.
3. He/She is responsible for quality upgradation of the organization through research and development (R&D) and introduction of total quality management (TQM) technique.

Duties and Functions

As the chief managerial personnel, the managing director has to perform the following duties and functions:

1. He/She has to perform duties apart from the duty of the ordinary director and also be treated as the employee of the company. The managing director possesses dual identity as per the decision of the Supreme Court order given in the *Employees State Insurance Corporation vs Apex Engineering (Pvt.) Ltd* case.
2. By virtue of the articles of the company, an agreement with the company, or a resolution passed during the general meeting or by the Board of Directors, the managing director is entrusted with substantial powers for the management of the affairs of the company as per Section 2(54).

COMPANY SECRETARY [SECTION 2(24)]

A company secretary refers to a company secretary as defined in Section 2(1)(a) of the Company Secaries Act, 1980 who is appointed by the company to perform the functions of the company secretary under this Act.

Section 2(25) of the Companies Act, 2013 also states the company secretary in practice as per the Act.

Functions [Section 205]

The functions of a company secretary shall include the following:

1. To report to the Board about compliance with the provisions of this Act, the rules made thereunder, and other laws applicable to the company
2. To ensure that the company complies with the applicable secretarial standards
3. To discharge such other duties as may be prescribed

It is also to be noted that in the contents of Section 204 and Section 205 shall not affect the duties and functions of the Board of Directors, chairperson of the company, managing director or whole-time director.

CHIEF FINANCIAL OFFICER [SECTION 2(19)]

The chief financial officer (CFO) refers to a person appointed as the Chief Financial Officer (CFO) of the company.

RESIDENT DIRECTOR [SECTION 149]

As per Section 149 of the Companies Act, 2013, every company shall have a Board of Directors. Only individuals can be directors. Every director should have a DIN; certain companies should have an independent director and at least one woman director. Every company should have at least one director who has stayed in India for a period of not less than 182 days in the previous year.

INDEPENDENT DIRECTOR [SECTION 149]

As per Section 2(47) of the Companies Act, 2013, an independent director has been referred to in Section 149(6) of the said Act. It is to be noted that the managing director, a whole-time director, or a nominee director are not independent directors.

As per Section 149(6) of the Companies Act, 2013, an independent director refers to a director

1. who, in the opinion of the Board is a person of integrity and possesses relevant expertise and experience;
2. who is or was not a promoter of the company or its holding, subsidiary, or associate company;
3. who is not related to promoters or directors in the company, its holding, subsidiary, or associate company;

4. who has or hasn't any pecuniary relationship with the company, its holding, subsidiary, or associate company;
5. none of whose relatives has or has had any pecuniary relationship or transaction with the company, its holding, subsidiary, associate company, their promoters, or directors, amounting to 2% or more of its gross turnover or total income or ₹50 lakh whichever is lower, during the two immediately preceding financial years or during the current financial year;
6. who neither himself nor any of his relatives
   (a) holds any key managerial position;
   (b) is or has been an employee, promoter, or partner in any of the three immediately preceding financial years;
   (c) holds together with his relatives 2% or more of the total voting power of the company;
   (d) is a chief executive or director of any non-profit organization that receives 25% or more of its receipts of the company or holds 2% or more of the total voting power of the company; and
7. who possess such other qualification as may be prescribed.

Qualification

As per Rule 5 of the Companies (Appointment and Qualifications of Directors) Rules, 2014, an independent director shall possess appropriate skills, experience, and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations, or other disciplines related to the company's business.

Case Study

Ram Avtar Jalan vs Coal Products (Private) Ltd

Year of judgement: 1970

Fact of the case: What the responsibility of the director should be

Judgement of the case: As a director it is more important to file evidence rather than a fact that the person was functioning as a de facto director.

Schedule IV of the Companies Act, 2013 provides guidelines for the professional conduct of an independent director.

Share Qualification [Section 149]

As per Section 149(f) of the Companies (Amendment) Act, 2015, directors must possess the qualification stated in Rule 5 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

An independent director shall possess appropriate skills, experience, and knowledge in one or more fields of finance, law, management, sales marketing, administration, research, corporate governance, technical operations, or other disciplines related to the company's business.

Insolvent as Director

A director appointed as per the norms has to enter into an agreement with the company. An insolvent is not entitled to enter into an agreement with the company as per the Contract Act, 1872. Therefore, an insolvent cannot be entitled to become a director of the company.

DISCLOSURE OF INTEREST BY DIRECTOR [SECTION 184]

According to Section 184 of the Companies (Amendment) Act, 2015, a disclosure of interest by the director is as follows:

1. At the first meeting of the Board in which he participates as a director and thereafter during the first meeting of the Board every financial year.
2. Every director of a company who is directly or indirectly concerned or interested in a contract, arrangement, or proposed contract or agreement entered into or to be entered into
   (a) with a body corporate in which such director or such director in association with any other director, holds more than 2% of the shareholdings of that body corporate, or is a promoter, manager, CEO of that body corporate; or
   (b) with a firm or other entity in which such director is a partner, owner, or member, as the case may be.

As per Rule 9 of the Companies (Meetings of Board and its Powers) Rules, 2014, the following hold true:

1. Every director shall disclose his concern or interest in any company or companies or body corporates (including shareholding interest), firms, or other association of individuals, by giving a notice in writing in Form no. MBP 1.
2. It shall be the duty of the director giving notice of interest to ensure it is disclosed at the meeting held immediately after the date of notice.
3. Every notice shall be kept at the registered office and such notices shall be presented for a period of eight years from the end of the financial year to which it relates and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for the purpose.

Case Study

Mukkattukara Catholic Co. Ltd vs M.V. Thomas

Year of judgement: 1995

Fact of the case: The word 'interest' refers to personal interest not official or other interest as mentioned in Section 299 of the Companies Act, 1956, corresponding to Section 184 of the Companies Act, 2013. Interest is not only confined to financial interest but is also related to fiduciary duties or closeness of relationship.

Decision of the case: The personal interest should not conflict with the duty as director.

Case Study

Hely–Hutchinson vs Brayhead Ltd

Year of judgement: 1968

Fact of the case: If the failure to disclose interest can make the contract void or voidable

Decision of the case: Non-disclosure does not make the contract void. It renders the contract voidable for the company and the director responsible for any secret profit made by him.

LOAN TO DIRECTORS [SECTION 185]

As per Section 185 of the Companies (Amendment) Act, 2015, no company shall directly or indirectly advance any loan including any loan represented by a book debt, to any of its directors or to any other person the director is interested in or gives any guarantee or provides any security in connection with any loan taken by him or such other person.

Companies (Amendment) Act, 2015 provides for the following:

1. Any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or
2. Any guarantee given or security provided by a holding company in respect of the loan made to any bank or financial institution to its subsidiary company.

These points hold provided that the loans made under the above clauses are utilized by the subsidiary company for its principal business.

If any loan is advanced or a guarantee or security is given or provided in contravention of the provision of sub-section(1), the company shall be punishable with fine which shall not be less than ₹5,00,000 and which may extend to ₹25,00,000.

The director or other person to whom any loan is advanced, or the guarantee or security given or provided in connection with any loan taken by him or other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than ₹5,00,000 or which may extend to ₹25,00,000 or with both.

WOMEN DIRECTORS OF BOARD [SECTION 149]

As per Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014, in the following cases the company shall appoint at least one woman director:

1. For every listed company
2. For every public company having a paid-up share capital of ₹100 crore or more or a turnover of ₹300 crore

Any company incorporated under this Act shall have to comply with the provision of Section 149 within six months from the date of incorporation.

Any intermittent vacancy of a woman shall be filled by the Board at the earliest but not later than the immediate next Board meeting or three months from the date of such vacancy, whichever is later.

AUDIT COMMITTEE [SECTION 177]

As per Section 177 of the Companies (Amendment) Act, 2015, the Board of Directors of every listed company and such other class or classes of companies shall constitute an audit committee. The audit committee shall consist of a minimum of three directors with independent directors forming a majority. The audit committee shall act in accordance with the terms of reference. The audit committee may call for the comments of the auditors regarding the internal control systems, the scope of audit including the observations of the auditors and review the financial statements before submission to the Board. The auditors of the company and the KMP shall have a right to be heard in the meeting of the audit committee when it considers the auditor's report and shall not have the right to vote. The audit committee has the authority to investigate.

An audit committee has to be constituted by every listed company.

NOMINEE AND REMUNERATION COMMITTEE [SECTION 178]

According to Section 178 of the Companies (Amendment) Act, 2015, a Nomination and Remuneration Committee has to be formed by the Board conforming to the following guidelines:

1. The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed shall constitute the Nomination and Remuneration Committee consisting of three or more executive directors out of which not less than one-half shall be independent directors.
2. This committee shall identify persons who are qualified to become directors and who may be appointed at the senior management level in accordance with the criteria laid down, recommend to the Board their appointment and removal, and carry out evaluation of every director's performance.
3. The Nomination and Remuneration Committee shall formulate the criteria for determining the qualifications, positive attributes, and independence of a director and recommend to the Board a policy relating to the remuneration of directors, key managerial personnel, and other employees.
4. This committee must ensure that the level and composition of remuneration is reasonable and sufficient to attract, retain, and motivate directors of the quality required to run the company successfully and the performance requirements are clear and meets appropriate performance benchmarks and the remuneration to directors, KMP, and senior management involves a balance between fixed and incentive pays reflecting short- and long-term performance objectives appropriate to the working and goal of the company.

STAKEHOLDERS RELATIONSHIP COMMITTEE [SECTION 178]

According to Section 178 of the Companies (Amendment) Act, 2015, the Board of Directors of a company which consists of more than one thousand shareholders, debenture holders, deposit holde

and any other security holders at any time during the financial year shall constituted a *Stakeholders Relationship Committee* consisting of a chairperson who shall be a non-executive director and any member as decided by the Board. This committee shall consider and resolve the grievances of security holders of the company. The chairperson or any other member under his absence authorized by him can attend the general meetings of the company.

SECRETARIAL AUDIT FOR BIGGER COMPANIES [SECTION 204]

As per Section 204 of the Companies (Amendment) Act, 2015, the following are true:

1. It shall be the duty of the company to give all assistance and facilities to every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report made in terms of Section 134(3), a secretarial audit report given by a company secretary in practice, in such form as may be prescribed.
2. It shall be the duty of the company to give all assistance and facilities to the company secretary in practice, for auditing the secretarial and related records of the company.
3. The Board of Directors, in their report made in terms of Section 134(3), shall explain in full any qualification, observation, or other remarks made by the company secretary in practice in his report as per Section 204(1).
4. If a company or any office of the company or company secretary in practice contravenes the provisions of this section, the company, every officer of the company, or the company secretary who has defaulted shall be punishable with fine which shall not be less than ₹1,00,000 and which may extend to ₹5,00,000.

As per Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 read with Section 204(1) the other class of companies as under will have to submit a secretarial audit report in Form No. MR. 3

1. **Every public company having a paid-up share capital ₹50 crore or more**
2. **Every public company having a turnover of ₹250 crore or more**

KEYWORDS

Additional director
Alternate director
Audit committee
Board of directors
Chief executive officer
Chief financial officer
Company secretary
Director
Director identification number
Independent director
Interested director
Key managerial personnel
Manager
Managing director
Nomination and remuneration committee
Nominee director
Whole-time director
Woman director
Secretarial audit

Company to Accept Unpaid Share Capital although Not Called Up [Section 50]

As per Section 50(1) of the Companies Act, 2013, a company may, if so authorized by its articles, accept from any member the whole or part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up.

As per Section 50(2) of the Companies Act, 2013, a member of the company limited by shares shall not be entitled to any voting rights in respect of the amount paid by him until that amount has been called up.

Variation of Shareholders' Rights [Section 48]

Share capital divided into different class of shares [Section 48(1)] As per Section 48 of the Companies Act, 2013, where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent, in writing, of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class.

Right of dissenting shareholders [Section 48(2)] Section 48 of the Companies Act, 2013 also states that where the holders of not less than 10% of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the tribunal to have the variation cancelled and where any such application is made, the variation shall not have effect unless and until it is confirmed by the tribunal.

Decision of tribunal [Section 48(3)] The decision of the tribunal on any application shall be binding on the shareholders.

Filing copy of order of tribunal with registrar of companies [Section 48(4)] It is to be noted that the company shall submit a copy of the order of the tribunal to the registrar within 30 days.

Penalty for default for non-compliance [Section 48(5)] Where any default is made in complying with the provisions, the company shall be punishable with fine which shall not be less than ₹25,000 but which may extend to ₹5,00,000 and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than ₹25,000 and which may extend to ₹5,00,000 or with both.

Case Study

Girish Kumar Kharia vs Industrial Forgs and Engineering Co. Ltd

Year of judgement: 1999

Fact of the case: Variation of shareholders' rights

Judgement of the case: Variation of shareholders' right without modifying the right itself is not a variation within the meaning of Section 48 of the Companies Act, 2013.

Right Share [Section 62]

As per Section 62(1)(a) of the Companies Act, 2013, whenever a company proposes to increase its capital by issuing further shares, it must offer such shares to the existing shareholders. This is referred to as right shares. It protects shareholders from dilution of their financial interest in the company.

Case Study

Gas Meter Co. Ltd vs Diaphragm and General Leather Co. Ltd

Year of judgement: 1925

Fact of the case: The Article of Association of Diaphragm and General Leather Co. Ltd laid down those new shares to be issued to the existing shareholders. However, the company made the new issue to all shareholders except the majority shareholders of Gas Meter Co. Ltd.

Decision of the case: It was decided that Diaphragm and General Leather Co. Ltd could not do this and should be restrained from carrying out such an operation.

Preference Shares [Section 85]

Preference shares come under the head 'share capital' but unlike ordinary equity shares, they are bond or debt instruments of one kind. Hence, they bear a pre-determined interest rate. In the case of squaring any liability, preference shareholders get priority. That is, at the time of liquidation, they get preference to get back the invested money prior to equity shares. As per Section 85 of the Companies Act, 2013, preference shares have two preferences—at the time of getting dividend they get the money prior to equity holders and at the time of liquidation they get back their money before equity holders. Preference shares give a fixed rate of dividend which is normally below 15% per annum. They give preferential rights over equity shares as regards to payment of dividends. Preference shareholders do not have the right to get dividends like equity shareholders. It depends on the Board of Directors of the company, if preference shareholders are entitled to get dividends or not in a particular year.

Preference Share Capital

Preference shares have two preferences: one to get dividends before equity shareholders, and two to get their money prior to equity shareholders. Preference shareholders constitute the preference share capital.

Voting Rights

Preference shareholders can exercise their voting rights to safeguard their own interests.

Types

Preference shares are divided into nine classes. They are as follows:

Redeemable preference shares Normally, the share capital of a company is not refunded to the shareholders as long as the company is in existence. However, an exception is usually made in the case of preference shareholders. In such cases, the preference shares are called redeemable preference shares as their share capital can be refunded or redeemed from the company after a fixed period of time.

Irredeemable preference shares The holder of this type of preference shares can get a certain percentage of the dividend every year but cannot get their invested money refunded before the company winds up or is liquidated. As per Section 65 of the Companies Act, 2013, no company limited by shares shall issue any preference shares that are irredeemable.

A company limited by shares may issue preference shares which are liable to be redeemed within a period of twenty years, if authorized by the articles. A company may also issue preference shares for more than twenty years for infrastructure projects.

Cumulative preference shares Companies which make losses are sometimes not in a position to pay any dividend to their preference shareholders. To provide for such an eventuality, companies issue what are called *cumulative preference shares*. Unpaid dividends on these shares do not lapse, but are allowed to accumulate until the company is in a position to clear all the arrears of accumulated dividends to the equity shareholders until such arrears of accumulated preference dividends have been paid.

This gives added security to preference shareholders by offering a fixed dividend rate, irrespective of the magnitude of losses to the company.

Non-cumulative preference shares If a company is not able to pay dividends to its preference shareholders in a year, the dividend of that year cannot be accumulated in the next year and hence these shares are called non-cumulative preference shares.

Participating preference shares The holders of this type of shares get an additional share of profits besides a specified rate of the dividend. Additional profits are given to preference shareholders according to the companies' laws. At the time of winding up of the company, participating preference shareholders enjoy the proportionate part of the surplus assets of the company.

Non-participating preference shares The holders of this type of shares can get dividends every year at a certain rate. However, they do not get any additional share of profits. They are neither entitled to get a proportionate share of assets at the time of winding up of the company.

Convertible preference shares After a certain period of time, preference shares that are eligible for conversion into equity shares are known as convertible preference shares and become the future shareholders of the company.

Non-convertible preference shares Shareholders of this type of shares are entitled to get interest every year at a certain pre-determined rate, but these shares are never converted into equity shares. Hence this type of shares are called *non-convertible preference shares*.

Deemed preference shares As per Section 43 of the Companies Act, 2013, a capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or both of the following rights:

1. With respect to dividend, in addition to the preferential rights
2. With respect to capital, in addition to preferential rights, further repayment on winding up

Redemption of Preference Shares [Section 55(2)]

As per Section 55(2) of the Companies Act, 2013, a redeemable preference share is a share which is redeemable in accordance with the provision of the Act.

A company limited by shares may, if so authorized by its articles, issue preference shares which are liable to be redeemed within a period not exceeding 20 years from the date of their issue subject to such conditions as may be prescribed by the section.

It is further to be noted that a company may issue preference shares for a period exceeding 20 years for infrastructure projects, subject to redemption of such a percentage of shares as may be prescribed on an annual basis on the opinion of such preferential shareholders.

Table 4.2 discusses the differences between equity shares and preference shares.

Table 4.2 Differences between equity share and preference share

Points of difference	Equity share	Preference share
Nominal value	Normally the face value of an equity share is much lower than a preference share	Normally the face value of a preference share is much higher than an equity share
Owner	Equity shareholders are the owners of the company and have voting rights in all respects, including the election of directors	Preference shareholders have voting rights only to protect their interests
Risk	As they are the owners of the concern they have to take risks for the company	Preference shareholders are not the owners of the concern and hence have to bear lesser risk
Redemption	Except in the case of buy back equity holders cannot get their money back	Redeemable of preference shares of a company at the time of liquidation can result in them getting their money back
Preference	Equity shares have no preference	Preference shares have preference in two ways at the time of getting dividends prior to equity and at the time of liquidation

PUBLIC OFFER OF SECURITIES TO BE IN DEMATERIALIZED FORM [SECTION 29]

As per Section 29(1) of the Companies Act, 2013, notwithstanding anything contained in any other provisions of this Act

(a) every company making public offer or (b) such other class or classes of public companies as may be prescribed, shall issue the securities only in dematerialized form by complying with the provisions of the Depositories Act, 1996 and regulations made there under.

As per Section 29(2) of the Companies Act, 2013, any company, other than a company as mentioned in Section 29(1), may convert its securities in physical form in accordance with the provisions of this Act or in dematerialized form in accordance with the provisions of the depositories Act, 1996 and the regulations made there under.

ALLOTMENT OF SHARE APPLICATION [SECTION 39]

A company invites application through a prospectus to the public for securities of the company. In response to the invitation, the public apply to the company for securities with the application money. When the application is accepted by the company, it is called 'allotment made'. In other words, it is said that allotment is the acceptance of the offer (made by the applicant) by the company. Allotment is considered a fresh issue of securities and the securities come into existence. In the case of a listed company, the securities are traded in the respective stock exchanges.

Issue of Share at Discount [Section 53]

As per Section 53 of the Companies Act, 2013, except as per provision of Section 54, a company shall not issue shares at a discount.

Any share issued by the company at a discount price shall be void.

Where a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than ₹1,00,000 and could extend up to ₹5,00,000.

Every officer who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than ₹1,00,000 but which may extend to ₹5,00,000, or with both.

Further Issue of Share Capital [Section 62]

Companies often require additional fund for their working capital. For their expansion and diversification plans, the company may raise these funds by sale of additional equity shares to its existing shareholders in the form of rights issues as per Section 62(1)(a), to the employees under an employees stock option scheme, as per Section 62(1)(b) or to any person authorized by a special resolution as per Section 62(1)(c) of the Companies Act, 2013.

The relevant and important SEBI guidelines issued regarding the rights issue are as follows:

1. Period of right issue shall be valid for not less than 15 days and not exceeding 30 days from the date of offer.
2. The quantum of right issue shall not exceed the amount specified in the letter of order. Retaining of over-subscription is not permissible under any circumstances.
3. The gap between the closure of rights issue and public issue must not exceed 30 days.
4. A minimum subscription clause is applicable for both rights issue and public issue.
5. A letter of offer for rights issue containing disclosures will be vested by SEBI time-to-time.

Case Study

Gas Meter Co. Ltd vs Diaphragm and General Leather Co. Ltd

Year of judgement: 1925

Fact of the case: The Articles of Association of Diaphragm and General Leather Co. Ltd laid down those new shares to be issued to the existing shareholders. However, the company had made the new issue to all shareholders except the majority shareholders of Gas Meter Co. Ltd.

Decision of the case: It was decided that Diaphragm and General Leather Co. Ltd could not do this and was restrained from this operation.

Re-issue of Shares

Forfeited shares become the property of the company. These shares may be either re-issued or disposed of as per the terms and conditions prescribed by the Board of Directors.

Employee Stock Option Scheme [Section 62]

Employee stock option scheme (ESOS) refers to the option given to directors, officers, or employees of a company or of its holding or subsidiary company, which gives such directors, officers, or employees, the benefit or right to purchase or subscribe for, the shares of a company at a future date at a predetermined price as per Section 2(37) of the Companies Act, 2013.

As per Section 62(1)(b)of the Companies Act, 2013, shares shall be offered to employees under the scheme of ESO, subject to a special resolution passed by the company and subject to such condition as may be prescribed.

ESOP is a form of compensation extended to the employees by issuing stocks, that is, equities at a discounted price in comparison to the market price. SEBI prohibits outstanding stock options in the case of an initial public offering (IPO) for employees. If ESOs are outstanding at the time of IPOs by an unlisted company, the promoters' contributions should be calculated on the basis of enlarged capital if all vested options are being exercised.

The issue of ESOPs is assured to be made on the approval of shareholders in a special resolution. If ESOPs are more than 1% of the total shares, a special approval is necessary in the AGM. The operation of ESOPs is made under the supervision and direction of a Compensation Committee formed by the Board of Directors where the majority are independent directors.

Every listed company may offer its securities to its employees through the ESOP scheme, subject to some specified conditions. These conditions are as follows:

1. The size of the issue of ESOP should not exceed 5% of the paid-up capital of the company in a particular year.
2. The promoters and part-time directors of the company are not entitled to the securities of the company, even if they are employees of the company.
3. In devising the ESOP, including the terms of payment, the company has full liberty.
4. The issue of shares under ESOP on a preferential basis can be made based on two conditions. First, the issue price should not be less than the higher of the weekly average of high and low of the closing prices of the related shares quoted on a stock exchange during the previous six months and the second, the issue price should not be less than the higher of the weekly average of high and low of the closing prices of the related shares quoted on a stock exchange during the two weeks preceding the relevant date.

Buy-back of Shares or Power of Company to Purchase its Own Securities [Section 68]

Section 68 of the Companies Act, 2013 and the respective guidelines issued by SEBI have allowed the companies to purchase their own shares with certain conditions. Subject to the provision of Section 68(2) of the Companies Act, 2013, a company may purchase its own shares or other specified securities out of free reserve, the securities premium account, or the proceeds of the issue of any shares or other specified securities. No company shall purchase its own shares or other specified securities unless the buy-back is authorized by the articles and a special resolution has been passed at a general meeting of the company authorizing the buy-back. The buy back is 25% or less of the aggregate of paid-up capital and free reserves of the company.

2 CHAPTER

Documentation for Incorporation of Company

Syllabus Mapping	Unit
Steps in Formation of a Company, Promotion Stage, Meaning of Promoter, Position of Promoter & Functions of Promoter, Incorporation Stage – Meaning, Documents, Forms of Memorandum of Association & Articles of Association and their Alteration, Distinction between Memorandum of Association and Articles of Association, Doctrines of Constructive Notice and Indoor Management, Certificate of Incorporation, Subscription Stage – Meaning & Contents of Prospectus, Types, Misstatement in Prospectus and Its Consequences	Unit 2: Formation of a Company

Learning Objectives

- Formation of company
- Promoter
- Memorandum of Association
- Articles of Association
- Doctrine of ultra vires
- Doctrines of constructive notice
- Doctrine of indoor management
- Doctrine of alter ego
- Certificate of Incorporation
- Prospectus form and content
- Provisions for mis-statement in prospectus and its consequences
- Minimum subscription
- Dematerialization of shares
- Global depository receipts
- National Company Law Tribunal
- Constitution of Appellate Tribunal

FORMATION OF COMPANY [SECTION 3]

As per Section 3 of the Companies Act, 2013, a company may be formed for any lawful purpose by

(a) seven or more persons, where the company to be formed is a public company;

(b) two or more persons, where the company to be formed is a private company; or

(c) one person, where the company to be formed is a one-person company, that is to say, a private company.

This is done by subscribing their names or his/her name to a memorandum and complying with the requirements of this Act in respect of registration.

A company formed under Section 3(1) may be

(a) a company limited by shares;

(b) a company limited by guarantee; or

(c) an unlimited company.

Steps Involved—Promotion Stage

A company comes into existence when promoters want to exploit some business opportunity. As per Section 3 of the Companies Act, 2013, in the case of a private limited company, two or more persons;

in the case of a public limited company, seven or more persons; in the case of a one-person company, one person subscribe/subscribes the names to the prospectus for the purpose of registration. The purpose for which a company is going to be incorporated must not be forbidden by law, be against the public policy, or be unlawful *ex facie*. The promoters refer to the people who convey the idea of formation for promotion, registration, and floatation of the company. If the objective of the company is found to be illegal, the registrar may refuse to register it and in the register, if the Certificate of Registration is not conclusive for the purpose, the registration may be cancelled by the Ministry of Company Affairs on behalf of the Central Government [*Bowmen* vs *Secular Society Ltd* (1917)]. The registrar has no legal obligation to enquire into the circumstances of the cancellation, although he/she can make such enquiries within the permissible limit.

The promoters should propose three suitable names in order of preference: for a private company it should end with 'Private Limited' and for a public company, the name should end with 'Limited'. The name should not be contradictory under the Emblems and Names (Prevention of Improper Use) Act, 1950, along with the guideline issued by the Department of Company Affairs.

An application should be made, in the prescribed format, along with the fees to the registrar of companies of the respective states where the office of the proposed company is to be situated. The registrar may inform the company within fourteen days from the date of submission and the accepted name shall be available for adoption within six months from the date of intimation by the registrar.

Documents to be Filed with Registrar

The application for registration of a company should be presented to the registrar of the company of the respective jurisdiction. The following documents are necessary:

1. Memorandum of Association
2. Articles of Association
3. Statement of capital
4. List of directors with their sign and consent
5. Appointment of directors, full-time directors, or managers
6. Notice of address of registered office of the company at the time of registration or within 30 days from the date of registration
7. Undertaking of qualification of shares
8. A declaration of all requirements as per the Act must be signed by the advocate of the Supreme Court or High Court or an attorney or pleader entitled to appear before the High Court or a Secretary or a Chartered Accountant who is in full-time practice.

PROMOTER

As per Section 2(69) of the Companies Act, 2013, a promoter refers to a person

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in Section 92;

(b) who has control over the affairs of the company, directly or indirectly, whether as a shareholder, director or otherwise; or

The memorandum of a company shall be in the respective forms specified in Tables A, B, C, D, and E in Schedule I as may be applicable to such a company.

At the time of giving judgement in the case of *Ashbury Railway Carriage and Iron C. Ltd* vs *Riche* (1875), Lord Cairns opined that, 'The Memorandum of Association of a company is its charter and defines the limitation of the powers of the company—it contains in it both that which is affirmative and that which is negative.'

Importance

1. There are two basic objects of the Memorandum of Association: investment in capital will be made within the specific risk and a constitutional relationship will be made in tandem with the corporate objects.
2. The Memorandum of Association is considered an important document on which the whole edifice of the company is built.
3. It is considered the constitution and foundation of company affairs.
4. It incorporates five clauses providing the basic features of a company's constitution.
5. A company can't depart from the constitution and if it does, would be considered an ultra vires and void.
6. A Memorandum of Association is a public document.
7. The decision in the case of *Comman* vs *Brougham* (1918) has two sides:
   (a) The future shareholders must know the purpose and risk of investment.
   (b) The person dealing with the company should know the permitted range of the company.

Contents

As per Section 4 of the Companies Act, 2013, the memorandum shall contain the following clauses: name, situation, objective, liability, capital, and subscription.

Name clause [Section 4(1)(a)] As per Section 4 of the Companies Act, 2013, 'Limited' must be added to the name of the company for a public limited company. In the case of a private limited company, 'Private Limited' must be added at the end of the name of the company. The examples are Tata Consultancies Services Limited and Infosys Ltd. The promoters are free to choose any name that does not fall under these categories:

1. The name is identical with or almost identical to a company that is already registered.
2. The name is identical with a company that is almost in liquidation.
3. The proposed name differs from the existing name by addition or subtraction of 'New' or 'Modern'.
4. It shall attract the Emblem and Names Act, 1950.
5. It includes a proper name which is not the name or surname of a director.

In the case of Asiatic Govt Security Life Insurance Co. Ltd vs New Asiatic Insurance Co. Ltd (1939), it was decided that the two companies' names were not too identical and that they couldn't be restrained because of their names.

Situation clause [Section 4(1)(b)] It pertains to the state in which the registered office of the company is to be situated.

Objects clause [Section 4(1)(c)] It pertains to the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.

Liability clause [Section 4(1)(d)] It explains the liability of members of the company, whether limited or unlimited, and also states the following:

1. In the case of a company limited by shares, the liability of its members is limited to the amount unpaid, if any, on shares held by them.
2. In the case of a company limited by guarantee, the amount up to which each member can take, to continue, is mentioned.
3. The assets of the company in the event of it being wound up while he/she is a member or within one year after he/she ceases to be a member; for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he/she ceases to be a member, as the case may be.
4. The costs, charges, and expenses of winding up and for adjustment of the rights of the contributions among themselves.

Capital clause [Section 4(1)(e)] It pertains to a company having share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share; and the number of shares each subscriber to the memorandum intends to take, indicated opposite his/her name. For a one-person company, the name of the person who, in the event of death of the subscriber, will become the member of the company. Each subscriber must take at least one share.

Subscription clause or association clause [Section 4(1)(f)] The memorandum of association shall indicate the name, address, description, occupation and shares taken by the subscriber. In the case of a public company, the number of subscribers must not be less than seven and in the case of a private company it must not be less than two.

It is to be noted that as per Section 4(1)(e), each subscriber of the Memorandum of Association must take at least one share and write the number of shares he/she has taken against his/her name.

Form

As per Section 4 of the Companies Act, 2013, the Memorandum of Association must be printed and divided as paragraphs and numbering along with Tables A, B, C, D, and E of Schedule I duly signed by the subscriber by obeying Rule 13 of the Companies Act (Incorporation) Rules, 2014. The following forms may be used for the purpose:

- Table A: Memorandum of Association of a company limited by shares
- Table B: Memorandum of Association of a company limited by guarantee and not having share capital
- Table C: Memorandum of Association of a company limited by guarantee and having share capital
- Table D: Memorandum of Association of an unlimited company not having share capital
- Table E: Memorandum of Association of an unlimited company having share capital

Change of Name Clause or Alteration of Name Clause

Section 4 of the Companies Act, 2013, read with Rule 8 of the Companies (Incorporation) Rules, 2014 states that a person can make an application in Form No. INC-1 by using the MCA portal (www.mca.gov.in) using a credit card for reservation of names.

The registrar, on the basis of the information collected and the documents submitted, reserves the name for a period of 60 days from the date of application.

If the company does not carry out the application process in a proper way, the reserve name shall be cancelled. The person liable for false application will be penalized with a fine of ₹1 lakh.

After incorporation, the registrar can give the company an opportunity to do the following:

1. The company may change the name within a period of 3 months.
2. Action can be taken to strike out the name.
3. Make a petition for winding up of the company.

Section 13 of the Companies Act, 2013, categorically states that for change of name, the Memorandum of Association has to be altered and an approval from the central government is also required for the purpose.

If the companies are marked as 'defaulters' as regards the filing of returns or any document related to registration, the change of name cannot be allowed as per Rule 29 of the Companies (Incorporation) Rules, 2014.

Form No INC 1 has to be filled up for reservation of names. When the reservation of names is completed, an application in Form No. INC 24 shall be filed with the Ministry of Company Affairs. If the correct procedure is followed, a new Certificate of Incorporation is issued using Form No. INC 25.

As per Section 16 of the Companies Act, 2013, the company shall change the name of the company within a period of 3 months by passing an ordinary resolution at a general meeting.

Change of Situation Clause

As per Section 13 of the Companies Act, 2013, a change of registered office from one state to another requires the approval of the members for alteration of the memorandum and also from the central government. Form No. INC 23 has to be filled for this purpose. After getting the certificate of shifting the registered office from one state to another, this is filed in the prescribed Form No. INC 29 within 30 days from the receipt of the certified copy. The registrar of the state where the registered office is shifted must issue a fresh Certificate of Incorporation mentioning the alteration.

However, in the *Orient Paper Mills* vs *The State* (1957) case, the Honourable High Court opposed the shifting on the ground of revenue loss.

Change of Object Clause

For change of object clause, a special resolution has to be passed for alteration of the Memorandum of Association.

Printing and Signing of Memorandum

As per Section 3 of the Companies Act, 2013, in the case of a private company at least two members, in the case of public company at least seven members, and in the case of a one-person company one person [illegible] the Memorandum of Association.

Both, 'artificial' and 'natural' persons may subscribe to the memorandum. The Memorandum of Association shall be properly signed by the subscribers. A company as a legal person may subscribe to the memorandum. If the company or body corporate is the subscriber, the Memorandum of Association must be signed by the authorized agent expect in the case of a minor as he/she is not a competent authority. If the subscriber to the memorandum is not able to sign, the thumb impression or a mark, attested by the person who writes it on behalf of the subscriber, is necessary.

At least one witness can act as the witness of all subscribers. The witness has to mention his/her the name, address, description, and occupation, along with the date.

As per the decision in the case of *Seal* vs *Claridges* (1881), one witness other than the subscriber can attest the Memorandum of Association. After registration, no subscriber of the Memorandum of Association can be allowed to withdraw the subscription on any ground.

ARTICLES OF ASSOCIATION

As per Section 5 of the Companies Act, 2013, 'The Articles of a company shall contain the regulation for management of the company. The articles shall also contain such matters, as may be prescribed in Rule 11 of the Companies (Incorporation) Rules, 2014.'

The company shall maintain and preserve at its registered office copies of all the documents and information, as originally filed, until its dissolution. The Articles of Association contains the regulations laid down in the Memorandum of Association.

Contents

The Articles of Association contains provisions related to the following:

1. Share capital, right of shareholders, variation of rights, and share certificate
2. Lien of shares, calls on shares, transfer of shares, forfeiture of shares
3. Conversion of shares into stock, share warrants
4. Alteration of capital
5. General meeting and its procedure
6. Voting rights, poll, and proxies
7. Directors, appointment, qualification, remuneration, and proceedings of the Board of Directors
8. Accounts, audit with borrowing power
9. Capitalization of profit
10. Winding up

Requirement

As per Section 5 of the Companies Act, 2013, the following are the requirements for Articles of Association:

1. The Articles of Association shall contain the regulations for management of the company
2. The articles shall also contain such matters as may be prescribed.

3. The articles may contain provisions for entrenchment to the effect that the specified provisions of the articles may be altered.
4. The articles of the company shall be in respective forms specified in Tables F, G, H, I, and J in Schedule I as may be applicable to the company.
5. Any additional matter required by the management.

Model Articles

As per Section 5 of the Companies Act, 2013, the articles of a company shall be in respective forms specified in Tables F, G, H, I, and J of Schedule I, as may be applicable in such companies.

- Table F: For a company limited by shares
- Table G: For a company limited by guarantee having share capital
- Table H: For a company limited by guarantee not having share capital
- Table I: For an unlimited company having share capital
- Table J: For an unlimited company not having share capital

Registration of Articles

According to Section 7 of the Companies Act, 2013, the Articles of Association duly signed by the subscribers shall be registered with the Memorandum of Association at the time of filing the application for registration. According to Section 10 of the Companies Act, 2013, both the memorandum and articles registered shall bind the company and members with all the provisions of the memorandum and of the articles.

Alteration of Memorandum of Association

As per Section 13 of the Companies Act, 2013, as provided in Section 61, a company by special resolution alters the provisions of its memorandum. Any change in the name of a company shall be made as per Sections 4(2) and 4(3) and shall not have effect without the approval of the central government in writing. Alteration of the memorandum pertaining to the place of the registered office (i.e., from one state to another) shall not be effective without the approval of the central government as per Section 13(4) of the Act. The registrar shall register any alteration of the memorandum with respect to the objectives of the company and certify the registration within thirty days from the date of filing of the special resolution as per Section 13 (9) of the Act.

Alteration of Articles

As per Section 14 of the Companies Act, 2013 and conditions contained in its memorandum, a company may, by a special resolution, alter its articles including alteration of articles under the following circumstances:

1. Change of a private company into a public company
2. Change of a public company into a private company

The alteration of articles along with approval of the tribunal shall be submitted to the Registrar of Companies within a period of fifteen days.

As per Section 15 of the Companies Act, 2013, every alteration made in the articles of the company shall be noted in every copy of the article.

Any alteration of the articles registered with the register of the company shall be considered as valid, if it was originally in the list of articles.

The alteration of Articles of Association has some limitations as discussed here:

1. The alteration of Articles of Association must have consistency with the provisions of Companies Act.
2. Alteration must not conflict with the Memorandum of Association.
3. Alteration must not attach any illegality.
4. Alteration must not deprive the minority shareholders.
5. The alteration must not increase the liability of shareholders.
6. The alteration must be made in good faith for the betterment of the company.
7. The alteration should not indicate breach of trust.
8. Alteration needs the approval of the central government for the conversion of a public company to a private company.

According to the judgement in the case *Neal* vs *City of Birmingham Tramways* (1910), a company can never replace its Articles but can only replace its provisions by altering its Articles. That alteration must be made on good faith and not create any unfair advantage in favour of the majority of the shareholders.

Enhancement Clause in Articles of Association

The Articles of Association contains provisions pertaining to enhancement where specific provisions of the articles may be altered, where more restrictive conditions in relation to the special resolution has been met. The provision is either made at the time of formation of the company or at the time of amendment of the articles. If the articles contain the provision of entrenchment, a special notice has to be served to the Registrar of Companies.

Procedure for Alteration of Articles

Board meeting A decision has to be taken during the board meeting regarding changes to the Articles of Association.

General meeting In the general meeting, the necessary special resolution has to be passed.

Online filing form MGT 14 Within 30 days from passing the resolution, Form MGT 14 has to be submitted through the Ministry of Company Affairs (MCA) portal with the requisite fees.

Inform stock exchanges Inform the respective stock exchanges where it is listed and also send the proceedings of the general meeting to the respective stock exchanges.

Make changes in articles Make necessary changes to all copies of the Articles of Association.

Relationship between Memorandum of Association and Articles of Association

The Articles cannot give powers to the company that are not conferred by the Memorandum of Association. The Memorandum of Association defines a company's objectives and powers. On the other hand, the

Articles of Association explains how these objectives are met and the power to be exercised as mentioned in the Memorandum of Association.

The Memorandum of Association is considered fundamental, whereas the Articles of Association is considered as a subsidiary. The Memorandum of Association is considered as the Charter of Incorporation and if the Articles of Association go beyond that will be considered as an ultra vires.

Lord Cairns describes the relationship between the Memorandum of Association and the Articles of Association at the time of interpreting the case of *Ashbury Railways Carriage and Iron Co. Ltd* vs *Riche* by saying, 'The articles play a part subsidiary to a memorandum of association. They accept the memorandum of association as a charter of incorporation of the company, and so accepting it, the articles proceed to define the duties, rights and powers of the governing body as between themselves and the company at large …'

Table 2.1 clearly explains the distinction between the Memorandum of Association and Articles of Association.

Table 2.1 Differences between Memorandum of Association and Articles of Association

Points of difference	Memorandum of Association	Articles of Association
Contents	The Memorandum of Association contains fundamental charters indicating the nature of the company. It also indicates the company's relationship with the outer world.	The Articles of Association indicates the rules, regulations, and by-laws of the internal management.
Scope	The Memorandum of Association lays down the scope of the company beyond which the company cannot go.	The Articles of Associations carry out the rules and regulations within the purview of the Memorandum of Associations.
Alteration	The Memorandum of Association cannot be altered except with the sanction of the National Company Law tribunal.	Articles of Association can be altered by passing a special resolution.
Ultra vires Act	Any Act which is *ultra vires* of the Memorandum of Association will be considered as *void ab initio*.	Any Act which is *ultra vires* to the Article of Association but *intra virus* to the Memorandum of Association can be ratified by the majority of shareholders.
Conflict	The Memorandum of Association is the supreme document of the company and must not contain any clause which is contradictory to the Companies Act.	The Articles of Association is considered a subsidiary of the Memorandum of Association and the Companies Act. If any conflict arises between the Articles of Association and the Memorandum of Association, the latter will prevail.

Effect of Memorandum and Articles

As per Section 10 of the Companies Act, 2013, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his/her part to observe all the

provisions of the memorandum and of the articles. All monies payable by any member to the company under the Memorandum of Articles shall be a debt due from him/her to the company.

The binding force of the Memorandum of Association and Articles of the company can be analysed in the following manner:

Binding contract The Memorandum of Association and Articles of Association of the company constitute a binding contract between the company and the members. All money payable by any member to the company under the Memorandum or Articles shall be considered as a debt due from him/her to the company.

Basic document Preparation of the Memorandum of Association is the basic document and the first step in the formation of the company.

Member inter se The Memorandum of Association and Articles of Association must not constitute any binding force between the members inter se.

Company and director The Articles of Association is certainly not a contract between the company and director, although directors are duty bound and act in accordance with the provisions of the company.

Limits of company The Memorandum of Association determines the powers and objects of the company. The Memorandum of Association and Articles of Association do not bind outsiders as there is no existing contract between the company and outsiders.

Right to Get Copies of Memorandum of Association and Articles of Association

According to Section 17 of the Companies Act, 2013, a company, on request and submission of fees, shall have to provide within seven days a copy of each of the following:

1. The memorandum
2. The articles
3. Every agreement and every resolution as per Section 117(1), if not embodied in the Memorandum or Articles

If a company defaults in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable for each default, with a penalty of ₹1000 per day for each day during which such default continues or ₹1,00,000, whichever is less.

DOCTRINE OF ULTRA VIRES

The power of the company emerges from the Companies Act, 2013, Memorandum of Association, and the purview of the laws does not go beyond this limit even if it is accepted by all members. Known as the doctrine of ultra vires, the word *ultra* means 'beyond' and the word *vires* means 'power'. The word *ultra vires* means 'beyond power'. The Ultra Vires Act will be considered as void and no legal bindings can be imposed by it.

Lord Justice Cairns described the doctrine of ultra vires in the case of *Ashbury Railway Carriage and Iron Company Ltd* vs *Riche*, (1875). The company was formed with a specific objective:

To make and sell, or lend or hire, the railway carriages and wagons and all kinds of railway plant, fittings, machinery and rolling stock and to carry on the business of mechanical engineers and general contracts.

referred to in Section 31 or any notice, circular, advertisement or other document inviting offers from the public or inviting offers from the public for the subscription or purchase of any securities of a body corporate.'

It means that any document inviting offers or deposits of public subscriptions for shares or debentures is called prospectus. It may not be considered as a mere document for advertisement but also as a notice or circular. The prospectus must be written. An oral invitation for subscription of shares will not be considered as a prospectus. Advertisements in the electronic media cannot be considered as prospectus.

A document is considered a prospectus if it satisfies the following conditions:

1. It invites subscription or deposits of shares or debentures.
2. It is only for the public.

As per Section 23 of the Companies Act, 2013, the initial public offer of a public company is done through a prospectus.

Content of Prospectus [Section 26]

As per Section 26 of the Companies Act, 2013, every prospectus shall be signed with date and the following information stated:

1. Names and addresses of the registered office of the company along with company secretary, chief financial officer, auditor, legal advisor, banker, and underwriter
2. Dates of the opening and closing of public issues, and date of issue of allotment letter and refund
3. A statement made by the Board of Directors with separate bank accounts where the money has been transferred
4. Details about the underwriters
5. Consent of the directors, auditors, and banker regarding the issue
6. Time schedule of allotment and issue of securities
7. Objective of public issue
8. Capital structure of the company
9. Minimum subscription, amount of premium, number of shares issued, etc.
10. Directors' detailed past performance and future projection of profit and loss and balance sheet
11. Report made by the auditor

Statutory Requirements of Prospectus

A public company limited by shares or guarantees must undergo the process of issue of prospectus before public issue.

The valid issue of prospectus must comply with the following requirements:

1. The prospectus may be issued after incorporation of the company within 90 days of submitting it to the Registrar of Companies.
2. A draft prospectus has to be submitted through a merchant banker and approved by the Securities and Exchange Board of India (SEBI) at least 21 days before filing the prospectus with the Registrar of the Companies.

3. A copy of every prospectus must be signed by every director and filed with the Registrar of Companies.
4. An expert's written consent must be received before incorporating the expert's statement in the prospectus prior to submission to the Registrar of Companies.
5. The terms of contract stated in the prospectus or statement in lieu of prospectus cannot be changed after registration of the prospectus without the approval of the members in the general meeting.
6. The consequences of allotting shares in the fictitious name displayed in the prospectus and in the application form issued by the company should be mentioned.
7. The share application form should be a part in the prospectus.
8. As per Section 26, every prospectus must disclose the matters contained in Parts I, II, and III of Schedule II of the Companies Act and also disclose the items as per the Guidelines for Disclosure and Investor Protection, 2000 and its subsequent amendments made by SEBI.

Additional Requirements

SEBI Guidelines, 2000 mentions additional disclosures made in the prospectus for public issue of shares:

1. For managing public issue, the appointment of a Category I merchant bank is a must.
2. The registrar of issue should be appointed.
3. A partly paid share, fully paid share, or a share forfeited in due course of time should be mentioned.
4. No public issue of shares shall be made by the company, if the issue has been prohibited by SEBI.

Statement in lieu of Prospectus

A statement in lieu of a prospectus applicable to a public company does not invite the public for raising money but does so through private sources. Companies Act, 2013, remains silent on the matter. If a statement in lieu of prospectus has not been filed with the registrar within the stipulated time, the company and every director is liable to be fined up to a sum of ₹1000.

Statement by Experts

A statement can be made by the director, promoter, or any other person including an expert who is authorized to issue the prospectus. The expert may include a professional such as engineer, valuer, chartered accountant, cost accountant, company secretary, chartered engineer, or any other person authorized to issue a certificate under the law in force.

Deemed Prospectus

As per Section 25 of the Companies Act, 2013, where a company allots or agrees to allot any securities, any document by which the order for sale of all or any of the securities is made to the public shall be deemed to be the prospectus issued by the company. All enactments and rules as to the content of the prospectus and all the liabilities of the prospectus will apply and shall be effective accordingly. It is also to be noted that documents shall be signed on behalf of the company or firm by two directors of the company or by not less than one-half of the partners of the firm, as the case may be.

Matters to be Stated in Prospectus

As per Section 26 (a) of the Companies Act, 2013, the following matters have to be stated in the prospectus:

1. Name and address of the registered office of the company, company secretary, chief financial officer, auditors, legal advisers, bankers, trustees, underwriters, and such other persons as prescribed in Rules 3, 4, 5, and 6 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.
2. Dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refund within the prescribed time
3. A statement by the Board of Directors about the separate bank account where all monies issued are to be transferred
4. Details about underwriting of the issues
5. Consent of the directors, auditors, and bankers to the issue expert's opinion
6. The authority for the issue and details of the resolution passed thereof
7. Procedure and time schedule for allotment and issue of securities
8. Capital structure of the securities in the prescribed manner
9. Main objective of the public offer, terms of the present issue, and such other particulars as may be prescribed as per Section 25 of the Companies Act 2013
10. Main objectives and present business of the company and its location, schedule of implementation of the project
11. Particulars relating to the following:
    (a) Management perception of risk factors specified to the project
    (b) Gestation of the project
    (c) Extent of progress made in the project
    (d) Deadlines for completion of the project
    (e) Any litigation or legal action pending or taken by the government department or a statutory body during the last five years
12. Minimum subscription, amount payable by way of premium, issue of shares or otherwise by cash
13. Details of directors including their appointment and remuneration
14. Disclosure of information as prescribed in Rules 3, 4, 5, and 6 of the Companies (Prospectus and Allotment of Securities) Rules, 2014

The following reports regarding financial information as per 26(b) of the Companies Act, 2013, are needed for the prospectus:

1. Reports of the auditors of the company with respect to profits and losses, and assets and liabilities
2. Reports relating to profits and losses for each of the five financial years immediately preceding the financial year of the issue of the prospectus

Shelf Prospectus [Section 31]

As per Section 31 of the Companies Act, 2013, a shelf prospectus refers to a prospectus in respect of which the securities or a class of securities are issued for subscription in one or more issues for a certain period without the issue of further prospectors.

Any company, provided SEBI approves, may file a shelf prospectus to the Registrar of Companies during the stage of the first offer of securities which shall not be one year from the date of commencement of such prospectus.

Red-herring Prospectus [Section 32]

As per Section 32 of the Companies Act, 2013, a red-herring prospectus refers to a prospectus which does not include the complete prospectus of the quantum or price of the securities included therein. A company proposing to make an offer of securities may issue a red-herring prospectus prior to the issue of the prospectus. A company proposing to issue a red-herring prospectus shall file it with the registrar at least three days prior to the subscription list and offer. A red-herring prospectus shall carry the same obligation as the prospectus and the variation that occurs will be highlighted.

Abridged Prospectus [Section 2(1)]

As per Section 2(1) of the Companies Act, 2013, an abridged prospectus refers to a memorandum containing such salient features of a prospectus as may be specified by SEBI making regulations in this regard.

As per Section 33 of the Companies Act, 2013, no application form shall be issued unless such form is accomplished by the abridged prospectus.

Registration of Prospectus

As per Section 389 of the Companies Act, 2013, a copy of the prospectus must be filed with the registrar on or before its publication. The copy of the prospectus sent for registration must be signed by every person whose name is given as director, the proposed director or agent, or an authorized person to do so. The following documents must be attached with the prospectus at the time of registration:

1. The consent of the expert as mentioned in the prospectus
2. A copy of the contract in relation with the appointment and remuneration of the managing director or manager
3. The written consent of the auditor, legal advisor, solicitor, issue house, banker, manager of the issue, broker, merchant agent
4. The consent of the director in relation with the new director
5. A copy of the underwriters' agreement

PROVISIONS FOR MIS-STATEMENT IN PROSPECTUS AND ITS CONSEQUENCES

Civil Liability

As per Section 35 of the Companies Act, 2013, where a person has subscribed for securities of a company acting on any statement, the inclusion or omission of any matter in the prospectus which is

As per SEBI (Depository and Participant) Regulation, 1996, the depository will provide the following benefits:

1. Shares cannot be lost, stolen, or destroyed.
2. Shares cannot be forged or faked.
3. Share transfer or transmutation can be made with immediate effect.
4. Share transaction cost is minimum and much lower than physical transaction.
5. There is zero risk of bad delivery.
6. The bonus share or right share will be credited immediately.
7. Investors will get regular statements from the DP.

Initial offering of any security for a sum of ₹10 crore or more shall be issued by any listed company in a dematerialized form.

GLOBAL DEPOSITORY RECEIPT (GDR)

Global Depository Receipt

As per Section 2(44) of the Companies Act, 2013, a global depository receipt (GDR) refers to any instrument in the form of a depository receipt, by whatever name called, created by a foreign depository outside India and authorized by a company making an issue of such depository receipts.

Issue of Global Depository Receipts

As per Section 41 of the Companies Act, 2013, a company may issue depository receipts in any foreign company in such a manner and subject to such conditions as may be prescribed after passing a special resolution during the general meeting of the shareholders.

A holder of a GDR can convert it into shares and until conversion, a GDR does not carry any voting right. Once the conversion takes place, the underlying shares are listed and traded on the domestic stock exchange.

Illustration

Indian GDRs are mostly sold to the institutional investor and have a standing demand in UK, USA, Hong Kong, Singapore, France, and Switzerland. Indian companies go for GDR issues listed in the Luxembourg Stock Exchange and London Stock Exchange. By following Rule 144A of the Securities and Exchange Commission (SEC) of the USA, outside players are qualified to issue GDR to the institutional buyers.

NATIONAL COMPANY LAW TRIBUNAL [SECTION 408]

As per Section 2(90) of the Companies Act, 2013, a 'tribunal' refers to the National Company Law Tribunal constituted under Section 208.

As per Section 408 of the Companies Act, 2013, the central government by notification shall constitute a tribunal to be known as the National Company Law Tribunal consisting of a president and judicial members as deemed fit by the central government.

Qualification of President and Members of Tribunal [Section 409]

1. As per Section 409(1), the president shall be a person who is or has been a judge of a High Court for five years.
2. A person shall not be qualified for appointment as a judicial member unless he/she
   (a) Has been a judge of a High Court;
   (b) Has been a district judge for at least five years; or
   (c) For at least ten years has been an advocate of the court.

CONSTITUTION OF APPELLATE TRIBUNAL [SECTION 410]

The central government shall by notification constitute an appellate tribunal to be known as the National Company Law Appellate Tribunal consisting of a chairperson and not exceeding eleven judicial and technical members, as the central government may deem fit to be appointed by notification for hearing appeals against the orders of the tribunal.

Qualification of Chairperson and Members of Appellate Tribunal [Section 411]

1. A chairperson shall be a person who is a judge of the Supreme Court or the Chief Justice of a High Court
2. A judicial member shall be a person who belongs to a High Court or a judicial member of the tribunal for five years
3. A technical member shall be a person of proven ability, integrity, and having knowledge and experience not less than twenty five years in law, industrial finance, industrial management, or administration.

Terms of President, Chairperson, and Other Members [Section 413]

1. The president, chairperson, and other members shall hold office for five years but shall be eligible for re-appointment for another term of five years.
2. A member of the following age can hold office: in the case of president, the age is sixty seven years; and in the case of other members, the age is sixty five years.

Salary, Allowances, and Other Terms and Conditions of Service of Members [Section 414]

The salary, allowances, and other terms and conditions of service of the members of the tribunal and appellate tribunal shall be as prescribed by the National Company Law Appellate Tribunal (salaries, allowances, and other terms and conditions of service of the chairperson and other members) Rules, 2014 and National Company Law Tribunal (Salaries, Allowances, and Other Terms and Conditions of Service of the President and Other Members) Rules, 2013.

KEYWORDS

Abridged prospectus
Alteration of Articles
Alteration of memorandum
Articles of Association
Company management
Dematerialization of shares

Company Law and Company Meetings

CHAPTER 5

Syllabus Mapping	Unit
Corporate Meetings – Shareholder and Board, Types of Meetings – Annual General Meeting, Extraordinary General Meeting, Minutes of Proceedings of General Meeting, Meeting of BOD and Other Meetings (Section 118), Requisite of Valid Meeting – Notice, Agenda, Chairman, Quorum, Proxy, Resolutions, Minutes, Postal Ballot, E-voting, Video Conferencing, Board Meetings and Resolutions	Unit 5: Corporate Meetings

Learning Objectives

- Corporate meetings
- Types of meetings
- Notice of meeting [Section 101]
- Statement to be annexed to notice [Section 102(1)]
- Notice of meeting through electronic mode
- Agenda
- Chairman
- Rules of quorum for meetings [Section 103]
- Proxy [Section 105]
- Resolution [Section 114]
- Minutes of meeting [Section 118]
- Motion
- Amendment
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- Poll [Section 109]
- Voting at board meeting
- Report on AGM [Section 121]
- Applicability of chapter to one-person company [Section 122]
- Committee meeting

CORPORATE MEETINGS

The management of a company is carried on and controlled through meetings. The shareholders of the company get an opportunity to elect the management and sit in judgement over the working of the company during the meetings. The Board of Directors can also act as a team, provided the members meet in a proper manner and pass a resolution embodying their decisions. Meeting and resolutions taken at the meeting are the most important components in the management of a company.

Meeting

When a group of persons work together, they coordinate their activities through meetings. A meeting is a formal/informal gathering of people for a common purpose. In a company, the shareholders and the Board of Directors are the group executives who manage the affairs of a company.

A 'meeting' may be defined as the gathering, assembling, or getting together of two or more persons for transacting business and for the smooth functioning of the company.

The effectiveness of the management of a company depends on the successful holding of a meeting. The success of a meeting depends on the way the meeting has been convened, the free exchange of views, and arguments and counter arguments to reach a conclusion.

The meeting must be called and held as per the provisions of the Companies Act and the clauses mentioned in the articles. Any irregularities in the convention and conduct of the meeting can invalidate the proceedings of the meeting.

Requisites for Valid Meetings

The following points must be observed:

1. The meeting must be properly convened.
2. Authorized people must be informed about the meeting.
3. A proper notice has to be served to the people entitled to attend the meeting.
4. The chairman must conduct the meeting.
5. The provisions of the Companies Act, 2013 and the Articles of the Company have to be followed.
6. The quorum must be maintained.
7. The business of the meeting is to authenticate valid transactions.
8. The members have the right to exercise their franchise by show of hands, through electronic means, or by means of a poll.
9. The minutes of the meeting must be written and maintained properly.
10. The minutes of the meeting must be signed by the Chairman.

Extraordinary General Meetings

An extraordinary general meeting (EGM) can be convened under the following cases:

1. By the Board of Directors
2. On the requisition of members
3. After a requisition meeting
4. During a meeting convened by the tribunal

TYPES OF MEETINGS

We shall discuss different types of meetings in this section.

1. Meeting of shareholders
2. Meeting of the Board of Directors and its committees
3. Meeting of the creditors and debenture holders

Shareholders' Meeting

A meeting of the shareholders of a company must be held at least annually, to elect members to the Board of Directors and to hear reports on the business' financial situation as well as new policy initiatives from the company's management. This is normally the annual general meeting (AGM). It is an important event for both shareholders and the company. During the meeting, shareholders are allowed to express their views, ask questions, and vote on resolutions on the agenda.

Shareholders have the option of participating in person or casting votes. In big companies, many shareholders vote via proxy or the electronic voting system.

There are four primary types of shareholder meetings in India:

1. Annual general meetings (AGMs)
2. Extraordinary general meetings
3. Class meetings
4. Court-convened meetings (CCMs)

All the aforementioned meetings differ in their periodicity and type of business agenda. Except for the AGM, which must be held every year, meetings are held to seek shareholder approval on specific resolutions, ranging from electing a small shareholder director to altering the Memorandum of Association and from issuing bonus shares to increasing borrowing limits.

Annual General Meeting (AGMs) [Section 96]

As the name signifies, AGM is an annual meeting of the shareholders. The purpose of the AGM is for participants to convey their views and opinions to the management.

Section 96 of the Indian Companies Act, 2013 lists the following rules for conducting an AGM:

One-person company exempted from holding AGM [Section 96(1)] Every company other than a one-person company shall, in each year, hold in addition to any other meetings, a general meeting as its AGM.

Notice of AGM [Section 96(1)] The notice of the meeting shall specify the AGM.

Time gap between two AGMs [Section 96(1)] Not more than 15 months should have elapsed between the date of one AGM of a company and that of the next.

Time limit for holding first AGM [Section 96(1)] The first AGM should be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months from the date of closing of the financial year.

Not to hold meeting in year of incorporation [Section 96(1)] If a company holds its first AGM meeting as aforesaid, it shall not be necessary for the company to hold any AGM in the year of its incorporation.

Discretion of registrar [Section 96(2)] The registrar may, for any special reason, extend the time within which any AGM, other than the first one, is held, by a period not exceeding three months.

Business hours of AGM [Section 96(2)] Every AGM shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a national holiday and shall be held either at the registered office of the company or at some other place within the city, town, or village in which the registered office of the company is situated.

Central government power for exemption [Section 96(2)] The central government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose.

Direction of tribunal [Section 97(1)] On the basis of the application of any member of the company, the tribunal may call or direct the calling of an AGM of the company and give such ancillary or consequential directions as the tribunal thinks expedient.

Deemed AGM [Section 97(2)] A general meeting held in pursuance of Section 97(1) shall, subject to any directions of the tribunal, be deemed to be an AGM of the company under the Act.

Power of tribunal to call AGM [Section 98] In addition, Sections 96, 97, and 98 provide the tribunal with the power to call an AGM (97), meetings of members, etc., (98), and punishment for default (99) in compliance with the provisions of Sections 96 to 98.

Punishment for default in complying with provisions of Sections 96 and 97 [Section 99] If any default is made in holding a meeting of the company in accordance with Sections 96, 97, or 98, or in complying with any directions of the tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to ₹1,00,000 and in the case of a continuing default, with a further fine which may extend to ₹5000 for every day during which such default continues.

AGM at short notice [Section 101] Clause 28 of Section 101 of the Companies (Amendment) Act, 2016 states that a general meeting may be held at short notice if, in the case of an AGM, consent is given by not less than 95% of the members entitled to vote and in case of other general meetings, consent is given by members holding not less than 95% of the paid-up share capital.

Mandatory transacted items [Section 110] Clause 29 of Section 110 of the Companies (Amendment) Act, 2016 says that a company may transact an item, which is mandatorily required to be transacted through postal ballot, at a general meeting also, where the facility of electronic voting is provided by the company.

Report of AGM [Section 121(1)] Every listed public company shall prepare in the prescribed manner a report on each AGM, including the confirmation to the effect that the meeting was convened, held, or conducted as per the provisions of this Act and the Rules thereunder.

Filing of report with registrar [Section 121(2)] The company shall file with the registrar a copy of the report referred to in Section 121(1) within 30 days of the conclusion of the AGM with such fees as may be prescribed, or with such additional fees as may be prescribed, within the time specified under Section 403.

Penalty for default in filing report [Section 121(3)] A company that fails to file the report before the expiry of the additional period of 270 days with additional fee as specified in Section 403 shall be punishable with fine which shall not be less than ₹1,00,000 and which may extend to ₹5,00,000, every officer of the company who is in default shall be punishable with fine which shall not be less than ₹25,000 and which may extend to ₹1,00,000.

Note: A national holiday refers to a day declared as a 'National Holiday' by the central government.

Section 96 of the Companies (Amendment) Act, 2016 enables unlisted companies to convene an AGM at any place in India, provided the approval of all shareholders has been obtained in advance.

As per Section 96 of the of the Companies (Amendment) Act, 2016, it has been proposed that the AGM of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

Case Study

Sharp vs Dawes

Year of judgement: 1876

Fact of the case: A general meeting was called for call money but only one shareholder attended the meeting. The shareholder was unable to pay the call money but he argued that the one-member meeting was not valid.

Decision of the case: A one-member meeting could not to be considered as valid and the defence of Dawes was justified.

Objective As per Section 96(1), every company other than a one-person company shall in each year hold, in addition to any other meeting, a general meeting as its AGM.

Notice As per Section 101(2), every notice of a meeting shall specify the place, date, day, and the hour of the meeting and shall contain a statement of business to be transacted.

Section 96(2) also states that the AGM shall be called during business hours, that is, between 9 a.m. and 6 p.m.

As per Section 101(3), the notice of every general meeting of the company shall be given to every member of the company, legal representative of any deceased member, the assignee of an insolvent member or the auditors of the company, and every director of the company.

Default As per Section 99 of the Companies Act, 2013 if any default is made in holding a meeting of the company under Section 96, the company and every officer of the company who defaults shall be punishable with a fine upto ₹1,00,000 and in case of continuing default, with a further fine upto ₹5000 for every day during which such default continues.

Case Study

Meenakshi Mills Company Ltd vs Assistant Registrar of Joint Stock Companies Madurai

Year of judgement: 1938

Fact of the case: The AGM of the company was originally called in December 1934 but adjourned and held in March 1935. The next AGM was held in 1936 and no other meeting was held in 1935. The company was prosecuted for not holding any meeting in 1935.

Decision of the case: It was decided that the meeting held in 1935 was the adjourned meeting of 1934. No other meeting was held in 1935 and this violated the provision of holding meetings.

Special or ordinary business of AGM [Section 114] As per Section 114(1) of the Companies Act, 2013, a resolution shall be an ordinary resolution if the notice required under the Act has been duly given and it is required to be passed by the votes cast, whether by a show of hands, electronically, or through a poll, as the case may be, in favour of the resolution, including the casting vote, if any, of the

Chairman by members who are entitled to vote in person or where proxies are allowed or by postal ballot, exceeds the votes, if any, cast against the resolution by members so entitled to vote.

As per Section 114(2) of the Companies Act, 2013, a resolution shall be a special resolution when

1. the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
2. the notice required under the Act has been duly given; and
3. the votes cast in favour of the resolution, whether by a show of hands, electronically, or through a poll, as the case may be, by members who, being entitled so to do, vote in person, by proxy, or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled to vote.

Power of tribunal to call AGM [Section 97]

Direction of tribunal [Section 97(1)] On the basis of the application of any member of the company, the tribunal may call or direct the calling of an AGM and give such ancillary or consequential directions as the tribunal thinks expedient.

Deemed AGM [Section 97(2)] A general meeting held in pursuance of Section 97(1) shall, subject to any directions of the tribunal, be deemed to be an AGM of the company under the Act.

Power of tribunal to call meeting of members [Section 98]

Decision of tribunal [Section 98(1)] As per Section 98(1) if, for any reason, it is impractical to call a meeting of a company other than an AGM in any manner in which meetings of the company may be called or to hold or conduct the meeting of the company in the manner prescribed by this Act or the Articles of the Company, the tribunal may either suo moto or on the application of the director or member of the company who would be entitled to vote at the meeting

1. order a meeting of the company to be called, held, and conducted in such a manner as the tribunal thinks fit; and
2. give such ancillary or consequential directors as the tribunal thinks expedient, including directors modifying or supplementing in relation to the calling, holding, and conducting of the meeting, the operation of the provisions of this Act or articles of the company.

Direction to constitute meeting [Section 98(1)] It is to be noted that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

Deemed meeting [Section 98(2)] As per Section 98(2) of the Companies Act, 2013, any meeting called, held, and conducted in accordance with any order made under Section 98(1) shall, for all purposes, be deemed to be a meeting of the company duly called, held, or conducted.

Report on AGM [Section 121]

Report of AGM [Section 121(1)] Every listed public company shall prepare in the prescribed manner a report on each AGM, including confirmation to the effect that the meeting was convened, held, or conducted as per the provisions of this Act and the Rules thereunder.

Filing of report with registrar [Section 121(2)] The company shall file with the registrar a copy of the report referred to in Section 121(1) within 30 days of the conclusion of the AGM with such fees as may be prescribed, or with such additional fees as may be prescribed, within the time specified under Section 403.

Extraordinary General Meeting (EGMs)

Statutory meetings and AGMs of a company are known as ordinary meetings. All general meetings other than these are called EGMs. EGMs deal with extraordinary matters which cannot be postponed until the next AGM. This type of meeting of a company is generally held between two consecutive AGMs for considering urgent or special issues.

Calling of EGM [Section 100]

Calling of EGM by Board [Section 100(1)] The Board may, whenever it deems fit, call an EGM of the company.

Calling of EGM on the basis of requisition of members [Section 100(2)] The Board shall, at the requisition made by (a) in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting; (b) in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote, call an EGM of the company within the period specified in sub-section (4).

Requisition made under Section 100(3) The requisition made under sub-section (2) shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the people making a requisition and sent to the registered office of the company.

Time limit to call requisition meetings [Section 100(4)] If the Board does not, within 21 days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than 45 days from the date of receipt of such requisition, the meeting may be called and held by the people requesting it themselves within a period of three months from the date of the requisition.

Manner of calling and holding meetings [Section 100(5)] A meeting under sub-section (4) by the those requesting it shall be called and held in the same manner in which the meeting is called and held by the Board.

Expenses incurred for calling meetings [Section 100(6)] Any reasonable expenses incurred in calling a meeting under sub-section (4) shall be reimbursed to those requesting the meeting by the company and the sums so paid shall be deducted from any fee or other remuneration under Section 197 payable to directors who were in default in calling the meeting.

Holding of EGM by wholly owned subsidiary company [Section 100] Section 100 of the Companies (Amendment) Act, 2016 allows the wholly owned subsidiary of companies incorporated outside India to hold its EGM outside India.

Calling of EGM [Section 100] It was proposed that the EGM of a wholly owned subsidiary of a company incorporated outside India can be held outside India. A company other than a wholly owned subsidiary of a company incorporated outside India must hold the EGM at a place within India.

Calling of EGM by subsidiary company [Section 100] It was proposed that the EGM of a wholly owned subsidiary of a company incorporated outside India can be held outside India. A company other than a wholly owned subsidiary of a company incorporated outside India must hold its EGM at a place within India.

Case Study

V.G. Balasundaram vs New Theatres Carnatic Talkies (P) Ltd

Year of judgement: 1993

Fact of the case: Calling of an EGM

Judgement of the case: An EGM may be called on the requisition of holders of at least one-tenth of the paid-up share capital of the company. The Board may call a meeting, if there is a valid requisition. It is the duty of the party to place the requisition before the meeting.

Minutes of proceedings of EGM

1. The minutes of the meeting should be properly maintained by the Board.
2. A signed resolution should be sent to the registered office.

Class Meetings [Section 48]

Class meetings are generally held for getting the consent of a particular class of shareholders for changing their rights and obligations or for conversion from one class to another. The article stated that the rights of different classes of shares vary by resolution specified in different meetings. The meeting can waive this requirement if it thinks so. If the class is represented by a single shareholder, that person alone may do.

As per Section 48, where share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied in the following ways:

1. With the consent in writing of the holders (not less than three-fourths of the issued shares of that class)
2. By means of a special resolution passed at a separate meeting of the holders of the issued shares of that class

Provided

1. If provision with respect to such variation is contained in the Memorandum or Articles of Association of the company, or
2. In absence of any such provision in the Memorandum or the Articles of Association of the company, if such variation is not prohibited by the terms of issue of the shares of that class.

Where variation by one class of shareholders affects the rights of any other class of shareholders [Section 48(1)] In such a case, the content of three-fourths of such a class of shareholders shall be obtained.

Rights of dissentient shareholders [Section 48(1)] Where the holders of not less than 10% of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the tribunal to have the variation cancelled. Where any such application is made, the variation shall not have effect unless and until it is confirmed by the tribunal.

Application to tribunal to be made within 21 days [Section 48(2)] Such application shall be made within 21 days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by one or more of their members as they may appoint in writing for the purpose.

Decision of tribunal [Section 48(3)] The decision of the tribunal on any application under Section 48(3) shall be binding on the shareholders.

Filling copy of tribunal's order with registrar of companies [Section 48(4)] The company shall, within 30 days of the date of the order of the tribunal, file a copy thereof with the Registrar of Companies.

Penalty for default for complying with provision [Section 48(5)] The company shall be punishable with fine which shall not be less than ₹25,000 but which may extend to ₹5,00,000 and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than ₹25,000 but which may extend to ₹5,00,000.

Meeting of debenture holders and creditors [Section 113]

Representative of body corporate [Section 113(1)] As per Section 113(1)(a) of the Companies Act, 2013, a body corporate, a member of a company within the meaning of this Act, by resolution of the Board of Directors or other governing body, authorizes such persons as it thinks fit to act as its representative at any meeting of the company, or at any meeting of any class of members of the company.

Creditor or debenture holder as representative of board [Section 113(1)(b)] As per Section 113(1)(a) of the Companies Act, 2013, if it is a creditor, including holder of debentures, of a company within the meaning of this Act, by resolution of its directress or other governing body, authorizes such persons as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

Creditor or debenture holder as representative of body corporate [Section 113(2)] As per Section 113(2)(1) of the Companies Act, 2013 a person authorized by resolution shall be entitled to exercise the same rights and powers, including the right to vote by proxy and by postal ballot, on behalf of the body corporate which he represents as that body could exercise if it were an additional member, creditor, or holder of the debentures of the company.

Court-convened Meeting

In case of amalgamation or acquisition of companies, courts are empowered to convene the meeting of the members for such approval. The court fixes up the date, time, and venue of the meeting and also appoints the Chairman to conduct the meeting. The Chairman submits the resolution of the meeting before the court. One member present also signifies the quorum.

Board Meetings

A company is a body corporate and it possesses a distinct entity. Company management is a democratic form of management and is independent of shareholders. The shareholders as owners cannot take part in the day-to-day activities of the company. The affairs of the company are looked after and managed by a representative body of the owners. The body is known as the Board of Directors. The directors have to frequently meet on policy matters and review the progress of work in the company from time-to-time. These meetings are known as board meetings. Committee meeting, which is a type of board meeting, is discussed later in the chapter.

Provisions Related to Board Meetings

Board meetings are generally guided by the Articles of Association and the Companies Act but in no circumstances should the articles contradict those of the Companies Act.

Meeting of Board of Directors [Section 118]

Section 118 of the Companies Act, 2013 imposes a statutory obligation on every company to record all the proceedings of every general meeting of the Board of Directors or every committee of the Board.

A notice to conduct the board meeting can be sent under the following circumstances:

1. The notice of the board meeting shall be given in writing at the usual address of the directors, both Indian and foreign.
2. The notice may be sent either by post or through a messenger.
3. If a meeting is to be held on a fixed date of a week or month, the serving of notice is not required.

Quorum for Board Meetings

As per Companies Act, the quorum for the board meeting shall be one-third of the total directors or two directors, whichever is higher. This should be mentioned in the Articles or may be decided at the board meeting. However, a quorum refers to a 'disinterested quorum'. This means that at the time of counting the quorum, the directors whose interests are being discussed are not to be included for determining the quorum. If after excluding the interested directors the quorum falls, the meeting can be carried out provided at least two non-interested directors are present at the meeting.

Conduct of Board Meetings

In a board meeting, the usual method of voting is a show of hands. Directors have to elect the Chairman at the first meeting. All resolutions in the board meeting may be passed by simple majority. A resolution passed by not holding a meeting is called 'resolution by circulation'.

Rules for Board Meetings [Section 173]

Holding of first meeting of Board of Directors [Section 173(1)] Every company shall hold the first meeting of the Board of Directors within 30 days of the date of its incorporation.

Minimum number of meetings and time gap between two board meetings [Section 173(1)] Holding a minimum number of four meetings of its Board of Directors every year in such a manner that not more than 120 days shall intervene between two consecutive meetings of the Board.

Direction of central government [Section 173(1)] The central government may, by notification, direct that the provisions of this sub-section shall not apply in relation to any class or description of companies or shall apply subject to such exceptions, modifications, or conditions as may be specified in the notification.

Matters not to be dealt with during videoconferencing As per Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014, the following matters shall not be dealt with in a meeting through videoconferencing or other audio-visual means:

1. Approval of the annual financial statements
2. Approval of the Board's report
3. Approval of the prospectus
4. Audit committee meeting for consideration of accounts
5. Approval of the matter relating to amalgamation, merger, demerger, acquisition, and takeover

NOTICE OF MEETING [SECTION 101]

Length of notice [Section 101(1)] A general meeting of a company may be called by giving not less than a clear 21 days' notice either in writing or through electronic mode in such manner as may be prescribed.

Provision of calling meeting at short notice [Section 101(1)] Section 101 of the Companies (Amendment) Act, 2016 states that a general meeting may be held at short notice if in case of an AGM, consent is given by not less than 95% of the members entitled to vote and in case of other general meetings consent is given by members holding not less than 95% of the paid-up share capital.

Mandatory contents of notice [Section 101(2)] Every notice of a meeting shall specify the place, date, day, and the hour of the meeting and shall contain a statement of the business to be transacted at such meeting.

Notice to be served to persons [Section 101(3)] The notice of every meeting of the company shall be given to (a) every member of the company, legal representative of any deceased member or the assignee of an insolvent member; (b) the auditor or auditors of the company; and (c) every director of the company.

Consequences of accidental omission of notice [Section 102(2)] Any accidental omission to give notice to, or the non-receipt of such notice by, any member or other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meeting.

Case Study

N.V.R. Nagappa Chettiar vs Madras Race Club

Year of judgement: 1949

Fact of the case: Clarification of not less than 21 days' clear notice

Decision of the case: Not less than 21 days' notice means 21 clear days excluding service days and the day of holding the meeting.

Case Study

Calcutta Chemical Co. Ltd vs Dhiresh Chandra Roy

Year of judgement: 1985

Fact of the case: Whether 21 days' notice was mandatory or not

Decision of the case: Accidental omission to give a notice of not less than 21 days does not invalidate the meeting. Short notices do not invalidate the meeting in all situations.

STATEMENT TO BE ANNEXED TO NOTICE [SECTION 102]

Explanatory statement annexed in meeting [Section 102(1)] A statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely

1. the nature of concern or interest, financial or otherwise, if any, in respect of each items of—
   (a) every director and the manager, if any;
   (b) every other key managerial personnel; and
   (c) relatives of the persons mentioned in sub-clauses (a) and (b)
2. any other information and facts that may enable members to understand the meaning, scope, and implications of the items of business and to take decisions thereon.

Special business relating or affecting any other company [Section 102(2)] For the purposes of sub-section (1),

1. in the case of an AGM, all businesses to be transacted thereat shall be deemed special, other than (a) the consideration of financial statements and the reports of the Board of Directors and auditors; (b) the declaration of any dividend; (c) the appointment of directors in place of those retiring; (d) the appointment of, and the fixing of the remuneration of, the auditors; and
2. in the case of any other meeting, all business shall be deemed to be special, provided that where any item of special business to be transacted at a meeting of the company relates to or affects any other company, the extent of shareholding interest in the other company of every promoter, director, manager, if any, and of every other key managerial personnel of the first mentioned company shall, if the extent of such shareholding is not less than 2% of the paid-up share capital of that company, also be set out in the statement.

Inspection of document [Section 102(3)] Where any item of business refers to any document, which is to be considered at the meeting, the time and place where such document can be inspected shall be specified in the statement under subsection (1).

Non-disclosure or insufficient disclosure in any statement [Section 102(4)] A statement where as a result of the non-disclosure or insufficient disclosure in any statement referred to in sub-section (1), being made by a promoter, director, manager, if any, or other key managerial personnel, any benefit which accrues to such promoter, director, manager or other key managerial personnel or their relatives,

Election of Chairman by show of hands [Section 104(2)] The Chairman elected by a show of hands shall continue to be the Chairman of the meeting until some other person is elected Chairman as a result of the poll.

Person elected by poll to be Chairman of meeting [Section 104(12)] The person elected as Chairman during a poll shall be the Chairman for the rest of the meeting.

Case Study

Nell vs Longbottom

Year of judgment: 1894

Fact of the case: Chairman's right regarding casting votes

Judgment of the case: The Chairman's right to cast a vote is not automatic; it has to be stated in the Articles. This has been introduced to avoid deadlock (and not as a common law). Therefore, the Chairman's right to cast his/her vote is not automatic; it has to be mentioned in the Articles.

RULES OF QUORUM FOR MEETINGS [SECTION 103]

The quorum for meetings may be defined as the minimum number of members to be present during the meetings, as required by law.

As per Section 103, a quorum may be defined as the minimum number of members to be present at a meeting in order to transact business with validity.

As per Section 103, the Articles do not provide a large number, in the case of a public company.

Quorum for General Meetings [Section 103(1)]

The following rules should be followed:

1. Five members to be present if the number of members on the date of the meeting is not more than 1000
2. 15 members to be personally present if the number of members on the date of the meeting is more than 1000 but less than 5000
3. 30 members to be personally present if the number of members on the date of the meeting exceeds 5000
4. In case of a private company, two members can be considered quorum for the meeting.
5. In absence of quorum [Section 103(2)]—If the quorum is not formed, the Chairman and members will wait half an hour beyond the scheduled time. However, in the case of a requisite meeting if the quorum is not formed within an hour of the meeting, it shall stand cancelled.
6. Notice of adjourned meeting for changing day, time, or place [Section 103(2)]—Provided that in case of an adjourned meeting or of a change of day, time, or place of meeting under clause (a), the company shall give not less than three days' notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in the vernacular language) which is in circulation at the place where the registered office of the company is situated.

7. Quorum not found in adjourned meeting [Section 103(3)]—If at the adjourned meeting also, a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall be the quorum.

Case Study

Sharp vs Dawes

Year of judgement: 1877

Fact of the case: Whether one member constituted the quorum for a meeting

Judgement of the case: Meeting *prima facie* means the coming together of more than one person. One shareholder cannot constitute a meeting.

However, in the case of a one-person company, this judgement is not applicable.

Quorum for Board Meetings [Section 174]

As per Section 174, a quorum may be defined as the minimum number of members to be present at a meeting in order to transact business with validity.

If the articles do not necessitate any large number, in the case of a public company, the presence of five members would suffice, and in the case of a private company two members would be considered the quorum.

If the quorum is not formed, the Chairman and members will wait half an hour more than that of the schedule time. However, in the case of a requisite meeting, if the quorum is not formed within an hour of the meeting, it shall stand cancelled.

Rules for Quorum of Board Meetings [Section 174]

Quorum for board meeting [Section 174(1)] The quorum for a meeting of the Board of Directors of a company is one-third of its total strength or two directors, whichever is higher, and the participation of the directors by video-conferencing or by other audio–visual means shall also be counted for the purposes of quorum under this sub-section.

Where the number of directors reduce due to vacancy [Section 174(2)] The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company and for no other purpose.

Quorum in case of interested directors exceeding or equal to two-thirds of the total strength of the board [Section 174(3)] Where at any time the number of interested directors exceeds or is equal to two-thirds of the total strength of the Board of Directors, the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time.

Note: For the purposes of this sub-section, interested director means a director within the meaning of Sub-section (2) of Section 184.

Adjournment of meeting for lack of quorum [Section 174(4)] Where a meeting of the Board could not be held for want of quorum, then, unless the articles of the company otherwise provide, the meeting shall automatically stand adjourned to the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place.

Note: For the purposes of this section,

(i) any fraction of a number shall be rounded off as one;

(ii) total strength shall not include directors whose places are vacant.

PROXY [SECTION 105]

A member entitled to attend and vote during a meeting shall have the right to appoint a person as a proxy to attend and vote in his/her absence but he/she does not possess any right to speak out during the meeting or possess any voting right (except for the current poll). The connotation of the word proxy signifies two things: the agent and the instrument appointing him. Every member shall be entitled to appoint another person as proxy to attain and vote in his/her place but he/she cannot become a member of the company.

The instrument appointing the proxy must be deposited with the company 48 hours before the meeting. Any other provision made in the article should be mentioned early [Section 105(3)].

Every officer who does not comply with the provision of the proxy shall be punishable with a maximum fine of ₹5000 [Section 105 (3)].

As per the decision in the case of *Kothari Industrial Corporation Ltd* vs *Maxwell Dyes and Chemicals*, old proxies can be used to adjourn the meeting and this will be considered valid.

Rules Relating to Proxies [Section 105]

Any member entitled to attend and vote at a meeting shall be entitled to appoint any person as proxy to attend and vote on his/her behalf. A proxy so appointed shall not have any right to speak during the meeting and shall not be entitled to vote except for the particular poll.

Appointment of proxy [Section 105(1)] Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.

Right of proxy [Section 105(1)] A proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll.

Company not having share capital [Section 105(1)] Unless the articles of a company otherwise provide, this subsection shall not apply in the case of a company not having a share capital.

Central government-prescribed class or classes of companies not appointed as proxy [Section 105(1)] The central government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy.

Limit of person to act as proxy [Section 105(1)] A person appointed as proxy shall act on behalf of such member or number of members not exceeding fifty and such number of shares as may be prescribed.

Notice of meeting to contain statement relating to proxy [Section 105(2)] In every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy

at the meeting, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member.

Penalty for default [Section 105(3)] If default is made in complying with sub-section (2), every officer of the company who is in default shall be punishable with fine which may extend to ₹5000.

Longer period of proxy [Section 105(4)] Any provision contained in the articles of a company which specifies or requires a period longer than forty-eight hours before a meeting of the company, for depositing with the company or any other person any instrument appointing a proxy or any other document necessary to show the validity or otherwise relating to the appointment of a proxy in order that the appointment may be effective at such meeting, shall have effect as if a period of 48 hours had been specified in or required by such provision for such deposit.

Invitation to members prohibited [Section 105(5)] If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to ₹1,00,000, provided that an officer shall not be punishable under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

Instrument appointing proxy [Section 105] The instrument appointing a proxy shall (a) be in writing; and (b) be signed by the appointer or his attorney duly authorized in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorized by it.

Instrument of proxy fails [Section 105(7)] An instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company.

Inspection of proxy [Section 105(8)] Every member entitled to vote at a meeting of the company, or on any resolution to be moved therein, shall be entitled during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than 3 days' notice in writing of the intention to inspect is given to the company.

Case Study

Tata Iron vs Steel Co. Ltd

Year of judgment: 1928

Fact of the case: A proxy can cast vote in the presence of the member. The member may cast a vote in a particular motion and the proxy may cast his/her vote in the substantive motion.

Judgment of the case: The proxy is an agent of the m ember who appoints him. The authority of the agent may continue until or unless it is revoked.

RESOLUTION [SECTION 114]

A resolution is a proposal which is voted at the meeting and approved by the members with a majority vote. Resolution may be of three types: ordinary resolution, special resolution, and resolution with special notice.

As per Section 114 of the Companies Act, 2013, resolutions are of two types, namely ordinary resolution and special resolution.

Ordinary Resolution [Section 114(1)]

As per Section 114(1) of the Companies Act, 2013, a resolution shall be an ordinary resolution if the notice required under the Act has been duly given and it is required to be passed by the votes cast

1. by a show of hands,
2. electronically, or
3. by a poll,

as the case may be, in favour of the resolution, including the casting vote, if any, of the Chairman, by members who are entitled to vote and vote in person or by proxy where allowed or by postal ballot exceed the votes, if any, cast against the resolution by the members entitled to vote.

Special Resolution [Section 114(2)]

A resolution shall be a special resolution when

1. the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
2. the notice required under the Act has been duly given; and
3. the votes cast in favour of the resolution, where by a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled to do so, vote in person or by proxy or by postal ballot, are required to be not less than three times the member of the votes, if any, cast against the resolution by members so entitled and voting.

A special resolution has to be passed under the following circumstances:

1. To change the place of the registered office from one state to another by alteration of Memorandum of Association [Section 13(1) and 13(4)]
2. To change the name of the company [Section 13(2)]
3. To change the objects of the Memorandum of Association, if the company has raised money from the public [Section 13(8)]
4. To alter the Articles of Association [Section 14]
5. To verify the terms of prospectus or objects of prospectus [Section 27]
6. To issue sweat equity shares [Section 54(1)]
7. To reduce the share capital of the company [Section 66(1)]
8. For buy back of shares or securities [Section 68(2)]
9. To move the auditor appointment as per Section 139 [Section 140(1)]
10. To exercise the power of the directors as per Section 180 [Section 180(1)]

11. To approve any scheme of loan to the managing director or whole- time director [Section 186(2) and Section 186(3)]
12. To consider winding up by the tribunal [Section 271(1)(b)]
13. To consider voluntary winding up [Section 314(3)]

Resolution Requiring Special Notice [Section 115]

As per Section 115 of the Companies Act, 2013 where, by any provision contained in the Act or in the articles of a company, special notice is required of any resolution, notice of the intention to move such a resolution shall be given to the company by such number of members holding not less than 1% of the total voting power or holding shares on which such aggregate sum not exceeding ₹5,00,000, as may be prescribed, has been paid up and the company shall give its members a notice of the resolution in such manner as may be prescribed.

Resolution Passed during Adjourned Meeting [Section 116]

As per Section 116 of the Companies Act, 2013, a resolution is passed at an adjourned meeting of the following:

1. A company
2. The holders of any class of shares in a company
3. The Board of Directors in a company. The resolution shall, for the purpose, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Passing of Resolution Circulation by Members [Section 111]

A company shall, on requisition in writing of such number of members, as required in Section 111 of the Companies Act, 2013 deals with the provision of circulation of members' resolution.

Right of Members to Propose Resolution [Section 111(1)]

1. Give notice to members of any resolution which may properly be moved and is intended to be moved at a meeting.
2. Circulate to members any statement with respect to the matters referred to in the proposed resolution or business to be dealt with at that meeting.

Circulation of Members' Resolution [Section 111(1)]

A company shall on requisition in writing by the members circulate a members' resolution.

Company Not Bound to Give Notice of Any Resolution or to Circulate Any Statement [Section 11(2)]

A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless the following hold true:

1. A copy of the requisition signed by the requisitionists (or two or more copies which, between them, contain the signatures of all the requisitionists) is deposited at the registered office of the company.

(a) In the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting.

(b) In the case of any other requisition, not less than two weeks before the meeting.

2. There is deposited or tendered with the requisition, a sum reasonably sufficient to meet the company's expenses in giving effect thereto.

Relaxation of Time Period for Submission of Requisition for Resolution at AGM [Section 111(2)]

If, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an AGM is called on a date within six weeks after the copy has been deposited, the copy, although not deposited within the time required by this sub-section, shall be deemed to have been properly deposited for the purposes thereof.

Application by Company or by Aggrieved Party to Central Government to Stop Circulation of Resolution [Section 111(3)]

The company shall not be bound to circulate any statement as required by Section 111(1)(a), if on the application either of the company or of any other person who claims to be aggrieved, the central government, by order, declares that the rights conferred by this section are being abused to secure needless publicity for defamatory matter.

Reimbursement of Cost of Company [Section 111(4)]

An order made under Section 111 (3) may also direct that the cost incurred by the company by virtue of this section shall be paid to the company by the requisitionists, notwithstanding that they are not parties to the application.

Penalty for Default in Complying with Provision of Section 111 [Section 111(5)]

If any default is made in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable to a penalty of ₹25,000.

Rules for Passing of Resolution by Circulation [Section 175]

1. No resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or members of the committee, as the case may be, at their addresses registered with the company in India by hand delivery, post, or courier, or through such electronic means as may be prescribed and has been approved by a majority of the directors or members, who are entitled to vote on the resolution.

   Provided that, where not less than one-third of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board.

2. A resolution under sub-section (1) shall be noted at a subsequent meeting of the Board or the committee thereof, as the case may be, and made part of the minutes of such meeting.

Board Meeting of One-person Company [Section 173(5)]

A one-person company in which there is only one director is not required to hold a board meeting. In case of a one-person company, small companies, and dormant companies, one board meeting has to be held in each half of the calendar year and the gap between two meetings should not be more than 90 days.

Quorum for One-person Company

The quorum shall not apply to a one-person company in which only one director is on its board.

One-man Meeting

One person can't form a quorum. In the following circumstances, one person shall form the quorum during a general meeting:

1. If all the shares of a particular class are held by one person
2. If there is only one creditor or debenture holder constituting the quorum for the creditors/debenture holders
3. If the Company Law Tribunal issues a direction that the one member of the company present in person or by proxy shall be deemed to constitute the quorum for a meeting. [Sections 97 and 98]

MINUTES OF MEETING [SECTION 118]

The minutes of a meeting may be maintained in the following situations:

1. Every AGM
2. Every board meeting
3. Every EGM
4. Every committee meeting of Board of Directors

The minutes of each meeting shall contain a fair and correct summary of the proceedings thereof.

Rules for Minutes of Proceedings of General Meeting, Meeting of Board of Directors, and Other Meetings and Resolutions Passed by Postal Ballot [Section 118]

Minute of proceedings of general meeting [Section 118(1)] Every company shall maintain the minutes of the proceedings of every general meeting of any class of shareholders or creditors, and every resolution passed by postal ballot

Timing of preparing minutes [Section 118(1)] Every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in such manner as may be prescribed and kept within 30 days of the conclusion of every such meeting concerned, or passing of resolution by postal ballot in books kept for that purpose with their pages consecutively numbered.

Minutes to contain fair and correct summary of proceedings [Section 118(2)] The minutes of each meeting shall contain a fair and correct summary of the proceedings.

Minutes to record all appointment of officers [Section 118(3)] All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting.

Meeting of board or committee meeting [Section 118(4)] In the case of a meeting of the Board of Directors or of a committee of the Board, the minutes shall also contain the following:

1. Names of the directors present at the meeting
2. In the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution.

Minutes of meeting containing specified matters [Section 118(5)] There shall not be included in the minutes, any matter which, in the opinion of the Chairman of the meeting—

1. is or could reasonably be regarded as defamatory of any person;
2. is irrelevant or immaterial to the proceedings; or
3. is detrimental to the interests of the company.

Chairman's discretion [Section 118(6)] The Chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified in sub-section (5).

Minutes as evidence of proceeding of meeting [Section 118(7)] The minutes kept in accordance with the provisions of this section shall be evidence of the proceedings recorded therein.

Preparation of meeting duly called and held [Section 118(8)] Where the minutes have been kept in accordance with sub-section (1) then, until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and the resolutions passed by postal ballot to have been duly passed and in particular, all appointments of directors, key managerial personnel, auditors, or company secretary in practice, shall be deemed to be valid.

Restriction on circulation of proceedings of general meeting [Section 118(9)] No document purporting to be a report of the proceedings of any general meeting of a company shall be circulated or advertized at the expense of the company, unless it includes the matters required by this section to be contained in the minutes of the proceedings of such meeting.

Observe secretarial standard [Section 118(10)] Every company shall observe secretarial standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India constituted under Section 3 of the Company Secretaries Act, 1980 (56 of 1980), and approved as such by the central government.

Penalty for default [Section 118(11)] If any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of ₹25,000 and every officer of the company who is in default shall be liable to a penalty of ₹5000 .

Consequence of tampering with the minutes [Section 118(12)] If a person is found guilty of tampering with the minutes of the proceedings of the meeting, he shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than ₹25,000 and which may extend to ₹1,00,000.

Case Study

Komaran Polly vs Venad Pharmaceutical and Chemicals Ltd

Year of judgement: 1989

Fact of the case: Whether maintaining the minutes is mandatory or not

Decision of the case: A company is bound to maintain the minutes of the proceedings of all kinds of meetings.

Case Study

Kotlapudi Venkateswar Reo vs Registrar of Companies

Year of judgement: 1977

Fact of the case: The resolution passed in the AGM has to be recorded as minutes.

Judgment of the case: The registrar has to proceed as per the minutes and record the resolution.

Signing of Minutes

The signing of minutes may be made as follows:

In case of board or committee meeting Signing of minutes may be made by the Chairman of the meeting or by the Chairman of the next meeting.

In case of general meeting Signing of minutes may be made by the Chairman of the general meeting within 30 days. In case of death or inability of the Chairman, the minutes shall be signed by any director authorized by the Board.

In case of postal ballot Signing of minutes may be made by the Chairman of the Board within 30 days. If there is no Chairman or in case of death or inability of the Chairman, he minutes shall be signed by the Director authorized by the Board.

Inspection of Minutes' Books of General Meeting [Section 119]

Place of Keeping the Minutes Book of General Meeting [Section 119(1)]

As per Section 119(1) of the Companies Act, 2013, the books containing the minutes of the proceedings of any general meeting of a company or of a resolution passed by postal ballot, shall be kept at the registered office of the company and be open during business hours, to the inspection by any member without charge, subject to such reasonable restrictions as the company may, by its articles or in general meeting, impose, so, however, that not less than two hours in each business day are allowed for inspection.

Members Entitled to Copy Any Minute [Section 119(2)]

As per Section 119(2) of the Companies Act, 2013, any member shall be entitled to be furnished, within 7 working days after making a request to the company, and on payment of such fees as may be prescribed with a copy of any minutes.

Penalty for Refusal of Inspection or Furnishing Copy of the Minutes [Section 119(3)]

As per Section 119(3) of the Companies Act, 2013, if any inspection as stated in Section 119(1) is refused or any copy required under Section 119(2) is not furnished within the time specified therein, the company shall be liable to a penalty of ₹25,000 and every officer of the company who is in default shall be liable to a penalty of ₹5000 for each such refusal or default, as the case may be.

Power of Tribunal to Order Inspection and Furnishing Copy of Minutes [Section 118(4)]

In case of default or refusal, the tribunal may, without any prejudice direct an immediate inspection of the minutes book or direct that the copy required shall forthwith be sent to the person requiring it.

Rule 26 of the Companies (Management and Administration) Rules, 2014 discusses the copies of the minutes book of the general meeting.

1. Any member shall be entitled to be furnished with a copy of any minutes of any general meeting within seven working days from the date of request for it to the company on payment of such sum as may be specified in the Articles of Association of the company, but not exceeding a sum of ₹10 per page or part of any page.
2. A member who has made a request for provision of soft copy in respect of minutes of any previous general meeting held during a period immediately preceding three financial yeas shall be entitled to be furnished with the same, free of cost.

Maintenance and Inspection of Documents in Electronic Form [Section 120]

Any document, record, register, minutes, etc. has to be maintained carefully.

1. It is required to be kept by a company.
2. Under the Act, documents must be accessible for inspection or copies be given to any person (by the company), if necessary, in electronic form in such form and manner as may be prescribed.

Case Study

Rameshwar Lal Lath vs Calcutta Wheat and Seed Association Ltd

Year of judgment: 1938

Fact of the case: Right of inspection of minutes book by the members

Decision of the case: Right of inspection cannot be denied, irrespective of the motive of the members. A contractual right of inspection is a statutory right. Even the provision of the articles on the contrary shall not be valid.

MOTION

A motion is a proposal moved by the member or members. It becomes a resolution if it is passed by the majority of members in a meeting. The motion must be in writing, related to the agenda and in the form of an affirmation.

A formal motion relates to the proceedings of the meeting. The purpose of the motion is to speed up, delay, or interrupt the discussion. A formal motion does not require any previous notice and need

not be in the written form. A formal motion is of four types: closure motion, previous question, next business, and adjournment. When the discussion of the meeting is prolonged, any member may move a closure motion to stop the discussion. The motion may be moved by the person who is not involved in the main motion. The objective of the motion is to restrain vote on the main motion. The objective of the next motion is to proceed to the next meeting. The objective of the adjournment motion is to postpone the discussion partially or fully. The date, time, and place of holding the adjourned meeting will be decided upon in the same meeting unless it is adjourned sine die.

The debate of the main motion will stop as soon as point of order is raised. The Chairman will take the ultimate decision on point of order and his/her ruling will be treated as final. If he/she rules out the point of order, the debate will resume.

AMENDMENT

An amendment is the alteration or modification of the wording motion considered in the meeting. An amendment may add new words, replace some words, drop some words, or change the position of words. When amendment is put to vote it becomes the substantive motion and if it is passed it becomes the solution.

POINT OF ORDER

Point of order means a question is raised in a meeting by a member as to whether the rules governing the procedures are being breached or violated.

CONDUCT OF MEETING

The role of the chairperson is to make the meeting effective and avoid common mistakes.

1. A meeting should be well conducted so that the objective and outcome of the meeting is clear.
2. The chairman should act as an effective moderator so that the meeting is channelized in the right direction.
3. Group contribution will make the meeting a success with the help of the moderator and participants of the meeting.

POLL [SECTION 109]

Section 109 of the Companies Act, 2013 states that before or on declaration of the result of the voting by show of hands, a poll may be ordered by the chairman of the meeting on his own motion. The chairman shall order a poll on a demand made on that behalf:

1. In case of a company having a share capital, by the members present in person or by proxy having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than ₹5 lakh or such higher amount as may be prescribed.
2. In case of any other company, by any member present in person or by a proxy and having not less than one-tenth of the total voting power.

3. The polling paper shall be made in accordance with Form No MGT 12. The scrutinizers shall submit a report to the chairman of the meeting in Form No. MGT13.The report shall be signed by the scrutinizer and the same shall be submitted to the Chairman of the meeting within seven days from the day of polling.

Demand for Poll [Section 109]

1. Before or on the declaration of the result of the voting on any resolution by a show of hands, a poll may be ordered to be taken by the chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf (a) in the case a company having a share capital, by the members present in person or by a proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid up; and (b) in the case of any other company, by any member or members present in person or by a proxy, where allowed, and having not less than one-tenth of the total voting power.
2. The demand for a poll may be withdrawn at any time by the persons who made the demand.
3. A poll demanded for adjournment of the meeting or appointment of Chairman of the meeting shall be taken forthwith.
4. A poll demanded on any question other than adjournment of the meeting or appointment of chairman shall be taken at such time, not being later than 48 hours from the time when the demand was made, as the chairman of the meeting may direct.
5. Where a poll is to be taken, the chairman of the meeting shall appoint such number of persons, as he deems necessary, to scrutinize the poll process and votes given on the poll and to report thereon to him in the manner as may be prescribed.
6. Subject to the provisions of this section, the chairman of the meeting shall have power to regulate the manner in which the poll shall be taken.
7. The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.

VOTING AT BOARD MEETING

Matters at board meetings are decided upon by a majority of votes. There are three exceptions in the majority rule:

1. Appointment of managing director, if the person is already appointed as managing director or managers [Section 203]
2. Appointment of manager, if the person is already appointed as manager. [Section 203]
3. In the case of inter-corporate loans [Section 186]

Restriction on Voting Rights [Section 106]

1. Notwithstanding anything contained in this Act, the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which

any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.
2. A company shall not, except on the grounds specified in sub-section (1), prohibit any member from exercising his voting right on any other ground.
3. On a poll taken at a meeting of a company, a member entitled to more than one vote, or his proxy, where allowed, or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way he uses all the votes.

Voting by Show of Hands [Section 107]

1. At any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under Section 109 or the voting is carried out electronically, be decided by a show of hands.
2. A declaration by the chairman of the meeting of the passing of a resolution or otherwise by show of hands under sub-section (1) and an entry to that effect in the books containing the minutes of the meeting of the company shall be conclusive evidence of the fact of passing of such resolution or otherwise.

Manner of Exercising Voting Rights [Section 108]

As per Section 108 of the Companies Act, 2013, the central government may prescribe the class or classes of companies and the manner in which a member may exercise his right to vote by electronic means.

Rule 20 of the Companies (Management and Administration) Rules, 2014 states the rules governing voting through electronic means and the conditions to be complied with:

1. Every listed company or company having not less than 1000 shareholders shall provide to its members the facility to exercise their right to vote at the general meeting by electronic means.
2. A member may exercise his right to vote at any general meeting by electronic means and the company may pass any resolution through an electronic voting system in accordance with the provisions of this rule.

Voting by Electronic Means

1. Voting by electronic means or electronic voting system means a secured system-based process of display of electronic ballot, recording of votes of the members and the number of votes polled in favour or against, such that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate cyber security.
2. The expression cyber security means protecting information, equipment, devices, computer, computer resource, communication device, and information stored therein from authorized access, use disclosures, disruption, modification, or destruction.

Postal Ballot [Section 110]

1. Notwithstanding anything contained in this Act, a company
   (a) shall, in respect of such items of business as the central government may, by notification, declare to be transacted only by means of postal ballot; and

(b) may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot, in such manner as may be prescribed, instead of transacting such business at a general meeting.

2. If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that regard.
3. As per Section 110 of the Companies Act, 2013, a one-person company and companies having members up to 200 are not required to transact business by means of postal ballot. In case of other companies the business shall be transacted by means of postal ballot.
4. Alternative of the objective clause of memorandum
5. Alternative of Articles of Association in relation to insertion or removal of to constitute a private company
6. Change of registered office outside the local limits of any city, town, or village
7. Change of object of the company for which money has been raised from public through the prospectus
8. Issue of shares with differential rights in relation with voting , dividends, or otherwise
9. Buy back of shares of the company
10. Appointment of directors by small shareholders
11. Sale of the whole or substantial portion of an undertaking company
12. Providing loans, guarantees, or security in excess of the limit

REPORT ON AGM [SECTION 121]

Every listed public company is required to prepare a report on each AGM including the confirmation to the effect that the meeting was convened, held, and conducted as per the provisions of the Act and the rules made thereunder. A copy of the report is to be filed with the registrar in Form No. MGT 15 within 30 days of the conclusion of the AGM along with the prescribed fees.

As per Rule 31, the report shall be prepared accordingly:

1. A report shall be prepared in addition to the minutes of the general meeting
2. The report shall be signed and dated by the chairman of the meeting or in case of inability to sign, by any two directors of the company, one of whom shall be the managing director, if there is one.
3. Such report shall contain a fair and correct summary of the proceeding of the meeting.

APPLICABILITY OF CHAPTER TO ONE-PERSON COMPANY [SECTION 122]

The following provisions are not applicable to a one-person company:

1. Powers of the tribunal to call a meeting of members [Section 98]
2. Calling of EGM [Section 100]
3. Notice of meeting [Section 100]

4. Statement to be annexed to notice [Section 102]
5. Quorum for meeting [Section 103]
6. Chairman for meeting [Section 104]
7. Proxies [Section 105]
8. Restriction for voting rights [Section 106]
9. Voting by show of hands [Section 107]
10. Voting through electronic means [Section 108]
11. Demand for poll [Section 109]
12. Postal ballot [Section 110]
13. Circulation of members' resolution [Section 111]

Ordinary Business to be Transacted at AGM of One-person Company [Section 122(2)]

As per Section 102(2) of the Companies Act, 2013, ordinary business is required to be transacted at its AGM with a company other than a one-person company and business transacted for a one-person company as per Section 122(3).

Passing Deemed Resolution of Board of Directors [Section 122(4)]

As per Section 122(4) of the Companies Act, 2013, in the case of a one-person company which has only one director, for any business that has to be transacted at a board meeting, it shall be sufficient if the resolution is communicated by the director to the company and entered in the minutes book and dated by the member and such date shall be deemed to be the date of the board meeting for all purposes of the Act.

COMMITTEE MEETING

For a particular purpose a committee of directors may be formed. This is known as a committee of directors. These directors meet time to time to transact particular business; this happens during the committee meeting. The Board of Directors finalizes the terms of references and rules and regulations, from time to time and committee to committee. The finance committee, audit committee, and ethical committee are examples in this regard.

KEYWORDS

Adjournment
Agenda
Amendment
Annual general meeting
Board meeting
Class meeting
Committee meeting
Corporate meeting
Demand for poll
Extraordinary general meeting
Meeting
Minutes
Motion
Notice
Ordinary resolution
Point of order
Poll
Postal ballot
Proxy
Quorum
Resolution
Resolution by circulation
Shareholders' meeting
Special resolution
Voting
Vote by electronic mode