

COMPANIES ACT 2013

➤ **STRUCTURE OF COMPANIES ACT 2013**

Sections	470
Chapters	29
Schedule	07

➤ **APPLICABILITY OF ACT:**

This Act Extends to all over India including Jammu and Kashmir.

COMPANY

DEFINITION	As per section 2(20) of the Companies Act, 2013 “company” means a company incorporated under Companies Act, 2013 or under any previous company law;” .
MEANING	The word “company” is derived from the two Latin word (Com = with or together; Panis = bread, meal), and originally referred to an association of persons who took their meals together.

THE MAIN CHARACTERISTICS OF A COMPANY ARE AS FOLLOW:

<u>INCORPORATED ASSOCIATION</u>	<ul style="list-style-type: none"> A company is formed and registered by complying with the formalities prescribed under the act.
<u>ARTIFICIAL PERSON</u>	<ul style="list-style-type: none"> Invisible, Intangible, Exists only in eyes of law. A company is an artificial legal person. But it is not a fictitious person. Being an artificial person it has to depends upon a natural persons, namely the directors, officers etc., for getting its various work done.
<u>SEPARATE LEGAL ENTITY</u>	<ul style="list-style-type: none"> A company is a separate person in the eyes of law distinct from its members. It is capable of enjoying rights and of being subjected to duties which are not the same as those enjoyed or borne by its members.
<u>COMMON SEAL</u>	<ul style="list-style-type: none"> It is an official signature of the company. The name of the company must be engraved on its common seal. A document not bearing common seal of the company is not authentic and has no legal force behind it. It is to be affixed in the presence of at least two directors and company secretary of the company.
<u>PERPETUAL SUCCESSION</u>	<ul style="list-style-type: none"> “Members may come and members may go but the company goes on forever”. Death, Insolvency or Insanity etc. of any member does not affect the continuity of the company. It is a creation of law and can be dissolved only under the law.
<u>TRANSFERABILITY OF SHARES</u>	<ul style="list-style-type: none"> The capital of a company is divided into parts, called shares. The shares are said to be movable property and, subject to certain conditions, freely transferable, so that no shareholder is permanently or necessarily wedded to a company.
<u>SEPARATE PROPERTY</u>	<ul style="list-style-type: none"> As a corporate person, the company is entitled to own and hold property in its own name. No member can claim ownership of any item of the company’s assets. The assets of the company are not the assets of the members.
<u>LIMITED LIABILITY</u>	<ul style="list-style-type: none"> The members of the company cannot be held liable for the debts of the company. The extent of the liability of the members varies according to the nature of the company.
<u>SEPARATION OF OWNERSHIP AND MANAGEMENT</u>	<ul style="list-style-type: none"> The members do not participate in day-to-day affairs of the company. The management of the company lies in the hands of the elected representatives of the members, called the Board of Directors. The directors are appointed as well as removed by the members.
<u>CAPACITY TO SUE</u>	<ul style="list-style-type: none"> A company being a body corporate can sue and be sued in its own name.

<u>AND BE SUED</u>	<ul style="list-style-type: none"> All legal proceedings against the company are to be instituted in its own name. Similarly, the company may bring an action against anyone in its own name.
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PRINCIPLE OF SEPARATE LEGAL ENTITY

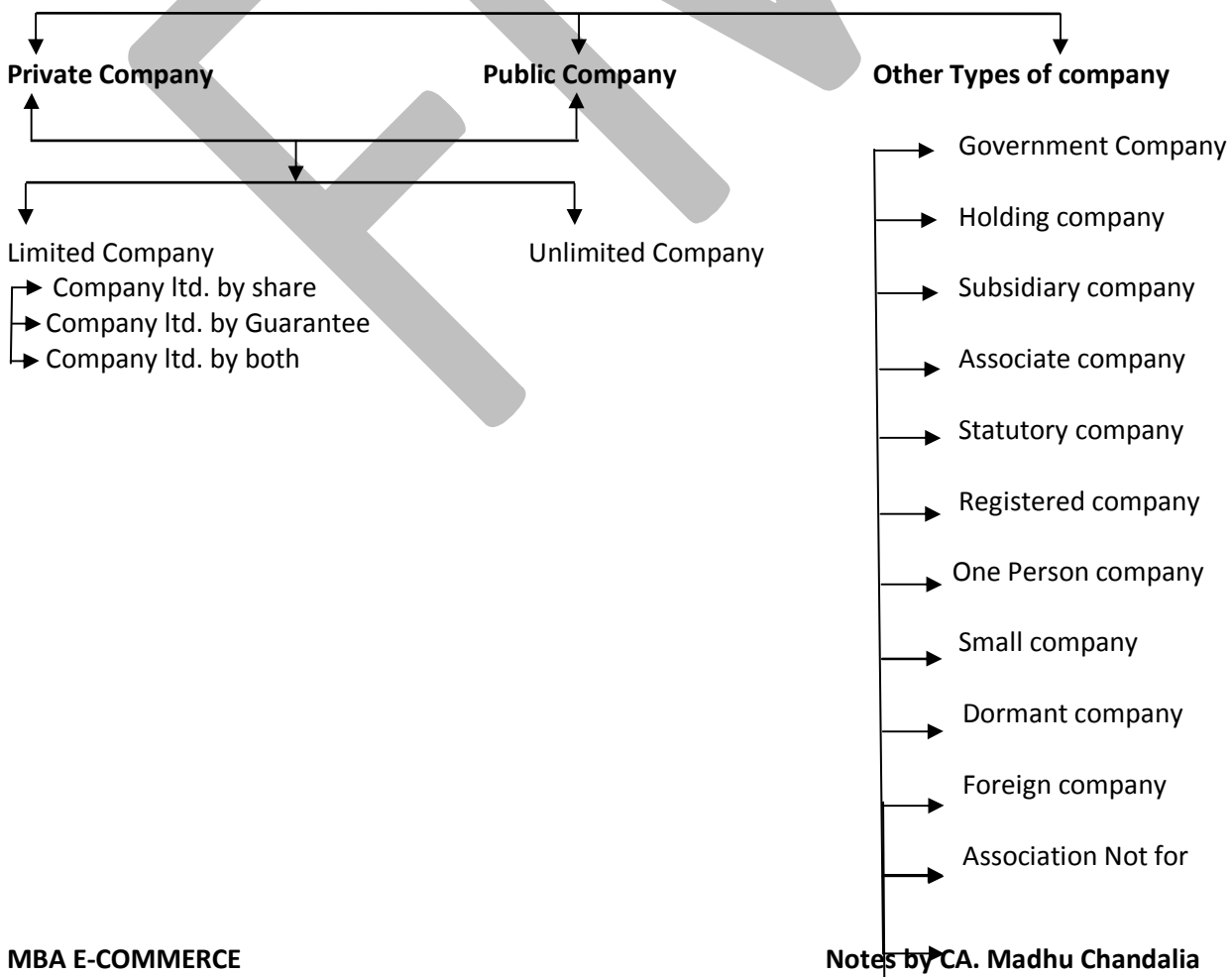
CASE LAW:- SALOMON Vs SALOMON Co. Ltd.

<u>Facts</u>	<ol style="list-style-type: none"> Mr. Salomon was carrying on the business of boot manufacturing as a sole proprietor. He incorporated a company named Salomon and Co. Ltd for taking over its business. The purchase consideration agreed was 38,782 pounds. The consideration was paid in terms of secured debentures of 10000 pounds, Fully paid up shares of 1 pound each-20000 and balance 8782 pounds in cash. The remaining six members of the family of Mr. Salomon were issued one share each. Salomon was the managing director of the company. The company borrowed from creditors, an amount of 7000 pounds. The company ran into financial difficulties and eventually went into liquidation. The assets realized were only upto 6000 pounds. The unsecured creditors contended that Salomon and the company were one and the same.
<u>Decision</u>	<p>➤ The court held that it was a real company fulfilling all the legal requirement, and therefore all the secured debentures even though held by Salomon were to be paid in priority to the other unsecured creditors.</p>

WHETHER COMPANY IS A CITIZEN?

- **COMPANY NOT A CITIZEN-** In India, the Citizenship either under the Citizenship Act,1955 or under the Constitution of India is available only to an individual. Therefore, a company cannot be a citizen of India.
- **RIGHTS OF A COMPANY-** The Constitution of India grants certain fundamental rights to only citizens and certain rights to every person, whether citizen or not. So, the company does not have the rights which are available exclusively to citizens, but the company is entitled to all the other rights which are available to all persons, whether citizen or not.

TYPES OF COMPANY



TYPES OF COMPANY ON THE BASIS OF LIABILITY OF MEMBERS

<u>A Company Limited by Shares</u> [SECTION 2(22)]	<ul style="list-style-type: none"> A company limited by shares may be defined as a company whether public or private company having the liability of its members limited by its memorandum to the amount, if any, unpaid on the shares respectively held by them.
<u>A Company Limited by Guarantee</u> [SECTION 2(21)]	<ul style="list-style-type: none"> A company limited by guarantee is a company having the liability of its members limited by its memorandum to such an amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up.
<u>A Company Limited by Guarantee having a Share capital</u>	<ul style="list-style-type: none"> Liability of its members limited by its memorandum to such an amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up plus any amount remaining unpaid on the shares held by him.
<u>An Unlimited Company</u> [SECTION 2(92)]	<ul style="list-style-type: none"> <u>An unlimited company is a company not having any limit on the liability of its members.</u> An unlimited company may or may not have share capital.

PRIVATE COMPANY**[Section 2(68)]**

“Private Company” means a company having a minimum paid up share capital as may be prescribed, and which by its articles:

1. Restricts the right to transfer its shares;
2. Except in case of **One Person Company**, limits the number of its members to 200:
 - Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member;
 - Provided further that –
 - a) Persons who are in the employment of the company; and
 - b) Persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
3. Prohibits any invitation to the public to subscribe for any securities of the company;
 - There should be at least 2 persons to form a private company. A private company can therefore be registered with a minimum of 2 members and cannot have more than 200 members (excluding employee and ex-employee members). It cannot invite the public to subscribe for its shares or debentures nor can its shares be freely transferred.
 - The words “Private Limited” must be added at the end of its name by a private limited company.

PUBLIC COMPANY**[Section 2(71)]**

“Public company” means a company which is not a Private Company;

- There should be at least 7 persons to form a public company.
- The words “Limited” must be added at the end of its name by a public limited company.

- **No Minimum Paid-up Share Capital:** The minimum paid-up share capital requirement of INR 100,000 (in case of a private company) and INR 500,000 (in case of a public company) under Company Act 2013 has been done away with. Consequently, the definitions of private and public companies stand amended. Accordingly, no minimum paid-up capital requirements will now apply for incorporating private as well as public companies in India.

DISTINCTION BETWEEN A PUBLIC AND A PRIVATE COMPANY

<u>Basis</u>	<u>Private Co.</u>	<u>Public Co.</u>
Minimum number of members	2	7
Maximum number of members	200	No Restriction
Number of directors	At least 2	At least 3
Transferability of shares	Right to transfer shares is restricted by the Articles.	Shares are freely transferable.
Restriction on invitation to subscribe for shares	Private company by its Articles prohibits any such invitation to the public.	Public company invites the general public to subscribe for the shares or the debentures of the company.

GOVERNMENT COMPANIES**Section 2(45)**

“Government Company” as any company in which not less than fifty one percent of the paid-up share capital is held by-

- a) The Central Government, or
- b) By any State Government or Governments, or
- c) Partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

HOLDING COMPANY**Section 2(46)**

Holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies.

SUBSIDIARY COMPANY**Section 2(87)**

Subsidiary Company or Subsidiary, in relation to any other company (that is to say the holding company), means a company in which the holding company—

- 1) Controls the composition of the Board of Directors; or
- 2) Exercise or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies, shall not have layers of subsidiaries beyond the prescribed limit.

ASSOCIATE COMPANY**Section 2(6)**

- In relation to another company, means a company in which that other company has a significant influence & which is not a subsidiary company.
- The term significant influence means control of at least 20% of total share capital or of business decision under an agreement.

REGISTERED COMPANY

Means a company incorporated under the Companies Act 2013 or any previous act relating to company.

STATUTORY COMPANY-

- Means a company formed under the special act of parliament. Ex. LIC, RBI.
- Nature and powers of such companies are laid down in the special Act
- Audit is conducted under the control and supervision of the Auditor General of India

ONE PERSON COMPANY (OPC)**[Section 2(62)]**

“One Person Company” means a company which has only one person as a member”.

The memorandum of One Person Company is required to indicate the name of the other person (Nominee), with his prior written consent in the prescribed form, who shall, in the event of the subscriber’s death or his incapacity becomes the member of the One Person Company.

“It is basically a Private Company with some unique features”

Other conditions for One Person Company are as under:

- 1) Only a natural person who is an Indian Citizen and Resident in India –
 - Shall be eligible to incorporate a One Person Company;
 - Shall be a nominee or the sole member of a One Person Company.
- 2) No person shall be eligible to incorporate more than a “1” One Person Company or become nominee in more than “1” such company.

- 3) No minor shall become member or nominee of the One Person Company or can hold share with beneficial interest.
- 4) Such Company cannot be incorporated or converted into a company under section 8 of Companies Act, 2013 (section 8 deals with Formation of company with charitable objects, etc.)
- 5) Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any Body Corporates.
- 6) No such company can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of One Person Company, except threshold limit (paid up share capital) is increased beyond 50 lakh rupees or its average annual turnover during the relevant period exceeds 2 crore rupees.

Benefits of One Person Company are as under:

- 1) Only One Director is sufficient.
 - 2) OPC is not required to hold annual general meeting.
 - 3) The requirement of a minimum number of Board Meetings to be conveyed shall not apply to an OPC having one Director. However, in case of OPC having more than one Director, the OPC shall hold at least one meeting of the BOD in each half of calendar year and the gap between two meetings is not less than 90 days.
 - 4) Information to be provided in the director's report has been significantly reduced (As compared to Private Company).
 - 5) Annual Return in other companies shall be signed by Director and Company Secretary and in case of no Company Secretary by a Practicing Company Secretary whereas in the case of OPC annual return shall be signed by Company Secretary and in case of his absence it will be signed by Director of the company.
- The words "One Person Company" shall be mentioned in brackets below the name of such company, wherever its name is Printed, Affixed or Engraved.

SMALL COMPANY

[Section 2(85)]

Small Company is a new form of Private Company under the Companies Act, 2013. A classification of a Private Company into a Small Company is based on its size i.e. Paid Up Share Capital and Turnover.

As per section 2(85) "Small Company" means a Company, other than a Public Company, –

1. Paid-up share capital of which does not exceed 50 lakh rupees or such higher amount as may be prescribed which shall not be more than 5 crore rupees; or
2. Turnover of which as per its last profit and loss account does not exceed 2 crore rupees or such higher amount as may be prescribed which shall not be more than 20 crore rupees:

Provided that nothing in this definition shall apply to –

- A Holding Company or a Subsidiary Company;
- A Company registered under section 8; or
- A Company or Body Corporate governed by any Special Act;

Relaxations provided to Small Companies under Companies Act, 2013.

- 1) Financial statement of Small Companies may not include the Cash Flow Statement.
- 2) Small Companies shall be deemed to have complied with the provisions relating to Board Meeting if at least one meeting of the BOD has been conducted in each half calendar year and the gap between the two meetings is not less than 90 days. (In other cases meeting required-There shall be minimum of four Board meetings every year and not more 120 days shall intervene between two consecutive Board meetings.
- 3) Merger or Amalgamation between two or more small companies have been simplified without the requirement of court process.

DORMANT COMPANY

[Section 455]

Where a Company is formed and registered under this act for a future project or to hold an asset or Intellectual Property and has no Significant Accounting transactions, such a Company or Inactive Company may make an application to the registrar in such manner as may be prescribed for obtaining the status of a Dormant Company.

FOREIGN COMPANIES

[Section 2(42)]

"Foreign Company" means any company or body corporate incorporated outside India which –

- Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- Conducts any business activity in India in any other manner.

INVESTMENT COMPANIES**[Explanation (a) to Section 186]**

Investment Company means a company whose principal business is the acquisition of shares, debentures or other securities.

ASSOCIATION NOT FOR PROFIT**[Section 8]**

Section 8 of the Companies Act, 2013 provides that where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered as a limited company

- Has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- The company shall apply its income in promoting the objects of the company.
- The company shall prohibit payment of any dividend to its members.

NIDHI COMPANIES**[Section 406]**

- Company which has been Incorporated as a Nidhi Company with the object of cultivating the habit of Thrift (Cost Cutting) and Savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefits and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

INCORPORATION OF COMPANIES**INCORPORATION OF COMPANY****[Section 3 & 7]**

Basic requirement for Incorporation	<p>There must be at least-</p> <p>7 persons.....in case of Public Company</p> <p>2 persons.....in case of Private Company</p> <p>1 person.....in case of One Person Company.</p> <p>The object for, which the company is proposed to be incorporated, must be lawful.</p> <p>The above persons must subscribe to the MOA and AOA.</p> <p>The requirements of the Companies Act, in respect of registration, must be complied.</p>
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PROCEDURE FOR INCORPORATION [SECTION 7 READ WITH COMPANIES (INCORPORATION) RULES, 2014]

SELECTION OF THE TYPE OF COMPANY	<ul style="list-style-type: none"> • The promoters of a company may select type of the company as they wish to form themselves into viz. OPC, Private Company, Public Company etc.
PRELIMINARY REQUIREMENTS	<ul style="list-style-type: none"> • All the directors of the proposed company must ensure that they are having Directors Identification Number (DIN). • Out of all the directors of the proposed company, atleast one director should have digital signature to digitally sign the incorporation and other related documents.
RESERVATION OF NAME	<ul style="list-style-type: none"> • One of the promoters should apply to the Registrar of Companies (ROC) regarding the reservation of name. While applying the following points should be kept in mind: <ol style="list-style-type: none"> i. He should apply in e-form No. 1 along with the fees of Rs. 1000/- as prescribed in the companies (Registration Offices and Fees) Rules, 2014. ii. Maximum six proposed names can be given in order of preference. • Upon receipt of the application in the Form INC-1 for reservation of name, the Registrar of Companies after verification of all the criteria and guidelines prescribed under Section 4 and related Rules, shall approve any of the name, which shall be valid for a period of 60 days from the date of intimation to the Registrar. After 60 days, if documents for incorporation are not filled with the Registrar, the reservation made by the Registrar shall lapse automatically.
PREPARATION OF THE MOA & AOA	<ul style="list-style-type: none"> • The Memorandum of Association is a document which sets out the constitution of a company and is therefore the foundation on which the structure of the company is built. It defines the scope of the company's activities and its relations with the outside world. • The articles of association of a company are its bye-laws or rules and regulations that govern the management of its internal affairs and the conduct of its business. • Get MOA & AOA printed and number of copies should be available with the company. One of the copies should be got stamped by the Collector of Stamps. It may be noted that the dating and execution of the MOA & AOA should not take place prior to the date of stamping. In most of the states, facility of e-stamping through

	MCA-21 system is available.
FILLING OF THE DOCUMENTS WITH THE REGISTRAR OF COMPANIES	<ul style="list-style-type: none"> An application shall be filed, with the Registrar of Companies within whose jurisdiction the registered office of the company is proposed to be situated, <p>1. APPLICATION FOR REGISTRATION OF COMPANY An application for incorporation shall be filed with ROC in form INC-2 (in case of one person company) or INC-7 (in case of other companies).</p> <p>2. FILING OF THE MEMORANDUM AND ARTICLES OF THE COMPANY Section 7(1)(a) the filing of the memorandum and articles of the company duly signed by all the subscribers to the memorandum</p> <p>DECLARATION FROM THE PROFESSIONAL A declaration in the prescribed Form INC-8 by an advocate or chartered accountant or cost of registration and matters precedent or incidental thereto have been compiled with.</p> <p>3. AFFIDAVIT FROM THE SUBSCRIBERS TO THE MEMORANDUM An affidavit in Form No INC-9 by each of the subscribers to the memorandum and by all the persons named as the first director, if any, in the articles that they are not convicted of any offence in connection with the promotion, formation or management of any company or that they has not been found guilty of any fraud or misfeasance or of any breach of duty under this act or any previous company law during the preceding 5 years</p> <p>4. The ADDRESS FOR CORRESPONDENCE till its registered office is established.</p> <p>5. PARTICULARS OF SUBSCRIBERS The certain prescribed particulars of every subscriber to the memorandum along with proof of identity.</p> <p>6. PARTICULARS OF FIRST DIRECTORS The particulars of the person mentioned in the articles as the first directors of the company in Form DIR- 12.</p> <p>7. CONSENT TO ACT AS DIRECTORS The particulars of the interest of the persons mentioned in the articles ALONG WITH their consent to act as director in Form no DIR-2</p> <p>8. FURNISHING VERIFICATION OF REGISTERED OFFICE E Form INC-22 for verification of the location of the registered office.</p>

MEMORANDUM AND ARTICLES OF ASSOCIATION

MEMORANDUM OF ASSOCIATION

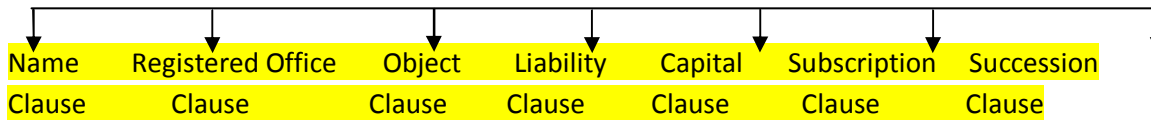
[Section 2(56)]

DEFINITION Section 2(56)	"Memorandum" means the memorandum of association of the company as originally framed or altered from time to time in pursuance of any previous company law or this Act.
MEANING	<ul style="list-style-type: none"> It contains the objects for which the company is formed and therefore, identifies the possible scope of its activities beyond which its actions cannot go. It defines as well as confines the powers of the company.
PURPOSE	<ul style="list-style-type: none"> The Memorandum of Association is the charter of the company. It is the foundation on which the structure of the company is built. It is the most fundamental document of the company specifying the most important information relating to the company.

FORM OF MEMORANDUM

[Section 4]

Name of Table	Types of Company
Table A	Companies limited by share
Table B	Companies limited by guarantee and not having share capital
Table C	Companies limited by guarantee and having share capital
Table D	Unlimited Companies not having share capital
Table E	Unlimited companies having share capital

CONTENTS OF MEMORANDUM**CLAUSES OF MOA**

As per Section 4 MOA of every company must contain the following clauses:

Name clause Sec.4(1)(a)	<p>The first clause must state name by which a company is known.</p> <p>i. It may be noted that name of the company shall not be identical with or too nearly resembles the name of an existing company.</p> <p><u>Note: It may be noted that ROC's may allow names starting with small alphabets (like i2 Technology Ltd) as such names are being increasingly used by many companies in other countries.</u></p>
Registered Office Clause Sec.4(1)(b)	<p>i. The name of the state in which the registered office is to be situated must be given in the Memorandum. But the exact address of the registered office is not required to be stated therein.</p> <p>ii. As per sec. 12, a company shall, have a registered office within a period of 15 days from the date of incorporation of company. (For verification of registered office Form No. INC-22 is to be filed within 30 days from the date of incorporation of company to the ROC).</p> <p>Importance of Registered office:</p> <ul style="list-style-type: none"> • Nationality of a company is determined. • Any notice is served to the registered office. • Any case filed at R.O. • Several statutory registers are maintained at the R.O. • Annual General Meetings • Legal advertisements
Object Clause Sec. 4(1)(c)	<p>i. The object clause is of great importance because it determines the purpose and the capacity of the company.</p> <p>ii. The subscribers to the Memorandum enjoy almost unrestricted freedom to choose the objects provided objects are not illegal and against the provisions of the company act.</p> <p>iii. A company cannot do anything beyond or outside its object and any act done beyond will be ultra vires and void and cannot be rectified even by the assent of the whole shareholders.</p> <p>iv. However, a company may do anything which is incidental to and consequential upon the objects specified and such act will not be an ultra vires act.</p>
Liability Clause Sec. 4(1)(d)	<ul style="list-style-type: none"> • The MOA of every co-must state whether the liability of its members are limited by share or limited by guarantee or it is unlimited.
Capital Clause Sec.4(1)(e)	<ul style="list-style-type: none"> • This clause must state the amount of capital with which the company is registered. • The capital is described as nominal/authority/registered. • The effect of this clause is that the company cannot issue more shares that stated under this clause without altering the memorandum.
Association Clause & Subscription Clause Sec.4(1)(e)	<ul style="list-style-type: none"> • In this clause the person subscribing the MOA declares their desires to take the share indicated opposite their respective names. • Following are the statutory requirement regarding to subscription to MOA. <p>(a) The MOA must be signed by each subscribes in the presence of at least one witness must attest the signatures;</p> <p>(b) Each subscriber must take at least share; if any and</p> <p>(c) Each subscriber must write opposite his name the number of shares (if any) which he agrees to take.</p>

ARTICLES OF ASSOCIATION**[Section 2(5)]**

DEFINITION Section 2(5)	“Articles” means the articles of association of the company as originally framed or altered from time to time in pursuance of any previous company law or this Act.
MEANING	<ul style="list-style-type: none"> The articles of a company are its bye-laws or rules and regulations that govern the management of its internal affairs and the conduct of its business. The articles of a company sub-ordinate to and are controlled by the memorandum of association.
PURPOSE	<ul style="list-style-type: none"> AOA established a contract between the company & members and between the members interest.

FORM OF ARTICLES**[Section 4]**

Name of Table	Types of Company
Table F	Companies limited by share
Table G	Companies limited by guarantee and having share capital
Table H	Companies limited by guarantee and not having share capital
Table I	Unlimited Companies having share capital
Table J	Unlimited companies not having share capital

DIFFERENCE BETWEEN MOA AND AOA

S. No.	MOA	AOA
1	It has primary importance in the formation of company.	It has a secondary importance in the formation of company.
2	Defines the limits and objects of the company.	Defines internal rules and regulations of the company.
3	Subordinate to the company act.	Subordinate to the company act and memorandum of association of the company
4	Defines the relation between the company and outsiders.	Govern internal relationship between company and its members.
5	This document determines the limits of the company business.	Business limits is not mentioned in it.

ALTERATION OF NAME CLAUSE**[Section 13]:**

Change of Name SEC.13	<p>The name of the company can be changed by a special resolution and with the written approval of the Central Government. The Powers of the Central Government for approving change in the name have been delegated to the Registrar Of Company. Approval of the Central Government is not necessary if the change relates to addition/deletion of the word 'private' to the name.</p> <p>Form MGT-14 along with the copy of approval of Central Government shall be filed to the ROC within 30 days of passing the special resolution.</p> <p>Change in the name shall be subject to the following:</p> <ol style="list-style-type: none"> Name of the company shall not be identical with or too nearly resembles the name of an existing company. Further provides that no company shall have a name which, in the opinion of Central Government, is un-durable. Unless the previous approval of Central Government is obtained, a company shall not be registered with a name which contains any word or expression which shows any connection with government or a state patronage or which contain such word or expression, as may be prescribed.
	<ol style="list-style-type: none"> E-form No. INC-1 along with fees of Rs. 1000 should be filed to the registrar. On confirmation from Registrar of Companies, a Board Meeting is held to: <ol style="list-style-type: none"> Note down the new name; Decide the day, date, time or venue of General Meeting; Approve the notice of the General Meeting; Authorize the CS/Director to Issue the of General Meeting;

Procedure:	<ol style="list-style-type: none"> 3. Issue the notice of General Meeting to all auditors, members, directors at least 21 clear days before the General Meeting. 4. Hold General Meeting and passed Special Resolution. 5. In case of listed companies send 3 copies of notice of General Meeting to stock exchange where the securities are listed. 6. Special resolution and explanatory statement should be filed with the ROC in form no. MGT-14 within 30 days of passing the Special Resolution. 7. In case of listed company file a copy of the resolution to the stock exchange where the securities are listed. 8. An application for change in name shall be made to the CG in e-form no. INC-24 along with prescribed fee within 60 days from the date of name reserved by the ROC or 30 days from the date of passing Special Resolution (whichever is earlier). 9. Application to the ROC to Issue of fresh/revised Certificate of Incorporation. 10. In case of listed company send 6 copies of the MOA as altered to stock exchange.
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ALTERATION OF REGISTERED CLAUSE**[Section 12&13]:****Alteration of RO****Within the same town**

Board Resolution + Notice to
ROC within 30 days (INC-22)

Different City, same state

Same jurisdiction of ROC: SR
Different jurisdiction of ROC:
 SR+ Permission of regional
 director

Different State

Special Resolution +
 Central Government
 approval

Change Within The Local Limits Of Same Town Section 12	<p>Board Resolution: A company can change its registered office from one place to another within the local limits of the city, town or village, where it is situated by passing a Board Resolution. This change of registered office does not involve alteration of memorandum.</p> <p>Notice of change: A Notice of change is to be given to the Registrar of Company in Form no. INC-22 within 15 days of such change.</p>
Change From One City To Another Within The Same State Section 12	<p>Special Resolution: If the registered office is to be shifted from one city, town, village to another city, town, village within the same State & which does not involve the change of jurisdiction of Registrar of Companies, special resolution has to be passed in the general meeting of company. This change of registered office also does not involve alteration of memorandum.</p> <p>Notice of change: Form No. MGT-14 shall be filled to Registrar of Companies within 30 days of passing the special resolution.</p> <p>A notice of change is to be given to the Registrar of Companies in form no. INC-22 within 15 days of such change.</p>
Change From One City To Another Within The Same State Involving Change Of Jurisdiction Of Registrar Of Companies Section 12(5)	<p>Special Resolution + Approval of Regional Director: If a company wants to change its registered office from one city to another within the same state & which involves change of jurisdiction of ROC a special resolution has to be passed in the general meeting of the company, which must be confirmed by Regional Director. This change of registered office also does not involve alteration of memorandum.</p> <p>Filing of Confirmation of Regional Director: The confirmation of Regional Director shall be communicated within a period of 30 days from the date of receipt of application and the company shall file the confirmation with the Registrar, within a period of 60 days of the date of confirmation, who shall register the same and certify the registration within a period of 30 days from the date of filing of such confirmation.</p> <p>Notice of change: Form No. MGT-14 shall be filled to Registrar of Companies within 30 days of passing the special resolution.</p> <p>A notice of change is to be given to the Registrar of Companies in form no. INC-22 within 15 days of such change.</p> <p>➤ <u>This provision is applicable only in the state of Maharashtra & Tamil Nadu where there are two Registrar of Companies .</u></p>

Change From One State To Another Section 13	<p>Special Resolution + Approval of Central Government: If a company wants to change its registered office from one state to another state a special resolution has to be passed in the general meeting of the company, which must be confirmed by Central Government. This change of registered office involves alteration of memorandum.</p> <p>Filling of Confirmation of Central Government: The confirmation of Central Government shall be communicated within a period of 60 days from the date of receipt of application, before passing its order, may satisfy itself that the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company or that the sufficient provision has been made by the company either for the due discharge of all its debts and obligations or that adequate security has been provided for such discharge and the company shall file the confirmation with the Registrar, within a period of 30 days of the date of confirmation, who shall register the same and certify the registration within a period of 30 days from the date of filing of such confirmation.</p> <p>Notice of change: Form No. MGT-14 shall be filled to Registrar of Companies within 30 days of passing the special resolution.</p> <p>A notice of change is to be given to the Registrar of Companies in form no. INC-22 within 15 days of such change.</p>
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ALTERATION OF LIABILITY CLAUSE

Relevant Provisions	<ul style="list-style-type: none"> ➤ In general liability clause cannot be altered. However, Section 18 permits a company of any class registered under this act to convert itself in some other class of company by altering its Memorandum and Articles of Association. ➤ By using these provisions, if an unlimited company gets converted into a limited company or vice-versa, The liability of the members will be changed and thereby it becomes necessary to alter the liability clause of memorandum.
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ALTERATION OF CAPITAL CLAUSE

[Section 61]:

Requirement of Change	<p>Section 61 of the Companies Act, 2013 provides that a Limited Company having a share capital may, by passing an Special Resolution (Sec-13) in a General Meeting, alter the capital clause of its Memorandum; provided authority to alter is given to it by its Articles of Association. A notice of alteration is required to be filled with the ROC in Form No. SH. 7 within 30 days.</p>
Modes of change	<p>Section 61(1) provides that Capital Clause can be altered in any of the following ways:</p> <ol style="list-style-type: none"> 1. By increasing its authorized share capital by such amount as the company requires; 2. By consolidating existing shares into shares of larger denomination; 3. By converting fully paid up shares into stock or vice versa; 4. By sub-dividing its existing shares into shares of small denomination; 5. By cancelling shares which have not been taken up or agreed to be taken up and diminishing the amount of its share capital by the amount of the shares cancelled.

ALTERATION OF ARTICLES OF ASSOCIATION

[Section 14]:

Provisions for Alteration of Articles	<p>Section 14 of the Companies Act, 2013 provides that a company may, by passing a special resolution in the general meeting, alter its Articles of Association. However, where articles are altered in such a way that it has the effect of converting a public company into a private company, then approval of NCLT is also required, in addition to special resolution.</p> <p>Every alteration of Articles of Association and a copy of the order of the NCLT approving the alteration shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of 15 days.</p>
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PROSPECTUS

[Section 2(70)]

Definition	<p>‘Prospectus’ means any document described or issued as a prospectus. And includes:</p> <ol style="list-style-type: none"> a) a red herring prospectus referred to in section 32 or b) shelf prospectus referred to in section 31 or c) any notice, circular, advertisement or other document inviting offers from the public for
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	the subscription or purchase of any securities of a body corporate.
Features	<p>a) It is a document, i.e. in writing. So, oral invitation to subscribe for shares will not be considered prospectus. Television advertisement cannot be treated as prospectus.</p> <p>b) It is issued to public, i.e. more than 200 persons. However, while counting 200 persons following persons will not be included:</p> <ol style="list-style-type: none"> Qualified Institutional Buyer like UTI, Scheduled Bank. Employees of company, to whom shares are offered under 'Employee Stock Option Scheme'. <p>c) The purpose of issue of prospectus is to invite the public for subscribing the securities of the company.</p>

WHEN PROSPECTUS NOT REQUIRED TO BE ISSUE [SECTION 26 AND PROVISIO TO 33(1)]

Right Issue Section 26(2)(a)	Where an offer or invitation is made to the existing members, or debentures holder of the company as per Section 62.
Repeat Issue or Further Public Offer Section 26(2)(b)	Where an offer or invitation is made to subscribe for shares or debentures, which are uniform in all respects with share or debentures previously issued and listed on a Recognized Stock Exchange.
Private Placement	Where no offer or invitation is made to the public for issue of shares or debentures.
Invitation to underwriter Proviso To Section 33(1)	When the application form is issued in connection with an invitation to a person to enter into an underwriting agreement.
Private Company	A private company is not required to issue a prospectus.

ABRIDGED PROSPECTUS**[Section 2(1) AND 33]**

DEFINITION Section 2(1)	It means a memorandum containing such salient features of a prospectus as may be prescribed by SEBI by making regulation in this behalf.
Mandatory attachment of Abridged Prospectus Section 33(1)	<p>A company shall not issue any application form inviting subscription for any securities unless it is accompanied by abridged prospectus.</p> <p>Exceptions: In following cases, abridged prospectus is not required to be attached with application form:</p> <ol style="list-style-type: none"> When the application form is issued in connection with an invitation to a person to enter into an underwriting agreement; When the application form is issued in relation to securities which were not offered to the public (i.e. Private Placement cases)
Furnishing of Normal Prospectus Section 33(2)	A copy of prospectus shall be furnished to any person who makes a request for it, before closing of the subscription list.
Penalty Section 33(3)	If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of 50,000 for each default.

DEEMED PROSPECTUS OR PROSPECTUS BY IMPLICATION**[Section 25]**

MEANING	<ul style="list-style-type: none"> Where a company allots or agrees to allot any securities With a view to these being offered for sale to the public Any document by which the offer for sale to the public is made Shall be deemed to be a prospectus issued by the company.
Contents	<p>In addition to the contents specified u/s 26, a deemed prospectus shall state the following:</p> <ol style="list-style-type: none"> Net amount of consideration received or to be received by the company on the securities to which the offer relates, and Place and time at which the contract of allotment of securities may be inspected.
Effects	All the provisions applicable to prospectus shall apply to deemed prospectus.
PROBLEM	Explain the concept of "Deemed Prospectus" under the Company Act, 2013. Point out the circumstances where under issuing the prospectus is not mandatory.

SHELF PROSPECTUS**[Section 31]**

MEANING	<ul style="list-style-type: none"> Shelf Prospectus means a prospectus in respect of which the securities or class of securities included therein are issued for subscription. In one or more issues, over a certain period, without the issue of a further prospectus.
Applicability	Any class or classes of companies, as the SEBI may provide by regulations in this behalf.
Privilege	A company filing a shelf prospectus with the ROC shall not be required to file a fresh prospectus at every stage of offer of securities by it within the period of validity.
Procedure	<ul style="list-style-type: none"> Shelf Prospectus shall be filled at the time of first offer of securities. The Shelf Prospectus shall be valid for a period of 1 year from the date of opening of the first issue of securities. The company need not file any prospectus afresh at every stage of offer of securities within the period of validity of the Shelf Prospectus. At the time of making second or subsequent offer of securities under the Shelf Prospectus, the company shall file an updated information memorandum. Such updated information memorandum shall contain all material facts relating to: <ol style="list-style-type: none"> New charges created; and Changes in the financial position as have occurred between the first offer of securities, previous offer of securities and the succeeding offer of securities.

RED HERRING PROSPECTUS**[Section 32]**

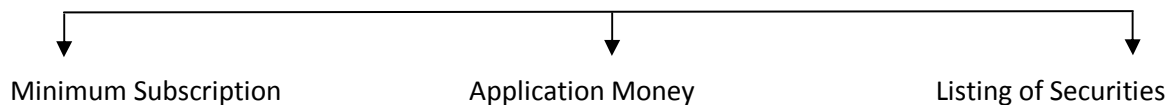
- a) Red Herring Prospectus means a prospectus which does not include complete particulars of the quantum or **prices of the securities included therein.**
- b) A company proposing to make an offer of securities may issue a Red Herring Prospectus prior to the issue of a prospectus.
- c) A company proposing to issue a Red Herring Prospectus shall file it with the Registrar at least 3 days prior to the opening of the subscription list and the offer.
- d) A Red Herring Prospectus shall carry the same obligation as are applicable to a prospectus and any variation between the Red Herring Prospectus shall be highlighted as variations in the prospectus.
- e) Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the Red Herring Prospectus shall be filed with the Registrar and SEBI.

ALLOTMENT OF SHARES**ALLOTMENT AND LEGAL RULES RELATING TO ALLOTMENT**

Meaning of allotment	<ul style="list-style-type: none"> Allotment means 'Acceptance by the company of the offer made by an applicant for taking of securities of it' Allotment means positive reply by the company of the offer of applicant for taking of the securities of it. Securities come into existence only after their allotment.
Definition of Allotment	<ul style="list-style-type: none"> It is an appropriation of securities to an applicant for securities and such appropriation is out of previously unappropriated capital of the company. Here 'unappropriated capital' means fresh securities and not just allotment of forfeited securities. That's why, the reissue of forfeited shares is not an allotment since reissue occurs as a result of sale of forfeited shares which had already been allotted and not allotment thereof.
Rules about Allotment	<ol style="list-style-type: none"> The proper authority for allotment of shares is the Board of Directors. The board may also delegate such authority to any person as it deems fit. The allotment must be made within a reasonable time. The allotment must be absolute and unconditional.

	5. The allotment is not complete until it is communicated to the applicant.
Re-issue	Since re-issue of forfeited share does not constitute appropriation out of unappropriated capital, it does not constitute allotment.

LEGAL REQUIREMENT FOR ALLOTMENT OF SECURITIES [Section 39 And 40]



MINIMUM SUBSCRIPTION [Section 39(1) And 39(3)]

Meaning	Minimum subscription means the minimum amount stated in the prospectus, which in the opinion of Directors, must be raised by the issue of securities.
Requirement for allotment	Where a company makes an offer to the public for subscription of its securities, no allotment shall be made unless the following 2 conditions are satisfied: a) The amount stated in the prospectus as the minimum subscription is subscribed. b) The sum payable on application in respect of minimum subscription is received by the company in cheques or other instrument.
Time Limit	The minimum subscription as provided in the prospectus must be received by the company; a) Within 30 days from the date of issue of prospectus; or b) Such other period as may be specified by the SEBI.
Consequences of Non Receipt of Minimum Subscription	If the company fails to obtain minimum subscription, the issue will fail and the entire amount is to be repaid, within 15 days from the date of closure of issue. If money is not repaid within 15 days, the directors of the company, who are officers in default, become liable to repay the money with an interest of 15% p.a.

APPLICATION MONEY [Section 39(2)]

Requirement about application money [Section 39(2)]	The amount payable on application on every security shall not be less than 5% of the nominal value of the security or such other amount (25% of issued price) as may be specified by the SEBI.
Application Money to be kept in Separate Bank Account	All money received on application from the public for subscription to the securities shall be kept in a separate bank account in a scheduled bank. Such amount shall not be utilized for any purpose other than: a) For adjustment for allotment of securities; or b) Refund of money, case of failure to allot shares.

LISTING OF SECURITIES [Section 40(1) And 40(2)]

Application and Permission for Listing [Section 40(1)]	Every company before making a public offer shall make an application to one or more Recognized Stock Exchange(s) and obtain permission for the securities to be dealt within such stock exchange
Disclosure in Prospectus	The prospectus shall state the name(s) of the Recognized Stock Exchange(s) in which securities shall be dealt with.

RETURN OF ALLOTMENT [Section 39(4)]

Meaning of Return	Return means "REPORT ABOUT ALLOTMENT OF SECURITIES".
Time Limit	The company must send the report of allotment to ROC within 30 days of allotment of securities, in e-Form No. PAS-3.
Contents	The return of allotment must contain following information / documents: a) A list of allottees stating their names, address, occupation and number of securities allotted to each of the allottees. b) Contracts in writing, under which securities have been allotted for any consideration other than cash, must be produced for examination of the Registrar. If the contract is not in writing, its particulars are to be in e-Form No. PAS-3. A report of a registered valuer in respect of the valuation of the consideration shall also be attached. c) Where bonus securities have been allotted, a copy of the resolution of the shareholders, authorizing the issue of such securities shall also be

	attached with the return.
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SHARES AND SHARE CAPITAL

MEANING OF SHARES

[Section 2(84)]

Section 2(84) of the Companies Act, 2013 defines the term "share". As per this, share means in the share capital of a company and includes stock.

KINDS OF SHARES

[Section 43]

There are two types of Shares: Preference shares and Equity shares.

Preference Share: A preference share is a share which fulfils the following two conditions:

- It carries preferential right in respect of payment of dividend; and
- It also carries preferential right in regard to repayment of capital.

A company can redeem its redeemable preference shares subject to the following conditions:

- Shares are fully paid-up;
- Shares may be redeemed only out of the profits available for distribution as dividend or out of proceeds of a fresh issue of shares made for the purpose of redemption;
- Where the shares are redeemed out of the profits available for distribution as dividend, a sum equal to the nominal amount of the shares redeemed shall be transferred out of profits to the Capital Redemption Reserve Account; and
- If premium is payable on redemption, it must have been provided for out of profits or out of company's security premium account.

Equity Share: Equity shares means share which is not preference share. There are two kinds of equity shares: Equity shares with equal rights and Equity shares with differential rights.

Equity shares with equal rights: Here, all the shareholders have the same rights in respect of dividend, voting or otherwise.

Equity shares with differential rights: companies may issue Equity shares with differential rights as to dividend, voting or otherwise in accordance with such rules and conditions as may be prescribed in Companies (Share Capital and Debentures) Rules, 2014.

A company limited by shares may issue equity shares with differential rights subject to the following conditions:

- There must be an authority in the Articles of Association of the company;
- The company has had distributable profits for last three years;
- The company has obtained the approval of the shareholders in a general meeting by way of an ordinary resolution;
- The equity capital with differential rights shall not exceed 26% of the total post issued paid-up equity share capital;
- The company has not defaulted in filing of annual accounts and annual returns for three years; in repaying deposits or paying interest thereon; in redeeming debentures or paying interest thereon; or redemption of preference share or paying dividend thereon; or repayment of any term loan or payment of interest thereon to a bank or financial institution; and paying dividend after declaration; and
- The company has not been convicted, during the last three years, of any offence under Securities Contracts (Regulation) Act, 2013; SEBI Act, 1992; and Foreign Exchange Management Act, 1999; RBI Act, 1934 or any other special Act, under which such companies being regulated by sectoral regulators.

It may be noted that a company cannot convert its equity shares with equal rights into equity shares with differential rights and vice-versa.

It may further be noted that Equity Shares with Differential Rights and Non-Voting Equity Shares are two different things and till date concept of 'Non-Voting Equity Shares' has not been recognized by Indian Company Law.

Right issue (RI): When an issue of securities is made by an issuer

- To its existing shareholders.
- In a particular ratio
- At a predetermined or discounted price.

ELIGIBILITY CONDITION

An issuer shall not be eligible to make a rights issue of specified securities:

- (a) If the issuer, any of its promoters, promoter group or directors of the issuer are **debarred from accessing the capital market by SEBI**;
- (b) If any of the promoters or directors of the issuer is a promoter or director of any other company which is debarred from accessing the capital market by SEBI;
- (c) If any of its promoters or directors is a **fugitive economic offender**

GENERAL CONDITION

- (a) It has made an **application to one or more stock exchanges to seek an in-principle approval** for listing of its specified securities on such stock exchanges and has chosen one of them as the designated stock exchange,
- (b) All its existing partly paid-up equity shares have either been **fully paid-up or have been forfeited** and
- (c) it has made **firm arrangements** of finance through verifiable means towards **seventy five per cent** of the stated means of finance for the specific project proposed to be funded from issue proceeds,
- (d) The amount for **general corporate purposes**, as mentioned in the object of the issue in the draft letter of offer and the letter of offer, shall not exceed **twenty per cent** of the amount raised by the issuer.
- (e) Where the issuer or any of its promoters or directors is a **wilful defaulter**, the promoters or promoter group of the issuer **shall not renounce their rights** except to the extent of renunciation within the promoter group.

RECORD DATE

- A listed issuer making a rights issue shall announce a record date for the purpose of determining the shareholders eligible to apply for specified securities in the proposed rights issue
- The issuer shall not withdraw rights issue after announcement of the record date.
- If the issuer withdraws the rights issue after announcing the record date, it shall not make an application for listing of any of its specified securities on any recognised stock exchange for a period of twelve months from the record date already announced.
- The issuer may seek listing of its equity shares allotted pursuant to conversion or exchange of convertible securities, ESOPs or exercise of warrants issued prior to the announcement of the record date, on the stock exchange where its securities are listed.

PRICING

- The issuer shall decide the issue price, in consultation with the lead manager(s), before determining the record date, which shall be determined in accordance with the designated stock exchange.
- The issue price shall not be less than the face value of the specified securities.
- The issuer shall disclose the issue price in the letter of offer filed with SEBI and the stock exchanges.

ABRIDGED LETTER OF OFFER

- The abridged letter of offer shall contain the **disclosures as specified by SEBI** and shall not contain any matter **extraneous to the contents of the letter of offer**.
- Every application form distributed by the issuer or any other person in relation to the issue shall be accompanied by a copy of the abridged letter of offer.

PROCEDURE FOR MAKING A RIGHTS ISSUE

The various steps involved for issue of rights share are enumerated below:

- Check whether the rights issue is **within the authorised share capital** of the company. If not, steps should be taken to increase the authorised share capital.

- Notify the stock exchange concerned the date of Board Meeting at which the rights issue is proposed to be considered **at least 2 days in advance of the meeting**.
- **Convene the Board meeting** and place before it the proposal for rights issue
- Immediately **after the Board Meeting notify the concerned Stock Exchanges** about particulars of Board of Directors decision.
- **Appoint a merchant banker and file a draft letter of Offer with SEBI**
- **Convene another Board Meeting** which shall decide on the following matters:..
 - o Quantum of issue and the proportion of rights shares.
 - o Alteration of share capital, if necessary, and offering shares to persons other than existing holders of shares in terms of Section 62 of the Companies Act, 2013.
 - o Fixation of record date.
 - o Appointment of merchant bankers and underwriters (if necessary).
 - o Approval of draft letter of offer or authorisation of managing director/ company secretary to finalise the letter of offer in consultation with the managers to the issue, the stock exchange and SEBI.
- **Obtain Observations** and incorporate the same in the Letter offer
- File a copy of **the letter of offer with the stock exchange** where the shares of the company are listed.
- **Despatch letters of offer and the Composite Application Form to shareholders by registered post.**
- Check that an **advertisement has been given** specifying date of completion of despatch of letter of offer has been released in at least an English National Daily, one Hindi National Paper and a Regional Language Daily where registered office of the issuer company is situated and that the shareholder can apply on plain paper if he does not receive the application form.
- The **advertisement** should state that applications of shareholders who apply both on plain paper and also in a composite application form are **liable to be rejected**.
- **Make arrangement with bankers** for acceptance of share application forms.
- Rights issue shall be kept open for **at least 15 days and not more than 30 days**
- **Finalise the allotment** in consultation with Stock Exchange.
- **Convene Board Meeting and make allotment** of shares.
- Make **an application to the Stock Exchange(s)** where the company's shares are listed for permission of listing of new shares.

Bonus issue: When an issuer makes an issue of securities

- To its existing shareholders
- In a particular proportion
- Without any consideration.
- It is also called capitalisation of reserve
- The shares are issued out of the Company's free reserve or share premium account in a particular ratio to the number of securities held on a record date.
- A company may capitalize profit by issuing fully paid bonus shares.
- Given free of cost.
- Given to the existing share holders.
- **Advantages of bonus issue**
 - ✓ Fund flow is not affected adversely.
 - ✓ M.V. of company's share comes to nominal.
 - ✓ M.V. of member's shareholding increases.

- ✓ Bonus share is not an income, so not taxable.
- ✓ Increase in PUC.
- **Condition for bonus issue**
 - ✓ Authorized by AOA.
 - ✓ Approval of shareholders in GM
 - ✓ SEBI regulations must be complied with.
- **SEBI'S regulation**
 - ✓ Out of free reserves: - Out of genuine profit or security premium collected in cash only.
 - ✓ Revaluation reserve: - Not to be capitalized.
 - ✓ Fully paid shares
 - ✓ Bonus issue not in lieu of dividend.
 - ✓ No default in respect of PD/Debentures.
 - ✓ No default in payment of statutory dues.
 - ✓ Issue must be made within 6 months from the date of approval of BOD.
 - ✓ Proposed bonus issue must not dilute right /value of PCD/FCD.

Note :- such specified securities being issued out of **free reserves and share premium existing in the books of account as at the end of the financial year preceding the financial year in which the draft offer document is filed with the SEBI;** and

Sweat equity shares

Section 2 (88) of the Companies Act, 2013 defines "Sweat equity shares" which means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

According to Section 54 of the Companies Act, 2013

A company may issue sweat equity shares, if the following conditions are fulfilled:

- (a) Special resolution passed by the company in the general meeting.
- (b) The resolution specifies the number of shares, current market price, consideration if any and the class or classes of directors or employees to whom such equity shares are to be issued.
- (c) Shares of same class must be issued earlier.
- (d) Issue must be made in accordance with the regulations made by SEBI and rule 8 of Companies (Share Capital and Debenture) Rules, 2014.

➤ Special resolution

For passing a special resolution, the Board of Directors at the time of sending notice to the shareholders shall send additional information (explanatory statement) for approving the issuance of sweat equity shall contain the following information:

- a) The total number of shares to be issued as sweat equity.
- b) The current market price of the shares of the company.
- c) The value of the intellectual property rights or technical knowhow or other value addition to be received from the employee or director along with the valuation report / basis of valuation.
- d) The names of the employees or directors or promoters to whom the sweat equity shares shall be issued and their relationship with the company.
- e) The consideration to be paid for the sweat equity.
- f) The price at which the sweat equity shares shall be issued.
- g) Ceiling on managerial remuneration, if any, which will be affected by issuance of such sweat equity.
- h) A statement to the effect that the company shall conform to the accounting policies as specified by SEBI.

i) Diluted earning Per Share in accordance with International Accounting Standards / standards specified by the Institute of Chartered Accountants of India.

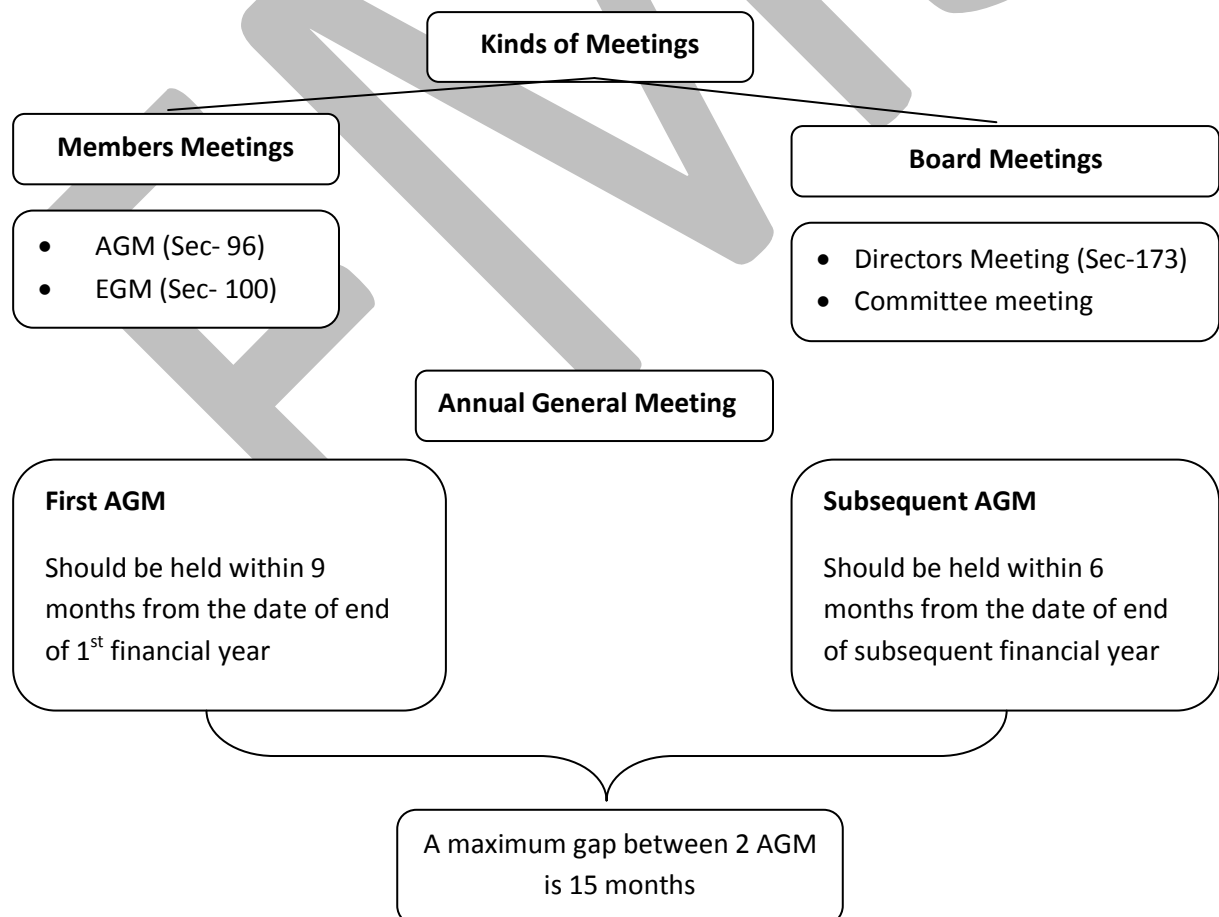
➤ **Issue of sweat equity shares**

- In case of Issue of sweat equity shares to promoters, the same shall also be approved by simple majority of the shareholders in General Meeting.
- The promoters to whom such Sweat Equity Shares are proposed to be issued shall not participate in such resolution and separate resolution shall be passed for each transaction of issue of Sweat Equity.
- Such resolution shall be valid for a period of not more than twelve months from the date of passing of the resolution.
- For the purposes of passing the resolution, the explanatory statement shall contain the disclosures as specified in the Schedule.

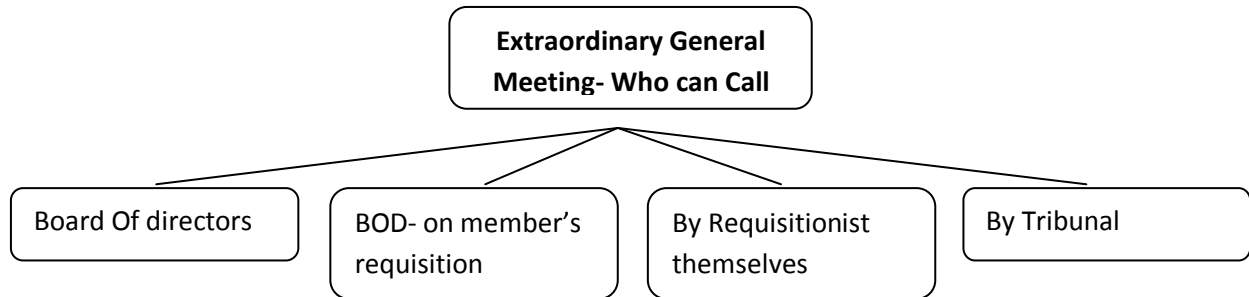
➤ **Pricing of sweat equity shares**

The price of sweat equity shares shall not be less than the higher of the following:

- The average of the weekly high and low of the closing prices of the related equity shares during last six months preceding the relevant date; or
- The average of the weekly high and low of the closing prices of the related equity shares during the two weeks preceding the relevant date.



Note: A 3 months extension can be taken from ROC



Q. Who can request calling EGM

The member or members of the company holding 1/10 of the capital or VR can request the company for calling EGM.

Time period for holding EGM

The BOD should take steps to call EGM within 21 days and such meeting should be held within 452 days from the date of submission of request and if BOD fails then members can call the meeting and such meeting should be held within 3 months from date of submission of request.

Type of meeting	Day	Time	Place
AGM	Cannot be held on national holiday	During business hours (9 to 6)	At RO of the company or within the city where RO is situated
EGM	Cannot be held on national holiday	During business hours (9 to 6)	At any place within India
EGM called by requisition	Can be held on any day	During business hours (9 to 6)	Same as AGM

Notice

Length of notice

At least 21 days clear notice

Notice to whom

Members, directors, auditors, legal representative

Business

AGM: Both Ordinary and special Business

EGM: Only special Business

Explanatory statement:

All special business require notice to be sent along with explanatory statement

Modes of serving Notice

By Post

By E- mail

By Fax

By hand Delivery

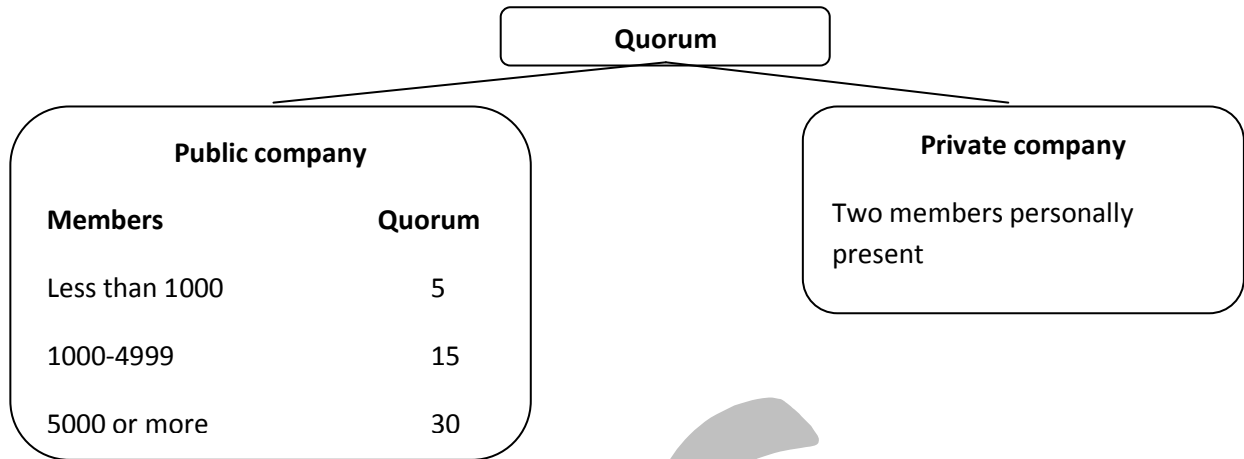
Note: Ordinary Business

- Adoption of accounts
- Declaration of dividend
- Appointment of auditors
- Appointment of directors

Special Business: any business other than ordinary business is special business

QUORUM (SECTION 103)

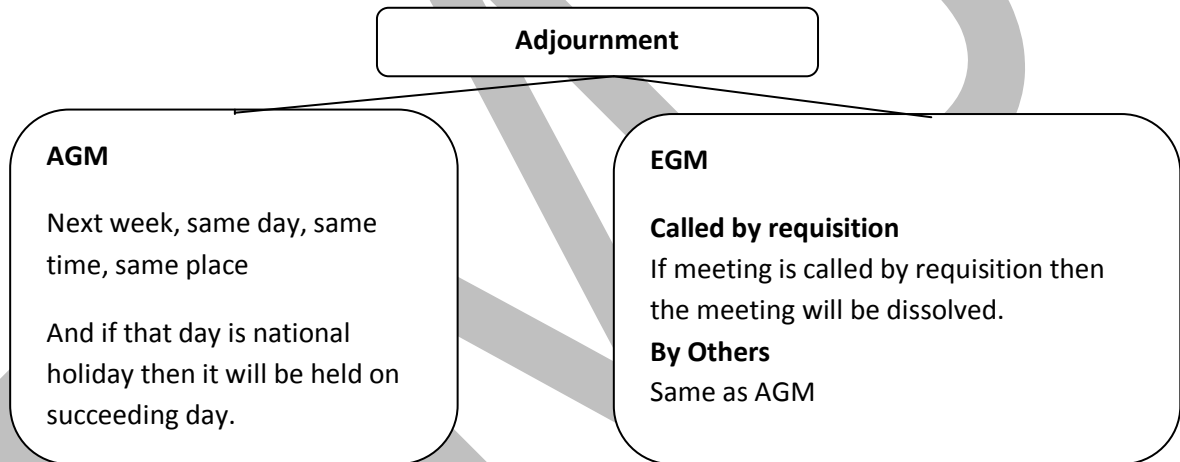
Minimum number of members that must be present in a meeting to treat the meeting a valid meeting.

**Q. Time within which quorum should be present?**

The quorum should be present within half an hour of commencement of meeting.

Q. What are the consequences if quorum is not present in the meeting?

If quorum is not present then meeting will be adjourned.

**Quorum of adjourned meeting**

In adjourned meeting if within half an hour of commencement of meeting quorum is not present, then the person present will constitute quorum but it should be 2 or more in number.

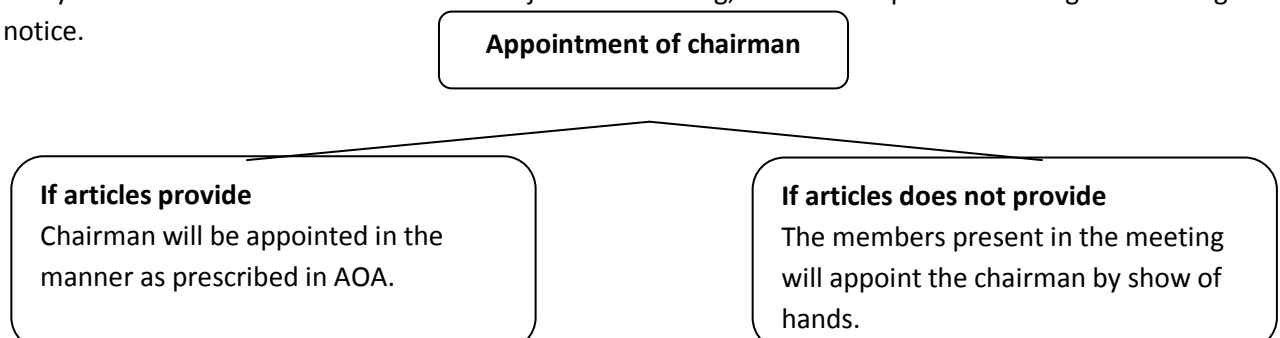
Can a single person constitute quorum

Yes a single person can constitute quorum in case where GM is called by tribunal.

Notice of adjourned meeting

New notice for adjourned meeting is required if:-

- If meeting is adjourned for 30 days or more
- If meeting is adjourned for indefinite period
- If articles provide
- If any new business is to be transacted at adjourned meeting, which is not provided in original meeting notice.



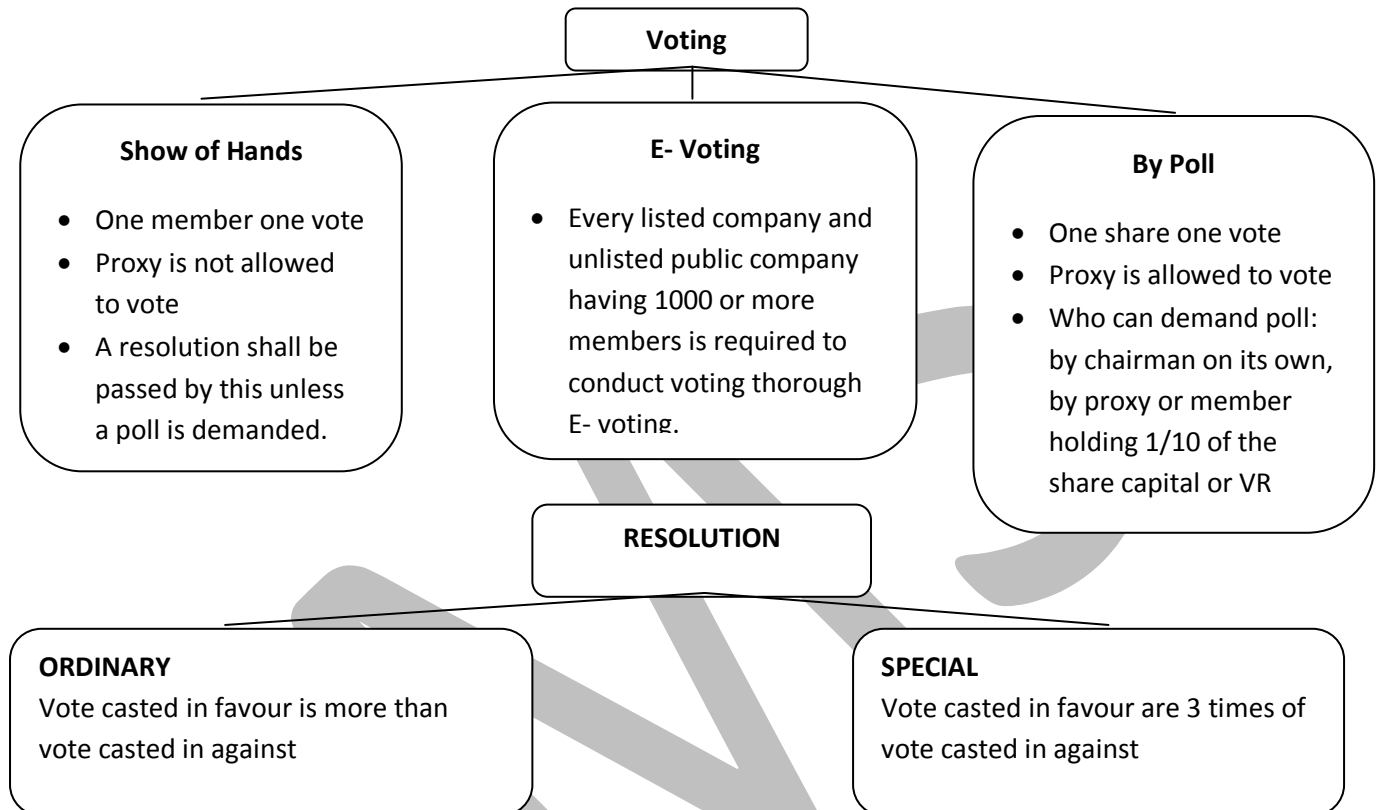
Proxy

Any person entitled to attend and vote in the meeting can appoint any other person as a proxy to attend the meeting on his behalf.

Proxy has no right to speak in the meeting, but if articles provide proxy can speak in the meeting.

A person can become proxy of 50 members.

For appointing proxy, form is required to be filled and deposited atleast 48 hours before the commencement of meeting at the RO of the company.



Minute Book (Section 118)

It is a summary of the meeting held. The details of the meeting should be recorded within 30 days of the conclusion of the meeting.

Signing of minute book

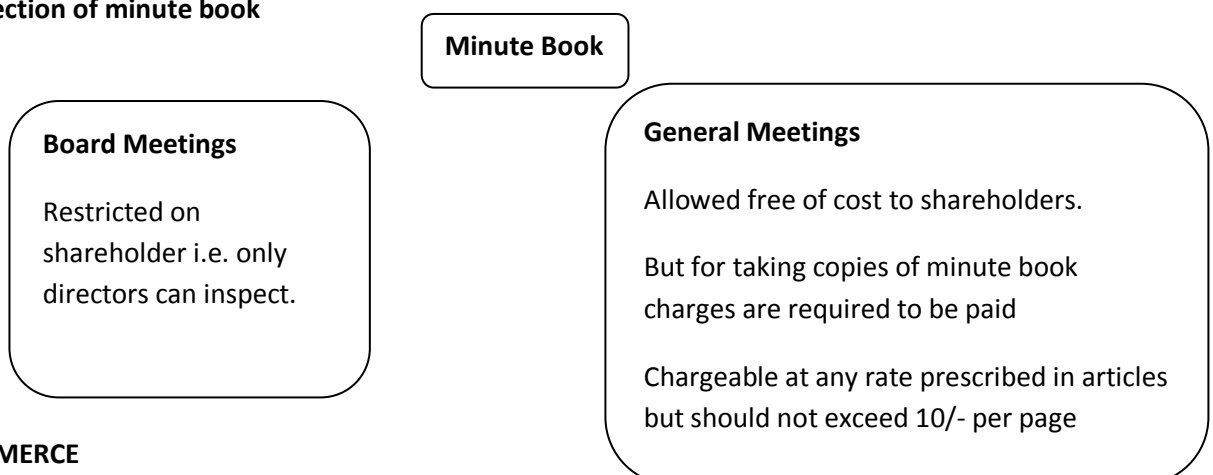
Board meeting

Chairman of the meeting will sign the minute book, but in case of death/lunacy/inability of chairman to sign the minute book, chairman of the succeeding meeting will sign minute book.

General meeting

Chairman of the meeting, in case of chairman inability, any other director authorised by BOD will sign minute book.

Inspection of minute book



Note: Minute book is to be kept at registered office and it should be preserved permanently.

Report on AGM

Every listed company has to file report on AGM in form no "MGT-15" within 30 days of conclusion of meeting.

Board Meeting (section 173)

Public/private Company

- First BM should be held within 30 days of incorporation of company.
- Atleast 4 BMs should be held in a calendar year
- Max. Time gap between 2 shall not exceed 120 days

OPC/Small company/Dormant Company

- Atleast 2 BM in a year
- Atleast 1 BM in half calendar year.
- Min. Time gap between 2 shall not exceed 90 days

Notice of board meeting

Notice should be provided of at least 7 days before meeting. However shorter notice can be served if some urgent business is to be transacted.

Quorum of BM

Case1: in case of public company and private company: quorum will be $\frac{1}{3}$ of total strength or 2 (whichever is high)

Case2: when $\frac{2}{3}$ or more directors are interested: quorum will be non interested directors which should be 2 or more

Case3: when non interested directors are less than 2: such business will be conducted in GM of members or any other person (who is not interested) shall be appointed as directors.

Note: Quorum should be present throughout the meeting.

The quorum cannot be increased by inserting a clause in AOA.

Presence of director in meeting

- a) Personally present
- b) Through video conferencing
- c) Audio Visual

Adjournment

To defer or to suspend the originally held meeting to a definite time or for indefinite period.

Who can adjourn the meeting?

The meeting is adjourned if the quorum is not present and with the consent of all the members, the chairman can adjourn the meeting.

Can chairman arbitrarily adjourned meeting?

No, the chairman cannot adjourn the meeting arbitrarily. It can only adjourn the meeting with the consent of members.

Role of directors

The duties and responsibilities of the board of directors are as follows

1. Trusteeship: The board of directors act as trustees to the property and welfare of the company. Hence, the board must use the company's property for the long-run gain of the company, but not for their personal use.

2. Formulation of Mission, Objectives and Policies: Board of directors must see the long run view and have long run perspective of the company. The board formulates, reviews and reformulates the company's mission, objectives and policies which forms the basis for strategy formulation and implementation.

3. Designing Organizational Structure: The board designs the structure of the organization based on the objectives, policies, environmental factors, degree of competition, role of quality, expectations of employees etc.

4. Selection of Top Executives: The board should assume the responsibility of screening and selecting the top executives who can formulate and implement the strategies. Chief executives are key personnel in the process of strategy implementation.

5. Financial Sanctions: The important financial decisions like sanctioning of finances to various projects, reserves, distribution of profit to shareholders and repayment of loans and advances etc., are taken by the board. Further, the board reviews the financial performance of the company from time to time and reformulates the financial policies.

6. Feed forward and Feedback: The board has to obtain information from the external environmental factors and feed that information forward to various key points in the company in order to prevent possible hurdles and mistakes in the process of achieving organizational goals. Further, the board also obtains the information from internal sources of the organization, and feeds it forward to prevent possible failures in decision-making by the top level executives.

The board also feeds the information back to the executives regarding their failures in decision-making with a view to avoid the recurrence of such mistakes. Thus, feedback of information helps the board to check and control the activities as board has the ultimate responsibility for the success of the company.

7. Link between the Company and External Environment: The board acts a vital and continuous link between the company and external environment like government, other companies, social and economic institutions etc.

The charter of duties and responsibilities for board of directors as suggested by Mace, are shown below.

Responsibilities of BOD to Shareholders

1. Monitoring:

- Return on Investment
- Security of Investment
- Dividend Policy
- Social Accountability

2. Select and elect CEO (usually the president) and delegate to him all the duties to manage the company not specifically reserved to the board.

3. Evaluate the performance of the CEOs and division presidents for performance and compensation.

4. Evaluate performance of CEOs and division presidents quarterly in comparison with competitors.

5. Review and approve major corporate objectives, policies, budgets and strategies as initiated by the CEO. In reviewing the strategic plan, confirm its directors, or propose changes of direction.

6. Monitor, review and appraise management:

- Provide for orderly succession of CEOs
- Duties and limits of CEOs
- Selection of outside legal counsel
- Select all officers
- Compensation of officers
- Advise Managing Directors and others.

7. Monitor, review and approve employee relations.

8. Monitor company's performance.

9. Management of the board.

10. Compliance with all laws affecting the business.