MAA OMWATI DEGREE COLLEGE HASSANPUR (PALWAL)

Notes

BBA 5th Sem

Company Law

Company Law :-
PAPER CODE :- BBAN → 502.

Unit → 1 :→ Company → meaning and feature, Kind of company, registration and incorporation memorandum of association, article of association, propectus.

Unit → II :- Share capital :- Share, issue and allotment of share, transfer of share, type of share, alteration of share capital, buy-back of shares, Surrender and forfeiture of share, bonus shares, Debentures - Meaning and kinds, debenture trust deed and duties of trustee.

Unit :→ III Company Administration and meeting - Board of directors - qualification appointment duties and remuneration

Meeting → Statutory meeting annual general meeting, extra - ordinery general meeting.

Unit → IV

Prevention of oppression and mismanagement.
Winding up → type of winding up, appointment of liquidator, power of liquidators Conduct of working winding up

Syllabus.

Company

Law

B.B.A. 5th Sem

Unit - I

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Company :-

Meaning :- The work company is a derivative of latin word Companis :"

Companis is impact made up of two words 'Com' and 'panis'. com means together and panis means bread.

A company in the accepted sense is a voluntary association of person formed for purpose of earning a profit with the investment of capital which is transferable in shares of limited liability It is incorporated and registered as an artificial person under the companies Act

Acc to the Indian companies Act 1956 :-

" A company is a Company framed and registered under this act or an existing company

Features of Company :-

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① Incorporated Association :-> A Company must be incorporated or registered under the company Act

② Artificial person :- It is called an 'artificial person' because its birth is not a natural birth. It is an artifical person created by law.

③ Seperate legal entity :- The company aquires a seperate legal entity after it is incorporated which is distinct from the entity of its members.

④ Perpetual Succession :- The shareholders or directors ~~will~~ might change but the company goes on.

⑤ Common Seal :- The Common seal is the symbol of the company identity and is as good as signature.

⑥ Limited liability :- The liability of shareholders of company is limited

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⑦ Number of Member :- In a private Company the minimum member is two and maximum is two hundred. and Public company the minimum is seven and Maximum No limit.

⑧ Representative mgt :- A company is administered and managed by representatives appointed by the share-holders

⑨ Limitation of Action :- The objective of the co. are described in its prospectus and define the limitation of company activities.

⑩ Transferability of Share :- Acc to Section 44 of the company Act ~~2013~~ 2013 each share holders can freely transfer his or her share.

⑪ Termination of existence :- A company may also terminated by law.

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Kind of Company :-

1. ① Classification on the Basis of incorporation :-

ⓐ Chartered Companies :-> These companies were formed by a royal charter i.e. at the exforcu orders of the King or Queen.

ⓑ Statutory Company :- This type of Company are incorporated by an act of parliament or the State Legislature.

ⓒ Registered Companies :-> Companies incorporated under the Indian Companies Act 2013 or earlier Act fall under this category.

2. ★ Classification of Companies based on liabilities :

① Limited liabilities ~~by share~~ Company :-

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ⓐ Company limited by shares
ⓑ Company limited by Guarantee
ⓒ Company limited by share as well as guarantee.

② Unlimited liability Companies :

★ 3. Classification of companies based on No of members :-

① Private Companies :- A private limited companies as define by Section 3(1) (iii) or Section 2(68) of Companies Act is a Company which is having a minimum paid up capital of 1 lac or such higher paid up capital as prescribed by its Articles and which.

1) Limited the number to 200
2) Restricts the right to transfer its share.
③ Prohibits any invitation to the Public to subscribe for any

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share or debentures of the comp any.

2. Public Companies :- One which not a private companies. No of shareholder is not restricted. This can invite the public to subscribe its shares.

4. Classification of Companies Based on Control :-

(i) Holding Company :- A holding Company is a company which holds more than 50% of issued share Capital or more than 50% of the voting power.

(ii) Subsidiary Company :- A Company shall be deemed to be a subsidiary compa -nies of another if but only if other holds more than 50% of nominal value

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of its equity share capital or more than 50% of total voting power of So..

5. Classification of Companies Based on Ownership :-

(i) Government Companies :- Acc to Section 2(45) of the company Act 2013 a ~~paid up~~ government Company means "any company in which not less than 51 per cent of the paid-up share capital is held by the Central government.

(ii) Foreign Company :- A company which is incorporated outside India after the commencement of Company Act.

(iii) One man Company :- This is a company in which one man holds practically the whole of share capital of the Company.

Formation of Companies

"A company is an artificial person created by law." The saying implies that a company is created by the provision of law. Being an artificial person the birth of a company is not a free and natural process. It is a process that involves a long exercise. The formation of company is a ~~birth~~ step by step process involving various stages.

1) Promotion of a Company.
(ii) Registration of a Company
(iii) Its capital subscription
(iv) Commencement of business.

Promotion of a company:-

It implies the beginning of the company.
~~Accounting of the company.~~
~~Accounting~~ to gerestenberg "Promotion of the companies is the discovering of business opportunities and the subsequent organisation of funds, property and mgt. ability into business concern for the purpose of making profit therefrom."

Stage of Promotion:-

The main stages of the promotion of a co. are:-

1. **Discovery of data:-** Promotion starts with an idea in the mind of a person or persons that a particular activity is practicable and profitable.

2. **Detailed Investigation:-** The next thing to do is to investigate whether the business can be done successfully.

3. **Assembling the propositions:-** After the investigation is complete, the facts and information collected need to assembled to give the proposition a shape.

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(4) Financing the proposition :- The next step is to arrange the finance required so that the proposed venture is a success.

2) Registration and Incorporation Stage :-
Incorporation is the second stage of the company formation, which is done by getting the company registered with the registrar of companies. The company become an entity only after it is registered. A floatation is the conception of a company whereas its incorporation is its birth when takes on the form of an artifical person.
After completing the promotional work and before getting the company registered the prepatory step can be listed as under.

1) Preliminary Activities :- Before a company is incorporated the promoter has to do the following.

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I) To decide where the registered office of the company will be located
(ii) To decide the name of company
(iii) To make appointment.
(iv) To ~~make~~ get important documents prepared.
(v) To send the application to the registrar.

(2) Documents to be filled with the Registrar.
(i) Memorandum of Association :- It define the object of the company and establishes its relationship with the outside world. It contains name, capital objective liability of the company.
(ii) Articles of Association :- It is the by laws of companies concerning its internal management.
(iii) Notice :- Notice regarding the situation of the office of the company must be served.

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(iv) Agreement :- As per the provision of Sec 33 of Indian Co. Act the copy of the agreement if any which the company proposes to enter into with any individual firm or company should be filed.

(v) Return containing the particulars of first directors of the company.

(vi) List of directors.

(vii) Written consent of the directors.

3. Registration :- The Registrar of Companies will carefully scrutinise the documents and if satisfied with compliance of legal formalities regarding registration, he enters the name of companies in his register.

(4) Certificate of Incorporation :- If the Registrar is satisfied as to the compliance of statutory requirement, he retains and registers the Memorandum the Articles and other documents filed with firm him and issued a "Certificate of incorporation" i.e. of the formation of the company.

The certificate of incorporation is signed by the Registrar of companies specifying the date of issue. From the date of incorporation certificate the company becomes distinct legal entity with perpetual succession and common seal.

Subscription / floatation Stage :- When a company has been registered and has received its certificate of incorporation it is ready for floatation, that is to say. It can go ahead with raising capital sufficient to commence business and to carry it on satisfactorily.

A private Co is prohibited from inviting public to subscribe to its share capital largest no of public Co. raises their capital in the very first instance by inviting public to subscribe to its share capital

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Commencement Stage :- A private Co may Commence business immediately after obtaining the certificate of incorporation. A public company must obtain a certificate to commence business from the Registrar before it can commence business.

Memorandum of Association :- The memorandum of association of a companies also called its charter is the company's principal document. It defines the rights and objectives of the company.
It also is the boundary wall with in which the activities of the company must be confined. Anything done beyond of what is stated in this document is deemed to be void.

Important of Memorandum of Association :-

— * —

(i) It is a fundamental documents
(ii) It is an unalterable documents.

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(iii) It define the limitation of the company is operations.

(iv) It forms the basis of relationship b/w the company ~~operation~~ and outsides.

(v) It contains clauses that gives important information the company.

Contains of Memorandum of Association :-
Clauses of Memorandum of Association are as follow.

(1) Name Clause - The first clause of a memorandum shall state the name of the proposed company. The name of a company establishes its identity and is the symbol of its existance. A company may subject to the following rules, select any suitable name.

1) Undesirable Name to be avoided :-
(2) Injuction of identical name adopted
(3) Limited or Private limited as the last word of the name.
(4) Prohibition of use of certain name

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2.) Registered office clause :- This clause describe the address, city and state in which the company registered office will be located. Every Co. shall have an office registered from the day on which it begin to carry on business or as from the 30th day after the date of its incorporation which ever is earlier. All communication and notice are to be addressed to the registered office.

3) Object Clause :- A company is not legally entitled to do any business other than what is specified in the object clause. this clause define the company is to be set up. If a company crosses the limit of its object and does some act which is beyond the scope of its activity, such act would be deemed to be Ultra vires. Such an act of

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The company can-not be hold valid even if it is done the consent of its members.

4) Liability Clause :- The clause states that the liability of members is limited by the face value of shares. The change in the liability can be brought by passing a special resolution to that effect. Directors may have an unlimited liability while members may have limited liability.

5) Capital Clause :- The capital clause in memorandum states the amount of the nominal or authorised capital with which the company proposes to be registered and the value of the shares into which it is divided.
The company during its exercise can-not issue any shares exceeding the value of its authorised capital unless and untill it complete the requisite legal formalities.

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5. Procedure for issuing share capital certificate.
6. Transmission of shares.
7. Conversion of share into stock.
8. Share warrants.
9. Alteration of capital.
10. Voting rights of memebers voting and poll proxies.
11. Secretary.
12. Capitalisation of profit.
13. Winding up.

Registration of Articles :-

Section 26 state that a public company limited by share may register AOA signed by the subscriber to the memorandum.
Section 26 provides for compulsory registration of Articles prescribing regulation for the company.
In any case the Articles of Association must be,
1. Printed
2. Divided into paragraphs numbered consecutively.
3. Signed by the subscriber to the MOA in the presence of atleast one witness. who shall attest the signature. Articles are to be stamped with requisite stamp and filed alongwith the memorandum.

Prospectus :-

Acc to Section 2(36) of Indian Companies Act 1956, "Prospectus means documents described or issued as prospectus and include any notice, circular advertisment or other documents inviting offers from the public for the subscription or procedure of any share or debenture of a body corporate." A documents shall be called a prospectus if it satisfies two things.
1. It invites subscription to share or debenture or invites deposits
2. The aforesaid invitation is made to the public.

Type of prospectus :-
1. offer Documents
2. Draft offer Documents

(3) Red Herring Prospectures.
(4) Adridged Prospectus.
(5) Shelf Prospectus

Registration of Prospectus :-

The registration must be made on or before the date of publication thereof the copy must be signed by every person who is named there in as director or proposed director of the co.
The prospectus must be issued with in 90 days of the date on which a copy there of is delivered for registration. If a prospectus is not issued with in this period it is deemed to be a prospectus a copy which has not been delivered to the Registrar.

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Type of prospectus :-

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(2) Draft offer Document
(3) Red Herring prospectus
(4) Adridged prospectus.
(5) Shelf prospectus.

Registration of prospectus (Sec 60)

The registration must

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made on or before the date of publication thereof. The prospectus must be signed by every person who is name of therein director or proposed directed of the company, or by his agent authorised in writing.

The prospectus must be issued with in 90 days of the date on which a copy thereof is delivered for registration. If a prospectus is not issued with in the period. It is deemed to be a prospectus a copy of which has not been delivered to the Registrar

Member and Share holder of a Company:

Company Law

Of

Unit 7

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Members :- Meaning :-

The signatories to the memorandum of association of a company are deemed to have accepted to become the members of the company and it is deemed that their names shall be listed in the company's register of members.

Definition :-

The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company and on its registration shall be entered as members in its register of members.

Ways of Acquiring Memorship :-

A person may becomes a member of a company in following ways:

1) **By Subscribing to the memorandum :-** Acc to Sec 2(55) of the Companies Act, the subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration, shall be entered as members in its register of members.

~~Prasad → These has been clarified and reaffirmed in the case of U.P. Oil Millers VS. Jammo~~

Prasad → Thus by merely signing the memorandum of association, a person is deemed to have given his consent to become a member of the company

Moradabad VS. Equity Insurance Co :- It was even held that it was ~~only~~ not necessary that any shares be allotted to the memorandum or their names be entered in the register of members.

(2) **By Application and Allotment :-** Each person who agrees in writing ~~shall be~~ to become a member of a company and whose name is entered in its register of members shall be a member of the company.

(3) **By Agreeing to Purchase Qualification Share :-**

By agreeing to acquire the qualification share of a company, a person becomes a member of the company on registration.

(i) A company not having share capital

(ii) A private company or

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(4) By ~~Shar~~ Transfer of Share :- When the instrument of transfer, duly executed as per the provision of law is delivered, the company removes the names of the transferor from its register of member and enter the name of the transferee when that is done, the transferee become a membere of the company.

(5) By Transmission of Share of Succession :-

In case of death, insolvency or lunacy of a member, the shares held by the member are transmitted to his legal representative who become the holder of such share. He become a member of company.

(6) By holding out or Doctrine of Estoppel :-

When a person gives his consent to his name being entered in the register of member. He shall be deemed to be a member of the company.

(7) By Surrendering Share warrant :- If a person volantarily and in a lawful manner surrenders his have share warrant to the company his name is entered in the register of members and he become a member of the company.

(8) Membership by Loan :- If a person gives a loan to the company against its shares company registers his name in the register of its members and he is deemed to be a member of the company.

Termination of Memership

Membership of a Company may be terminated in the following ways.

(1) Transfer of Share :- When a shareholder transfer his share to another person and the name of the transferee is entered in the company ~~is wound up within a year of the transfer, the~~ 's register of members, the membership of the transferor terminates.

(2) Forfeture of Share :- When share are forfeited, the name of the defaulting shareholder is removed from the register of members. In this way his membership of the company terminates.

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(3) Valid Surrender of Share :- By 'surrender' is meant the voluntary return of share to the company by the share holder. One a vail surrender of share and its acceptance by the company, the memership of the holder of such share comes to an end.

(4) Death of Member :- On the death of a shareholder his share come under the authority of his legal representative, and when the name of the legal representative of the deceased member is entered in the registed of member the membership of the deceased shareholder is terminated.

(5) Insolvency of Member :- When the official Receiver disposes of the share the member ship of the Insolvent shareholder terminates.

(6) Exercise of Lien :- The memership of the shareholder terminates when the name of the buyer of such share is entered in the company's register of members.

(7) Decree of the Court :- If the share are disposed of under a decree of the court the membership of the holder of such shar terminated.

(8) Redemption of Preference share :- Memership of a holder of share is terminated on the redemption of redeemable preference share.

(9) Winding up of Company :- In case the company is wound up the membership of its members terminates if the members are liable as 'contributory' to third parties.

Rights of Members :-

When a person buy the share of a company a contract is created between the buyer of shares and the company as a result of which the buyer of the share (who is member of the company) ~~as a result of which the buyer of the shar~~ get some rights. These rights are as under :-

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Statutory Rights :- The right that are lawfully attained by a member under the provisions of the Companies Act called 'Statutory rights'. These right can-not be denied to a member no matter what is provided in the Company Act the members of a company enjoy a number of Rights. Some rights are exercised individualy, and some collectively. There are as follows:

(1) Individual Right of Members. By 'individuals rights' is meant the rights the member of the company attains when he becomes a member and can exercise individully as a member. These right are as follows.

(i) Right to transfer Shares :- A member of a company has the right to transfer the shares he holds when and to whosoever he wants.

(ii) Right to Inspect Certain Books & Every member of a company has the right to inspect the registers, indexes, returns and copies of other certificate and documents.

(iii) Right to obtain copies :- Every member of a company has the right to obtain a copy of any such register index or other specified certificates or documents.

(iv) Right of Pre-emption :- In case the company proposes to increase the subscribed capital by allotment of further share the person who are holders of shares at the date of the offer have the prior right to acquire such share.

(v) ~~Right Regarding Metting :- All Rights with respect to the Company metting are the rights of every member - like the right to attend the meeting~~

(vi) Right Regarding Metting :- All the right with respect to the company meetings are the right of every member - like the right to attend the mettings. the right to receive notices for the meetings, the rights to vote, the right to propose a resolution, etc.

(vi) Right to nominate for appointment of Auditor :- If a company does not appoint an auditor or auditors at its general meeting a member or members of the company can appeal to the central governments nominate an auditor

(vii) Right to apply for appointment of Liquidator :- In the case of company is being wound up at the instance of its creditors, the member can be appeal to the Nation company law tribunal to appoint an official Liquidator for the company

(viii) Right to application to Nation company Law tribunal :- In the case of the share certificates are not being issued or renewed, or there is need to alter the register, or there is any mismanagement or oppression of any member's right. the members can appeal to the national Company Law tribual .

(3) Collective Rights of members :- By collective right is meant those right which the member can exercise collectively. Some collective right are exerciable by a simple majority of members whereas some rights can be exercised by a definite majority and under certain condition

(i) Right Enforceble by sample Majority

(ii) Right Enforceble by definite Majority .

(4) Documentary Right :- These include the rights that are granted to the members by the memorandum or articles of association like the right to receive dividend the ~~are~~ right to the company is property in case of winding up etc.

(5) Legal Right :- These are the rights that the law of the land grants to a member of a company e.g. the right to appeal to the court in case of mind.

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Liability of Members :- Members have some liability under the provision of Company Act some under the provisions of the company's articles. The main liability of members are as under.

① **Liability to pay the price of share :-**

Every person who agrees to become the member of a company liable to pay the price of shares stated in the company's products.

② **Liability in Unlimite company :-** In case of a company with unlimited liability. each member of the company has the personal liability to pay the company creditors.

③ **Liability in company limited by guarantee :-** The liability of a member of company limited by guarantee is limited to amount of guarantee that the member has undertaken.

④ **Liability in case of Reduction of members below Minimum :-**

When the number of members of a limited company is reduced below the minimum and the company continue its buinesy for six months or more the liability of its members become unlimited.

⑤ **Liability on transfer :-** On the transfer of share till the name of transferee is entered in the company's register of member, the transferor continues to be liable as a member of the company.

⑥ **Liability of the winding up company :-**

If the company windup one year transfer of shares, the name of transferor is also entered in Schedule B (along with the name of the current holder of shares) and if need be the transferor can also be held liable for the unpaid call on shares. likewise, in case the company is windup before the transfer of share the transferor is liable for the unpaid amount on the shares transferred.

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(7) **Liability as Member:-** when a person has not agreed and does not want to become a member of company, but his name has been entered in the company's register of members and he does not raise any objection he is deemed to be a member and is liable as such.

(8) **Increase the Liability with the consent of members.** If the liability of a member is increased under a provision of the Act, the member shall be liable only if he gives his consent to such increase, not otherwise.

(9) **Taking share in Fictitious Name:** The holder of such share is liable in every respect.

Annual Return :->

Annual Return statement of two types: Annual return of a company with share capital and annual return of a company without share capital.

(i) Annual Return of a company with share capital

(ii) Annual Return of a company without share capital

Company meetings and Resolution

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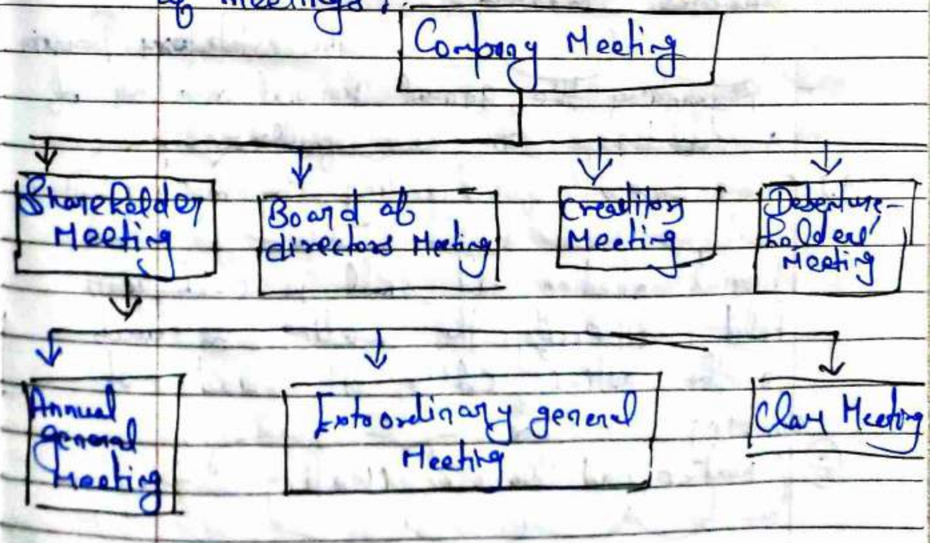
Meaning :-> A 'meeting' may be defined as the gathering together of two or more person by previous notice or by mutual agreement for discussion and transaction of some business.

Defination :- Acc to R.K. Ghosh Any gathering assembly or coming together of two or more person for the transaction of some lawful business of common concern is called meeting.

Kind of Meetings:

A company has the following four kind of meetings:



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A Shareholder Meeting :- A board of directors to manage the company's business. To ensure that the shareholder are informed of the company's affairs, periodic of the shareholder are called. These are the general meeting of a company and are referred to as 'company meeting'.

1.) Annual Meeting :- Meaning :- Every company must hold in each year, in addition to any other meetings a general meeting of its member, which is called the company's annual general meeting.

Statutory Provisions Regarding the Annual general meeting. The Statutory Provision Regarding the annual general meeting of a company are as follows.

1.) Time Interval for calling the meeting :- Annual meeting and shall ~~in each year~~ ~~hold~~ i specify the meeting as such in the notice calling it and not company.

2) Notice and Place of Meeting :->

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The general meeting of a company may be called by giving not less than twenty one days' notice in writing

3) Consequences of not holding the Annual general meeting :- The consequences of not holding the annual general are as follows.

I) Tribunal calling meeting Tribunal may notwithstanding with the provision of the act or the articles of the company, call or direct the calling of a general meeting of the company on an application being made by any member of the company.

II) Penalty :- In a case company on its own or on the direction of the tribunal defaults in calling such meeting the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees.

2) Extraordinary general meeting.

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Beside the statutory and the annual general meetings, any meeting of the company's shareholder called for whatever purpose is an extraordinary general meeting. In otherwords An extraordinary general meeting of a company is any meeting of its share-holders which is called during the period b/w 18 two consecutive annual general meeting.

Who may call such meeting :- An extraordinary general meeting of a company may be called (1) by the directors (2) by the directors or requisition of the members (3) by the requisitionists themselves and (4) by the national company law tribunals.

(1) By the directors :- it is authorised by the company's articles, the directors may convene an extraordinary general meeting by passing a resolution to that effect in the Board's meeting.

(2) By the directors on Requisition of members → In case the directors do not call a general meeting of the company as required under the provision of the Act the

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the member mentioned hereunder can bind the directors to call an extraordinary general meeting.

(3) By the Requisitionists themselves :- If the directors fail to call the meeting within ~~three month~~ aforementioned time limit, the requisitionists may themselves convene a meeting within three month be called in the same manner of the deposit of the requisition.

(4) By National Company Law Tribunal :- If, for any reason, it is impractical to call a meeting of a company other than an annual general meeting, the National Company law tribunal may either of its own motion or on the application of any of any director of the company or of any member of the company.

(5) Class Meeting :-

When a company issue different classes of share, it calls a meeting of class of shareholders. such meeting of type of share-holders is called a class meeting.

Only those members of a company of a company who hold the class of shares for which the meeting of is called may participate in such meeting.

Board of Directors' Meeting :- Meeting of the company's Board of directors are held to take decision relating to its policy and management.

(I) The meetings of the Board of directors and.

(II) Meeting of Directors' Committees

Statutory Provision Regarding Board's Meeting! The main provision of the act related to the meeting of a Company's Board of directors are as under.

(1) Power to convene the Meeting: A meeting of the Board of Directors may be convened by any directors of the company.

(2) Period of Meeting!, Sec. 173 of the Company Act 2013 Provides that every company shall hold the first meeting of the Board of directors within thirty days of its incorporation.

(3) Notice and Agenda of the meeting! A written notice of not less than seven day prior of date of Board's meeting shall be given to every director at his address registered with the company and such notice shall shall be sent by hand delivery or by post or by electronic means.

Quorum If there is no such provision in the company's articles, then the quorum for a meeting of the Board of directors a company shall be one-third of its total strength (any fraction contained in the in that one-third being regarded as one.

(5) Chairman of the meeting :- Every meeting of the Board of directors of a Company must be presided over by a chairman. The company may name the name the chairman or the directors of the Company may elect a chairman. The directors of the company may be elect a chairman to preside over the meetings.

(6) Business to be transacted in Meetings. Acc to the provisions of the company Act, or the memorandum or articles of the company, must be transacted in a general meeting of the company's share-holders.

(7) Minutes of Meetings:- Minutes are a gist of the proceedings of a meeting. The constitute a summery of the proceeding of a meeting.
Minutes of meetings kept in accordance with the provisions of sect 100 118 shall be evidence of the proceeding recorded therein.

Meeting of directors Committees :-

The company therefore, constitute committees of its directors to deal with different issue and when a particular issue is to be discussed, only the directors of ~~the directors, and imply the transference of the rights of some directors on some issue to other directors~~. Concerned committee need to meet and make a decision.
(i) Permanent Committees.
(ii) Temporary Committees.

Creditors Meeting. A creditors' meeting infact is not the company is meeting because such meeting is organised by the creditors. The provision for such meeting are defined in Section 393 of the Companies Act.

Debenture - holders Meeting :- When a company issue its debenture, it also belongs the the meeting of the holders of its debentures the rules governing such meetings are printed on the reverse of the debenture certificates issued by the company.

Resolutions : प्रस्ताव

A resolution, therefore is the decision of the person of the persons present at the meeting either personally or by proxy which is arrived at after due deliberation. A valid resolution can be passed at a meeting which has been duly convened and duly constituted with the requisite quorum.

Kind of Resolution :

Under the Companies Act 2013, resolution can be of three kinds.

(I) Ordinary Resolution
(II) Special Resolution
(III) Resolution Requiring Special Notice

(1) **Ordinary Resolution** : An ordinary resolution is one which is passed by a simple majority of votes, which is more than fifty per cent of votes of the members, includes proxies.

Acc to company Act, an ordinary resolution is required to be passed in the following cases.

(I) To change the name of a company if it is identical with, or too nearly resembles the name of another company. Section 16

(II) To alter the company's share capital. - section 61

(III) To accept the annual accounts and balance sheet of the company Section 129.

(IV) To appoint and fix the remuneration of the company's auditors or to replace the auditors. — 139

(V) To alter the prospectus of the company. — 27

(VI) To appoint the company's directors who are to retire by rotation. 152

(VII) To fill the vacancies of directors retiring by rotation. 152

(VIII) — 160 To appoint person other than retiring directors as directors.

(IX) To approve the remuneration of director.

(X) To make inter corporate investment

beyond the prescribed limits.

(xi) To approve voluntary winding up if the articles provided.

(xii) To approve appointment and remuneration of liquidator for voluntary winding up.

Special Resolution :- A resolution is a special when intention to proposed (sub) resolution has been duly specified in the notice of the company.

(i) To alter the provisions of its memorandum to alter its registered office from one state to another.

(ii) To alter its articles of the association.

(iii) To reduce its share capital.

(iv) To keep register of members at a place other than the registered office.

(v) To make variation in the rights of special classes of share.

(vi) To wind up company voluntarily.

(vii) ~~To wind up company.~~

(vii) To obtain an order from the court for the winding up of the company.

(viii) To issue further share to any person other than equity share holders.

(ix) It may demand the appointment of one or more person to investigate the affairs of the company.

(x) Loan and investment by company.

(xi) It may be accept any arrangement b/w the company and its creditors in case of it being wound up.

(3) Resolution Requiring Special Notice

Special notice implies a prior notice according to the act and the articles of a company, there are some resolution which can not be passed (and do not become effective) unless a prior notice is given.

Under the provision of the company Act, the following are the resolution that require a special notice.

(i) Appointing an auditor a person other than a retiring auditor, or provision or providing expressly that a retiring auditor shall not be re-appointed.

(ii) To appoint another director in place of the so removed director

~~To appoint~~
(iii) To remove a director before the expiry of his period of office.

Meetings procedure or Requisites of a valid Meeting Meeting

Validity of a meeting: Any meeting of the shareholders of a company is only valid if it is held in a proper manner. it is very important that the meeting have the requisites of a valid meeting and are held according to the provision of law.

1) Proper convening Authority :- The first requisite of a valid meeting is that it shall be called by an authorised officer of the company. The authority to call a general meeting of the share holder is vested in the company's Board of directors.

2) Proper - Notice :- The next requisite of a valid meeting is that all members of the company should be given a proper notice of the meeting being called. The requirements of a proper notice are as follows

(i) Duration of Notice :- Acc to Sec 101 of the act a general meeting of a company may be called by giving not less than twenty-one days' notice in writing.

(ii) Procedure to send Notice :- A notice may be either be delivered in person or sent to the members' registered address. If a member has not registered address in india, the notice must be send to the address he has given to the company for communication.

(iii) Subject - matter of Notice :- Every notice issued for a meeting of the company must clearly state the date, day, place and time of the meeting, It must also given a description of the business to be transacted at the meeting.

(iv) On whom to serve a notice :- Acc to Sec 101 the Act notice of every meeting of the company shall be given to :

(a) Every member of the company. In case of a meeting of the Board of directors to every director.

(b) the legal representative of a deceased member.

(c) ~~The legal representative of a deceased member.~~

(d) the auditor or auditors of the company

(2) Notice of the Meetings of directors: Acc to Sec 173 the notice of every meeting of the Board of directors of a company shall be given in writing to every directors in india and to every other directors who outside india for the time being at the usual address in india. The notice must be state the date time and place of the meeting.

(3) Quorum: Quorum:- Another requisite of a valid meeting is the presence of the required quorum of members. It may be more, but can not be less, that what is deemed to be a valid legal limit. Only such members who have the right to vote can constitute a quorum.

Quorum at meeting of directors.

(4) Chairman:- The fourth requisite of a valid meeting is that there must be a chairperson to preside over the meeting and to conduct its procedings.

(5) Minutes:- By minutes is meant a record that is kept of the proceedings of any meeting under Sec 118 of the act the provisions governing the minutes of a meeting are as follows.

(i) Every company must record the minutes of every meeting by making entries in a minutes book kept for the purpose within thirty days of the conclusion of every meeting.

(ii) In the case of a meeting of the Board of directors, the minutes also contain the names of the directors dissenting from or not concurring in any resolution.

(iii) The chairman of the meeting shall experience exercise an absolute discretion in regard to the inclusion of non-inclusion of any matter in the minutes

(iv) Minutes of meeting kept in accordance with the provision of Section 118 shall be evidence of the proceeding recorded therein

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(v) Where minutes of the proceedings of any meeting have been kept with the above provision, the meeting shall be deemed to have been duly called and held.

Voting, Polls and Proxy.

Voting is meant ~~the explicit expression~~ of assent or dissent for or against any proposal or resolution.
The articles of a company give the right to vote to its share-holders and prescribe the ~~regulation~~ and procedure for voting at the company's meeting.
1) Voting by show of hands
2) Voting by Poll.

1) **Voting by show of hands :-** This is the simplest method of voting. Acc to Sec 107 ~~demanded~~ In the case of the number of hand raised in support of the motion is greater than those opposing it, the motion is carried; otherwise it is dropped. This is the most widely used method of voting in a company meeting.

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2) **Voting by Poll :-** If the members are dissatisfied about the result of voting by show of hand. [In this method of voting each member is entitled to as many votes as the equity share held by him. The voting is done on a vote card for or against the resolution and voting by proxy is allowed.

Legal Provision Regarding Polls There are the legal provision with respect to a poll.

1) **Demand for Poll :-** A demand for a poll may be made in the following circumstances.
(a) In case of a company having a share capital by the members present in person or by proxy where allowed and having not less than one-tenth of the total voting power.
2) **Time of Poll :-** A poll is demanded on a question of adjournment, it must be taken immediately. (A poll being demanded for any other question, not being a question related to the election of a chairman

must be taken not later than forty-eight hours from the time when the demand was made.

③ Restriction on exercise of voting right :

A Public company, or a private company which is a subsidiary of a Public company shall not restrict any member from exercising his voting right on the ground that he has not ~~held not restrict any~~ ~~member from~~ held his shares of any specified period preceding the date on which the vote is taken.

④ Right of Members to use votes differently

On a poll taken at a meeting of a company a member entitled to more than one vote, or his proxy, need not necessarily cast all his votes in the same manner.

⑤ Procedure of Taking Poll :- when there is demand for a poll, the chairman of the meeting shall appoint two scrutinisers to scrutinise the votes given on the poll and to report thereon to him. The company's secretary shall give a voting card to each member who is entitled to vote.

⑥ Result : of The two scrutinisers appointed one shall be a member (not being an officer ~~appointed two &~~ or employee of the company. The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.

Proxy :- A Proxy is a person who is authorised by a member to attend the company's meeting and vote on behalf of the member.

E-Voting :- E-voting is a facility given to the members of a company to cast their votes on the resolution through electronic mode.

Advantages of e-voting :-

1) Administrative costs of postal voting will be reduced as there will be no need for verification of signature and counting of ballot votes.

2) The participation of share holder increase as they can vote from their home or office

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(3) It is a secured system wherein share-holders can cast their votes in respect of resolution placed by issue for voting by postal by postal ballot / general meeting.

(4) No need to store physical ballot papers

(5) Accurate counting of votes.

(6) Declaration of result in very short time.

(7) No need to verify the signature

(8) e-voting would eliminate the need of appointing a proxy.

(9) Once the shareholder casts his vote, no option is available to the share-holders to modify his casted vote.

10) Voting can be done for different companies at the same time.

11) Increase of transparency.

12) Increase of participation in the decision making process.

Disadvantages of e-voting

(1) There may be a chance of misuse of user id and password of the shareholders, If it is fallen into wrong hand.

(2) Lack of awareness among the share-holders about the new process of e-voting.

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(3) It has to be ensured that the entire process of e-voting is not subject to any kind of manipulation.

(4) Correct data of shareholder will have to be provide by the Registrar and share transfer agents or the company to the agency providing e-voting platform otherwise a shareholders may not get his user id and password and thus may not be able to cast his vote.

(5) No option is available to the share-holder to modify the casted votes

Unit - III

Dividend

dividend is the part of the divisible profit which is distributed among the share-holder. In other word, dividend denote that portion of the profit earned by a company which is distributed among its share-holder at a pre-determined rate.

Determination of dividend:

Hence the rate of the dividend should pay attention to the following point while declaring dividend.

1. Checking the level of profit
2. Determination of Rate of dividend.
3. verification of Liquid Needs.
4. Fore-casting future need.
5. Adequacy of Reserve
6. In case of surplus. Profit.
7. Compliance with Rules and Regulation of the company.
8. Compliance with provision of the company.

Source of dividend:

Following are the source of dividend

(I) Dividend for any financial year can be paid by a company.

(II) Out of the profits of the company

(III) Out of money provide by the central government ~~or a state~~

(IV) State government for the payment of dividend by the company

(V) No dividend shall be declared or paid by a company from it reserves other than free reserve.

Statutory Provisions Regarding declaration and payment of dividend.

Acc. to sec 123 of Companies act 2013 the statutory provision regarding declaration and payment of dividend are as under.

1) No dividend shall be declared or paid by a company for any financial year except:

(I) A company may, before that declaration of any dividend in any financial year, transfer such percentage of its profit for that financial year as it may consider appropriate to the reserve of the company.

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(iii) For the purpose of clause (a) of the Sub-section (1) depreciation shall be provided in accordance with the provision of Schedule II.

(iv) The Board of directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profit of the financial year in which such interim dividend is sought to be declare. No dividend shall

(V) ~~The amount of the dividend~~ be paid by a company in respect of any share therein except to the registered share-holder of such share or to his order or to his banker and shall not be payable except in cash.

(vi) The amount of dividend including interim dividend shall be deposited in a schedule bank a separate account with in five day from the date of declaration of such dividend.

(vii) A company which fails to comply with the provision of Section 73 and 74 shall not so long as such failure continues, declare any dividend on its equity share.

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Unpaid and Unclaimed dividend.

(1) When a dividend declared by a company but has not been paid or claimed within thirty days from the date of the declaration to any share holder entitled to the payment of the dividend, the company shall be within seven days from the date expiry of the said period of thirty days transfer the total amount of dividend which remain unpaid.

(2) The company shall, within a period of ninety days of making any transfer of an amount under sub-section (1) to the unpaid dividend Account, prepare a statement containing the names their last known addresses and the unpaid dividend to be paid to each person and place it on the website of the company.

(3) If any default is made in transferring ~~total said account~~ to amount referred to in subsection (1) or any part there of to the unpaid dividend Account of the company ~~in pursuance of this section which remain~~ unpaid or unclaimed ~~for a period of seven years from~~

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the date such transfer shall be transferred by the company along with interest accrued, it shall pay from the date of such default, interest on so much of the amount as has not been transferred to the said account.

(4) Any person claiming to be entitled to any person money transferred sub-section (1) to the Unpaid dividend Account of the company may apply to the company for payment of the money claimed.

(5) Any money transferred to the unpaid dividend account of a company in pursuance of this section which remains unpaid or unclaimed for a period of seven ~~days~~ years from the date of such transfer shall be transferred by the company along with interest accrued.

(6) All shares in respect of which unpaid or unclaimed dividend has been transferred under sub-section (5) shall be transferred by the company also in the name of Investor Education and Protection Fund.

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(7) If a company fails to comply with any of the requirement of this section the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees.

Interim dividend. Meaning :- The dividend which is declared by the directors during the continuance of the financial year is known as interim dividend. Such a dividend is declared only in situations where profit are high.

Statutory Provision Regarding Interim dividend.

The legal position relating to declaration of interim dividend is as follows-

(1) Usually, the Articles of Association of the company empower the directors to declare interim dividend. If the provision of Rule 86 of table 'A' are applicable to the company than the directors of the company are authorised to declare interim dividend.

(2) The directors of the company can pay interim dividend to the share-holders keeping in mind the profits of the company

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(3) It is not necessary to obtain confirmation from a general meeting in order to declare interim dividend.

(4) The declaration of interim dividend can be canceled at any time after the issue of the declaration but before the actual payment of the dividend.

Payment of dividend out of Capital

Usually it is not allowed to pay dividend out of capital since if dividends are declared out of capital, it would mean that the company is voluntarily returning a part of the share capital invested by them as dividends.

(I) If the company has not earned any profit during the financial year, nor does the company have any accumulated profit of the past financial year but still the company declares a dividend.

(II) If revenue are treated as capital expenditure and the increase in profit due to the same is distributed as dividend.

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(III) If the assets of the company have been over valued, in order to increase profit which are distributed as dividend.

(IV) If the liabilities of a company are concealed and dividends are distributed.

Statutory Provisions - Sec 123 of the Company Act 2013 set out the various source from which dividends can be declared. Acc to this section a company can distribute only out of its profits or out of fund received from the central or state governments for distribution of dividends. This distribution of dividend from any other source would be illegal. Hence, if a company pay dividend out of capital, it would not be legal.

[The reasons for prohibiting payment of dividend out of capital are as follows.

(1) **illegal** :- The Acc to Sec 66 no company can reduce its capital without the approval of the Central government. This is the reason why the payment out of capital is

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considered illegal

(6) Danger: The capital investment by the share holder is a fund which is utilised the repayment of creditors at the time of winding up of the company. This means that the capital of the company is a security for the creditors of the company. Thus, the distribution of dividend out of capital reduces the security of the fund of the creditor of the company.

(5) Prohibition: Acc to Rule 94 of table A dividend can-not be distributed out of capital. If the memorandum and Articles of association of any company authorised it to pay dividend out of capital then such provision shall be void.

(7) Liability: Deposit the relevant provision of the company act and other prohibition, if any dividend are paid out of capital, then in such a situation, the directors will have to deposite in the company the total amount distributed in such manner along with interest at the rate of 5% Per cent.

Company Auditors:- Appointment, Powers duties and liabilities

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Introduction:- The job of the auditors is to examine the books of account. Audit is optional in case of a sole proprietorship concern or a partnership concern, but in the case of a company it is compulsory.

Company Auditors:- It is mandatory for a company to get its accounts audited. Such an audit is known as a 'statutory audit', and the person appointed for conducting the audit is known as the 'statutory auditor'.

Appointment of Company Auditors:- In the case of a company, the auditor can be appointed.

(i) By the Board of directors
(ii) by the share holders
(iii) By the central government

(i) By the Board of Directors:- In the following circumstance the auditors can be appointed by the Board of directors.

(I) First Auditor:- The first auditor of the company other than a government company is appointed by the Board of directors within one month of its incorporation.

(II) Casual Vacancy:- The post of the auditors

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has become vacant due to a reason other than his resignation (such as death, disqualification etc.) before the expiry of his tenure, then the position may be filled in by the Board of directors.

(2) By the Shareholders or Member → The following are the rule regarding the appointment of auditor by the members of share holders.

(i) First Auditor :- In the case of failure of the Board to appoint such auditor, it shall inform the member of the company, who shall within ninety days at an extra ordinary general meeting appoint such auditor.

(ii) Appointment in Annual General Meeting :- Sec 139 of Com. Act 2013 provides that every company shall at the first annual general meeting, appoint an individual or a firm as an auditors who shall hold office from the conclusion of the meeting till the conclusion of its sixth annual general meeting

(3) By the Central government → The following are the provision relating to the appointment of the auditors by the central government

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(i) First Auditor :- In case of a government company or any company owned or controlled by the central government or by any state government, the first auditors shall be appointed by the comptroller and Auditor general of India (CAG) within sixty day from the date registration of the company.

(ii) Subsequent Appointment :- In the above mentioned companies the comptroller and Auditor general of India shall appoint an auditor duly qualified under the companies act in respect of a financial year within 180 days from the commencement of the financial year.

Qualification of Auditors :-

Acc to Sec 141 (1) of Companies Act 2013. The persons who may be appointed as auditors must be qualified chartered accountants within the meaning of Chartered Accountants act 1949 or they must for the time being, be authorised by the central government to be appointed as having obtained similar qualification India.

Disqualification :- Person shall not be eligible for appointment as an auditor of a company.

(a) A body corporate
(b) An officer or employee of the company; or
(c) A partner or employee of an officer or of an employee of the company or
(d) A person or a firm who directly or indirectly has business relationship with the company
(e) A person whose relative is a director or is in employment as a key managerial personnel,

Right or Powers of the Auditors :-

(1) Right to access the Books, Accounts and vouchers of the company :-

The auditors has the right to access the books, accounts and vouchers of the company at all times,

(2) Right to Recieve Necessary Information and Explanations :-

The auditor has the right to recieve necessary information and explanation from the directions and officers of the company.

(3) Right to Receive the prepared Final Account

The auditor has the right to get prepared and receive the final account from the management of the company.

(4) Right to visit the Branch offices :- If the company has branches which have been audited by somebody other than the company auditor in such a situation the company auditors has the right to inspect the account of the branches branch.

(5) Right to Receive Notice and Attend the general meeting :- The auditors has the right to receive all notices issued by the company for convening a general meeting of the company.

(6) Right to make a statement in the general meeting :- The auditors has the right to speak in the general meetings and speak there in order to give

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explanation relating to the accounts and the points mentioned by him in his reports.

(7) Right to have technical and legal Advice :- The auditors is by himself not an expert in every subject. Hence, if he deems necessary then in certain specific matters he may seek the advice of other legal and technical experts in order to form his opinion.

(8) Right to Sign the Audit Report and to certify Related documents :- The auditors in accordance with Sec 141 has the right to sign the audit report. Only he has the right to certify the related documents.

(9) Right to be Indemnified :-

(10) Right to Receive Remuneration :- The auditor has the right to receive his remuneration of his completed the work that was assigned to him.

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Duties under the ~~under~~ India Companies act 2013 :-

Acc to company act, a company auditor has the following duties.

(1) To check certain special points.

(ii) Loans and advances given by the company

(iii) Transaction of the company

(iv) whether the part of the assets of the company held in shares, debentures and securities have been sold at a price below their purchase price.

(v) Whether the loans that have been advanced by the company have been shown as deposits

(vi) Whether personal expenses have been debited to the profit and Loss account

(2) To issue a report :- The auditor is appointed in order to keep control over the working of the directors. The auditors has to issue his report to the shareholders since they are the owners of the business ~~by the central government or by the~~ business, and they are the ones who appoint him.

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8) To give a report on the prospectus of the company.

If an existing company issue a prospectus, then it should include a report from it's auditor on the following matters,

(I) The profits or losses of the company for the last five years.

(II) The assets and liabilities of the company as on the closing date of the same.

(III) If the account for the last 5 year have not been made than description of the same.

(4) To Help in Investigation. It is the duty of the auditor to help any person engaged in investigation in relation to the company.

(5) To give report on solvency:- As to see in case the company is voluntarily being wound up then it is the duty of the auditors to give his report on the declaration of solvency of the company issued by the directors.

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(6) To Help the advocate general :- It is also one of the duties of the auditors that in case the advocate his instituted any proceedings against the directors of the company. then he should help the advocate general in whatever manner possible, in the matter.

(III) Duties According to decisions of Courts.

(I) To Examine the truthfulness and justification of the Balance Sheet

It is the duty of the auditors to see whatever the Balance sheet depicts the true situation of the business and not merely check it arithmetical accuracy.

(II) To give Clearcut Information with honesty :-

It is the duty of the auditors to issue a clear and unambiguous report on the profit on the Profit and Loss account and Balance Sheet. This is his prime duty.

(III) To perform his work tactfully and cautiously :-

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(III) To perform his work tactfully and cautiously :-

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- It is the duty of the auditors to perform his work exercising due tact, caution and care.

(4) To carry out intensive checking in doubtfull circumstances :- If during the course of the audit the suspicions of the auditors are aroused in relation to any fact he should examine the same in detail and only then should give his report.

(5) To give information regarding violation of the company act. If the client is violating any of the provision of the company act then the auditors should inform the shareholders about the same.

(6) Not to cheat the client :- It is the duty of the auditors, not to cheat his client. In this relation it may be said that he should take his remuneration only when he has complete his work.

Liability of Auditors :- Liability are related to duties and duties are related to right. If any auditors does not discharge his duties with due diligence and alertness he can be liable for the same.

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I Civil Liability

(i) Liability for negligence
(ii) Liability for misfeasance
(iii) Liability towards third parties
(iv) Liability under the company act.

II Criminal Liability :-

I Civil liability :- Civil liability are those liability for which if the auditor is found guilty, he shall to pay damages. The court can not fine or imprison the auditor in these case. Such liabilities are the following.

(1) Liability for negligence :- It is expected from the auditors that he will do his work with due caution diligence, efficiency and sincerity and will abide by the provision of his contract with the client and the provision of the company Act.

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(10) Liability for misfeasance :- If any auditor not do the duties entrusted to him, or which arise due to his position, then he shall be held guilty of misfeasance. On the other hand doing prohibited take also amounts to misfeasance.

(11) Liability towards third parties :- If due to any negligence with the company relying upon the audited parties suffering loss, then the auditor can-not be held liable for the same, since since there is no contract b/w the auditors and third party.

(12) Liability under the companies Act :-

As to sec 35 of companies Act if the auditors make a wrong statement in the prospectus of the company then he shall be liable for the same.

(II) Criminal Liabilities :- If any auditor while conducting the audit, commits any act which is

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legally considered to be a 'crime', then he is said to be indulging in criminal activities.

1) Where auditor's report is made or any document of the company is signed or authenticated otherwise than in conformity with the requirements of sections 143 and 145 the auditor concerned shall be punished.

2) Where the auditor fails to produce relevant account, documents and books before the Inspection appointed for investigating the affairs of the company, he may be punished.

3) Where any auditor make a false profit report, certificate or balance sheet or balance sheet require form the purpose of any the provisions of the act or omits any material fact knowingly he shall be liable to punishment.

4) Where any auditor intentionally gives false evidence on examination upon oath or in any affidavit etc. he shall be punishable.

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Inspection and Investigation :-

Meaning :- An investigation is a special and in depth examination of the book of account of an organisation with a predetermined purpose. An investigation is always undertaken with a specific objective. It is different from both accountancy as well as auditing.

Acc to Spicer and Peglar :- "The term investigation implies an examination of the accounts of a business for some special purpose."

Essential Precautions while conducting In investigation → The following points kept in the mind,

(1) Procedure of Investigation :- Before commencing the investigation the investigator should inquire from the client what is the actual object of the clients.

(2) Nature of Business :- Before commencing the investigation the nature of the business should be studied in detail in order to gain knowledge about the method of working, internal check be studied in detail in order to gain knowledge about the method of working, internal check and control and method of accounting being followed by the organisation.

(3) Determination of Period :- Before commencing the investigation the nature of the business should be study in detail in order to gain knowledge

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Oppression and Mismanagement.

Meaning :- The term oppression has not been define act accordin to Board Cooper :- The essence of the matter seems to be that the conduct complained of should at the lowest involves a visible departure from the standards of fair dealing and a violation of the condition of fair play on which every shareholder who entrusts his money to the company is entitled to rely.

Meaning of mismanagement :-

With the concepts of mismanagement or ill conduct. Section also highlights two basic concepts that the affairs of the company are being conducting or such affairs are link to conduct in manner in which is

(i) Prejudicial to Public Interest

(ii) Prejudicial to the Interest of the company.

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Prevention of Mismanagement :-

Section 398 provides for relief against mismanagement.

A requisite no of member of a company may apply to the company law Board for appropriate relief on the ground of mismanagement of the company. The company law Board may give relief if it is of opinion,

(1) That the affairs of the company are being conducted in a manner prejudicial to the public interest or the interests of the company, or

(2) That by reason of a material change in the management or control of the company, the affairs of the company is likely to be conducted in a manner prejudicial to the public interest or the interests of the company.

Winding up of Company.

Meaning and definition of winding up :-

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Winding up is the process of putting and end to the life of the company in other words, It is a proceeding by which a company is dissolved. In the course of such dissolution, the company are disposed of, the cowice are paid off out of the realised assets and the surplus of any, is then paid off to the members in proportion to their holdings in the company.

Type / Model of Winding up of a company :-

There are three type / Model of winding of a company viz:-
1) Compulsory winding-up by court of,
2) Voluntary winding -up, This may be :-
(i) Members' voluntary winding -up
or
(ii) Creditors' voluntary winding - up
3) Winding - up subject to the

Compulsory winding-up the court :-

The winding up by the court

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is generally referred to as the compulsory winding up.
The court will issue an order for the winding -up of a company on an application

Ground of Winding-up by the Compomany by the court :-

1) Special Resolution :- Special resolution for winding up by the court is passed by the members in a general meeting.
2) Default in failing Statutory Report or Holding Statutory meeting Section :- It is default is made in delivering the Statutory report of a Public company to the Registrar, or in holding the Statutory meeting of the company the court may make a winding - up order.
3) Failure to commence Business within time :-

There are reasonable prospects of the company starting business with in a reasonable time and.

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(4) Reduction of members :- Reduction of a members below the legal minimum limit i.e. below 7 in a public company and 2 in a private company. The company may be ordered to the winding - up.

(5) Inability to pay debts :- A company ** may be ordered to be wound up, if it is unable to pay its debts

(6) Default in Filling P/L Account and B/S :- If a company ** is found to be a defaulter in filing Profit and Loss account and Balance sheet under the company act 1956 then the court may order for the Compulsory winding up of the company.

(7) Acted against Sovereignty and Integrity of India :- * The court may order for the compulsory winding up of the company in case if the Company has acted against Sovereignty and Integrity of India.

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Voluntary winding up :- Voluntary winding up means winding - up by the members or creditors of company themselves without the intervention of the court. The object of a voluntary winding - up is that is that the company.

(1) Special Resolution :- ** The voluntary winding - up will commence from the date of the passing of the resolution. The company shall cease to carry on its business except for the benefits of winding - up proceedings.

Type of voluntary winding up :-

Under the act there is clear distinction b/w :-

(i) Members voluntary winding up.

(ii) Creaditors ' voluntary winding up.

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Members voluntary winding up :-

This is possible only in the case of a solvent company. A winding up in the case of which a declaration has been made by the Board and filled with the registrar is referred to as 'members' voluntary winding up.

1. Appointment of liquidator (Sec 490)
2. Board's Power to cease (Sec 491)
3. Power to fill vacancy in the office of liquidator (Sec 492)
4. Notice of appointment of liquidator to registrar (Sec 493)
5. Power of liquidator to accept shares etc. as consideration for sales of company property (Sec 494)
6. Duty of liquidator to call creditors meeting (Sec 495)
7. General meeting at end of each year (Sec 496)
8. Final meeting and dissolution. (Sec 497)

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Procedure of members' voluntary winding up :-

are as follows.

1. Appointment of liquidators :- The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distribution the assets of the company.
2. Board's power to cease on appointment of liquidator :- On the appointment of a liquidator, all the powers of the Board of directors and manager, if there be any of these shall cease, except when the company in general meeting or the liquidators sanctions them to continue (Sec 491)
3. Power to fill vacancy in office of liquidator :- If a vacancy occurs by death resignation or otherwise in the office of any liquidator appointment by the company in general meeting may fill

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the vacancy.

(4) Notice of Appointment of liquidator to give to Registrar.

* * *

The company shall give notice to the registrar of the appointment. (sec 493)

(5) Power of liquidator to accept share etc as the consideration for sales of property sec (494)

* *

This is deals with in chapter on Compromises. Amalgamation and Reconstructions.

(6) Duty of liquidator to call creditors meeting in case of Insolvency.

*

If the liquidator is at any time opinion that the company will not be to pay its debts in full within the period state in the declaration he shall in full with in the period stated in the declaration he shall summon a meeting of the creditors and lay before it is a statement assets and liabilities.

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Creditors' Voluntary winding up (sec 499-509)

* *

If the declaration of solvency has not been made by directors the winding up referred to as a creditor voluntary winding up. In the absence of the solvency declaration voluntary up will naturally be controlled and supervised voluntary winding up.

(1) Meeting of creditors.
(2) Notice to Registrar.
(3) Appointment of liquidator
(4) Committee of inspection
(5) Liquidator remuneration
(6) Power of board to cease.
(7) Power to fill a vacancy in the office of a liquidator
(8) Power to accepts in office of a liquidator
(9) Meeting and dissolution.

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Procedure for the Creditor's Voluntary Winding - up :-

1. Meeting of creditors :- The Board of directors will convene two separate meeting - one of members and the on the two consecutive days. Both the notice be simultaneouly sent and advertised duly in the official gazatee and also in two regional newspaper.

2. Notice of Resolution
3. Appointment of Liquidator.
4. Commitee of Inspection
5. Liquidators Remuneration
6. Board's Power to Cease on Appointment of Liquidator.
7. Duties of liquidators to Call meeting of meeting and creditor at the end of each year.
8. Final meeting and dissolution.

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Consequences of Voluntary winding - up :-

The consequence of voluntary winding - up are as follows.

1. Effect on Status of Company
2. Corporate Power to Continue until Dissolution.
3. Avoidance of transfer of share.
4. Effect on company's Employees.
5. Board's Powers to cease on liquidator's Appointment.

Consequences of winding :up ->

1. Consequences as to Shareholders.
2. Consequences as to proceeding against the company
3. Consequences as to Creditors
   (a) The company's creditor can not files suits or continue any pending suits against the company. They are required to lodge their claims and prove their debts.

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(3) A security creditor need not prove his debts in the court, unless his securities are worthless.

(4) Consequence as to servants and officers.

(5) Consequence as to servants and officers.

(6) Consequence as to board of directors.

(7) Consequence as to Costs.

Difference b/w

Basis of difference	Members Voluntary winding up	Creditors' Voluntary winding up.
1) Declaration of Solvency	In case of a members voluntary winding up there is declaration of solvency	In case of creditors voluntary winding-up there is no such declaration.
2) Control winding up	In a members' Voluntary winding up the members control the winding up to the company and the creditors do not participate directly as the company makes a declaration makes a solvency	In a creditors' voluntary winding up the creditors control the winding up of the a the company is deemed to be insolvent
(3) Members	In a members Voluntary winding There is no meeting of creditors -	In a creditors voluntary winding up whenever there is a meeting of control

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Basis.	Members Voluntary Winding up	Creditor Voluntary Winding up
(4) Appointment of Liquidators	In a members' voluntary winding up the liquidator is appointment by the company and his remuneration is fixed by the company.	In a creditors voluntary winding up he is appointment by the creditor and his remuneration is fixed by the committee of inspection or, if there is no such committee by the creditor
(5) Comitee of Inspection	There is no commitee in a members voluntary winding up.	In a creditors voluntary winding up may appointment a commitee of inspection.
6) Powers of Liquidator	In a members voluntary winding the liquidator can exercise power with the sanction of a special resolution of the co.	In a creditors voluntary winding up he can do so with the sanction of the court or the commitee of inspection or of a meeting of the creditors