

1: MANAGEMENT OF COMPANIES

COMPANY DIRECTORS:

MEANING OF A DIRECTOR/WHO IS A COMPANY DIRECTORS:

Directors act as agents of shareholders and look after the management of the company. Company is an artificial person created by law. It does not have physical existence. It is invisible and acts through human agency. **This human agency of company management is the board of directors.** The individual members of the board are called directors and collectively they form the board. **All managerial powers are given collectively to the board of direction and not to directors individually. They are responsible for directing, governing and controlling the management of their company. Direction have to function as a group. Board is the principal authority in company management. It is the supreme execution authority** consisting of a team of directions. Direction are not outsiders but are elected by shareholders as their representatives. They act on behalf of shareholders.

The board of directors is the **top administrative organ** of the company. **Directors are the brains of the company** as the company can and does act only through its directors. This suggest that the **Directors (collectively) occupy the most influential position in the company management.** The position of Directors in relation to the company is not set out in the Companies Act. However, judicial pronouncement suggest the importance of the position of Directors in the management of a company. In reality **the "Board" is the supreme policy framing and decision-making organ of a company.**

DEFINITION OF A DIRECTOR:

(1) The Companies Act, 2013 has narrowed down the definition of the term director. S2 (34) of the Act lays down that a director *"means a director appointed to the Board of Directors of a company"*. The Act recognizes only the concept of a de jure director, namely a person who is actually appointed as a director on the Board of Directors of a company.

Direction are **responsible for directing, governing and controlling the management of a company.** In brief, a direction are direction is one of those person, who are responsible for direction, governing and controlling the policy or management of a company. **Directions are collectively called as "board".it acts as the supreme policy forming authority of a company.**

LEGAL POSITION OF COMPANY DIRECTION:

- (1)** Under the companies act, the board of directors is a must for the management and administration of company, means the **collective body of directors** of the company. (S2 (10)).
- (2) Directions are elected representatives of shareholders and are given substantial powers of management.** Such powers are not to be used individually by a direction but collectively by all direction i.e. by the board of directors. **Board is the principal agency of company management.** A company is an artificial person and cannot act directly. Directors act on behalf of a company. They take policy and administrative decisions on behalf of a company. They act as **human agents of the company.**
- (3)** A public company having a paid up share capital of rupees five crore or more and thousand or more small shareholders, should have a director election by the small shareholders (S.55).
- (4) Every private company must have at least (minimum) two direction and every public company must have at least three directors.** An OPC must have at least one director.

There can be a maximum of 15 directors. Companies have been permitted to have 3 more than 15 directors by passing a special resolution. In the case of listed companies, at least one-third of the directors have to be independent directors.

- (5) **Directors act as agents, trustees and managing partners of a company.** They are responsible for directing, governing and controlling the management of their company.
- (6) **Directors have to honour legal provision as regards their qualifications, appointment, retirement and use of powers** (statutory and delegated). Action is possible if they cross their limits. Even shareholders can remove them collectively in their AGM. Various restrictions are imposed on the directors because of their key position in company management.
- (7) Under S. 165 of the Act, a person cannot be a directors in more than twenty companies at the same time. The maximum number of public companies in which he is a director cannot exceed ten.

APPOINTMENT OF DIRECTORS: (WHO APPOINTS COMPANY DIRECTORS?)

Only individuals (no firm or association) can be appointed as directors. A firm, a company or any other association cannot.

(A) **First Directors:** As per S. 152 of the Act, the first directors of a company are to be appointed by the subscribers of the memorandum. They are generally listed in the articles of the company. If they do not appoint any, all the subscribers who are individuals become the directors of the company. The first directors, whosoever appointed, hold the office only up to the date of the first annual general meeting of the company. The subsequent directors must be appointed in accordance with the provisions of section 152.

(B) **Subsequent directors (Appointment at general meetings) (S. 152):** **Subsequent directors** of the company are elected by the shareholders in the annual general meetings. According to section 152, directors must be appointed by the company in general meetings. The person to be appointed has to furnish his DIN and a declaration that he is not disqualified to become a director under the act. The person appointed as director is not to act as such unless he has filed with the company his consent to act as such. He has also to file his consent with the registrar within 30 days of his appointment in the prescribed manner. [S. 152(5)] unless the articles provide for the retirement of all the directors at every annual general meeting, **at least two-thirds of the total number of directors** of a public company and its subsidiary private company shall retire by rotation and shall be appointed by the shareholders in their general meetings. These provisions of annual rotation are not applicable to private companies.

At subsequent AGMs out of the two-thirds directors liable to retire by rotation, one-third or the number nearest to one-third, must retire. The directors longest in office (senior most) shall retire in the first place. Persons who became directors on the same day, the retirement by rotation will be decided by mutual consent or by lot. The directors who are to retire by rotation at an AGM would automatically vacate office on the last day on which the annual general meeting ought to have been held. They cannot prolong their tenure by not arranging a general meeting in time.

The **retiring director shall be eligible for re-election.** He can be reappointed if he is eligible and offer himself for the appointment. If a new person (other than retiring director) is to be appointed, a notice in writing must be given to the company at least 14 days before the meeting. Re-appointment of directors is possible. **However, appointment of directors on permanent basis is not possible/allowed.**

In addition to directors appointed by the shareholders in the AGMs, the **board is empowered to appoint additional directors, casual directors and alternate director. Third parties** i.e. **banks, debenture holders, etc.** can appoint a **director as their nominee** (nominated directors). In addition, the **central government** is empowered to nominate not more than two directors for a period not exceeding three years. If the articles permit, the minority shareholders may be allowed to have their representative on the board of directors. **A resolution for the appointment of a director** (retiring by rotation) can be worded as noted below:

Every director has to be elected through a **separate resolution** passed by simple majority, unless the meeting unanimously resolves otherwise. The appointment of a director (other than retiring director) will not be valid unless written consent to act as a director is filed with the registrar **within thirty days of appointment**. Similarly, if two or more directors are appointed, the appointment shall be null and void. In order to give sufficient representation to minority shareholders on the board, the company can adopt the system of proportional representation, by the single transferable vote or by a system of cumulative voting. Appointment by such system of proportional representation can be made only once in three years.

LEGAL RESTRICTIONS (RULES) ON THE APPOINTMENT OF DIRECTORS:

(A) Legal restrictions (rules) on first directors:

- (1) A director has to give a written consent to act as a director. This consent needs to be filed with the registrar.
- (2) A director should have purchased or agreed to purchase qualification shares as per the articles of the company.
- (3) The first directors must sign the prospectus before it is filed and issued to the public. They would be personally liable for any misleading statements made therein.

(B) Legal restrictions (rules) on subsequent directors:

- (1) **Only individual can be appointed as a director.**
- (2) **A person cannot act as a director of more than fifteen companies at the same time. This restriction is as per companies (amendment) act, 2000. (Earlier limit was twenty).**
- (3) **A separate resolution is required for the appointment of each director.**
- (4) **A person who desires to join as a director has to submit a written consent with the registrar within in 30 days of his appointment.**

APPOINTMENT OF DIRECTORS BY THE BOARD:

In addition to the directors elected by the shareholders, the board may appoint directors under the following circumstances/situations:

- (1) **Casual vacancies:** Casual vacancies are possible due to the death or resignation of existing director before the expiry of his term of office. Such casual vacancy may be filled in by the Board by appointing a new director. The director so appointed will cease to act the moment the term of original director is completed. Such appointment is subject to the regulations in the articles of the company.
- (2) **Additional Directors:** If the articles so permit, the Board of Directors can appoint additional directors, subject to the maximum number of directors fixed in the articles. Additional director appointed will hold the office only upto the date of next AGM. The board can make such appointment every year as there is no restriction on the use of this power.

The Board can use the services of professional experts, etc. who may not get elected on the Board in the general meeting.

- (3) **Alternate directors:** The articles may empower the board to appoint alternate (in place of original director) director, during the absence of an existing director for more than three months, from the state in which the meetings of the board are normally held. Such alternate director shall vacate the office either on the return of the original director to the state or on the expiry of the original director term. This means alternate director hold the office only during the absence of the original director.

APPOINTMENT OF DIRECTORS BY THE CENTRAL GOVERNMENT:

With a view to preventing mismanagement, the Central Government may appoint such number of directors as the **National company law Tribunal (NCLT)** may specify as being necessary to effectively safeguard the interests of the company / shareholders. Such directors will be appointed **for a period not exceeding three years on any one occasion**. Such directors appointed by the central government shall they be subject to retirement by rotation. Such appointment is possible only when the order is passed by the **National Company law Tribunal (NCLT)** on reference made by members holding at least ten percent voting rights or by the central government. The tribunal is also empowered to appoint directors on the board in order to prevent or give relief against **oppression and mismanagement. [(s. 242)]**

DUTIES OF COMPANY DIRECTORS:

The duties of directors are many and varied in nature. Duties include statutory and other duties. Such duties are based on the provisions in the companies act and the general law. Directors are given wide powers which may be misused by them. The law, therefor impose several duties on directors so that the chances of abuse of power on the part of directors are considerably minimized. Such duties are also imposed for the protection of interest of company and its stakeholders, particularly shareholders and investors.

In short, the duties of directors are divided into two categories:

- (a) Statutory duties of directors, and**
- (b) Duties under general law/general duties of directors**

(A) STATUTORY DUTIES OF COMPANY DIRECTORS:

- (1)** It is the duty of the board of directors to see that all moneys received from applicants for shares are deposited in a schedule bank until the “**certificate to commence business**” is obtained from the appropriate authority.
- (2)** The board has a duty to place before the members at the annual general meeting, the **company’s profit and loss A/C and the balance sheet**.
- (3)** **To call an extra – ordinary general meeting** on the requisition of the specified number of members as per legal provisions.
- (4)** The board of directors has to make a “**declaration of solvency**” of the company in the case of member’s voluntary winding up (section 488).
- (5)** At the meeting of the creditors in a creditors’ voluntary winding up, the Board of Directors must **(a)** cause a full statement of the position of the company’s affairs together with a list of creditors and the estimated amounts of their claims to be laid before the meeting; and **(b)** appoint one of their member to preside at the said meeting.

- (6) The directors must determine the “**minimum subscription amount**” required to be disclosed in the prospectus. In addition, they have to sign and issue the prospectus for the collective of capital. They have to see that the allotment of shares made is **regular and valid**.
- (7) The board of Directors is supposed to hold its meeting at least once in every three calendar month. In addition, at least four meetings of the board must be held in every year.
- (8) The directors have to determine to what extent the accounts and books of the company shall be open for inspection.
- (9) The board of directors of every listed company must constitute an audit committee, consisting of the at least three directors, with independence directors forming a majority. (S. 177)
- (10) It is the duty of the director to take consent of the board before entering into any contract with the company for the purchase or supply of any goods or services to the company.
- (11) The directors have **to purchase and pay for qualification shares** within the prescribed time as per provisions of the act.
- (12) **To file annual returns** as per the provisions of the act.
- (13) To prepare and circulate among all members, the **annual report of the company**.

(B) DUTIES OF DIRECTORS UNDER THE GENERAL LAW (GENERAL DUTIES):

- (1) The Directors **must always act bona fide for the benefit of the company**. They must protect the interest of the company and must not make any secret profit.
- (2) The directors **must discharge their duties with such care and precaution** as is reasonable in a person of their knowledge.
- (3) The Directors **must attend all meeting of the board** unless it is impossible otherwise. This means they must not be negligent as regards their duties in relation to the company.
- (4) The directors **must perform their duties personally**. They see that they do not delegate their powers to others but perform the duties expected from the personally. The maxim delegatus non potest delegare (a delegare cannot delegate further) is applicable to company directors. In the case of delegation of powers, they have to see that they are always within the scope of the articles.
- (5) Finally, the directors are expected to make full and complete disclosure in any contract in which they are directly or indirectly interested (section 299). They are also expected to conduct the business in the best interest of the company and shareholders.

The powers and duties of directors are individual as well as collective. They have to use their powers jointly through board meeting. Similarly, their duties are also the duties of the board of directors. In this sense, the duties of directors and of the board of directors are rather identical. In addition to normal/ routine duties noted above, (under general law), there are some more important duties of directors under the following four heads:

- (A) **Duty of good faith:** this is the first and foremost duty of directors. They are supposed to act honestly in good faith and in the interest of the company and its shareholders. Their personal interest should not overpower the interest of the company. Directors should not exploit corporate opportunity for their personal benefit. They should not make secret profits and other dealings which are harmful to company and shareholders.
- (B) **Duty of care, diligence and skills:** Directors should discharge their duties with efficiency, care and caution. They should not bring company in trouble due to their hasty and faulty decisions. They have to discharge their duties with due diligence and foresight. Their honesty, integrity and competence must be reflected in the policy decisions and company

administration. They are expected to use their full capacity, skills, maturity, etc. for the progress and welfare of their company and its

(c) Duty not to delegate: Here, the maxim "A delegate cannot *delegate*" is applicable.

Directors are given wide powers by shareholders as they have full faith and confidence on directors. This faith may come in danger if directors delegate their powers to subordinate who may not have professional skills, maturity, etc. for using such powers. Faulty delegation is as good as neglecting duties assigned. This is unfair as this may bring the company in difficulties and may move towards sickness. Directors are not allowed to delegate details of management to their subordinates. They are not expected to delegate responsible and sensitive functions to lower level staff. To protect company means to give full attention to the affairs and activities of the company. Delegation over and above safe limits is undesirable and dangerous to the company and must be avoided by directors. In short, important duty of directors is not to delegate further and further.

(d) Duty to disclose interest: It is the duty of directors to ensure that their personal interest do not conflict with the company's interest. A director has to disclose his intention to other directors in Board meetings. An interested director should not participate in the discussion relating to the specific matter of his interest. A non-disclosure of interest is punishable in India and must be avoided by directors.

The role of directors in company management:

(1) Directors as Agents:

Directors act as agents of the company. This is natural as company is an artificial person and cannot think or act independently. Its affairs must be managed by some responsible person who are the directors only. The company can act through directors and naturally the company is the principal and directors are its agents. **The directors are therefore termed as agents of the company.** As agents, they must conduct the business with reasonable care and diligence and also within the scope of memorandum, articles and their authority. They enter into contracts and put their signature on behalf of the company like an agent.

(2) Directors as Trustees:

Directors are treated as Trustees of their company. They are supposed to protect the property, funds and other assets of the company with due care as if they are the custodian/guardians. They have to protect the interest of the company. Directors should not make any secret profit at the cost of the company or at the cost of the properties of the company. The directors exercise many powers in their capacity as Trustee of the company. Search powers include issue of shares and debentures, transfer and transmission of shares, calls on shares, forfeiture of shares and investment of company's funds. The interest of the company must be protected properly while using such powers.

As Trustees, the directors are not responsible for every omission or Commission. This only suggests that they should protect the interest of the company while dealing with the property and assets of the company. **The directors are trustees but not the legal owner of the property of the company** as the company itself is the legal owners of his property. The directors may not be trustees in strict legal sense of the term but they have to act as trustees in regard to asset and property, etc., of the company. In addition, they have to use their powers in the interest of the company only. Their loyalty to the company should be total.

(3) Directors as Managing Partners:

Directors are elected by shareholders as their representatives for management of the company and therefore **they act as managing partners of the company.** The directors are

basically share holders with power of decision making as regards the functioning of the company. Moreover, the directors conduct almost all the proprietorial functions such as making calls, forfeiture of shares, and transfer of shares and so on. However, directives are elected for specific period and are not the managing partners in the full sense of the term. They have to function within the limits set by the memorandum and articles of the company.

In brief, **directors occupy important position in the managerial setup of a company.** They are described as agents, trustees and managing partner of their company. However, legally speaking, they do not occupy these positions in the strict sense of the terms. **They combine in themselves all those positions.** They stand in a fiduciary position towards the company and at best may be termed as “**officers**” of the company. They have powers of decision making and may be held responsible for their mistakes and omissions. **The directors are Basically men with long experience, business skills, maturity and vision.** They are given wide powers and are expected to use such powers for the benefit of the company and shareholders. The stability, progress and prosperity of the company depend on the interest and initiative taken by the directors. They bring popularity and market standing to the company. This suggests their positive role in company management.

The role of directors in company management is becoming more and more complicated and challenging in the present socio-economic and political/environment in Indian. Companies are facing complex problems and situations. The present political environment in India is not stable and favourable to business growth. There is slow growth rate as regards industry and business in India. Business expansion is difficult due to globalisation, competition among companies, trade restriction, and limited progress towards economic reforms, weak central government, and uncertainty about election outcome and so on. In brief, companies or corporate sector is facing lot of uncertainty in India.

A NOTE ON DIRECTOR IDENTIFICATION NUMBER (DIN) [S.153 and Rule 9]:

The Companies Act, 2013 has introduced a new provisions relating to company directors. This relates to **Director Identification Number (DIN)** to directors. No person can be appointed as a director in a company unless he has been allotted a Director Identification Number (DIN) by the Central Government. It is like PAN Number or Aadhar Number given to individual directors. DIN will be issued by the Central Government and will be useful for easy and quick identification of Company Directors at the National level. Sections 153 to 159 of Companies Act 2013 deals with DIN. These Sections give essential details of DIN which are noted below.

Section 153: Application for allotment of Director Identification Number – Every individual intending to be appointed as director of a company shall make an application for allotment of Director Identification Number to the Central Government in such form (Form DIR-3) and manner along with such fees as may be prescribed.

Section 155: Prohibition to obtain more than one Director Identification Number- No individual, who has already been allotted a Director Identification Number under section 154, shall apply for, obtain or possess another DIN.

Section 156: Director to intimate Director Identification Number- Every existing director shall, within one month of the receipt of Director Identification Number from the Central Government, intimate his DIN to the company or all companies wherein he is a director.

Section 157: Company to inform DIN to Registrar-

(1) Every company shall, within fifteen days of the receipt of intimation under section 156, furnish the DIN of all its directors to the Registrar or any other officer or authority as may be specified by the Central Government with such fees as may be prescribed or with such additional

fees as may be prescribed within the time specified under section 403 and every such intimation shall be furnished in such form and manner as may be prescribed.

(2) If company fails to furnish DIN under subsection(1), before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than 25,000 rupees but which may extend to 1,00,000 rupees and every officer of the company who is indifferent shall be punishable with fine which shall not be less than 25,000 rupees but which may extend to 1,00,000 rupees.

Section 158: Obligation to indicate DIN - Every person or company, while furnishing any return, information or particulars as are required to be furnished under this Act, shall mention the Director Identification Number in such return, information or particulars in case such returns, information or particulars relate to the director or containing any reference of any director

Section 159: Punishment for contravention- If any individual or director of a company, contravenes any of the provisions of section 152 section 155 and section 156, such individual or director of the company shall be punishable with imprisonment for a term which may extend to 6 month or with fine which may extend to 50,000 rupees and where the contravention is continuing one with a further fine which may extend to 500 rupees for every day after the first during which the contravention continuous.

[Detail provisions have been made in the Companies (Appointment and Qualification of Directors) Rules 2014, for the application and allotment of DIN]

Importance of Director Identification Number (DIN):

DIN is a unique 8 digit number that is required for every existing or proposed director of a company. It was originally introduced under Companies (Amendment) Act,2006. **DIN is mandatory** for any person intending to register in a Private Limited Company or Limited Company or One Person Company.

In India and be a part of Board of Directors. A **Digital Signature Certificate (DSC)** in the name of the DIN applicant must be obtained prior to applying name for DIN number. The concerned applicant has to provide identity proof such as PAN card and passport along with address proof like voter ID card, driving licence, electricity bill, etc. DIN application can be filed with the Ministry of Corporate Affairs (MCA). Once application is approved, DIN is provided instantly. DIN does not have an expiry date and no further compliance formalities are required for maintaining the validity of DIN. It allotted by way of intimation through **DIN allotment letter. The need for introducing DIN arose because:**

- (1) The need to create authentic database for the directors; and
- (2) To address the issue of companies raising capital from public and subsequently vanishing with the directors who became untraceable.

DIN keep track of directors. It is not possible to remain untraceable when some directors commit fraud because the government has all the relevant papers with them. **Offences committed by the directors will be immediately detected as the office ROC have all relevant documents.** Investors will have chance to take more informed decision by making the top management of the company.

The government is prompt in providing DIN . In all case, the number is issued on the same day as the applicant uses e-Form. DIN is not mandatory for directors of foreign company having branch offices in India. Only a single DIN is required for an individual irrespective of number of directorship held by him. Surrender or Deactivation of DIN is also possible in special circumstances.

TYPES OF DIRECTORS

The Board of Directors of a company includes different types of directors such as full time directors, non executive directors and independent directors. There are legal provision for the appointment, functions and responsibilities of such directors.

LEGAL PROVISIONS RELATING TO APPOINTMENT OF DIRECTORS:

As per Section 149 of the Companies Act 2013, every company shall have a Board of Directors consisting of individuals as directors.

Minimum number of directors for a public company shall be **three**. The minimum directors in the case of a private company is **two** and **one** director on the case of a One Person Company. Maximum directors of a company shall be **fifteen**. However, the company may appoint more than fifteen directors after passing a special resolution.

In the Companies Act 2013, there is a provision of compulsory appointment of **woman director**. Section 149 of the Act provides that the prescribed classes of companies must have at least one woman director. There was no corresponding provision earlier in Indian Corporate laws. The Companies Act, 2013 has also introduced the new concept of a **resident director**. S. 149 of the Act lays down that every company must have at least one of the directors who has stayed in India for 182 days or more in the previous calendar year. The act also provides that listed public company shall have **at least one third of the total number of directors as independent directors**. In addition, there is a provision for director elected by small shareholders. In brief, the information given above speaks about the types of directors.

Company Directors include the following:

- (1) Directors.
- (2) Managing Director or CEO or Manager or whole time Director.
- (3) Non Executive Director.
- (4) Independent Director.
- (5) Woman Director.
- (6) Resident Director.
- (7) Director elected by small shareholders.
- (8) Additional Director and Alternate Director.

In Companies Act, 2013, new concept "**Key Managerial Personnel**" is introduced. Sec.203 of the Act provides that every listed company and every other public company have a paid up share capital of 10 crore rupees or more shall have whole time key managerial personnel comprising of:

- (1) **Managing Director;**
- (2) **Chief executive officer (CEO) or Manager and in their absence, a whole time Director;**
- (3) **Company Secretary; and**
- (4) **Chief Financial Officer.**

In brief, the concept of Chief Executive Officer (CEO) and Chief financial officer are two new management executive introduced for the first time in the corporate sector through Companies Act, 2013. The CEO is given the highest executive position in the administrative setup of a company. He is responsible for formulating, leading and executive long term strategy of the company. He will also be responsible for leading all functions and operations of the company in an orderly and effective manner. The CEO will act as a **connecting link** between Board of Directors and management. His functions, duties and responsibilities are broad ranging covering all aspects of company's management. He has to play a crucial role in the progress, stability and

property of the company. If a company contravenes the above noted provisions, the company shall be punishable with fine and every directors and key managerial personnel of the company who is indifferent shall also be punishable with fine.

ROLE OF CHIEF EXECUTIVE OFFICER (CEO)

APPOINTMENT OF CEO:

Every company needs an executive at the highest level to keep effective supervision on the affairs of the company so that the company functions effectively, make profits, shares a part of it with the shareholders and make positive contribution to industrial growth and social welfare. For this, a company can make the appointment of managing director/whole time director or chief executive officer (CEO). Search person needs sound educational background, business experience, Marati and capacity to plan for the future and motive the entire organization in the right direction. Here, CEO plays important role. The CEO of the company is to be appointed by a resolution of the Board of Directors, containing the terms and conditions of appointment including his remuneration.

CEO is the position of the most senior corporate officer or administrator incharge of managing an organization. **CEO is the highest ranking executive in a company** and is responsible for major corporate decisions, managing overall operations and resources of a company. He also acts as **the main point of communication** between the Board and Corporate operations.

FUNCTION AND RESPONSIBILITIES OF CHIEF EXECUTIVE OFFICER (CEO):

- (1) To lead the development of the company's strategy with the co-operation of the Board.
- (2) To lead and oversee the implementation of the company's long term and short term plans in accordance with its strategy.
- (3) To communicate effectively with shareholders, employees, government authorities and other stakeholders and the public.
- (4) To act as a liaison between management and the Board.
- (5) To ensure that the company maintains high standards of corporate citizenship and social responsibility wherever it does business
- (6) To ensure that the company has appropriate systems to enable it to conduct its activities **both lawfully and ethically**. Management and development of human resources of organization. Management of financial and physical resources the benefit of the organization.

ROLE OF NON EXECUTIVE DIRECTORS

MEANING AND FEATURES OF NON EXECUTIVE DIRECTORS:

Every company has its Board **of Directors** has highest policies framing and decision making authority. The board include executive directors, non-executive directors and independent directors. The term executive and non-executive directors have specific meaning as explained below:

- (a) **Executive Director:** The directors **who are in the employment of the company are called executive directors or inside directors**. Whole time director and managing director are covered in this category of directors. The inside directors possess in depth knowledge about the affair of the company. They are generally connected with the policy formulation of the company and take active interest in the day to day affairs of the company. They have **personal involvement with the company** since there remuneration depends on the successful operations of the company.

The term “whole time director” is not defined in the Companies Act. Presumably, which term is used in the act to denote such a director who is in the whole time employment of a company but is not interested with substantial power of Management (like Managing Director) For example, a director is appointed as the “Controller of Finance and Accounts” of the company. He becomes a full time or whole time director of the company. Such director is now called or known as “Executive Director”

(b) Non-Executive Directors: Directors who are not in the employment of the company are called Non-Executive directors or part time directors or outside directors. This category includes professional directors and nominee directors. These directors have generally diverse experience and backgrounds. They provide independent thinking, wider knowledge and perspective to the company. They are appointed not to work full time under a contract of service. They are not intimately connected with the company except through attending the Board meetings. They have an unbiased attitude towards the working of the company and are useful to the company and the Board. They give the benefit of their knowledge, experience and skills to the company.

FUNCTION OF NON-EXECUTIVE DIRECTORS:

Non-Executive directors do not have executive responsibilities and are **expected to focus attention on broad policy and planning matters** and not on stray 'executive direction'. They should **provide an independent view** of the company which is different from day-to-day running of the company. Non-executive directors are appointed to provide the benefit of their independent thinking and analysis, as well as their special skills knowledge and wide experience. **They express fresh and impartial views in board meeting.** They are also expected to function as independent and **impartial guide and advisor to the Board.** Their contribution will be extremely useful to the company if they function by using their abilities and qualities fully.

Non-executive directors are expected to function in such a way that company gets innovative ideas to develop and expand business activities. Non-executive directors have **valuable contacts in business world. They give their benefits of such contracts** for the expansion of their company. They also review critically the business plans and policies of the company and **suggest certain innovative ideas** for marketing such plans and policies more promising and result-oriented. Company and its business environment than the executive directors. The normal role of the non-executive director is:

(1) Strategy formation: He is expected to guide the management and make creative contribution to the company. He can act as a constructive critic as regards the objective and plants devised by the chief executive or his or her executive team.

(2) Monitoring performance: Non-executive directors should take responsibility for monitoring the performance of executive management, especially with regard to the progress made towards achieving the determined company strategy and objectives. They are also responsible for determining of appropriate level of remuneration of Executive directors, and have a prime role in appointing, and when necessary removing, executive directors and in succession planning.

(3) Communication: The company's and board's effectiveness can benefit from outside contacts and opinion. Non-executive directors are expected to help to connect the business and board with networks of potentially useful people and organisations. In some cases, the non-executive director will be called upon to represent the company externally.

(4) Risk: Non-executive directors should satisfy themselves on the integrity of financial information and that financial controls and Systems of risk management are robust and defensible.

(5) Audit: It is the duty of entire board to ensure that the company accounts are submitted to its shareholders by presenting a true and fare reflection of its action and financial performance and that the necessary internal control systems are put into place and monitored regularly and rigorously. A non-executive director has an important part to play in fulfilling the responsibility whether or not a formal audit committee (composed of non-executive directors) of the board has been constituted.

ROLE OF INDEPENDENT DIRECTORS

Independent Directors are experts professionals with knowledge, skills, experience in finance, management, law, sales, marketing, research, etc. and offer their services for its progression and prosperity. They are not involved directly in the activities of the company. An independent director is a non-executive director of a company and help the company **in improving corporate celebrity and governance standards**. Independent directors are expert and give that benefit of their services to the company. It is a type of selfless service which they give to the company. Independent director in relation to a company means a Director other than: A Managing; or Whole time director; or a nominee director. Sec 149(3) of the Act provides that every listed public company shall have at least one third of the total number of directors as independent directors.

The concept of independent directors was introduced in Indian corporate sector by 1980s. The need of such directors was felt due to growth of frauds, financial irregularities and malpractices in the corporate sector. The ides got official support when the concept was incorporated **in clause 49 of the listing agreement** which mandates appointment of independent directors on the board of listed companies. Finally, the Companies Act 2013 give effective support to this concept by incorporating suitable provisions in the act for the appointment of independent directors in listed companies and in other companies such as:

- (i) Public companies with paid up capital of rupees 100 crore or more.
- (ii) Public companies with turnover of rupees 300 crore or more, and
- (iii) Public companies with outstanding loans or borrowings or debentures are deposits exceeding rupees 200 crore.

Unlisted companies need to appoint at least two independent directors, if:

- (i) Paid up share capital exceeds Rupees 10 crore,
- (ii) Total turnover exceeds Rupees 100 crore,
- (iii) Aggregate of all outstanding loans, debentures, deposit exceeds Rupees 50 crore.

LEGAL POSITION OF INDEPENDENT DIRECTORS:

As noted earlier, a listed company must have independent directors to the extent of at least one third of total number of directors. Ab “independent director” means a director, other than a managing or whole time director:

- (1) Who, in the *opinion* of Board of Directors, is a person of integrity, and processes the relevant expertise and experience;
- (2) Who possesses such qualifications as may be prescribed;
- (3) Who was *not* a promoter of the company or of its holding, subsidiary or associate company;

- (4) Who is *not related* to the promoters or directors of the company or its holding, subsidiary or associate company;
- (5) Who has no pecuniary relationship with the company or its holding, subsidiary or associate company or their promoters or directors in the current financial year or during the preceding two financial years;

In addition some more legal provisions are made in the Act in order to maintain **Independence status** of such directors. In short, independent director is a non-executive director who does not have any kind of relationship with the company that may affect the independence of his or her judgment.

Detailed provisions are made in section 149 and section 150 of the Companies Act as regards independent directors which are as **briefly noted below**:

- (1) Who, in the *opinion* of board of directors, is a person of integrity, and possesses the relevant expertise and;
- (2) Who possesses such qualifications as may be prescribed;
- (3) Who was *not* a promoter of the company or office holding subsidiary or associate company;
- (4) Who is *not related* to the promoters or directors of the company or its holding, subsidiary or associate company;
- (5) Who has no pecuniary relationship with the company or its holding, subsidiary or associate company or their promoters or directors in current financial year or during preceding to financial year;

In addition, some more legal provisions are made in the Act in order to maintain **Independence status** of such directors. In short, independent director is a non-executive director who does not have any kind of relationship with the company that may affect the independent of his or her judgment.

Detail provisions are made in section 149 and section 150 of Companies Act as regards independent directors are **as briefly noted below**:

- (1) Whenever there is any change in circumstances which may affect his or her status as an independent director, he/she must give a declaration that he/she fulfils the criteria of an independent director.
- (2) An independent director can receive "sitting fees" for attending board meetings and can also be reimbursed for his expenses for participating in such meetings
- (3) An independent director is not entitled to any stock option.
- (4) Subject to Section 152 of the Act, an independent director holds office for five consecutive years and is eligible for reappointment. The re-appointment of independent director shall be on the basis of report of performance evaluation. Section 149(11) provides that the Independent Director shall be eligible for re-appointment by passing of special resolution. He shall not hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director.
- (5) An independent director can be held liable only for such acts of commission or omission which had occurred with his knowledge and with his consent or connivance or where he/she had not acted diligently.
- (6) The provisions of the Act relating to retirement of directors by rotation do not apply to independent directors.
- (7) An independent director may be **selected from a day bank** of persons who are eligible and willing to act as independent directors as may be notified by the Central Government. The

appointment of independent director shall be approved by the company in the general meeting as provided in the Companies Act.

COMPANY AUDITOR

INTRODUCTION:

Audit of accounts is **compulsory** in the case of all types of companies. It must be done on yearly basis. Audit is mandatory as per Companies Act, 2013. Such audit must be conducted by a properly qualified auditor. The company has to provide all necessary information, documents, etc. to the company's auditor for inspection and for the preparation of the audit report.

The first auditor of a company is appointed by the Board of Directors. Thereafter, the auditor is appointed by shareholders in their AGM. He is appointed on yearly basis. The Auditor's report is placed before the AGM for consideration and approval. The remuneration of an auditor is fixed by the shareholders in their AGM.

The appointment of auditor needs to be made as per the provisions made in the Companies Act, 2013. He/ She is assigned certain duties relating to audit work. In addition, he/she is given certain rights and powers relating to the audit work. His/ Her main function of responsibility is to inspect the account of the company (including register, documents, etc.) and to prepare audit report before the AGM for consideration and approval of member of the company. Section 139 to 148 of the Act contain various provisions relating to audit and auditors. Yeah, we will consider the appointment, duties, rights and powers of an auditor.

MEANING OF AN AUDITOR (WHO IS AN AUDITOR?):

The audit of accounts is compulsory for all types of Companies. In Companies Act, 2013 a provision of **compulsory internal audit** is introduced (S.138). Search internal audit is in addition to regular audit of accounts of the company. There was no provision in the 1956 Companies Act as regards to mandatory internal audit. It is a statutory audit and must be done by a **professionally qualified person** i.e., by chartered accountant. A certified auditor or practicing chartered accountant or a firm of Chartered Accountants can be appointed as auditor of a company. An auditor is **an independent professional** properly qualified to perform audit work. He is responsible for evaluating the accounts of the company and to report the members. Audit of accounts on yearly basis is made compulsory under the Indian Companies Act, 2013 for the safety and protection of shareholders and the company. Auditors are appointed by the shareholders in General Meetings and they are expected to work with honesty and integrity. Auditors are given statutory rights and powers. **Section 139 to 148 of Companies Act, 2013, contains various legal provisions relating to qualifications, appointment, duties, power, removal, etc., of company auditors.** An auditor is given **Independence status** with socially important and useful role in company management and administration. He is supposed to protect the interest of members and the company. He has to make detailed scrutiny t of company's account so that financial irregularities, accounting mistakes and frauds etc. are promptly detected for immediate action and remedial measures. A director or an employee of a company cannot function as an auditor of the company. Moreover, an auditor must be independent for meaningful and purposeful audit of accounts. **An auditor is independent as he is neither an employee nor a debtor of the company.**

QUALIFICATIONS OF AN AUDITOR:

A person is eligible to be appointed as an auditor of the company only if he is a **chartered accountant**. A firm is qualified to be appointed if a majority of its partners practicing in India

are chartered accountants. However, when a firm is appointed, only those partners who are chartered accountants can act and sign on behalf of such a firm. In short, **only chartered accountants can function as auditors of companies.**

Section 141 of the Act, lays down a list of ten person who are not eligible for being appointed as auditors of the company. They include an officer or employee of the company, a person who is indebted to the company, a person whose relative is a director or is in employment as a director or key managerial personnel, a person who has been convicted by a court of an offence involving fraud and so on.

When a person who is already an auditor of a company incurs any of the above ten disqualification after his appointment, he has to vacate his office as auditor and such a vacancy will be treated as a casual vacancy.

WHY COMPANY AUDITORS ARE APPOINTED?

The reasons (justification) for the appointment of company Auditors are as mention below:

- (1) Companies appoint auditors **as such appointment is compulsory** as per the provisions of Companies Act, 2013.
- (2) Company auditors are appointed **in order to ensure that the funds of the company are utilized properly** and that **the accounts are maintained properly** as per the legal provisions.
- (3) Auditors are appointed **in order to avoid misuse/misappropriation of funds** of the company. Even serious financial irregularities including fraud are detected because of systematic audit by experts.
- (4) **Auditor works as the representative of shareholders.** He submits his **audit report** to shareholders. **This provides information on financial matters to the shareholders.** Appointment of auditors **is necessary for the protection of interests of shareholders** and for avoiding misuse of funds. Shareholders can take remedial measures only when they get information on financial irregularities through Audit Report.
- (5) Independent audit by a qualified auditor **is necessary for the protection of money provided by shareholders.** This gives adequate justification (legal and social) for the appointment of an auditor.

APPOINTMENT OF COMPANY AUDITOR:

The Indian Companies Act contains provisions relating to appointment of company auditors. Large companies may appoint two or more auditors. Similarly, a company having branches in foreign countries may appoint **local auditor for branch audit.** The Act has put a cap on the maximum number of auditor ships at **twenty companies.** If a person or a partner of a firm holding appointment as the company's Auditor is, at the date of such appointment, already the auditor of more than twenty companies, he becomes ineligible for being appointed as an auditor in a company.

- (1) **The first auditor (or auditors)** of a company shall be appointed by the Board of Directors **within thirty days of incorporation of the company** and the auditor/ auditors so appointed shall hold office until the conclusion of the first AGM of the company. His remuneration will be fixed by the Board. The auditors so appointed may be removed before the expiry of their term and another person may be appointed in their place by the company at a general meeting by passing an ordinary resolution to that effect, provided notice of such proposed resolution is given to all members at least 14 days before the date of the meeting.

If the Board of Directors fail to appoint first auditor within 30 days of registration of the company, it i.e. Board has to inform the members accordingly. The members will then at an extra-ordinary general meeting within 90 days appoint an auditor who has to hold office till the conclusion of the first AGM (S. 139(6)).

(2) The subsequent auditors of a company are appointed by the shareholders (on yearly basis) in the annual general meetings by passing **an ordinary resolution**. Before the appointment of any auditor is made, his written consent is to be obtained, along with a certificate from him stating that he is to be eligible to be so appointed and has necessary qualifications as laid down by S. 141 of the Act. The remuneration of the auditor is also mentioned in the resolution. Such auditor will hold to the office for one year i.e., from the conclusion of that meeting until the conclusion of the next annual general meeting. The auditor appointed in AGM shall be informed of his appointment within **seven days of the appointment** and also intimate the ROC within fifteen days from the date of the AGM at which he is appointed. The auditor concerned has to inform the Registrar in writing whether he has accepted/rejected the appointment within thirty days of the receipt of intimation of his appointment from the company. The first auditor so appointed will hold the office from the conclusion of that AGM till the conclusion of next AGM of the company. The shareholders may appoint the same auditor for next one year. Alternatively, shareholder may appoint new auditor in his place. They have full power to select any alternative. Such appointment of the existing auditor for the next year needs to be place for rectification by the members of the company at every AGM. If at any AGM, no auditor is appointed, the existing auditor continues to be the auditor of the company. An ordinary resolution for the appointment of an auditor in the AGM may be given below:

Before appointment, the company must get a certificate from the auditor that the appointment or reappointment will be within the limits. The limit are that an auditor can hold office only in 20 companies at a time [S. 139]

(3) Casual vacancy of an auditor (S. 139(8)): Casual vacancies are to be filled up by the Board of Directors within thirty days and the new auditor holds the office until the conclusion of next AGM. However, if such casual vacancy has occurred as a result of resignation of an auditor, the new auditor must be approved by the company in the general meeting to be called within three months of the Board's appointment as foresaid.

(4) Re-appointment of Retiring Auditor: The auditor who retires at the AGM may be reappointed, or shall be automatically Re-appointed, unless:

- a) He is not qualified for reappointment;
- b) He has given to the company a notice in writing of his unwillingness to be Re-appointed;
- c) A resolution has to be passed at the meeting appointing somebody instead of him or providing expressly that he shall not be Re-appointed; or
- d) Where notice has been given of an intended resolution to appoint some person or persons in place of the Retiring auditor, and by reason of death, incapacity or disqualification of that person, as the case may be, the resolution cannot be proceeded with.

In short, a retiring auditor may be reappointed at the AGM if he has not become disqualified. Secondly, he has not informed his unwillingness. Thirdly, a special resolution has not been

passed at the meeting appointing another auditor or providing expressly that he is not to be reappointed. [S. 138(9)]

In case no auditor is appointed or reappointed at an AGM, the existing auditor is to continue to be the auditor of the company [S. 139(9)]

DUTIES OF COMPANY AUDITOR/AUDITORS:

An auditor plays a positive role in financial management of a company. He has to function on behalf of the shareholders who are the real owner of the company. An auditor represents the shareholders and protects the interest of the company and shareholders. His/her basic/ primary duty is to examine the books and accounts of the company on behalf of the shareholders and to report to them thereon. The Auditor has a number of duties to shareholders and the company. Basically, he has to check the accuracy of the accounts of the company. He has to use his skills and knowledge for the protection of shareholders and the company. He acts as a trusted friend and guide of shareholders. By performing his duties honestly, efficiently and promptly, an auditor improves his status and goodwill as a professional and also protects the interest of his company and shareholders. **The duties of an auditor are as briefly explained below:**

- 1) To examine the accounts of the company carefully:** The most important duty of an auditor is to inspect the accounts of the company and to make a report to the members of the company on the accounts and documents that he has audited. His report must state whether, in his opinion, the books of account exhibit the true position of the company.
- 2) To give fair information to members on the audit work completed (through audit report):** The auditor's duty is to inform the members whether: (a) he has obtained all the information and explanation from the officers for the purpose of his audit work; (b) in his opinion, proper books of account, as required by the Companies Act, have been kept by the company and necessary returns have been received from those branches not visited by him; (c) the company's profit and loss account and balance sheet dealt with by the report are in agreement with the books of accounts and returns submitted by him for the purpose of audit; (d) the balance sheet and profit and loss account have been drawn up according to the requirements of the Companies Act, and (e) in his opinion the profit and loss account exhibits a true and fair view of the profit and loss, and a balance sheet shows a true and fair view of the statement of affairs of the company.
- 3) To get himself acquainted with M/A and A/A of the company:** Auditors are expected to acquaint themselves with the memorandum and articles of the company in order to get a clear idea as regards to internal management of the company.
- 4) To be loyal to Members/company:** Company auditor is appointed by the shareholders and their representative. He has to protect the interest of shareholder and the company properly. He works as the trustee of the shareholders and functions on their behalf. If there are non-disclosures in the balance sheet, the auditors should immediately bring this fact to the notice of the members of the company. This means, his duty is to remain loyal to the members of the company or appointing authority. He has to give correct financial position and picture of the company. If the financial position is not sound and stable, he has to give suggestions/guidance to Members (through audit report) for improving financial position in the near future through constructive suggestions and follow-up steps.

- 5) To hand over books of accounts to the liquidator on winding-up of the company:** In the event of the winding-up of the company, the auditor has a duty to hand over books of account that are in his possession to the liquidator.
- 6) To call for required information for audit work:** It is the duty of the company auditors to call for information on various points such as (a) whether loans have been properly secured. (b) Whether the personal expenses have been charged to revenue account, etc.
- 7) To sign audit reports, etc.:** It is an important duty of an auditor to sign the auditor report and sign and verify other documents of the company in accordance with S. 141(2) of the Act. The audit report get **value, authenticity and legal status** due to signing by the auditor himself. He cannot delegate this duty to directors or managing the directors and so on. It is his statutory responsibility. Audit report will be meaningless without the signature of an auditor.
- 8) To certify statements included in the prospectus:** A prospectus issued by a company for sale of shares contain a statement of profit and loss, year-wise for previous five years and statement of asset and liability of the company. It is the duty of the auditor to certify such statement before incorporation in the prospectus.
- 9) To verify cash and bank balance of the company:** An auditor has a duty to verify cash and bank balance and the bank balance of the company during the course of his audit work.
- (10) To be honest to the company:** An auditor has a duty to be honest in his approach and loyal to the company. He should investigate in full when there is sufficient cause for suspicion. His duty is to use his professional skills and diligence while conducting an audit work.
- (11) To supply information on irregularities:** The Auditors has to bring to the notice of the shareholders any irregularities (including fraud) affecting their interest. However, he is not concerned with policy or management of the company. The auditor owe their duty to the shareholders and the company only. They are not liable to third party.
- (12) To be honest, sincere and methodical:** An auditor should be honest while doing his audit work. He has to use his professional skills for the benefit of the company and for the protection of interest of shareholder. He should not certify anything which he does not believe to be true. An auditor has to act honestly. It is his moral duty and professional ethics.
- (13) Duty to comply with accounting standards:** The auditor has a duty to comply with auditing standards, specified by the Institution of Chartered Accounts of India. By following such high standards, the auditor to offer quality audit work to his clients. This duty is related to his professional ethics.
- (14) Duty to report fraud and serious financial irregularities:** In the course of his audit work, an auditor has a reason to believe that an offence involving fraud is being or had been committed by officers or employee of the company. Under such situation, he/she has an urgent duty to report the manner to the Central Government in such manner and within such time limit as may be prescribed. This duty of an auditor is important as it gives protection to company and shareholder. Moreover, failure to do so expose such an auditor to a fine ranging between Rs. One lakh and Rs. Twenty five lakh.
- (15) Miscellaneous Duties of an Auditor:**
- Duty relating to fair valuation of the company's property.
 - Duty to point out non-disclosure in the balance sheet of the company.
 - Duty to keep window-dressing effort within reasonable limits.
 - Duty to disclose bad and doubtful debts of the company.
 - Duty to make inquiries under A. 143 of the Act.

RIGHTS AND POWER OF COMPANY AUDITORS:

Rights and power of auditors move together. Rights supplements the power. **The Indian Companies Act confers various right and power on auditors as briefly explained below:**

- 1) Access at all times to the book and accounts and vouchers of the company:** The auditors has a **right of access to the books and accounts of the company**. He had access to the vouchers of the company whether kept at the head office or elsewhere. He can refer to accounts books as well as statutory statistical and costing books of the company. He can also refer to the correspondence relating to the books and accounts.
- 2) To acquire information and explanation relating to audit work:** The auditors is entitled to acquire the officers of the company any such **information and explanation** as he may think necessary for the performance of his audit duty in the best possible manner.
- 3) Rights relating to Branch audit:** Where the branch accounts of a company are audited by a person other than the company's auditors, the company's auditors: **(a)** shall be entitled to visit the branch office if he seems it so necessary; and **(b)** shall have a rights to access at all times to the books and accounts and vouchers of the company maintained at the branch office.
- 4) Right to received remuneration for audit work:** The auditor is entitled **to receive his remuneration** on the completion of his audit. This rights cannot be limited or abridged by the article of the company or by a resolution of the shareholder.
- 5) Rights under Section 146:** The auditor has the following rights under Section 146:
 - (a)** To receive all notices of and other communications relating to any general meeting of a company;
 - (b)** To attend and to be heard and any general meeting on any aspect of the business which concerns him as an auditor.
- 6) Maintenance of books of accounts:** The is empowered to enquire whether the company is maintaining the books of accounts in the manner prescribed by the Act it not.
- 7) Rights to have illegal and technical advice on audit matters:** The auditor has a **right of seeking legal or technical advice on matter pertaining to his audit work** of the company. However, in the audit report, he is expected to give his own observation.
- 8) Right of indemnity:** Under section 201 of the Act, the auditor has **right of indemnity**. The company must indemnify all liability incurred by the Auditor for defending any proceedings, ether civil or criminal, in which the judgment is given in favor of the company.
- 9) To seek expert opinion:** An auditor has a right to seek expert opinion on a specific matter if he feels necessary as he may not be expert in all areas of working of the company.
- 10) Benefit of limitations act:** The auditor is entitled to the benefit of Limitations Act, there by his liability is always limited period of limitation.
- 11) Right to sign audit report of the company:** The auditor **Right to sign audit report of the company**. He may also sign or authenticated by the auditor.
- 12) Right to obtain information and explanation:** S. 143 confers a right to an auditor to collect such information and explanation as he may think necessary for performance of his duties as company auditor. Company officers have a duty to furnish without delay, all information required by the auditors in connection with the audit work of the company. There is provision for punishment if company contravenes this provision.
- 13) Right to lien:** This right relates to payment of remuneration to the auditor. An auditor having possession of books and documents of the company has a lien on them for non-payment of his fees and can retain the same until he is paid the fees due. However, it is difficult to exercise this right in practice as the Act require all books of accounts of the

company be normally kept at the registered office of the company. Normally, Auditor is paid after the audit work is done. As a result, this right is only in theory and it's actual use is practically nil.

- 14) Miscellaneous Rights/Power:** (a) Right to make representation when threatened with removal. (b) Right to receive notice of his appointment within seven days of his appointment as Auditor. (c) Right to receive details of loans and advances made by the company during the accounting year.

Objective Questions with Answers

(1) Select the most appropriate answer from the options given below:

- (a) Director's report is placed before ___ for consideration and approval.
 (i) EGM (ii) Board meeting (iii) Committee meeting. (iv) AGM
- (b) Non- executive directors are ___ of the strength of the Board.
 (i) Less than half (ii) More than half (iii) Not less than half (iv) More than 07
- (c) Directors actors ___ after companies
 (i) Owners (ii) Employee (iii) Agents (iv) Partners.
- (d) Only ___ can be a director of a company.
 (i) Rich person (ii) Influential (iii) a political (iv) an individual.
- (e) A listed company must have at least ___ of total numbers of directors as Independent director.
 (i) One third (ii) One half (iii) one forth (iv) three.
- (f) DIN is ___ for all Directors.
 (i) Compulsory (ii) Optional (iii) not necessary (iv) Essential.
- (g) Remuneration of an auditor is decided by ___
 (i) Shareholders in AGM (ii) Board of Director (iii) Promoter (iv) By auditor himself.
- (h) Meeting of directors are held ___
 (i) rarely (ii) two monthly (iii) frequently (iv) Once in a year
- (i) Audit of accounts of Companies is ___
 (i) Optional (ii) Compulsory (iii) Not needed (iv) None of the above.
- (j) Casual vacancies of auditor are to be filled up by the ___
 (i) Shareholders (ii) Managing Director (iii) ROC (iv) Board of Directors.
- (k) Minimum qualifications of an auditor is ___
 (i) MBA (ii) M.com, Ph.D. (iii) CA (iv) IAS
- (l) An auditor has a right to attend ___ meeting.
 (i) Annual General (ii) Board (iii) extraordinary general (iv) Committee.
- (m) An auditor has to sign ___ as per section 141 (2) of the Act.
 (i) Director's Report (ii) Auditor's Report (iii) Committee report (iv) Account secretary.
- (n) An auditor ___ advisor.
 (i) An (ii) not an (iii) an accounting (iv) a legal
- (o) Audit report is prepared by ___
 (i) Company auditor (ii) Chartered Accountant (iii) A Director (iv) Company secretary.

[Ans. : (a- iv) ; (b- iii) ; (c-iii) ; (d- iv) ; (e- i) ; (f- i) ; (g-i) ; (h- iii) ; (i-ii) ; (j-iv) ; (k-iii) ; (l- i) ; (m- ii) ; (n- ii) ; (i-ii)]

(B) State whether the following statement are TRUE or FALSE:

- (a) Retiring directors are not eligible for re-appointment.
 (b) Directors are elected in AGM.
 (c) Directors auto-owners as well as trustees of the property of the company.

- (d) DIN is not required for directors who are working as directors at present.
- (e) Independent directors participates in company management like directors.
- (f) There can be more than 1 CEO in a company.
- (g) An MBA candidate can be appointed as company auditor.
- (h) Audit of accounts of small companies are optional.
- (i) Shareholders constitute appointing authority for auditor.
- (j) An auditor must be honest, fair and favorable to shareholders.
- (k) Auditor has a lieu for non-payment of his audit account.
- (l) Directors actors owners of the company.
- (m) Directors need to specific academic qualifications.
- (n) A person without DIN cannot be appointed as company director.
- (o) S.149 of the act provides that prescribed clause of companies must have at least one woman director.
- (p) In the case of Casual Vacancy, company secretary can be appointed as director.
- (q) The first auditor of a company is appointed by company promoters.
- (r) Remuneration of first auditor of a company is fixed by the Board of Directors.
- (s) An auditor has a right to obtain information and explanation.
- (t) An auditor is not an insurer.
- [Ans.: (a- False) ; (b- True) ; (c- False) ; (d- False) ; (e- False) ; (f- False) ; (g - False) ; (h - False); (i- True); (j- True); (k- True); (l- False); (m- False); (n- True) ; (o- True) ; (p- False) ; (q- False) ; (r- True) ; (s- True) ; (t- True)]

Question Bank for Self-Practice

- (1) Who are directors? Explain the role in company management.
- (2) Define the term director and explain the legal position of directors.
- (3) Explain the meaning and appointment of company directors.
- (4) Explain duties of company directors.
- (5) Explain the statutory duties of company directors.
- (6) Explain the role of directors in company management.
- (7) Write a note on Directors' Report.
- (8) Explain directors as an agent and as trustee of a company.
- (9) What is DIN? Explain its benefits and importance.
- (10) State provisions in the Companies Act, 2013 as regards Director Identification Number.
- (11) Explain the need and importance of DIN.
- (12) "Directors are the brains of the company"
- (13) "Directors are the agents, trustees and managing partners of a company" Explain.
- (14) "Directors play a prominent role in company management" Explain.
- (15) Explain the types of directors and the constitution of board of directors.
- (16) Explain the meaning and role of CEO.
- (17) Who are non-executive directors? What are their functions?
- (18) Explain role of non-executive directors in company management.
- (19) Who are independent directors? Explain their role in company management.
- (20) Explain the position of CEO, and independent directors in company management.
- (21) Who is the chief executive officer of a company? Explain his role.
- (22) What are the functions or responsibility of CEO?
- (23) Explain the terms executive and non-executive directors and their position in Board of Directors.

- (24) Explain deposition and contribution of independent directors.
- (25) "Non-executive directors play a very active and useful role in company management" Explain.
- (26) Explain the duties and responsibilities of independent directors.
- (27) Who is a company auditor? How is he appointed?
- (28) Explain fully the appointment of company auditor.
- (29) What are the duties of company auditor? Explain them truly.
- (30) Explain the rights and powers of company auditor.
- (31) Write a note on Audit Report. What are its benefits?
- (32) "An auditor should be fair, honest and loyal to shareholders" explain.
- (33) Explain the restrictions on the appointment of an auditor.
- (34) Why auditor is appointed for audit of company's account?
- (35) Explain the meaning and qualifications of an auditor.
- (36) "Auditor should be loyal to shareholders and the company" Explain.
- (37) Write notes on the following:
- (a) Appointment of director.
 - (b) Role of directors in company management.
 - (c) DIN.
 - (d) Role of CEO.
 - (e) Independent director and his role.
 - (f) Non- Executive director.
 - (g) Duties of an auditor.
 - (h) Rights of an auditor.
 - (i) Appointment of an auditor.
 - (j) Audit Report.

2. COMPANY MEETINGS

MEANING OF COMPANY MEETING:

Meeting, in simple words, means a gathering or assembly of person for transacting lawful business. Company meeting is different from public meeting or political meeting. A company meeting must be convened and held as per the provision made in Companies Act. Such meeting is only for person who are given notice or invitation. The business of the meeting is conducted under the leadership of the chairman and the decisions taken are in the form of resolution. **Meeting act as collective decision making forums.**

DEFINITION OF A MEETING:

Meetings are necessary in the case of companies as they operate on democratic principles. All policy decisions on company management are taken through meetings of shareholder and directors. Meeting is an assembly of member for some specific purpose. It facilitates group discussion and decisions. Meeting facilitates effective personal communication. Certain divisions acceptable to all or to majority of members present are also taken in the meeting. The term meeting is derived from Latin word "maeta" which means "Face to Face". Meeting is an assembly of number of people for entertainment, discussion and so on.

According to **Webster Dictionary** "Meeting is an act of coming together to discuss any particular matter".

In a **general sense**, meeting may be defined as "an official gathering of two or more person invited at a specific place and time for participation in free discussion and arriving at decision regarding certain lawful purpose."

According to **P. K. Ghose** "any gathering, assembly or coming together of two or more persons for the transaction of some lawful business of common concern is called meeting." Minimum two person are necessary for a meeting. Meetings are held to discuss the matters of common interest. Company meetings are meetings of joint stock companies. They include meetings of shareholders, directors and so on.

NEED / PURPOSES OF COMPANY MEETINGS: / WHY COMPANY MEETINGS ARE HELD

The reason for convening company meetings are as noted below:

- (1) To provide a convenient platform to members to come together and express their views freely** on company matters. Members are the owners of the company. Their sanction or approval is required for major decisions on company management. Such sanction is given in the general meetings of members.
- 2) To approve annual report, annual accounts** of the company, to approve **auditors report** and to declare **the rate of dividend**.
- 3) To elect directors of the company** from time to time.
- 4) To review the progress of the company and to take important policy decisions** on the company matters i.e. Future plans, policies and programme.
- 5) To bring shareholders on common platform for policy** for policy framing and decisions-making of the company.
- 6) To enable shareholders to come** together to discuss the problems, progress and prospects of their company and to exercise their voting rights.
- 7) To give approval to important appointments** such as appointment of auditors.
- 8) To maintain effective control** on the activities and operations of the company.

9) To solve urgent and crucial problems faced by company.

10) To comply with the statutory requirements, as per the provision of Indian companies act, 2013.

Requirements of a valid meetings are:

- i. **It must be duly convened.** It must be called by proper authorities and also as per the provision of the Articles of Association of the company.
- ii. **It must be properly constituted.** There must be proper quorum and proper person in the chair for the meeting.
- iii. **It must be properly conducted.** Proper rules for discussion and order in debate must be followed. The sense of the meeting must be ascertained properly and the processing of the meeting must be recorded properly in the proper minute's books.
- iv. **There must be proper person in the chair** to conduct the business of the meeting.

IMPORTANCE OF COMPANY MEETINGS:

Meeting play an importance role in the company management and also in decisions-making in the car off companies. Members/directors take all managerial decision collectively in their meetings. In the meetings, members come together, discuss the issues and take decision which are acceptable to all or to majority of member present. Meeting are necessary in the case of companies as companies are owned by large number of shareholders and operates on Democratic principal. All decision about company management are taken jointly/collectively through meeting, discussion and resolution. Resolution are approved through voting. **Meeting provides a common platform to members and management for collective deliberate and decisions.**

The following points suggest the importance of company meetings:

- (1) Meetings facilitate divisions in a democratic way.
- (2) Meetings Facilitate reasonably rational decisions as they are taken collectively through participation of many members present.
- (3) Meetings facilitate gathering of large number of shareholders at one place for discussion on company matters. Meeting provides opportunity to members to come together for common purpose.
- (4) Certain activities like election of directors, approval of auditor's report and appointment of auditor are possible only through meetings.
- (5) Meetings Facilitate cross fertilization of ideas for the benefit of company and members.
- (6) Meetings bring together those who own the company and those who manage the company for discussion and decisions on issue equally important to both.

TYPES/KINDS OF COMPANY MEETING:

A company meeting is a meeting of its directors or members. A company meeting is different from every gathering or assembly of people. Company meeting must be convened and held in perfect compliance with the provisions of Companies Act, 2013 and the rules framed thereafter. The business conducted in such meeting should be validly transacted and not liable to be questioned later due to any irregularity. The company secretary has to study carefully the provision of the Companies Act, 2013 relating to company meetings and to ensure that the meeting is convened properly, proper quorum is available in the meeting and the business is conducted as per the provision of the Act.

Company meetings include the following there types:

- e) **Meetings of shareholders/members:** Meeting of the shareholders are also called **general meeting**. Such meeting are necessary for policy decisions on various issues before the company as well as for the election of directors, approval of annual accounts and for the election of alteration in the Memorandum and articles of the company. **Meetings of the shareholders include annual general meeting, extra-ordinary general meetings and class meetings.** Meetings of shareholder are not frequent like meeting of directors.
- f) **Meeting of Directors:** Directors are given wide managerial powers. These powers are to used collectively and hence meeting of Board are frequently arranged. **Meeting of Directors include board meeting and meeting of sub-committees of directors** All directors are invited to the meeting of the Board, Many important decisions such as allotment of shares, forfeiture of shares, issue of new shares, investment of funds, etc. are taken in the meeting of Directors.
- g) **Meeting of creditors:** Creditors include debenture holders and other financial institution offering loans to the company. Creditors are not concerned with the management of the company. Indian Companies Act provides for the meeting of creditors. Such meeting are arranged when certain matter relating to creditors are require to be discussed for taking their consent. **Only creditors are invited for such meeting.** Sick meeting are **rarely arranged** but rules and procedure of general meeting are made applicable to such meeting of creditors. The following chats shows the type of company meeting:

In short, the meeting of a company under the company act, 2013 are as noticed below:

- 1) **Meeting of shareholders** which includes **Annual general meeting, extra-ordinary general meeting and class meeting.**
- 2) **Meeting of directors** and sub-committees.
- 3) **Meeting of debenture holders/bond holders.**
- 4) **Meeting of creditors** otherwise than in winding up of a company.
- 5) **Meeting of creditors and contributors in winding up.**
- 6) **Court/Tribunal convened meeting under circumstances.**

SECRETARIAL DUTIES BEFORE, DURING AND AFTER COMPANY MEETING:

Company secretary is closely connected with company meeting which include general meeting and board meeting. He perform various Duties before, during and after every company meeting. He is the man behind all company meeting. He plays a constructive and **responsible role** in relation to all company meeting. A company secretary has to see that **every company meeting is duly convened and properly conducted.** In addition, he has to see that the business of the meeting is lawfully conducted and accurately. Finally, the secretary has a responsibility to execute all decision taken in the meeting. For this he has to send letters, reports and so on. This suggest his close association with company meeting and positive role in company meetings. In brief, it is the duty of company secretary to study carefully the provisions of Companies Act, 2013. Relating to company meetings and to ensure that the business at company meetings is conducted in conformity with the provision of this act

A company secretary has to conduct various Duties/functions in relation to company meetings. His general or overall duties can be conveniently divided into the following 3 parts (a) Duties before the meeting, (b) Duties during the meeting, and (c) Duties after the meeting.

- (a) Before Company meeting**, the secretary has to prepare and send the notice and agenda to all members and keep ready all documents, etc., required for the meeting. In addition, he has to make all necessary arrangements for the smooth conduct of the meeting. Before the meeting, he has to prepare certain documents and reports for the consideration of the meeting. For example, annual report before AGM or statutory report before statutory meeting. He has to make all necessary arrangements in time so that the meeting will be conducted smoothly and without any procedural or other irregularity. In addition, for the Board meeting, he has to keep ready documents, etc. required for decision-making by the Board.
- (b) During the company meeting**, he has to look after the quorum and help the chairman in the smooth conduct of the meeting. A secretary has to supply information, draft resolution, take down notes of the proceeding and look after the voting arrangements. He remains present in the meetings even when he is not a member or is given voting rights. He also reads certain reports, etc. As per the instructions of the chairman. He has to see that the agenda of the meeting is completed with concrete decisions. He also provides information, etc. If some new issue is raised by members during the course of the discussion.
- (c) After the company meeting is over**, the secretary has to draft minutes and place them before the chairman for consideration and approval. In addition, he has to execute the decisions taken in the meeting. In the case of AGM, the secretary has to see that dividend is paid to all members before the due date. He also writes letters to persons appointed for the next financial year. For example, company Auditors. He submits the copies of resolutions approved to the Registrar as per legal provisions. His work after the AGM and Board meetings is time consuming but he has to complete this work with the help of his subordinates. The secretary all alone will not be able to give attention to all aspects of company meetings. He distributes the secretarial work relating to company meetings among his subordinates and guides them properly.

DETAILS OF COMPANY MEETINGS:

ANNUAL GENERAL MEETING (AGM) [Section 96]

Annual General Meeting (AGM) is the most important general meeting of shareholders. It is a yearly feature. Under Section 96 of the Companies Act, 2013 every company (other than one person company) must hold AGM every year, specifying such a meeting to be an AGM in the notice of the meeting. This meeting is in addition to other general meetings and is **compulsory** for all types of companies- private as well as public and must be held within the time limit fixed. As the name indicates, annual general meeting is a general meeting of shareholders and is held once in a year. The first AGM of a company must be held **within nine months** from the close of the first financial year of the company and subsequent meetings within a period of six months from the close of every financial year. The gap between two annual general meetings should not be more than 15 months. Section 96 of the Companies Act, 2013 deals with the annual general meeting.

BUSINESS CONDUCTED IN THE AGM:

The business conducted in the annual general meeting may be **ordinary or special**. This business is conducted by passing **ordinary resolutions**. **The items of ordinary/routine business are as follows:**

(i) Approval of annual report of directors. (ii) Approval of annual accounts and balance sheet of the company. (iii) Adoption of Auditor's report. (iv) Appointment auditors and fixing their remuneration. (v) Election of directors in place of retiring directors. (vi) Declaration of annual rate of dividend, if any.

Any additional business (in addition to the above mentioned points) will be treated as **special business**. The notice of special business must be given properly to the members. **Explanatory statement** on items of special business is required to be annexed to the notice sent to the members informing them about the meeting (Section 102). **Special business** normally includes alteration in articles, execution of expansion programme, and reorganization of capital structure and appointment of managing director. This special business may be conducted through ordinary or special resolution as per the statutory provisions made in the Companies Act.

PROCEDURE OF AGM:

The procedure of AGM is similar to any other general meeting of a company. Company secretary completes all procedural formalities before the AGM. He gets the accounts of the company audited, drafts annual report of the company, issues notice of AGM to all members and so on. The chairman of the Board normally presides over the annual general meeting and conducts the business as per the agency already circulated. He makes a brief speech in this meeting called "**Chairman's speech**". In his speech, he reviews the working of the company and informs about the achievements and challenges before the company.

The company secretary reads the notice and reports, etc. in the AGM. He also helps the chairman in orderly conduct of the AGM. The decisions (in the form of resolution-ordinary or special) will be taken on routine matters as well as on special matters for the consideration of the meeting. Members present express their views on various matters and decisions are taken in a democratic manner.

Directors, members, auditor, solicitors, company secretary and other managers attend this meeting. AGM may be short or long. It gives opportunity to members to review the working of the company and understand future prospects of their company. Company secretary takes notes on proceedings of the AGM for drafting minutes. He also makes arrangements for taking voting on different issues before the meeting. He also supply whatever information, statistical data, etc. Required during the meeting.

After the AGM, the secretary has to draft minutes of the AGM for the consideration and approval of the Board. In addition, the secretary has to take follow-up actions after the AGM is over. This includes dividend payment, issue of appointment letters and so on.

STATUTORY/LEGAL PROVISIONS RELATING TO AGM:

- (1) **Time limit:** The first annual general meeting must be held **within 18 months** from the date of incorporation of a company and thereafter, every year it must be held **within six months** from the close of the financial year of the company. However, the gap in between two annual general meetings should not exceed 15 months.
- (2) **Extension of time limit by Registrar:** Under special circumstances, (i.e. when company cannot hold its AGM within fifteen months from the date of its last AGM) the **Registrar may grant extension of three months period for arranging the meeting**. However, there can be no extension of period beyond 18 months in case of AGM even by the Registrar. However, there is no provision for extending the time for holding the first AGM of a company.

- (3) **Day and place of AGM:** The AGM must be held on any working day (not on public holiday) during the business hours at the registered office or at a place notified in advance. The AGM may be adjourned meeting is deemed to be a continuation of the earlier meeting. Such adjourned meeting must also be held within 15 months of the previous meeting.
- (4) **Time of meeting: Every AGM:** Every AGM should be held during business hours, i.e. between 9 am and 6pm on a day that is not declared to be a national holiday by the Central Government.
- (5) **Notice of AGM: At least 21 days written notice** of the meeting must be given to every shareholders, directors and auditor of the company. The meeting may be held with a shorter notice, if it is so agreed unanimously by all members entitled to vote in such a meeting.
- (6) **Documents sent along with the notice of AGM:** A notice of AGM may be given either in writing or through electronic mode. It must be accompanied by a **copy of Directors Report, audited annual accounts and auditor's report**. Both the documents are placed before the meeting for consideration and approval. Normally, such sanction is given under routine business of AGM.
- (7) **Provisions in the case of failure to call AGM:** If a company fails to call AGM within the prescribed time limits, the Tribunal may, on the application of any member of the company, call or direct the calling of the meeting and give directions as it thinks expedient in relation to the calling, holding and conducting of the meeting.
- (8) **Punishment for not calling AGM in time:** The Company and every officer who is in default (for not calling the meeting in time) is punishable with a fine upto Rs. 1lakh. In case of a continuing offence, they are also liable to pay upto Rs. 5000 for every day during which the default continues (Section 99). **Secondly**, any member can apply to the **Tribunal**, which can call or direct the calling of the AGM.
- (9) **Report on AGM:** Section 121 of the Act provides that every *listed public company must* prepare a report in the prescribed manner on each AGM, informing that such a meeting was convened, held and conducted as per the provisions of the Act and the Rules made thereunder. A copy of the report is to be filed with the ROC within thirty days from the conclusion of the AGM, along with the prescribed fees.

Any default in complying with the above exposes the company to a fine ranging between RS 1 lakh and RS 5 lakhs. Additionally, every officer in default is also punishable with a fine ranging between Rs. 25,000 and Rs. 1 lakh.

SECRETARIAL FUNCTION/DUTIES RELATING TO AGM:

(1) FUNCTION/DUTIES BEFORE THE AGM:

- (a) **Preparation of annual accounts** and their submission to the Board for consideration and approval. He also obtains the signatures of the Directors authorised to sign annual accounts.
- (b) **Submission of annual accounts to company's auditors and to secure auditor's report.** The secretary has to offer necessary co-operation to the auditor for audit purpose. He has to see that the audit work is completed in time and that the audit report is sent to all members along with the notice of the AGM. The secretary has to see that audit work is completed with three or four months after the end of financial year so that the AGM will be arranged within six months after the end of financial year.
- (c) **Preparation of draft of Annual Report** for the consideration and approval by the Board in their meeting prior to AGM. The Secretary drafts the annual report (also called Directors' Report) in consultation with the chairman and sends to all directors for information as they have to approve this report in their Board meeting prior to AGM. Company secretary helps

the Directors in finalising and drafting of annual report. He also provides secretarial assistance in the printing of the report.

- (d) **Arrange Board Meeting** (in consultation with the chairman) **for finalising arrangements of the AGM.** In this meeting, the date, time, place of the meeting, agenda, rate of dividend etc. are decided by the Board. This enables the secretary to go ahead with other arrangements for the meeting. The annual accounts and balance sheet for the financial year are also approved in the Board meeting.
- (e) **The secretary gets the notice, agenda, annual report, etc. Printed and sends** the notice and other documents to all members. He issues a public notice about the meeting and also provides secretarial assistance to the chairman in preparing his speech for this meeting (**Chairman's speech**).

(2) FUNCTIONS/DUTIES DURING THE AGM:

- (a) **Ascertaining Quorum:** During the AGM, the secretary has to help chairman in **ascertaining the quorum** for the commencement of the business of the meeting. He also takes the signatures of members present in the **Member's Attendance Register**. The secretary has to check entry of members at the entry point so that only members or their proxies are given entry to the meeting hall. For this, the secretary has to check **admission cards** at the gate and take signatures of members in the attendance register.
- (b) **Reading notice:** The secretary may be asked to read out the notice, of the meeting, Director's Report, etc. in the meeting.
- (c) **Taking notes of proceedings:** The secretary also arranges for taking down notes of the proceedings for drafting minutes.
- (d) **Providing information and assisting the chairman:** The secretary provides whatever information required during the AGM. This facilitates orderly completion of the business. The secretary also helps the chairman in the smooth conduct of the meeting. He/she helps the chair in regard to points of order raised in meeting.
- (e) **Conduct of Poll, if required:** The secretary keeps ready all arrangements for the conduct of Poll, if demanded by members and approved by the chairman.

(3) FUNCTIONS/DUTIES AFTER THE AGM:

- (a) **Drafting minutes:** The secretary **drafts and places the minutes** of AGM before the chairman for consideration and approval.
- (b) **Execution of decision taken:** The secretary **executes other decision** taken in the meeting. Here, he has to take follow-up steps for executing the decision taken.
- (c) **Filing documents with the Registrar:** The secretary **files certain documents** like Annual Accounts and return with the Registrar within the time limit fixed. The secretary has to file requisite copies of **annual accounts** and **the annual return** with the Registrar within 30 days and 60 days respectively of the AGM. In addition, he has to file the copies of special resolutions approved in the AGM (along with related documents).
- (d) **Arrangements for dividend payment:** The secretary makes necessary **arrangements for the payment of dividend to members** within the time limit fixed. He has to arrange for **the dispatch of dividend warrants** (a Cheque towards dividend payment) to members. He/she has to **open a separate bank account** known as "Dividend Account for the year__ and to deposit the total amount of div payable within five days from the date of declaration of dividend.

- (e) **Intimation to auditors and directors:** The secretary writes letters to different parties like auditors, etc. in connection with the decision taken in the AGM. He informs auditors about their re-appointment. The secretary also sends intimation to newly appointed directors by sending an official letter of appointment.
- (f) **Changes in the Register of Directors:** The secretary makes suitable changes in the Register of Directors, as per need.
- (g) **Action on decision taken:** The secretary has to take appropriate action on the decision taken by the shareholders in their annual meeting. For example, he has to send a letter of appointment to auditor appointment in the AGM or director elected in the AGM.
- (h) **Publicity to AGM:** After the AGM is over, the secretary has to give publicity to the proceedings of the AGM. He has to send the **Chairman's speech** to the press for publicity. This facilitates company's image building and wide publicity to company's progress and new schemes/projects.

EXTRA ORDINARY GENERAL MEETING (EGM) [Section 100]

MEANING AND FEATURES OF EGM:

Any meeting of shareholders other than the annual general meeting is called **extra ordinary general meeting**. Regulation 47 of "Table A" defines: EMG as "All general meetings other than annual general meetings shall be called extraordinary general meetings" Under Section 100 of the Act, meeting of members other than an AGM is known as an extraordinary general meeting (EGM). It is a special meeting of shareholders called under special circumstances. There is no fixed schedule or statutory condition regarding the convening of this meeting. It is held at any time whenever circumstances so demand to deal with any special business of extra ordinary importance and cannot be postponed till the next annual general meeting. For example, such meeting may be called for alteration in the memorandum or articles of association, issue of debentures, reorganization of capital, issue of bonus shares and so on.

Extra-ordinary general meetings are called to deal with urgent problems and vital issues which need prompt decisions as they cannot be postponed till the next AGM. Even the shareholders may demand such special meeting for discussion and decision on an important and urgent matter. **Extra-ordinary general meetings are required/necessary to secure sanction of shareholders on urgent matters.**

All business transacted in the extra-ordinary general meeting is treated as special business. The resolution approved in such meetings are **special resolutions**. The convening and conducting of this meeting is similar to convening and conducting AGM. The notice of this meeting must be sent to all concerned members 21 days before the date of meeting. It can be held at a place other than the registered office of the company.

Quorum is also necessary for this meeting. The quorum shall be five members in the case of a public company and two members in the case of a private company. If the quorum is not available at the extra-ordinary general meeting called by the directors, the meeting is adjourned. However, if the quorum is not available at a meeting called by requisition, the meeting stands cancelled.

The notice of extra ordinary general meeting is normally accompanied by exact text of the resolution and explanatory statement. This statement gives precise information to members about the purpose and the business to be transacted in the meeting.

All resolution passed at the meeting must be filed with the Registrar within 30 days from the date of passing of the resolution. If the memorandum or articles are altered, the altered set of memorandum/articles will have to be filed with the Registrar within three months.

WHO CAN CALL EXTRA-ORDINARY GENERAL MEETING?

Extra-ordinary general meeting may be called by directors, members or Tribunal as explained below:

- (1) By the Directors:** It is the privilege of the board of directors to summon such a meeting. However, if a requisition is filed with the company by a required number of shareholders, the board must forthwith take the necessary steps to call an EGM. They must within 21 days from the date on which the requisition is made, call a meeting, the date whereof **cannot** be later than 45 days from the date of deposit of requisition. The directors may convene an extra-ordinary general meeting when they feel it necessary. For this, the Board will have to make suitable resolution in its meeting.
- (2) By the Directors on Requisition by Members:** Company directors must convene this meeting on the requisition of members holding not less than one-tenth of the total voting rights on the matters of requisition. Such requisition must be signed and deposited at the registered office of the company by the requisitionists. 21 days' notice of proposed meeting must be given to members. Thus, if a requisition is filed with the company by the required number of members, the **board of directors must call EGM**. If directors fail to do so, the requisitionists can go ahead, call the meeting and recover their reasonable expenses of the meeting from the company. The company can, in turn, reimburse itself for such expenses from the director or directors in default. The requisitionists must call the EGM before *three months* expire from the date of the requisition. The requisitionists can call AGM if the Board does not, within 21 days from the date of receipt of a valid requisition, call the AGM. Institutional shareholders like LIC has the same right to requisition as EGM as any other shareholders.
- (3) Power of Tribunal to call an EGM:** Section 98 of the Act, empowers the Tribunal to call an EGM of a company if the holding of such a meeting has, for any reason become "impracticable". The Tribunal can do so either on its own motion or on the application of any director or member of the company. It can order such a meeting to be called in such a manner as it thinks fit. The tribunal should use this power with caution so that the Court does not become either the member or a director of the company trying to participate in the squabbles of the company.

WHEN EXTRA-ORDINARY GENERAL MEETING IS NECESSARY?

EGM is necessary for the following purposes:

- (1)** Alteration in the name clause.
- (2)** Domicile clause or object clause of Memorandum of Association.
- (3)** Removal of directors before expiry of his term.
- (4)** Removal of company auditor before expiry of his term.
- (5)** Voluntary winding up of company.

SECRETARIAL DUTIES/FUNCTION RELATING TO EXTRA- ORDINARY GENERAL MEETING:**(A) Duties/functions Before Extra-ordinary General Meeting:**

- (1) Fixing Board meeting prior to EGM:** The secretary convenes the Board meeting after consulting the Chairman to consider the question of calling extra-ordinary general meeting due to urgency of the matter. If the requisition of such meeting is received from the members, the secretary makes scrutiny of the requisition and places the same before the Board for consideration. If the Board decides to hold such meeting, the date, time and place of the meeting will be fixed by the Board. The Board has to prepare the draft resolution

which are to be placed before the meeting for approval. The secretary has to help the directors in framing the proposed resolutions. He is also authorised to issue notice of the meeting to members in that behalf.

(2) Issuing notice of the meeting: Once the decision is taken to hold the extra-ordinary general meeting, the secretary arranges to get the notice, agenda, circulars, etc. printed and posts them on the registered addresses of the members. The members must receive the notice 21 days before the meeting. For this, he should also make a public announcement of the meeting in the press i.e. newspapers. The circulars accompanying the notice of the meeting must be drafted carefully with a view to convincing the members about certain changes required to be made. The secretary has to draft the notice of such a meeting carefully. **The notice of extra-ordinary general meeting should clarify the following points:**

- (a)** The notice must clarify whether it is requisitioned meeting or a meeting called by the Board.
- (b)** It must contain the text of the resolutions which is/are proposed to be approved with or without modification.
- (c)** It must state clearly whether the resolution is to be passed as special or ordinary resolution.
- (d)** There should be an 'explanatory statement' attached to the notice.

(3) Posting of proxy forms: The secretary should send proxy forms along with the notice. He has to prepare a list of proxies and members who will attend the meeting. This list should also be kept ready for inspection at the time of the meeting. He should also keep the arrangement for poll ready, if required/demanded.

(4) Arrangements for the meeting: The secretary has to make suitable arrangements for the meeting. This includes seating arrangements and keeping necessary papers and documents ready for the meeting.

(B) Duties/Functions During Extra-ordinary General Meeting:

(1) Ascertaining quorum: At the time of the meeting, the secretary has to make arrangements for recording the attendance of members. He has to arrange to collect the admission cards from the members at the gate of the meeting hall. In addition, he has to ascertain the quorum.

(2) Reading notice: After Ascertaining the quorum, the secretary has to read out the notice of extra-ordinary general meeting at the instance of the chairman.

(3) Supplying information: During the course of extra-ordinary general meeting, the secretary has to supply statement, explanations, information and documents, etc., required by the chairman. He also helps the chairman in conducting the meeting in an orderly manner.

(4) Arranging poll: If the poll is demanded, the secretary has to give assistance to the scrutineers in taking a poll and conducting of votes.

(5) Taking notes of proceedings: During the extra-ordinary general meeting, the secretary has to take down detailed notes of proceedings with a view to writing minutes soon after the meeting and for follow-up of the decision taken in AGM.

(C) Duties/Functions after Extra-ordinary General Meeting:

(1) Drafting minutes: Soon after the extra-ordinary general meeting, the secretary has to draft minutes on the basis of notes taken and get them approved and signed by the chairman of the same meeting within 30 days of the meeting.

(2) Execution of resolutions: The secretary has to take all necessary steps for the execution of the resolutions approved in the meeting. He has to execute the instructions issued to him during the meeting.

(3) Filing of resolution: If the resolution approved in the meeting are special ones, the secretary has to file them with the Registrar within 30 days of the meeting. If changes are made in the Memorandum or Articles, he has to submit the altered copies of the same with the Registrar within three months period.

MEANING AND LEGAL PROVISIONS OF BOARD MEETING (What Are BOARD MEETING?):

The term "board" is a collective name for the "directors" under the Companies Act. Board meetings include meetings of entire Board of Directors or meetings of small committee of directors such as investment committee or allotment committee. Meetings of Board are arranged frequently as compared to the meetings of shareholders. This is because affairs of the company are managed by the Directors. **Board is the highest decision-making and policy framing agency of the company.** Moreover, Directors can exercise their powers collectively and not individually. Board meetings are necessary in order to use the powers given to the Directors. The company faces new problems and challenges from time to time. The Board has to study and deal with such problems. For this, Board meetings are frequently held. Thus, **meetings of directors are necessary and useful for efficient management of the company.** Similarly, for dealing with administrative, legal and policy matters, Board meetings are necessary. Even in the Companies Act, provisions is made for frequent meetings of the Board. The Directors review the working of their company through such meetings. Policies for future period are also necessary for using different powers given to the company directors.

Details of board meeting:

(1) FREQUENCY OF BOARD MEETING:

Board meeting are held frequently as the directors are given wide powers and they are involved closely in the working of a company. Normally, board meeting are held/arranged on monthly basis. In addition, committee meeting are also arranged. In case of large companies, frequently meetings of the board and also of Sub-committees are arranged.

As per Section 173 of the Act, every company shall hold the first meeting of the board within 30 days of its incorporation and thereafter hold minimum number of four meetings of board every year in such a manner that not more than 120 days shall intervene between two consecutive meetings of the board. The participation of directors in board meeting may either in person or through video conferencing or other audio-visual means. There is no upper limit to board meeting. Such meetings can be arranged frequently as per need and urgency.

(2) NOTICE OF THE BOARD MEETING:

A meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his addressed registered with the company and such notice shall be sent by hand delivery or by post or by electronic means (SECTIONAL 173).

A meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director shall be present at the meeting. In the absence of independent directors for such a meeting, decisions taken shall be circulated to all the directors and shall be final only on rectification by at least one independent director.

Notice of the board meeting must be given in writing to every director. The notice should mention the place, time and date of the meeting. The meeting is to be arranged on the working day and the time should be during business hours unless agreed otherwise by all the directors. It is not necessary to state the business to be transacted in the notice, unless

the article so require. However, notice must refer to resolution on which unanimous consent of the director present is required.

(3) AGENDA OF THE BOARD MEETING:

The agenda of board meeting is compiled by the secretary in collaboration with the chairman or managing director. The chairman normally conducts business as per the serial number of items on the agenda. However, he is not obliged to adhere strictly to the exact order of the agenda. Normally, grant of leave for absence (if any) and approval of minutes of the last Board meeting are taken first. The board of Directors can transact business even without formal agenda. It is not necessary that an agenda for board meeting should be specified.

As per the Companies Act, it is not obligatory to send an agenda along with the notice of the Board meeting. Normally, agenda is sent along with the notice for the convenience of directors. This facilitates quick decision making by directors. The agenda of board meeting involves routine matters and other important policy matters which need detailed discussion before decision. Agenda of board meeting may be given just below the notice itself or may be sent separately. The Board may consider any other matter for decision even when the same is not included in the agenda. Usual matters included in the agenda of the board meeting are:

- (1) Approval of minutes of previous meeting.
- (2) Consideration of matters arising out of minutes.
- (3) Review of progress of the company in different areas such as production, sales, profit, etc. Since the last board meeting.
- (4) Review of financial position of the company.
- (5) Issue of shares and debentures.
- (6) Allotment, transfer and transmission of shares, calls on shares and forfeiture of shares.
- (7) Exercising borrowing powers and investment of funds of the company.
- (8) Dispersal of profit, finalising the rate of dividend.
- (9) Agreements and contracts with third parties, staff problems and maintenance of statutory books, etc.
- (10) Determining policies for the future period.
- (11) Arrangements for AGM and audit of accounts of the company.

The company secretary should finalize the agenda of board meeting in consultation with the chairman of the board.

(4) QUORUM AT THE BOARD MEETING:

- (a) As per section 174 of the Act, the quorum for the board meeting shall be one-third of its total strength or two directors whichever is higher. The participation of the directors by video conferencing or by other audio visual means shall be counted for the purpose of quorum under this sub-section.
- (b) When a meeting of the board could not be held for want of quorum, then, unless the articles of the company otherwise provide, the meeting shall automatically stand adjourned to the same day, at the same time and place in the next week or if that day is a national holiday, till the next succeeding day which is not a national holiday, at the same time and place.

(5) CHAIRMAN OF THE BOARD MEETING:

The Articles of the company provide regulations regarding the appointment of the chairman. The Directors may be given discretionary power to elect the chairman for a specific period. When the chairman is elected by the directors, he presides over the meeting of the Board. The chairman of the board meeting is expected to remain present at the scheduled time of the

meeting. If he is not present within five minutes of the scheduled time of the meeting, the directors present are entitled to elect anyone of them as the chairman for that meeting. The chairman of the board meeting has to perform all normal duties of the chairman of a company meeting (general meetings). He is normally given a “**casting vote**” as per the provisions in the articles.

(6) PROCEDURE OF BOARD MEETING:

Before the commencement of the proceedings of the board meeting, the chairman has to see that the board meeting is properly convened and that quorum is present. The chairman thereafter starts the proceedings. He request the secretary to read the minutes of previous board meeting and sings the minutes after approval board members. Thereafter, the items on the agenda are taken for consideration as per the order on the agenda. The decision taken are noted by the chairman and also by the secretary for reference and also for recording in the minutes of the meeting. The chairman has to give full opportunity to directors to express their views. After full discussion, if there is any difference of opinion on any item, the same is put to vote in the form of a motion. If the majority votes are favorable to the motion, the same is approved as resolution. After discussion and decision on all items on the agenda, the chairman decides the date of the next meeting of the board and also declares that the meeting is concluded. The secretary helps the chairman during the course of the meeting. He also notes the decision taken in the meeting. The secretary also takes notes on the proceedings of the meeting for drafting of minutes.

(7) RESOLUTIONS APPROVED AT BOARD MEETING:

Decision taken in the Board meeting are in the form of resolution. **All resolution in the Board meeting are approved by simple majority** and all resolution approved are of one type and not like 'ordinary' and 'special' resolution as in case of general meetings. However, Indian Companies Act requires **unanimous resolution of directors** on certain matters (e.g. Appointment as managing Director who is already the managing Director of one more company or investment in shares and debentures of other bodies corporate).

It may be noted that a Board can approve a **resolution by circulation**. For this, suitable procedure must be followed. Resolution passed by circulation should be noted at the next meeting of the board or Committee (as the case may be) and recorded in the minutes of such meeting.

SECRETARIAL FUNCTION/DUTIES RELATING TO BOARD MEETING:

Company secretary is closely connected with board meetings. **He has to perform various duties before, during and after the board meetings. The functions/duties of a secretary relating to board meeting are as explained below:**

(A) Duties before the Board meeting:

(1) Fixing the date of board meeting: The secretary has to fix the date, time and place of the board meeting in consultation with the chairman. He also fixes the agenda after consulting the chairman.

(2) Issuing notice: The secretary has to see that the notice of the meeting is sent to all directors as per the provisions of the Act. The notice should be accompanied by an agenda and the explanatory notes, if necessary. If the chairman feels that the auditor or other officers of the company should be present, the necessary notice should be sent to them well in advance.

(3) Keeping ready required papers and documents: After the dispatch of the notice, the secretary should prepare and keep ready various documents required for the meeting. This includes periodical financial statements and trading returns, the bank pass book, statement regarding cash balance Documents and contracts for sealing and signing and transfer statement, etc. This will enable the directors to conduct the business in an orderly manner.

(4) Arranging Board Room: The secretary should see that board room is properly arranged and that necessary facilities are provided to the directors during the meeting.

(B) Duties during the board meeting:

(1) Ascertaining quorum : The secretary has to ascertain the presence of the requisite quorum. The meeting will be invalid if the quorum is not available. It is, therefore, an important duty of the secretary to check that the quorum of disinterested directors is available at the beginning and also throughout the meeting.

(2) Notice attendance of directors: A company secretary has to maintain special attendance register of board meetings. He should take the signature of the directors in the attendance register known as '**directors' Attendance book**'. He has to report any request for leave from any director and note the same in the minutes.

(3) Reading notice: If directed by the chairman, the secretary has to read out the notice of the meeting and the minutes of the previous meeting. In addition, he has to obtain the signature of the Chairman on the minutes after they are approved/ confirmed by the directors.

(4) Supplying information: The secretary has to supply information and documents/files required by the directors during the meeting. He has to report notice of disclosure of interest, if any, received from directors under sect 209(3) of the Act.

(5) Taking notes of proceedings: The secretary has to take brief notes of the proceedings of the meeting. He has also to take down the resolution passed in the meeting. This type of noting is necessary and useful for drafting minutes of the meeting.

(6) Making payment of allowance: The secretary has to make arrangements for the payment of sitting fees and travelling Allowance to directors in accordance with the provisions made in the Articles.

(C) Duties after the board meeting:

(1) Drafting minutes: After the board meeting, the secretary has to draft the minutes of the meeting as per the notes taken. He has to place the draft minutes before the chairman for consideration and approval.

(2) Execution of the decision taken in board meeting: The secretary has to follow-up action on the decision taken in the board meeting. He has the responsibility to execute the decision taken. In addition, the secretary has to carry out the orders and instructions issued by the board. If necessary, he has to supply necessary information to the registrar of Companies.

ESSENTIALS/REQUISITES OF VALID GENERAL MEETING:

Every company meeting must be a valid meeting. **THE Essential requisites of a valid company meeting are as explained below:**

(a) A meeting must be convened properly (proper convening Authority): A company meeting must be convened properly. This means it must be called by a **competent authority** in accordance with the provisions in Indian Companies Act and also as per the provisions in the articles of the company. In addition, **the notice of the meeting** must be given to concerned members within the prescribed time limit. Such notice must give all details about

the meeting including the day, date, time, place, etc., of the meeting. In addition, notice should be supplemented by the agenda of the meeting.

- (b) **A meeting must be constituted properly (requisite Quorum):** A company meeting must be organized properly. A meeting, for example, needs requisite quorum. It cannot be conducted in the absence of a quorum. The provisions regarding quorum are usually given in the Articles. Business conducted, without a quorum, is null and void. A meeting is duly constituted only when the requisite quorum is maintained throughout the meeting. It is one condition for a valid meeting.
- (c) **A meeting must have proper person in the chair:** Every company meeting must have proper person in the chair to conduct the proceedings of the meeting as per the rules and law of the meeting. Such person is called **chairman of the meeting**. He should be competent to conduct the business of the meeting in an orderly manner. He has to maintain proper decorum at the meeting. Chairman of the Board usually acts as the chairman of the meeting of members and Directors.
- (d) **A meeting must be conducted properly and recorded accurately:** A company meeting needs to be conducted as per the normal rules and procedures by the chairman. It must be held at a lawful place for lawful purpose. The chairman of the meeting should ascertain the quorum before the commencement of the business of the meeting. He should also judge the sense of the meeting in respect of any resolution or matter placed for the consideration of the meeting. **Voting** at the meeting must be recorded properly in the **form of resolution and minutes**.

The requisite/essentials of a valid company meeting are as follows:

- (1) The purpose of the meeting must be lawful.
- (2) The meeting must be convened properly i.e. by proper convening authority.
- (3) **Proper notice** of the meeting must be issued by proper authority to every member entitled to receive the notice.
- (4) **There must be proper quorum** at the beginning and during the course of the meeting. This means the meeting must be properly constituted.
- (5) There must be **proper person to preside over the meeting** and to conduct the proceedings.
- (6) The meeting must be **lawfully conducted** and the minutes must be recorded accurately.
- (7) The voting at the meeting must be proper, fair and also as per statutory provisions.
- (8) All provisions of the Companies Act and the Articles of the company must be complied with.

A company secretary has to see that every company meeting is **duly convened and properly constituted**. In addition, he has to see that the business of the meeting is **lawfully conducted and accurately recorded**.

FORMALITIES OF COMPANY MEETING:

There are four important formalities of convening and constituting company meeting. These are:

- (A) **Notice of the Meeting,**
- (B) **Agenda of the Meeting,**
- (C) **Quorum of the Meeting,**
- (D) **Chairman of the Meeting.**
- (E) **Proxy.**

(A) NOTICE OF THE MEETING**MEANING OF NOTICE OF MEETING:**

Under **Section 101** of the Act, a general meeting of a company can be called by giving a notice of not less than 21 days, either in writing or through an electronic mode, as may be prescribed. A shorter notice is also possible if consent is obtained from 95% of the members entitled to vote at such a meeting.

Notice of a general meeting needs to be given to members of the company, legal representative of a deceased member, the auditors and Directors of the company. An accidental omission to give notice to or the non-receipt of such notice by any person entitled to receive the notice does not invalidate the proceedings of the meeting (Section 101). However, a deliberate omission to give notice of the meeting does not invalidate the meeting. Notice of the meeting normally contains the business to be conducted in the meeting. Such business may be **General business** (Approval of Directors Report, Auditors Report, declaration of the rate of dividend, appointment of directors, auditors, etc.) or **Special business** (alteration of M/A, A/A and so on). For special business, explanatory statement needs to be annexed to the notice of the meeting.

Drafting notice of the meeting is the **first formality** in convening the meeting. **In an invitation/initiation** given to concerned member to attend a meeting as per the details given therein. The notice must be drafted properly and sent to all those who are entitled to attend the meeting. This means it must be sent to members, auditors and directors. A press advertisement of the notice may also be given for the general information of all members.

CONTAINS OF A NOTICE:

The notice of the meeting contains the following details:

- (i)** Date, time and place of the meeting,
- (ii)** A brief, accurate and understandable description of the purpose of the meeting,
- (iii)** Nature of business to be conducted in the meeting (brief agenda),
- (iv)** Any are the special business to be conducted in the meeting.

Length of Notice:

According to the Indian Companies Act, 1956, **a notice of not less than 21 clear days is necessary in the case of general meetings of shareholders.** This is a statutory requirement. Notice must be sent to all the members by post. Deliberate omission to give notice to even a single member may invalidate the meeting. However accidental omission to send notice to any member or non-receipt of notice by a person entitled to receive it will not invalidate the proceedings of the meeting (as per Section 172(2)(3)). Such advanced intimation about the meeting is for the convenience of members. It may be noted that no fresh notice needs to be given in case of an adjourned meeting because such a meeting is regarded in law as continuation of the original meeting. However, a fresh notice of adjourned meeting should be given if the original meeting is adjourned.

In case of **Board meeting, a reasonable notice needs to be given.** The notice should be sent as per the provisions in the Articles or notice of reasonable period as per the standing orders should be given. In brief, adequate time should be provided to a Director to consider and make up his mind about the business to be transacted at the meeting. The notice of every Board meeting shall be given in writing to directors. The date of Board's meeting is usually decided by the chairman of the Board. The date of committee meeting is decided by the conveyor of the committee. Notice is sent to concerned member accordingly.

AUTHORITY TO SEND NOTICE:

The notice of the meeting must be sent by a person who is authorized to do so. This is one statutory requirement. The Directors are entitled to call General Meeting and hence notice of such meetings are generally signed and sent by the secretary under the words **“By Order of the Board of Directors”**. The date and other details of general meetings are decided by the Board and the Board also authorizes the secretary to send notice of the meeting to concerned members. The secretary can send the notice of the meeting only when he is authorized to do so by the Directors. This is because the secretary himself has no right to convene a meeting without proper authority. However, he is usually consulted by the chairman while fixing the date of the meeting. Once the date is fixed, the secretary has to draft the notice and agenda and looked after the dispatch of the notice.

(B) AGENDA OF THE MEETING**MEANING OF AGENDA:/ WHAT IS AGENDA ?**

Agenda is an essential supplement of the notice of the meeting. It is usually sent along with the notice and hence is rightly treated as part and parcel of the notice itself. An agenda means **“things to be done”**. It is a program of a meeting or a statement of business to be transacted in the meeting. In other words, **it is a list of items for consideration of meeting**. Agenda is normally given just below the notice. Agenda is useful to the members as they come well prepared for the meeting. Members can also participate effectively in the deliberations. **Agenda must be brief but should suggest the points to be discussed in the meeting.**

Agenda can be prepared in two methods: **(a) Bare statement agenda** which is brief and indicates the points to be considered in the meeting **(b) Draft minutes agenda** which gives details of all items included in the agenda. This type of agenda is useful drafting minutes. **The items in the agenda should be arranged in logical order.** The secretary has to prepare an agenda in consultation with the Chairman. It is sent to concern members along with notice. This gives convince to them and enables them to prepare homework for the meeting.

An agenda serves as a base for conducting the proceeding of the meeting. It is possible to conduct a meeting smoothly with the help of well-prepared agenda. The business of the meeting is usually conducted as per the agenda. However, the chairman may change the order of the items in the agenda if need arises. Every meeting has its own agenda.

ADVANTAGES/PURPOSE OF SENDING AN AGENDA:

- (1)** To give brief information about the items to be discussed in the meeting of the shareholders.
- (2)** To enable members to prepare and participate in the meeting effectively.
- (3)** To enable the chairman of the meeting to conduct the business in orderly manner.
- (4)** To avoid omission of any important matter from the discussion in the meeting.
- (5)** To provide proper base for conducting the proceedings of the meeting.
- (6)** To enable the meeting to discharge its function systematically and expeditiously.

(C) QUORUM AT THE MEETING**MEANING OF QUORUM/ WHAT IS QUORUM?**

Quorum is an essential requirement of a valid meeting. Quorum must be observed in every company meeting as no business can be transacted unless the quorum is available. Moreover, any decision taken without quorum is invalid. The chairman has to start proceedings of the meeting only when the quorum is available as it is essential for every company meeting.

Quorum means a specified minimum number of members necessary or required for valid meeting.

Company secretary has to give attention to this factor before commencement of the meeting and also throughout the meeting. Moreover, quorum must be present at the beginning of the meeting. In addition, it should be available at all stages of the meeting. The rules regarding quorum are noted in articles of the company. Quorum is important as company meetings must be truly representative in character.

RULES (STATUTORY CONDITIONS/PROVISIONS) REGARDING QUORUM:

(1) Quorum at General Meetings: The word "Quorum" refers to the minimum number of members who must be present in order to constitute a valid meeting. The A/A of a company normally provide the number which constitute a quorum for its meetings. Unless the article provides for a larger number, the quorum for a meeting of the members of a company is as noted below:

(a) In the case of a public company

- (i)** 5 members personally present - if the company has not more than 1000 members.
- (ii)** 15 members personally present- if the company has not more than 1000 and up to 5000 members.
- (iii)** 30 members personally present - if the company has more than 5000 members.

(b) In the case of a private company: Quorum is 2 members personally present. **Under section 103 of the act**, if within half an hour from the time fixed for the meeting, a quorum is *not* present, the meeting stands dissolved if it was a meeting called Upon A requisition of members. In other cases, the meeting stands adjourned to the **same day in the next week at the same time and place**. If, at such adjourned meeting too, a quorum is not present within half an hour, the members who are actually present constitute quorum, even if such a number is less than the prescribed quorum.

(2) Quorum at Board Meetings: In the case of Board meetings, the **quorum shall be one third of the total strength of the Board or two Directors, Whichever is higher**. For the purpose of quorum, interested Directors and Directors whose place are vacant are to be excluded. Without the quorum meeting of the board will be treated as invalid. Since quorum is one essential requirement of a properly constituted Board meeting, a secretary has to ascertain this quorum before the commencement of the Board meeting. He has to inform about the quorum to the chairman of the meeting.

The chairman of Board meeting should not start the business of the meeting, if the quorum is not available. In case of **Board meeting, the quorum must be present throughout the Board meeting**. In the absence of the quorum, the business transacted is void. When quorum is absent, the Board meeting shall automatically stand adjourned till the same day in the next week and at the same time and place (unless articles otherwise provide)

(D) CHAIRMAN OF THE MEETING

MEANING OF THE TERM "CHAIRMAN" OF A MEETING (WHO IS THE CHAIRMAN OF A MEETING?):

The person who presides over a company meeting is called the Chairman. He is in charge of the proceedings of the meeting and he has to conduct the whole meeting in an orderly manner. The presence of Chairman is necessary for the proper conduct of a meeting. Every

meeting needs a chairman who conducts the business of the meeting. It is an essential requirement of a valid meeting. The business of the meeting is conducted under his guidance and instructions. He brings order lines in the meeting. **“Chairman” is the person who has been designed or elected to preside over and conduct the proceedings of a meeting.** He is *“the empire of debate, the judge of admissibility and the folder of order and decorum”*.

The Articles of a company normally provide for the appointment of a Chairman and his rights and duties. In the absence of such provision in the Articles, the member present at the meeting elect one of them self to be the chairman.

The chairman is given special position/ status in the meeting. He occupies the main chair on the platform facing the audience and conducts the proceedings. The orderly conduct of the meeting depend on the knowledge, ability, skill and maturity of the chairman.

WHO CAN BE A CHAIRMAN?

- (1) The Articles of the company usually designate **the chairman of the board of directors to preside over the general meeting of the company.** The first chairman of the company is generally named in the Articles.
- (2) If the chairman is not present within ten minutes of the schedule time of the meeting (or if he refuses to the chair), then, **any other director present shall be entitled to occupy the chair.**
- (3) If the director is not willing to preside, then, **the members present can elect any one of them as the chairman of the meeting.**

DUTIES/FUNCTIONS OF THE CHAIRMAN OF A MEETING:

- 1) The chairman has to see that the meeting, over which he is to preside, is **properly convened and duly constituted.** This means he has to see that the meeting is convened by proper notice, that his own appointment is in order, that a quorum is present and that only those who are entitled to attend are present.
- 2) His duty is to see that the **proceedings of the meeting are conducted according** to the rules and that the business of the meeting is being discussed in the order decided in the agenda.
- 3) He has to see that no discussion is allowed unless there is a specific motion before the meeting moved and seconded and that the motion itself is within the scope of the meeting.
- 4) The chairman has to maintain **proper order and decorum** in the meeting. For this, he has to check improper language and disorderly behavior of members.
- 5) He has to see that **all members, including the minority get equal opportunity to express their views.** This means he has a duty to conduct business in a fair and impartial manner.
- 6) The chairman of the meeting has a duty to ascertain **the sense of the meeting properly and correctly** in the case of every motion before the meeting. The sense of the meeting means the general view or opinion of the members present in the meeting. This means to see whether the majority is in favour or against the proposal before consideration of the meeting. The sense of the meeting is to ascertain through voice, show of hands or even by poll.
- (7) **To maintain orderly atmosphere in the meeting** and to prevent private discussion and whispers among the members present in one important duty of chairman.
- (8) **He has to declare result of voting by show of hands** which shall be conclusive evidence of the fact, unless a poll is demanded. If Poll is demanded, the chairman has a duty to order and take poll in a fair manner.

- (9) He has to see the **proper and correct minutes** I entered in the Minutes book and also to sign the minutes of the previous meeting after approval by the members.
- (10) The Chairman has to declare that the meeting is closed when the business has been properly transacted.
- (11) He has to **give ruling on the point of order raised by** any member present in the meeting.
- (12) He has to **exercise his right of casting vote** as and when required.

RIGHTS/ POWERS OF THE CHAIRMAN OF A MEETING:

- (1) The chairman has the right to **maintain order and decorum at a meeting**. He can adjourn the meeting or have the offending member expelled.
- (2) The chairman has the **power to give his ruling on the** interpretation of the rules and his ruling shall be binding on all members present.
- (3) The chairman has power to **decide the priority** (of speaker) in which the members will be allowed to speak. He can also decide the time limit for every speaker.
- (4) The chairman has a **power to stop discussion on motion** when he feels that adequate discussion has already taken place. He has also the power to stop irrelevant discussion. The chairman has the right to put to vote the proposed resolution after sufficient discussion.
- (5) He had a **right to adjourn the meeting** when the quorum is not available or when the meeting becomes disorderly or when the meeting adopts a motion of adjournment.
- (6) The chairman has a power to **exclude certain matters, remarks, etc. From the proceedings of the meeting** if he is of the opinion that the matter or remark (i) is defamatory, or (ii) is irrelevant, or (iii) is detrimental to the interests of the company (Section 193).
- (7) The chairman has power to **check loose remarks and personal references during the course of the discussion** in the meeting
- (8) The chairman has a **right to stop a speaker from addressing the meeting** when time allotted to him is over.
- (9) If chairman is not satisfied with the result of voting, by show of hands or by other methods, **he can order and take a poll on the issue.**
- 10) **Miscellaneous Rights of a Chairman:**
- To **appoint scrutineers** for checking the votes on a poll.
 - To **decide points of order** submitted to him.
 - To **get disorderly persons removed** from the meeting.
 - To **declare result of voting** by show of hands.

ROLE OF CHAIRMAN IN A MEETNG:

Every company meeting needs a capable and competent chairman. He is the most important person in the meeting as he has to conduct the meeting in an orderly manner. The success of a meeting or orderly conduct of a meeting depends on the experience, maturity and knowledge of a chairman. He is rightly called "*the umpire of debate, the judge of admissibility and the upholder of order and decorum*". This suggests his positive role/importance in the meeting.

The chairman is given special position and status due to his important role in the meeting. He is like the captain of a ship and is given prominent seat on the dais. He guides and controls the proceedings of the meeting. An ideal chairman needs qualities of leadership, impressive personality, knowledge of company law and courteous, impartial and decent approach. These qualities make his role impressive and praiseworthy.

The chairman brings discipline and decency to the meeting. He completes the business of the meeting promptly and in an orderly manner and also as per the agenda fixed. He gets cooperation from members because of his cool, calculated, patient and decent approach. This suggests is positive role in making company meeting smooth and result oriented. The role of chairman depends on the qualities available with him. With varied qualities, his role will be more effective. In brief, successful meeting an ideal chairman are inseparable. **A meeting needs competent chairman as he bring decency, decorum and success to the meeting.** He maintains good atmosphere in the meeting and completes the whole agenda of the meeting in an orderly manner.

(E) A NOTE ON PROXY

MEANING AND FEATURES OF A PROXY (WHO /WHAT Is PROXY?):

A member may vote either in person or by proxy. Proxy arrangement enables a member to exercise his voting right even when he is unable to attend the meeting due to personal difficulties or unavoidable reason. Proxy facility is a special arrangement permitted in the case of **general meetings of companies**. Proxy is a person appointed by member of a public company to attend and vote on his behalf in the General Meeting. A member of a public company may not be able to attend the meeting. However, he may be interested in exercising his voting right. In order to provide opportunity to such absentee member, **the provision of proxy is incorporated in the Companies Act**. A proxy error presents a member at a meeting of a company. He has to function as per the instructions issued by the member.

The purpose is to allow the member to vote through his representative, i.e. , proxy . *A proxy is an authorized representative of a member for the purpose of voting only.* **He is neither allowed to speak in the meeting nor allowed to participate in the discussion** but is nearly allowed to vote on behalf of the member who is not in a position to attend the meeting. A 'proxy' need not be a member of the company as he is concerned only with the voting. However the vote given by a proxy is valid for all practical purposes.

The term '**proxy**' has two connotations. **Firstly**, it means authorized agent or appointed for the purpose of voting. **Secondly**, proxy is an instrument or letter of authority to vote for another. The member who is not in a position to attend the meeting is allowed to give his power of voting to his agent called proxy. Proxy refers to a document which enables the member of the company to vote (through proxy).

Section 105 of the Act provides that any member of a company entitled to attend and vote at a meeting of a company has the right to appoint another person, **whether a member or not**, as his proxy to attend and vote instead of himself. However, a proxy so appointed **does not have any right to speak at the meeting**. For the appointment of a proxy, suitable provision must be available in the article s. Otherwise, the provision of proxy does not apply to the company. A proxy can vote only when a poll is taken. Availability of proxy facility must be made clear with reasonable prominence in the notion of the meeting. Normally, all companies proxy facility in general meetings.

APPOINTMENT OF A PROXY:

A member who desire to appoint a proxy has to intimate to the company regarding such appointment through prescribed form called proxy form. **Completed proxy form must be deposited in the company's office at least 48 hours before the date and time fixed for the meeting.** The proxy form submitted must be complete in all respects. The secretary has to examine proxies at the time of meeting. Every notice of general meeting issued by the company

must state clearly in the notice itself that a member is entitled to appoint a proxy and that proxy need not be a member of the company. In the case of default in this regard, every officer responsible shall be punishable with fine which may extend to rupees five hundred.

Proxies play an active role when voting is taken by poll. The secretary has to examine proxies at the time of the meeting. The proxy forms submitted must be complete in all respects. A member of the company can give a blank proxy wherein the name of the person to whom authority to vote is given is not mentioned. This blank proxy form is sent to every member along with the notice of the meeting. Any person interested in voting behalf of the member has to fill in his name in the proxy form. Even after appointing a proxy, a member may attend the meeting personally and can vote. In such a case, the vote given by proxy would be automatically rejected.

TYPES OF PROXIES:

A proxy may be **Special or General**. A special proxy is appointed to vote upon a particular resolution only. His authority is restricted. A general proxy is one who is given power to vote on all proposal before meeting (Specimen of proxy form is given)

RULES RELATING/REGARDING TO PROXY:

- (1) The Articles of all companies generally contain the rules and regulations regarding the use of proxies. Section 185 of the Companies Act, 2013 deals with proxies. **This provision of proxy is included in the Companies Act for the benefit of members.**
- (2) **A proxy is allowed to vote only when the poll is taken.** However, he will not be allowed to vote when voting is taken by show of hands.
- (3) **A member of a public company can appoint more than one proxy** as per his voting right/power. However, member of a private company can appoint it one proxy irrespective of his voting power. A private company can exclude the applicability of proxy facility by providing so in its articles.
- (4) **A proxy is not allowed to participate in the discussion** as he is merely allowed to vote on behalf of the absentee member.
- (5) **A proxy has no right to speak** in the meeting as he is not the member of the company.
- (6) **A proxy represent the original member only for voting purpose.** He can vote either for or against the proposed resolution.
- (7) **A proxy need not be a member of the company** as he is concerned only within the voting.
- (8) **The vote given by a proxy is valid** for all practical purposes.
- (9) **A proxy cannot be counted for the quorum.**
- (10) An instrumental appointing of proxy (proxy form) must b deposited in the company's office **48 hours before the time of the meeting.** Members can inspect proxy for 24hours before the meeting.
- (11) The instrument appointing proxy (proxy form) is revocable but before the commencement of the meeting.
- (12). **Reference to appointment of proxy must be made in the notice of general meetings.**

POWER/RIGHTS OF A PROXY:

- 1) Proxy is an authorized representative of a member for the purpose of voting. Naturally, **he has a right/authority to vote when poll is taken.** However, he will not be allowed to vote when voting is taken by show of hands.
- 2) A proxy has no power/right to speak or participate in the discussion.

- 3) A **general proxy** has **power/right to vote on all proposals put before a meeting** but a **special proxy** has power/right to vote upon a particular resolution only. His authority/power is restricted.
- 4) Proxy has a **power/right to play an active role when voting is taken by poll.**

SPECIMEN OF PROXY FORM (PRO-FORM):**SPECIMEN:1****ABC COMPANY LIMITED**

(Address of Regd. Office)

PROXY FORM

I/We _____ of _____ being a member/s of ABC Company Limited hereby appoint _____ of _____ or falling him _____ of _____ or falling him _____ of _____ as my/our Proxy attend and vote for me/us and on my/our behalf at the _____ AGM of the said Company to be held at _____ p.m. on Signed this _____ day of _____

Signature (s) of the Member(s) _____

Affix a Revenue Stamp

Note: (1) This proxy form must be deposited at the Registered Office of the Company, not more than 48 hours before the scheduled time of the meeting. (2) A PROXY NEED NOT BE A MEMBER OF THE COMPANY

FORMALITIES RELATING TO COMPANY MEETINGS:

So far, we have studied certain formalities of company meeting. They include Notice Agenda, Quorum, etc. relating to company meetings. In addition, there are some more formalities relating to company meetings. Such formalities are as noted and explained below:

- (A) Motion.
- (B) Resolution.
- (C) Minute.
- (D) Vote.

(A) MOTION**MEANING/CONCEPT OF A MOTION (WHAT IS A MOTION?):**

Motion is a definite proposal for the consideration and approval if found suitable by the meeting. It may be related to any other matter included in the agenda.

Motion is the starting point of the resolution as motion when approved becomes a resolution. **Motion is a proposed resolution.** The business of a meeting is transacted through motions or definite proposals as discussion and decisions are not possible unless a definite proposal is placed before the meeting for consideration. The person who moves the motion is called "**mover**" and a person who support the motion is called as the "**seconder**".

Motion is a proposal placed before a meeting for consideration or discussion and decision. After adequate discussion, it will be put to vote. When the majority votes are cast in favor of the motion, the chairman declares that "**The motion is carried**". As a result of this

declaration, the motion becomes a resolution. In brief, the motion may be accepted or rejected. It is also subjected to modification/alteration through amendment.

REQUISITES/ESENTIALS OF A VALID MOTION (RULES/PROVISIONS REGARDING MOTION):

- 1) A motion must be in writing and signed by the proposer or mover. It must be seconded by any other member. However, a motion initiated by the chairman needs no seconding.
 - 2) A motion must be within the scope of the notice convening the meeting.
 - 3) It must be clear, definite, precise and free from ambiguity.
 - 4) It must be introduced with prior notice or intimation. Such notice is not required in the case of formal motions.
 - 5) A motion must be drafted in an affirmative sense and should begin with the word "That". When approved, it reads "Resolved that".
 - 6) A motion must be formally proposed by one member present in the meeting and seconded by another member present in the meeting.
 - 7) A motion once proposed cannot be withdrawn by the mover or the seconder without the permission of the meeting as motion once proposed and seconded is left to the attitude of the meeting.
 - 8) Every member present in the meeting can express his views on the motion but only once. However, the proposer of the motion is allowed to speak twice.
 - 9) A motion may be amended during the course of its consideration.
 - 10) Motion must comply with the articles and the Companies Act.
- When a motion is not accepted because of a technical flaw, such as not seconded by a member, it is said to *fall to the ground*.

TYPES/KINDS OF MOTIONS:

There are three types of motions. These are:

- (1) **Original Motion:** Original motion is a motion which has come up for discussion before the meeting in connection with a specific item on the agenda. It is proposed by one member present in the meeting and seconded by another member. It acts as the main proposition for discussion. This motion can be treated as an original one as it imitates discussion in the meeting.
- (2) **Formal Motion:** Formal motion aims at postponing diverting, ending or preventing the discussion on a specific business placed before the meeting. Such motion is not concerned with the subject matter of original motion and naturally previous notice for such a formal motion is not required. No amendments can be moved to the formal motion. Such motions are procedural in character and them. Expedite the business of the meeting and accelerates the process of decision-making.

Types of Formal Motions:

Formal or dilatory motions may be moved in the following forms:

- a) **The Closure:** The Closure as a type of motion aims at closing further discussion on the motion which is under the consideration or discussion. It is moved when enough time has already been spent on the discussion of a particular motion. A member may stand and say that the question be now put to vote as sufficient discussion has taken place and further discussion involves waste of time. After it is moved and seconded, it is put to vote. If approved, discussion on the original motion is stopped. If it is lost, discussion on the original

motion continues. The purpose of this formal motion is to conclude the discussion on a particular motion which is already under discussion for a long time.

- b) Previous Question:** The purpose of “**Previous Question**” motion is to stop discussion and to set aside the original motion under discussion. The motion can be moved only by a member who has not already spoken on the original motion and no amendment is allowed on it. It takes precedence over all amendments. The discussion is also diverted. If the chairman is satisfied about the genuineness of the motion, he put it to vote. If carried, the main motion is shelves at least for that meeting. If lost, the original motion is put to vote immediately. The previous question motion is in the following form: “**That the question be not now put**”.
- c) Proceed to Next Business:** The object of “**Proceed to Next Business**” motion is to prevent further discussion and voting on the original motion. The purpose of “**Proceed to Next Business**” motion is similar to the “**Previous Question**”. It is put in the following for “**That the meeting to proceed to the next business**”. Such formal motion is moved when a member feels that the main motion under discussion is a little importance and other important items of business remain to be transacted. The motion is put to vote and if it is carried, the original motion is dropped at once. If it is lose, discussion on original motion is resumed. It is also possible to move such a motion again after some time.
- (d) Adjournment:** Adjournment motion is for adjournment of the debate on any motion taken up for the consideration in the meeting. A member can move such a motion if he is of the opinion that some additional information is desired for having a proper discussion on that particular matter and therefore the discussion should be postponed for some time so that it is possible to collect additional information during the intervening period. If the motion is carried, the debate is postponed to an agreed date. If the motion is lost, the debate is resumed once again.
- (e) Refer Back:** “**Refer back**” motion may be moved in the meeting of the Board of Directors. For example, a report of committee or sub-committee may be placed before the consideration of the Board. A Director present may feel that certain points should be studied for the second time by the committee or sub-committee. He may more such a formal motion. If approved, the matter will be sent back to the committee for reconsideration and also for resubmission.

(3) Substantive Motion: A motion changed on account of the introduction of an amendment is called a substantive motion. Many amendments may be suggested to an original motion during the course of the discussion. There may be an amendment to an amendment. Such an amendment is known as secondary amendment. The original motion is changed if the secondary amendment is accepted. The original motion thus changed, is known as “**Substantive Motion**”. It is a modified motion for the consideration of the meeting.

(B) RESOLUTION

MEANING/CONCEPT OF A RESOLUTION (WHAT IS A RESOLUTION?):

Resolution is next to motion. A **proposed resolution or motion when approved by requisite majority become a resolution**. Motion becomes a resolution after discussion and approval by majority votes. It is formal decision of a meeting after full discussion and voting on any proposal before it. All decisions taken in the company meetings are in the form of resolutions. Such resolutions are passed in the general meetings as well as in the board meetings.

A resolution is a *final decision taken in the meeting*. It suggests a policy decision of a company. It is for suitable action in the future period.

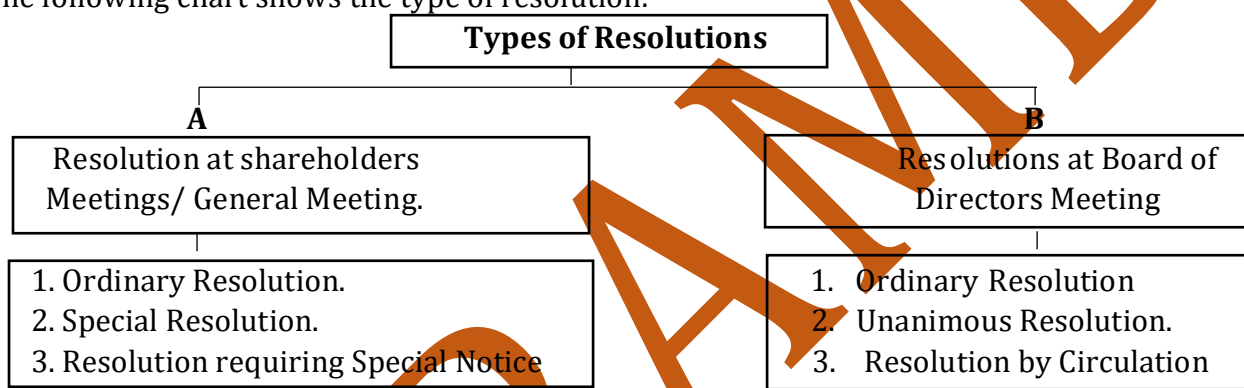
All resolution must be worded clearly, correctly and precisely. They must be approved in proper convened and duly constituted meeting. Resolution must be always within the scope of Memorandum and provisions of Indian Companies Act, 1956. The Companies Act and the A/A of the company lay down the type of resolution required for any particular matter.

A resolution may be defined as *“a formal and final decision taken in a meeting on any proposal before it for consideration”*.

A resolution approved in company meeting may be **valid or invalid**. It is **valid** when it is approved at a meeting by following proper procedure and rules. A resolution approved without following procedure and rules become **invalid resolution**. Such resolution is illegal and not worth implementing.

TYPES OF RESOLUTION:

The following chart shows the type of resolution:



(A) RESOLUTIONS AT THE GENERAL MEETINGS:

Resolutions are made at the general meetings of shareholders. As per the Indian Companies Act, 1956, there are four types of resolution which may be passed in the general meetings. They are as follows:

(A) Ordinary Resolution: An ordinary resolution is approved by **simple majority**. *When any motion is passed at a meeting by a mere numerical majority of members, it is said that it is passed by passing a ordinary resolution.* Ordinary resolution requires only nominal/bare for approval. This means the votes cast in favour of the resolution are more as compared to the vote cast against the resolution. Votes by proxies are counted for the purpose while those member who are neutral or abstain from voting are not counted. **The voting in the case of ordinary resolution may be by show of hands or by poll.** The usual notice of Twenty-one days is necessary for passing an ordinary resolution. They are adequate for giving approval to routine matters. It will suffice unless expressly provided otherwise in the Companies Act or the Articles of the Company. Normally, such resolutions are adequate for giving approval to **“ordinary business”**. **For example, ordinary resolutions are adequate for the following purposes:**

- (i) Approval of annual accounts, Directors' report and Auditor's report.
- (ii) Declaration of rate of dividend.
- (iii) Appointment/election of Directors and appointment of auditors and fixing their remuneration.
- (iv) Voluntary winding up of a company.
- (v) Appointment of sole selling agents.

It may be noted that even the special business at the annual general meeting needs to be conducted through ordinary resolution as per legal provisions. For example, in the annual general meeting, ordinary resolution is adequate for the conduct of the following business which actually constitutes **special business**:

- (a) Issue of shares at a discount.
- (b) Approval of statutory report.
- (c) Issue of Bonus shares as per the Articles.
- (d) Alteration of share capital.
- (e) Borrowing money in excess of the paid up capital and free reserve of the company.
- (f) Appointment of Branch Auditor.

Specimen of Ordinary Resolutions:

- 1) **Declaration of dividend: "Resolved:** " That a dividend of 15% be and is hereby declared on equity shares of the company for the year ended 31st March, 20....., to those shareholders whose name appears on the register of members on 28 February, 20....."
- 2) **Appointment of Auditors: "Resolved:** That M/s. Shri Krishna & Co. Chartered Accountants, Kalyan be and are hereby appointed auditors of the company for the financial year 2005-2006 at a remuneration of Rs.75,000".

(B) Special Resolution: A special resolution is one which is **approved by a substantial majority of vote (75% or more)**. Here, the votes cast in favour of the resolution must not be less than 3 times the vote cast against the resolution. Thus a special resolution requires absolute and overwhelming majority. Thus, **a resolution is deemed to be special resolution when the following three conditions are fulfilled:**

- (i) The intention to consider is a special resolution should be clearly expressed in the notice of the General Meeting.
- (ii) A notice of at least 21 days must be issued to concerned members along with the text of resolution.
- (iii) The votes cast in favour of the motion (proposed resolution) should not be less than thrice the total number of votes cast against the resolution (3/4th majority).

A special resolution must be recorded in the minutes of the meeting. In addition, as per Section 117, a copy of the special resolution must be registered with the ROC within a period of 30 days from the day of its passing.

It may be noted that the Companies Act, 2013 provides that the notice sent to the members in respect of a meeting must specify that a particular resolution is proposed to be passed as a **special resolution**. The law requires a special resolution to be passed in matters which are **fundamental to the constitution and affair of the company**.

Purpose of Special Resolution (When is a special resolution passed?) :

Special resolution are necessary or passed for the following purposes:

- (i) Alteration in the Memorandum or Articles of Association of the company.
- (ii) Reduction in the share capital or creation of Reserve capital.
- (iii) For shifting the registered office of the company from one state to the other.
- (iv) Voluntary winding up of the company.
- (v) Filing a winding- up petition in the court.

(C) Resolution Requires Special Notice [Section 169]: When the articles of a company or provision in the Act requires special notice of a resolution, notice of the intention to move the resolution is to be given to the company by members holding at least one percent of the total voting power or members holding shares on which the prescribed sum of money has been paid up. After the receipt of such a notice comma the company has to give notice of such a proposal to all its members in the prescribed manner. **Resolutions requiring special notice are different from special resolutions.** For example, the resolution for the removal of a director need to be passed as an *ordinary resolution but special notice of such resolution* is required under Section 169 of the Act.

(C) MINUTES

MEANING/CONCEPT OF MINUTES OF A MEETING (WHAT ARE MINUTES?):

The term "minutes" means a concise factual, accurate and official written record of the business transacted at a company meeting. Minutes are always precise and normally include the resolution actually approved. They are an official record of the business conducted in the meeting. According to **Webster's Dictionary** minutes means "a note to assist the memory". In commercial world it is considered as the written record of business transacted on decisions taken in the meetings of the shareholders or Board

Directors. Minutes are more analogous to a telegram than to a letter. **Minutes are precise or drafted in summary form and not prepared in a narrative form.** Minutes are written after the meeting but notes on business conducted are taken during the course of company meeting. Minutes must contain a *fair and correct summary* of the proceedings of the meeting.

The purpose of minutes writing is to maintain an accurately written record of the business conducted in the meeting. Minutes are useful for quick reference. They give the summary of the business conducted, resolutions approved and decisions taken, particulars of the meeting, constitution of the meeting and other details. Minutes constitute a legal document and can act as legal evidence in the Court of Law. The company secretary has to preserve the minute's book with safety at the registered office of the company. **Minutes writing is compulsory.**

As per Section 118 of the Act, every company is required to write and maintain minutes of all meetings within 30 days of the conclusion of the meeting in minutes books maintained for that purpose with pages consecutively numbered. Pasting of loose leaf papers is not allowed in the minute's book. Minutes approved and signed by the chairman constitute *prima facie* evidence of the proceedings of the meeting. **Minutes get official status only when they read, confirmed and signed by the chairman in the next similar meeting.**

STATUTORY PROVISION REGARDING MINUTES:

- (1) Every company must maintain minutes books for recording proceedings of its general meetings and meetings of Boards of Directors.** In addition, the company must draft minutes of meetings within 30 days and enter them in the minutes books kept for the purpose.
- (2) The pages of minutes books must be consecutively number** and in no case there should be attached by pasting or otherwise any extra page.
- (3) Any correction, cutting, etc. in the minutes books must be initialled by the person signing the minutes.**
- (4) There should be no erasure** in the case of minutes books.

- (5) Each page of every minutes book shall be signed and the last page of the record of proceeding of each meeting in such books shall be dated and signed by the chairman of the same meeting within a period of 30 days.
- (6) The minutes book must be **kept by the secretary under proper custody** so that there may not be any tampering of the minutes.
- (7) The minutes of each meeting shall **contain affair and correct summary of proceedings thereat**. The Chairman shall, however, enjoy and absolute discretion in regards to non-inclusion of any matter in the minutes which according to him is defamatory of any person, is a irrelevant or detrimental to interests of the company.
- (8) The minutes book of general meetings are to be kept at the registered office of the company and be open to inspection for at least 2 hours a day during business hours to any member without charge. Members are entitled to obtain copies of minutes on request within 7 days. If a company refused to give minutes for inspection or furnished copies of minutes, the company and every defaulting officer is punishable with fine as provided in Section 119 of the Act. The Tribunal is also empowered to order inspection of the minutes book or direct to deliver the copy required thereof if the company fails to comply with the provisions of this Section.
- (9) **All appointment of officials made at any of the meeting (e.g. general or board meetings) must be included in the minutes of the meeting. [Section 118]**
- (10) Minutes signed by the Chairman of the meeting at which the proceeding took place, shall be treated as *prima facie* evidence of the proceedings [Section 194].

IMPORTANCE OF MINUTES/MINUTES WRITING:

The benefits of keeping minutes suggest the importance of minutes writing. Minutes are also necessary for different purposes. Such purposes are as noted below They suggest the importance of minutes/ minutes writing

- (1) Minutes writing is compulsory under Companies Act. Minutes are important as **they fulfil one important legal formality.**
- (2) Minutes are important as **they act as an evidence in the court matters.** Minutes can be produced in the court as legal evidence of proceedings of a meeting.
- (3) Minutes are important as they **act as accurate, reliable and brief record of resolutions approved, decision taken and appointments made in the meeting.**
- (4) Minutes are important as the **provided detail information of the proceeding of the meeting** to the absent members.
- (5) Minutes are important as they **facilitate follow-up steps/ actions** by the secretary and the administrative staff of the company.
- (6) Minutes are important as they **provide full record of decisions taken in the previous meetings** of the company. Minutes act as **memory bank** of the company. Reference to decisions taken 20 years back is easily possible due to proper preservation of Minutes books.

METHODS/TYPES OF MINUTES WRITING:

There are two methods used for writing minutes. There are:

(a) Minutes by Resolution:

In the minutes by resolution, only the decision taken all the resolutions approved are noted in the minutes. Reference is not made to the procedural details regarding the resolutions and other matters. This method is a summary method of writing minutes as only the formal and

final resolution passed are recorded. Such minutes are brief but are useful for understanding the business conducted in the meeting. This method of minutes writing is not popular as it provides only the bare legal requirements. Minutes by resolutions always start with the word “**RESOLVED**”, followed by the exact text of the resolution.

(b) Minutes by Narration:

In the minutes by narration, the minutes are written in an **narrative/ descriptive form**. The procedural details are given along with the resolutions and decisions. Statements of facts, nature of discussion, amendments suggested, name of the speakers, method of voting used, votes for and against the resolutions, etc. are given along with the resolutions. Thus, brief details are given along with the resolutions approved in the meeting. This method of minutes writing gives full information to the reader as regards the business conducted in the meeting. Minutes by narration are generally preferred as compared to the minutes by resolutions. Here, reference is made by other matters which are discussed but regarding which no formal resolutions have been passed.

Company **secretary can select any suitable/convenient method for writing minutes**. The entries in this book must be made within 30 days of the meeting. Usual rules relating to minutes writing are applicable to the Minutes book of the Board meetings. The minutes of Board meeting must continue affair and correct summary of the proceedings of the meeting. The minutes are approved and signed by the chairman of the board are final and **alterations are not allowed in the same thereafter**. If any correction is to be made, the Board has to make another resolution that effect.

The minutes of board meeting are not available for inspection by the members. However, Directors and Auditor are free to inspect such minutes. The auditor of the company are given statutory right to inspect the minutes of Board meeting.

Company secretary has to take down brief notes during the meeting of the board and has to draft minutes as early as possible in consultation with the chairman. The minutes are presented before the next meeting of board for consideration and approval. The chairman put his signature below the minutes only after the approval in the meeting.

MINUTES OF GENERAL MEETINGS:

The secretary has to maintain the minutes of meetings of shareholders. The general meetings include AGM and extraordinary general meeting. Every company has to keep separate minutes book for recording the proceeding of general meetings. All usual rules of minutes book are applicable to the minutes books of general meetings. **The minutes of general meetings must be recorded within 30 days of such meetings**. The minutes must be signed by the chairman of the same meeting within 30 days.

The minutes of general meetings are kept at the registered office of the company. Members are free to inspect the minutes book of general meeting without payment of any fee. Members can obtain copies of minutes on request from the company by paying certain fees. If a member is not allowed to inspect the Minutes book or is not supplied with a copy of the minutes after request, the company and every officer in default is liable to fine. The Court, if necessary, may order the company to provide Minutes book of general meetings for inspection.

(D) VOTING**MEANING/CONCEPT OF VOTING:**

Voting is necessary in order to find out the view of majority. Resolutions are approved only after voting either by show of hands or by poll. Such voting is necessary in the general meetings as well as in the Board meetings. Members present in the meeting are given voting rights and they have full freedom to use them as per their desire. *The word "vote" means an expression of opinion or wish in an authorised formal way for or against a proposal before the consideration of the meeting.* The articles of the company normally prescribe regulations and proceed for voting at the general meetings subject to the provision in the Companies Act. Equity shareholder possesses normal voting rights. A shareholder or member can exercise his right to vote as per his personal wish or desire.

DEFINITION OF VOTING:

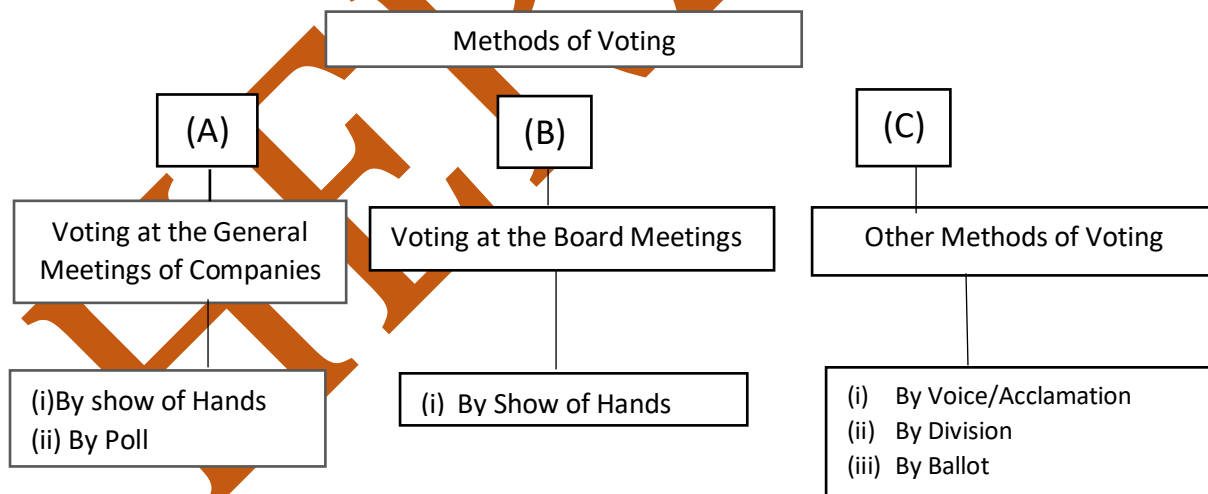
- (1) Voting is a method of ascertaining the WILL of those present and qualified to exercise their right to vote.
- (2) Voting is defined as the WILL or the opinion or the view of the members present at the meeting.

USUAL METHODS OF VOTING:

It may be noted that there are five **different methods** used for voting in a meeting. They are useful for taking the sense of the meeting. In company meetings voice, show of hands and poll are the usual methods of voting used. **The methods of voting are:**

- | | |
|---------------------------|--------------------|
| (a) Voice or Acclamation, | (b) Show of hands, |
| (c) Division, | (d) Ballot |
| (e) Poll. | |

The following chart shows different methods of voting:

**Details of Methods of Voting at Company Meetings:****(A) VOTING AT GENERAL MEETINGS:**

Voting at general meetings take place normally by: **(A)** Show of hands, and **(B)** Poll **(c)** Postal Ballot, **(D)** Electronic Mode.

(A) Voting by Show of Hands:**Meaning:**

Voting by show of hands is one commonly used and popular method of voting in the company meetings. As a general rule, voting on a proposed resolution takes place by show of hands unless a poll is demanded. The Chairman requests the members to indicate their opinion

by raising hands. Those who are for and against the request, intern, to indicate their opinion by raising hands. The hands are counted as if they are the votes. Here, every member present has only one vote. **Proxies are not allowed to vote in the case of show of hands unless the articles provide otherwise.**

The decision given by the chairman on the basis of show of hands is **final provided the poll is not demanded immediately after the declaration of the results by show of hands.** The fact that the resolution is carried or lost will be recorded in the Minutes book. In the case of an equality of votes in the show of hands, **the chairman may exercise his casting vote,** provided he is given such a vote under the Article of the company.

Advantages of voting by Show of Hands:

- (1) Voting by show of hands is very easy to understand and simple to follow or operate.**
- (2) It is a democratic method of voting** as it once vote is given to every member, irrespective of the number of shares owned by him.
- (3) This voting method ensure quick decision** as a special arrangements etc. are not required. It is a **time saving method of voting.**
- (4) This method gives opportunity of voting to those who are really interested in the activities of the company,** as proxies are not allowed to vote in this method.
- (5) Voting by show of hands is particularly convenient for decision on routine matters** where the scope for difference of opinion is limited.
- (6) There is less paper work** in the voting by show of hands.

Disadvantages of Voting by Show of Hands:

- (1) In the voting by show of hands, there is absence of secretary in voting** as voting done openly by raising hands.
- (2) It is not scientific as counting mistakes are quite possible** specially when the number of members present is large.
- (3) In this method, there is a possibility of double voting** as the same member may raise his hand twice.
- (4) Voting by show of hands does not give an opportunity of voting to those who are unable to attend the meeting** due to previous engagements/ urgent work/sickness etc.
- (5) Proxies are not in a position to exercise their voting right** when voting is taken by show of hands.
- (6) in the show of hands, "one man, one vote" is a rule.** A member with large number of shares is at a disadvantage as his voting power is not proportional to his ownership of shares.
- (7) The decision taken by show of hand is not final** if poll is demanded and granted.

(B) Voting g by Poll:

Meaning of a Poll:

Poll is another method of voting in companies general meetings. **It is an alternative to voting by show of hands.** A poll literally means **"a counting of heads"**. Poll is demanded when some member present in the meeting are not satisfied by the verdict given by the show of hands. Poll may be demanded even before the declaration of results by show of hands. It may even be demanded immediately after the declaration of results by show of hands. If the poll is demanded properly, the previous result declared by show of hands will be treated as cancelled. **Thus, poll as a method of voting is superior to show of hands and the decision taken by poll is final.**

In poll, every **member is given a voting paper** indicating therein whether he is 'for' or 'against' the proposal. Every member is entitled to record the number of votes in proportion to equity shares held by him. Thus, in this method, voting is in proportion to equity shares held by him. Similarly, **proxies are allowed to vote when a poll is taken**. The result of the poll is treated **as final as it overrules the result by show of hands**.

Who can demand a poll? [Sec 179]

a) A poll may be ordered by the chairman on his own motion. In addition, the chairman has to order poll if the demand is made properly by member.

(b) In the case of a public limited company, poll may be demanded at least by five members having a right to vote and present in person or by proxy.

(c) In the case of private limited company, one member having voting right and present in the meeting in person or by proxy, if not more than 7 members are personally present, and but 2 of such members if more than 7 such members are personally present.

(d) Any member of members present in person or by proxy and having not less than one tenth of the total voting rights can demand a poll.

Procedure of a Poll:

When the demand for poll is accepted by the chairman, he fixes the time and the place of taking it. When it is demanded by the members, he will first decide whether he should accept such demand or not. The secretary helps the chairman in the script unity of the requisition of poll. However, if the demand is valid, he has to accept it. If we accept the demand for a poll, he informs the member about the time and place of the poll. If the arrangements for the poll are available; he may decide to have it immediately. In any case, a poll must be taken within 48 hours after the valid demand is made. **If the poll is related to the election of the chairman or adjournment of the meeting, it must be taken up forthwith.** It shall be deemed to be decision of meeting. The chairman is bound by the result of poll section 109 (7). The decision declared by the chairman should be recorded in the Minutes of the meeting.

Once the decision to have poll is taken, **the chairman appoints two scrutineers** in order to distribute voting papers to the members. One of the scrutineers must be member present at the meeting. The company secretary helps the scrutineers in supervising the arrangements of poll. These scrutineers must be appointed as their appointment is compulsory. The scrutineers, thereafter, prepare a polling list and accordingly the voting papers are distributed among the voters. After distribution of voting papers, members fill in the details indicating their own votes and votes in respect of proxies. The members have to sign the voting papers. These papers are, then, collected by this scrutineers. The details of voting are, then, entered on the polling sheets. The votes in favor and against the resolution are counted by the scrutineers. They intimate the result of poll to the chairman who declares the same to the meeting. **The result by a poll is conclusive and final.** It shall be deemed to be the decision of the meeting. The chairman is bound by the result off the poll (Sec 109.(7)). The decision declared by the chairman should be recorded in the minutes of the meeting.

Advantages of a Poll :

(1) Poll, as a method of voting enable every member to vote as per his share qualification.

(2) Absentee members are allowed to vote in this method through proxy.

(3) Poll is more scientific and reliable accounting mistakes are easily avoided.

(4) The decision by the poll is final and it cannot be challenged.

(5) Poll as a method of voting **ensures secrecy in voting.**

Disadvantages of a Poll:

- (1) The democratic principle of 'one member, one vote' is violated in this method of voting. **It is a capitalistic method of voting**
- (2) **Poll is a time consuming method of voting** and quick decisions are not possible in this method.
- (3) **There are many formalities** which are required to be observed in this (Poll) method of voting.
- (4) **Illiterate member find it rather difficult to vote** when a poll is taken.
- (5) Poll, as a method, **enables limited shareholders to influence the policies of the company** by virtue of ownership of large number of shares.

(C) Voting by Postal Ballot:

The concept of postal ballot came into existence in Indian corporate sector in 2000. A postal ballot is defined to mean voting by post or through any electronic means. [S. 2(65)]. The introduction of the concept of postal ballot is welcome step as it allows a shareholder to exercise his valuable voting right from the comfort of his home or office. Large majority of members find it difficult to attend AGM due to their busy schedule. As a result, several companies have a thin attendance of their AGMs. This suggest growing need and importance of voting by postal ballot.

(D) Voting through Electronic Mode:

It is the latest and most modern method of voting added to the existing method of voting in general meetings. Voting by electronic mode means a process for recording votes by members using a computer based machine to display an electronic ballast and to record the vote and also the number of votes polled in favour or against such that entire voting gets registered and counted in an electronic registry in a centralized server. According to Section 108 of Companies Act, 2013 any company may opt voting through electronic means.

(B) VOTING AT THE BOARD MEETING:

In the case of Board meetings, voting is necessary in order to ascertain the sense of meeting. All resolutions at the Board meeting are approved by bare/simple majority. **The resolutions approved belong to one category only.** However, certain resolutions approved in the Board meeting must be unanimous.

Every company Director is given one vote which he can give for or against the resolution. The chairman is given to votes, i.e., regular board as a Director and additional vote as a chairman. This vote can be used only in the case of a tie.

In the Board meeting, voting is by show of hands. Voting by proxy is not allowed. The interested Director is also disqualified from voting on a particular resolution in which he is directly or indirectly interested.

(C) OTHER VOTING METHODS:

(1) Voice or Acclamation: Voice all acclamation is one common and popular method of voting. If the chairman feels that the sense of the meeting is likely to be nearly unanimous, he ask those who are in favour to say 'yes' and those who are against the resolution to say 'no'. If the volume of voice is heavily in favour of the resolution, he gives the decision that the resolution is approved. If the volume of the voice in

favour of resolution is very low, he gives the decision that the resolution is not approved. This method of voting is very common in Parliament. However, it is not scientific and generally not suitable for company meetings. Moreover, any member may demand poll immediately after the use of this method. If the poll is demanded, the decision, by voice become invalid.

- 1) **Division:** In this method, the member for and against the proposal are divided into two groups. The chairman will ask the members in favour of the resolution to go to one side of the hall or to go to one room. Similarly, he will ask the member who are against the proposal to go to another room of the hall or in the other room. The sense of meeting is then assistant by counting the vote by the "Tellers". This method of division may be adopted when voting by show of hands or by voice is challenged.
- 2) **Ballot:** This is a secret method of voting and is used in political elections. However, voting paper i.e. ballot paper, is given to every voter and he has to record his vote on the ballot paper. This paper is then dropped in the specifically prepared box known as ballot box. The ballot papers are then counted by the persons specifically appointed for this purpose. This method of voting may be adopted for the election of directors by a company which does not carry business for profit or does not pay dividend to members. Here, the members are scared from embarrassing position of taking sides.

SHOW OF HANDS v/s POLL:

<i>Show of Hands</i>	<i>Poll</i>
Meaning: In the show of hands method, voters show their preference by raising hands	Poll is a method in which voting preference is indicated through voting paper.
Secrecy: There is no secrecy of any kind as voters give vote openly by raising their hand.	There is completely crazy as both are recorded on a special voting paper issued.
Number of votes: Voting principle is "one member, one vote".	Voting principle is "one share , one vote"
Proxy: Voting by proxy is not allowed.	Voting by proxy is allowed.

Objective Questions with Answer

(1) Select the most appropriate answer from the option given below:

- (a) AGM is arranged _____
(i) Once in every year (ii) twice in a year (iii) frequently (iv) once in every
- (b) Company auditor is appointed in the _____ of the company
(i) First board meeting (ii) AGM (iii) EGM (iv) Committee meeting
- (c) Shareholders meeting arranged in between two AGM's is called _____
(i) Board Meeting (ii) Extra - Ordinary general meeting (iii) special meeting
- (d) The gap between two AGMs should not be more than _____ months.
(i) 18 (ii) 24 (iii) 08 (iv) 15
- (e) Board meetings are usually arranged on _____ basis

- (i) Yearly (ii) quarterly (iii) monthly (iv) six monthly.
- (f) Proxy form must be deposited at least ____ before the meeting.
(i) 48 hour (ii) 24 hours (iii) 3 days (iv) 4 hours
- (g) Minutes writing is ____ under Companies Act.
(i) Compulsory (ii) optional (iii) voluntary (iv) not binding
- (h) Agenda is normally a part and parcel of ____ of the meeting.
(i) Minutes (ii) notice (iii) quorum (iv) records
- (i) Proxy is allowed to vote when ____ is taken
(i) poll (ii) voting by show of hands (iii) voting by voice (iv) voting by Ballot
- (j) The proposer of a motion is allowed to speak _____.
(i) Once (ii) twice (iii) four times (iv) any number of times.
- (k) Motion becomes ____ after discussion and voting.
(i) Strong motion (ii) weak motion (iii) resolution (iv) special resolution
- (l) Proxy is not allowed in ____ meeting
(i) AGM (ii) special (iii) board (iv) Extra ordinary
- (m) There is no secrecy in the voting by ____
(i) poll (ii) show of hands (iii) Ballot (iv) Electronic made
- (n) Meetings are necessary under ____ management
(i) Democratic (ii) one man (iii) government (iv) none of the above
- (o) General meeting include ____ meeting.
(i) AGM (ii) Director Meeting (iii) Board (iv) Committee
- (p) Companies Act, 2013 has ____ for holding of statutory meeting.
(i) no provision (ii) provision (iii) no arrangement (iv) removed the need.
- Ans: (a- i) ; (b- ii) ; (c- ii); (d- iv); (e- ii); (f- i); (g- i); (h- ii); (i - i); (j - ii); (k- iii); (l - iii); (m - ii); (n - i); (o - l); (p - i)

(B) State whether the following statements are true or false:

- a) A private company need not hold AGM.
- b) Directors are elected in board meeting.
- c) Resolution can be amended.
- d) Business transacted without quorum is treated as valid business.
- e) Minute's book of general meetings is available for inspection by members.
- f) Agenda is drafted after the General Meeting.
- g) Meeting acts as a collective decision making forum.
- h) A company meeting must be duly convened and properly constituted.
- i) Meeting is an official gathering of members of a company.
- j) Meeting of directors are arranged rarely.
- k) Company secretary needs full knowledge of provisions made in Companies Act relating to company meetings.
- l) The rate of dividend payment is decided in the Board meeting.
- m) Auditor's report is approved in AGM.
- n) Board can approve a resolution by circulation.
- o) Resolution approved in the board meeting are by simple majority.
- p) Company meeting is a private meeting.
- q) Meetings of preference shareholders is called class meeting.
- r) Agenda enables meeting to discharge its functions systematically.
- s) Chairman decides the point of order submitted to him.

t) A proxy may be special or general.

u) Ordinary resolution needs substantial majority of vote for approval.

Ans: (a- False); (b- False); (c -False) ;(d- False) (e- True); (f- False); (g – True); (h – True); (i – False); (j – False) ; (k – True) ; (l- True); (m- True); (n -True); (o- True); (p- True); (q- True); (r- True); (s- True); (t- True); (u-False).

Question Bank for Self Practice

(1) What is company meeting? Explain its features.

(2) Explain the importance of meetings in company management.

(3) Explain the concept of meeting and the types company meeting.

(4) Explain the secretary duties before, during and after company meeting.

(5) **Discuss** the purpose of company meeting.

(6) Explain briefly the requirements of valid company meeting.

(7) Explain the relationship between company secretary and company meeting.

(8) What is Annual General Meeting? Explain its importance.

(9) Explain briefly the statutory provisions relating to Annual General Meeting.

(10) What is AGM? Explain the business conducted in AGM.

(11) Explain the secretary duties relating to AGM.

(12) When Annual General Meeting is called? Explain secretarial work before the AGM.

(13) What is Extra-ordinary General Meeting. Who can call the EGM.

(14) Explain briefly the statutory provisions concerning EGM.

(15) Why EGM is called? Give broad features of EGM.

(16) Explain the business conducted in the extraordinary general meeting.

(17) Explain the secretary duties before, during and after EGM.

(18) Explain the meaning and legal provisions of board meeting.

(19) Explain briefly about notice, quorum and chairman of board meeting.

(20) Explain the procedure and resolutions approved in Extra-ordinary General Meeting.

(21) Discuss the secretary duties relating to board meeting.

(22) What is committee meeting? Explain the rules relating to committee meeting.

(23) Explain the requisites of valid General Meeting.

(24) Explain the meaning and features of notice of a meeting.

(25) Explain meaning and advantages of sending an agenda of General Meeting.

(26) What is quorum of a meeting? Explain the statutory provisions of quorum of General Meeting.

(27) Who is the chairman of a meeting? Explain his duties.

(28) State the rights and powers of chairman of a meeting.

(29) Explain the role of chairman of General Meeting.

(30) What is a proxy? State his rights.

(31) Explain the rules regarding proxies.

(32) Explain the meaning and types of motion.

(33) What is motion? What are the essential of a valid motion.

(34) Explain the concept of motion and its types.

(35) What is resolution? Explain types of resolution in general meeting.

(36) Explain the types of resolution in general and board meeting.

(37) Explain the concept of minutes and the important of minutes writing.

(38) Explain the methods of writing minutes.

(39) What are minutes? Write the statutory provisions regarding minutes.

- (40) Explain secretarial work related to minutes writing.
- (41) Write note on minutes of general meetings and board meetings
- (42) What is voting? Explain its importance.
- (43) Explain the method of voting used in general meeting.
- (44) What is poll? Who can demand Poll?
- (45) Explain the advantages and disadvantages of poll.
- (46) Explain voting at board meeting and explain voice or exclamation as a method of voting.
- (47) Distinguish between show of hands and poll
- (48) Distinguish between notice and agenda of a general meeting.
- (49) Explain the role of Chairman in orderly conduct of company meeting.
- (50) Write note on the following:**
- a) Role of directors in company management.
 - b) Rights and power of company auditor.
 - c) Types of directors.
 - d) Annual General Meeting.
 - e) Notice of General Meeting.
 - f) Duties of chairman of a meeting.
 - g) Types of minutes.
 - h) Directors' report.
 - i) Draft specimen of notice and agenda of AGM.
 - j) Proxy

HERAMB

3. DEMATERIALIZATION AND ONLINE TRADING

MEANING/CONCEPT OF DEMATERIALIZATION:

Dematerialisation (Demat) is the process by which **securities in physical form are converted into electronic form** (at the request of holder/investor) by following suitable procedure. **Demat** is a commonly used abbreviation for **dematerialisation**. In brief, *Dematerialisation (Demat) is a method/process by which physical share certificate are converted into electronic form/mode*. An investor can convert his shares in physical form into electronic form through dematerialisation process. In addition, new shares allotted to him are credited to his demat account. Even bonus shares and rights shares can be directly credited to his demat account. In short, conversion of physical share certificate into dematerialised holdings at the request of the investors is called dematerialisation.

Only shares registered in the name of account holder are accepted for dematerialisation at the depository (NSDL). The dematerialisation takes place through suitable follow-up steps. The entire process of dematerialisation takes about 10 to 15 days or even less. More time will be required if the number of certificates submitted for conversion are large in number.

In short, **dematerialisation of securities means holding securities in electronic form in place of physical share**

Certificate. It is as good as keeping your money in bank account. Purchase of shares is reflected in credits in demat account while sale of shares is indicated as debits. Shares in dematerialisation ensures easy handling, safety and quick transfer of shares. It is a modern, progressive and safe method for handling your shares/securities.

Depository is a store house of electronic shares of investors. It is responsible for storing, handling and maintaining investors securities in demat format. Depository system, now, operates in all developed countries. It safeguards the interest of investors and offer convenience and protection to them. To comply with international practices, depository system was introduced in India in 1996 when Depositories Act, 1996 was passed. The depository system has many participants such as depository, depository participants, Issuer company and investors. They are also called constituents/participants of Depository system. Dematerialisation of shares of a company is regulated by the Depositories Act, 1996.

An investor has an option to hold his investment in shares in physical or electronic form. Even conversion of demat shares in physical certificates is also possible by following suitable procedure. Such conversion of electronic shares/securities into physical form i.e. physical certificates is known as "**Rematerialisation of shares**" which is opposite to dematerialisation.

NEED OF DEMATERIALIZATION:

The following points suggest the need of dematerialisation of shares/securities:

- (1) Easy, quick and safe transfer of shares among investors and shareholders.** Transaction take place faster under dematerialisation and also in risk-free environment as chances of forgery are minimized.
- (2) Replacement of old, outdated methods of stock exchange working by new methods.** The old system has many problems/inconvenience such as bad deliveries, more paper work, delays in transfers, forgeries and frauds in transfers, and loss of share certificate. These problems are solved by introducing new depository system.

- (3) **Introduction of transparency, safety and quickness in transfer of securities.**
Dematerialisation concept was introduced in order to mitigate the risks associated with share trading in paper format.
- (4) **Introduction of paperless trading system** in stock exchanges which is now a common practice in developed countries.
- (5) **Introduction of computer technology** in the working of Indian stock exchanges.
- (6) **Encouraging foreign institutional investors. (FIIs) to invest funds in India through capital market mechanism.**
- (7) **Giving protection and convenience to investors/shareholders,** companies and banks.

BENEFITS / ADVANTAGES OF DEMATERIALIZATION / DEMAT ACCOUNT:

(A) BENEFITS To INVESTORS

- (1) Demat shares eliminate paper work for transfer or sale of shares. Transfer and transmission of shares become easy, quick and safe. Sale of one shares is also possible.
- (2) The risk of bad deliveries, fraud and loss of share certificate are avoided. Shares in demat form are convenient and safe than in physical certificates.
- (3) Time for settlement of transaction is very limited.
- (4) Investors are in a position to change their portfolio more easily and frequently.
- (5) Investors can keep all types of securities (Equity, debt securities, mutual funds, etc.) in one demat account.
- (6) Collection of dividend, etc. will be easy and quick.
- (7) Faster payment in the case of sale of shares.
- (8) The cost of transfer is less as the share transfers are exempt from stamp duty. Investors can operate conveniently through different terminals.
- (9) Investors find it easy and convenient to track on all their shareholdings.
- (10) Banks give loan on demat securities liberally.
- (11) It ensures liquidity by speedy settlement of transaction.
- (12) Dematerialisation is **optional** under Indian Companies Act. However, SEBI has made demat **compulsory** for the traded scrip's (shares). Shares are allotted by crediting demat account of investors. The popularity of demat is fast increasing among young investors. As a result, demat will be very common in the near future and its optional aspect will remain only as historical. Moreover, demat system is beneficial to investors and corporate sector.

(B) BENEFITS TO ISSUER COMPANIES (Corporate sector):

- (1) Easy to maintain records of transfer, transmission, etc. Of shares.
- (2) Facilitates easy and quick transfer of shares.
- (3) Prompt settlement of transaction possible.
- (4) Handling of large number of share transaction easily and quickly.
- (5) Helps in easy arbitrage transactions.
- (6) Less record keeping work. The volume of paper work of companies relating to transfer, allotment, transmission, bonus issue and dividend payment is reduced considerably.
- (7) Reduces administrative cost.
- (8) Easy and economical distribution of dividend, interest, bonus and rights shares.
- (9) Facilitates wider spread of shareholdings over wider geographical area.
- (10) The Depository maintains complete and correct record of transaction pertaining to beneficial owner through its network. This information is provided to issuer company and

transfer agents regularly. This enables Issuer Company to distribute dividend, interest, bonus and right shares easily, quickly and economically.

(C) BENEFITS TO BANK:

- (1) Higher turnover of banks as all payments are made through them.
- (2) More business as every investor has to open a bank account for transaction in shares.
- (3) Provides more business and profits to banks.
- (4) Less routine work as regards collection of dividend, payment for transfer of shares, etc.

(D) MISCELLANEOUS BENEFITS OF DEMATERIALIZATION:

- (1) Brokers find it easy to deal in securities in dematerialised form. Depository offers safe mode of transaction. It removes the problem of odd lots as market lot becomes one share in demat mode.
- (2) Dematerialisation **makes capital market safe and investor friendly**. Paper work is reduced and demat shares do not have storage problem.
- (3) Important step in the development of Indian financial system. Demat system promotes investor confidence and raises the volume of transactions.
- (4) Depository system **avoids irregularities on the trading of shares**.
- (5) Depository system **minimizes the possibilities of forgeries, faults, lapses and other irregularities in trading of shares**.
- (6) Raises the flow of foreign funds by providing risk-free trading environment

The steps in the dematerialisation process are as briefly explained below:

- (1) **Opening a Demat Account with DP:** An investor interested in dematerialising his securities has to approach his depository participation (DP) with request to open a demat account. The demat account is similar to SB account in bank. Dematerialisation process starts with the opening of demat account by the client or investor. It may be noted that opening demat account with DP is the first essential step in dematerialisation as DP acts as a link between the Depository and the Demat account holder. DP also acts as an agent of the depository. For opening Demat account, the investor/client has to submit completed account opening form. Search printed form is easily available with DP. In addition to demat account opening form, the client has to sign DP client agreement which states the rights and duties of DP as well as of client i.e. investor.
- (2) **Securing Client ID Number from DP:** After opening a demat account, the DP provides Client Identification Number (similar to bank account number) along with **booklet of demat request forms** popularly known as DRF and **delivery instructions by clients**. The Demat account holder has to make reference to this number for different purposes. The DIS (Delivery Instruction Slip) given by DP is useful for trading transactions.
- (3) **Submission/Filing of DRF and Shares Certificates to DP:** In this third step, the investor submit the DRF properly filled in and also physical share certificate which he desires to dematerialised i.e. converting physical shares into demat shares. The demat request form (DRF) is to be submitted in **triplicate** (one copy is given to the investor as acknowledgement second copy is kept by DP for his reference and the third copy is forwarded to depository for information) The DP will verify the DRF form as well as share certificate submitted and **give acknowledgement to the investor**. The acknowledgement is duly stamped copy of DRF. The DP also puts remark **"Surrendered for Demat"** on the face of share certificates

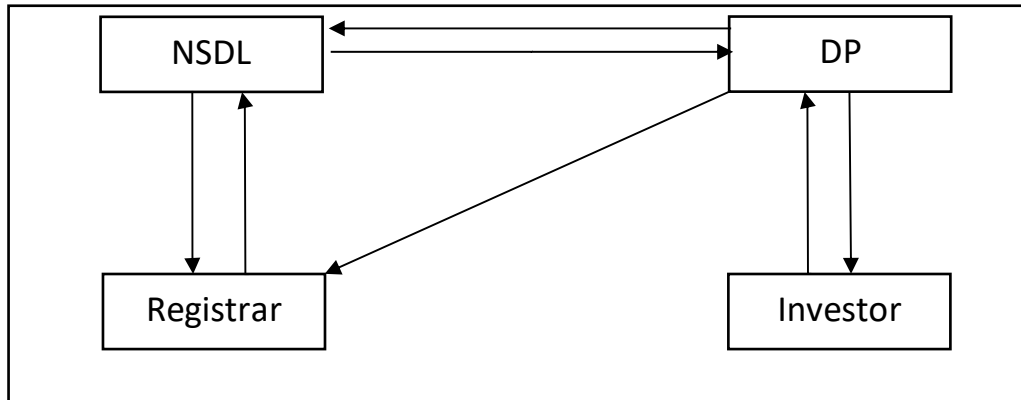
submitted. This process of dematerialisation starts after the submission of DRF form and share certificate/scrip certificates.

- (4) Forwarding/ Sending DRF and Scrip Certificates:** In this step, the DP forwards the first original copy of DRF along with share certificates to the **Registrar** of Company or to the **Transfer Agent** appointed by the company for dealing with the share related matters (as the case may be) for further processing/verification. In addition, one copy of DRF is forwarded by the DP to its depositories (NSDL or CDSL) for information. The depository sends a letter confirming the dematerialisation request of the investor to the Registrar or the Transfer agent of the company for follow up actions.
- (5) Verification of Share Certificates and Updating Company's Record:** After the receipt of confirmation from the depository, the company's Registrar or the transfer agent of the company verifies the signature of the investor with company's records, the contents of DRF form, folio of investor, etc. If the detail a are correct, the meeting of **Share Transfer Committee** of the company will be called for approval to proposed change. The resolution giving permission for dematerialisation of shares as per the request of the investor is approved in this meeting. After approval, the Registrar or transfer agent updates the records of the company. **This is a type of confirmation of demat of shares by the company.** For this, he cancels the certificate numbers and distinctive numbers of shares in the name of concerned investor and gives **Client Identification Number (Client ID)** in its place. The Transfer agent also substitute s the name of the depository against the name of the original shareholder. The Registrar/ transfer agent also send **confirmation about dematerialisation to the depository.**
- (6) Recording/Giving Credit to Demat Account holder:** After updating his records, the company sends a copy of minutes of Share Transfer Committee and company's approval to dematerialization to the depository either directly or through share transfer agent. On receipt of these documents, the depository credit the Demat account of the investor with the securities dematerialised. The depository also record client's ID number and other details in its record as **beneficiary owner ID.** He is the investor and he also enjoy all benefits (and also liabilities) in respect of securities recorded on his name.
- (7) Confirmation of Dematerialisation by Depository to DP:** after completing dematerialisation procedure at its level, the deposit reasons confirmation of demat of securities to concerned DP for information and follow up action. With this dematerialisation work of the depository is over.
- (8) Updating Records by DP:** After the receipt of confirmation of dematerialisation from the depository, the DP update the record of it's demat account holder i.e. investor and gives him the credit for the shares dematerialised. This is actually crediting client's demat account with DP. As a result, he becomes beneficiary owner of dematerialised securities.
- (9) Intimation to Account Holders and Securing his Confirmation:** The investor is given intimation by the DP about dematerialization of his securities as per his request. The demat account holder is also requested to verify the entries in his account. In case of any discrepancy, the investor should bring it to the notice of DP for suitable correction. With this, the procedure of demonetization comes to close. The DP also sends periodic statement to the Demat account holder regarding the position of his account.
- (10) Regular Operation of Demat Account by the Account Holder:** After the demat of shares, the account holder can operate his Demat account for trading purpose i.e. for buying and selling securities. If the Demat account holder purchases the shares, the shares purchased will be credited to his account through the depository and DP. The operation of

Demat account will be similar to the operations of savings bank account. However, this account will deal with shares/securities and not with cash.

If the Demat account holder sell the shares from his Demat account, he has to fill up the “**delivery instructions by clients form**” and submit it to his DP. Finally, his demat account will be debited (as per the securities sold out) and the purchase’s Demat account will be credited. It is similar to transfer of money from one bank account to the other.

The process of dematerialisation is shown in the following figure:



PARTICIPANTS IN DEMATERIALISATION:

Dematerialisation is a lengthy process in which many participants are involved. They play active role in the dematerialisation and are called participants of dematerialization. Such participants are as briefly explained below:

(1) DEPOSITORY:

Depository is an agency/institution/organization which transfer the ownership of securities in physical form into electronic form. **A depository acts as the custodian of securities of investors.** National Securities Depositories Limited (**NSDL**) and Central Depositories Services Limited (**CDSL**) are two important depositories operating in India since 1996. Depository is a Central System or organization where all corporate securities (shares, debentures, bonds, government securities and so on) are kept/recorded in **Electronic form**. It holds securities/shares in demat accounts. It also keeps the records of all transaction relating to purchase and sale of demat securities of investors/Shareholders. **Depository is like a bank** which holds non cash investment of its clients. A depository holds securities of investor in electronic form. Depository transfer shares/ securities between Demat account on the instruction of account holder. It also facilitates safekeeping of securities of account holders. Depository contains the customers through depository participants (DPs) but depository participant contacts customers/investors directly. Depository act through depository participants. It provides its services to investors through its depository participant (DP).

(2) DEPOSITORY PARTICIPANTS (DP):

Depository Participant act as the agent/representative of Depository. It acts as a **connecting link** (intermediary) between investors and depositories. An investor has no direct access to the depositories. He has to trade his securities through his DP. An investor has to open his Demat account with the DP as he has no direct contact with the depository. An investor has to trade his shares/securities through the depository participant (DP). Every DP has an **identity number** for easy identification. DP has to maintain account of securities of every investor and update the same form time to time as per the purchase or sell of securities by the investor. DP

also gives intimation about customer's holdings periodically by sending a statement of holdings. It acts as a passbook for the investor Demat account holder. An investor has to open his Demat account with the DP, of his choice. Services of DP/ Depository will be available only when such account is opened. In India, we have two depositories (NSDL and CDSL) but the depository participants are many. According to SEBI guidelines, **financial institutions, banks and stock brokers** are permitted to operate as DPs. The number of DPs is increasing along with growing popularity of dematerialisation of securities.

(3) ISSUER COMPANY:

It is the Joint Stock Company which makes new issue of securities. Such company must register itself with a depository. Large majority public limited companies are issuer companies in India and listed companies are prominent among them.

(4) BENEFICIAL OWNER:

An investor is known as or called as **beneficial owner**. He is the person in whose name demat account is opened. His name is recorded with the depository. He is entitled to get benefits such as dividend, bonus shares and so on, through his demat account. Shares purchased by him are credited to his demat account. He also gets details of his account periodically from the depository.

Secretarial Duties in issuing Securities in Demat Form:

Here, as a secretary of an **issuer company**, he/she has to perform the following duties:

- (1) Issue of prospectus is necessary for issuing new securities. Here, the company secretary has to **file draft prospectus with the SEBI** for consideration and correct (21 days before filing prospectus with the Registrar). The issuer company has to make necessary changes in the prospectus, if suggested by SEBI. The company has to file the prospectus with the Registrar thereafter, i.e. after making necessary changes.
- (2) The company secretary has to ensure that company's shares/ scrip comes under **compulsory dematerialised trading**.
- (3) For such dematerialised trading, the secretary has to see that the issuer company enters into an agreement with a Depository for demat trading of its issue.
- (4) The secretary has to ensure that the company gives only one option to subscriber/investor to receive security certificate in dematerialised form from Depository and DP.
- (5) The secretary has to ensure that his/her company (issuer company) has made an application to stock exchanges for listing of securities of the company.
- (6) Soon after allotment, the secretary has to intimate the details of allotment to concerned depository.
- (7) The secretary has to ensure that the **Articles of Association** of the company do contain the article which authorises the company to have its securities (new and already issued) dematerialised. If articles of the company are silent on this matter, it will be necessary to alter its article by passing a special resolution in general meeting as per the provision in the Depositories Act 1996. Here, the secretary will have to follow the procedure for alteration in the articles of the company.
- (8) After securing the permission through altered articles, the company has to approach a depository for this purpose. The depository shall enter into agreement with the company in respect of securities that are to be declared eligible for dematerialised form. Here, secretary has to complete various procedural formalities on behalf of the company.

- (9) If the **Registrar** is appointed for the **new issue** or a **share transfer agent** for transfer/transmission of company's existing shares who have been granted certificate for registration by SEBI, the depository will enter into a tripartite agreement with the company and the Registrar to the issue/ share transfer agent relating to securities to be declared by the depository as eligible to be hold in demat form.
- (10) In due course, shareholders may surrender their share certificate to the company for demat purpose. Here, the company secretary will inform the depository accordingly. In addition, the company secretary will cancel the certificates and inform the depository accordingly.

(B) ONLINE TRADING

MEANING/CONCEPT OF ONLINE TRADING:

Online trading in securities is an online platform that gives you access to the stock exchange. For this, you need to register with an online trading portal and it facilitates you to trade in various financial instruments such as equities, mutual fund and commodities. Online trading in India in 1996 when Derivatives Act was passed. This service is offered on the internet for purchase and sale of shares. In order to trade online in stock market, one needs to open an online trading account with a registered broker. To open an online trading account in India, you need a proof of identity and residence. BSE provides online trading system known as **BOLT** and NSE's online trading system known as **NEAT**.

Online trading system is getting popularity and public support in recent years because of online trading benefits. As a result, offline trading has lost popularity in India. Special benefits of online trading system are:

- (a) Online trading system **consumes less time** as compared to offline trading.
- (b) You can **find the records easily in online trading**.
- (c) **The chances of fraud are less in online trading**.

The general meaning of online trading is trading i.e. buying and selling of securities with the aid of internet. Online trading has brought the stock exchange facilities within easy reach of people requiring them. There are a number of trading sites at present that facilitate online trading in securities. With the introduction of online trading, the investors, mainly the new ones, who were not actively involved in the stock market, are now rushing towards it. Online trading is now possible in different securities such as stocks, bonds, options, futures, mutual funds and foreign currencies.

PROCEDURE OF ONLINE TRADING:

Under online trading, initially, an investor has to make his decision about buying and/or selling securities. He has to decide the price at which he wants to purchase or sell specific scrip and also decide the quantity. After making these basic decision, the rest of the trading procedure is to be completed through the use of network facilities.

Under online trading, investors can enter order directly online or even trade with other investor via **Electronic Communication Network (ECN)**. Some orders entered online are still **routed through the broker**, allowing agents to approve or monitor the trades. This step helps in the protection of both the client and brokerage firm from unlawful trades. In the case of transaction through the broker, the investor places his order with the broker. He also gives clear and specific instructions to the broker and the broker makes online order entry. After completing the transaction, the brokerage and other matters are settled. The necessary entry is visible to the investor in his Demat account. Investors who trade through an online brokerage firm are provided with a trading platform which act as a hub, allowing investors to purchase and

sell such securities as equity/stock, mutual funds and so on. Many online brokers provide assistance/guidance to investors about their investment decisions. In addition, there are third party providers of information (Yahoo Finance)

Online trading procedure is different from traditional trading procedure. In traditional trading, all your activities are carried out with the aid of brokers where they help you in the entire process which takes a lot of time. However, in online trading, the stock brokers have a platform in the form of special websites created for trading of stocks. However, in online trading, the stock brokers have a platform in the form of special websites created for trading of stocks. These platforms are useful in providing extra information in relation to market data, charts, news and alerts. This information facilitates quick decision and suitable follow-up steps by the broker.

In traditional trading, traders are executed through a broker via phone or via any other communication method. The broker assist the trader in the whole trading process; and collect and use information for making better trading decisions. In return of this service they charge commissions. The whole process is usually very slow, taking hours to execute a single trade. Long term investors who do lesser number of trades are the main beneficiaries.

In online trading, traders are executed through on online trading platform (trading software) provided by the online broker. The broker, through their platform offers trader access to market data, news, charts and alerts. All trading decision are made by the trader himself. All trades are executed in (near) real-time. In return of their services online brokers charge trading commission (which is often very low-discount commission schedule) and software usage fees.

ADVANTAGES OF ONLINE TRADING:

Online trading is quite popular among the people/investors because of its advantages/benefits. Online trading offers risks and rewards. **Important advantages of online trading are as noted below.**

- (1) Online trading is **fully automated trading process**. It is faster than mutual trading. There is automatic credit in Demat account.
- (2) It is **broker independent, informed decision making** and access to advanced trading tools.
- (3) In online trading, **traders have direct control over their trading portfolio**, ability to trade multiple product.
- (4) Binary trading is faster trade execution which is crucial in day trading and swing trading, discount commission rates.
- (5) **There is choice of routing orders to different market maker or specialist**, low requirements, high leverage offered by brokers to trading on margin, easy to open account and to manage account, and no geographical limits.
- (6) **Online trading favours active traders, who want to make quick and frequent traders**, who demand lesser commission rates and who trade in bulk on leverage.
- (7) **Easier and convenient way to own shares.**
- (8) **Immediate transfer of securities** and less transaction cost.
- (9) Less paper work for transfer of shares and automatic credit in demat accounts
- (10) **Miscellaneous advantages:**
 - (a) Fully transparent
 - (b) No errors.
 - (c) Saving of time and cost.
 - (d) Easy accessibility.
 - (e) Wide market available.

- (f) Zero Stamp duty on transfer of shares.
- (g) Lesser expenditure on new issue.
- (h) Any number of shares can be sold. Even one share can be sold.

DISADVANTAGES OF ONLINE TRADING:

- (1) First time investors may get sucked into all the technology** and may temporarily forget that they are actually using real money.
- (2) There is no mentoring relationship between a professional broker and an online trading account holder**, leaving the investor out on his/her own to make choices.
- (3) Novices (newcomer/beginners) not familiar with the ins and outs of the brokerage software can make costly mistakes.**
- (4) Time is a possibility/probability of trading loss** in case of any mechanical or platforms malfunction in the online trading system.
- (5) Online trading may prove unsafe if it is done broadly on margin.**
- (6) The fee schedule of online brokers varies** and this may put additional burden on investors.
- (7) And online trader is exclusively responsible for every decision made.** Quite often, there is hardly any help available to him in the process.
- (8) Users who are not familiar with the ins and outs of the basics of brokerage software can make mistakes which can prove to be a costly affair.**

There are advantages and disadvantages associated with online trading. Though there are certain disadvantages with online trading, it is possible to avoid them if one proceeds with necessary training and also with proper care and caution. It is certainly a useful tool in operating your business as an investor or

BOMBAY STOCK EXCHANGE ONLINE TRADING (BOLT):

Bombay stock exchange (BSE) is one progressive and most updated stock exchange operating in India. BSE has always been on par with the international standards. It is the first exchange in India and second in the world to obtain an ISO certification. BSE has a wide range of obtain an ISO 9001:2000 India and facilitate smooth transactions in securities to empower investor and facilitate smooth transactions in securities. BSE has introduced online trading system in 1995 and its BOLT system is efficient, orderly and popular throughout the country. The BSE SENSEX (SENSITIVE Index) also called the BSE 30, is widely used market index in India and Asia.

The Bombay stock exchange (BSE) switched over from the open outcry trading system to fully automated computerized mode of trading known as the BSE online trading (BOLT) system in 1995. This system, was commissioned on 14 March 1995. In May 1995, it was introduced for all the securities listed on the BSE.

BSE started with the screen based trading and in September 1997, switched over to direct online access facility. In the initial stages, BOLT was available to brokers of the BSE based in Mumbai through leased line. At present, BOLT is available all over the country and even abroad.

BSE is the world's number one exchange in terms of the number of listed companies and world's 5th in transaction numbers. An investor can choose from more than 4,700 listed companies for investment purpose. It has a nation-wide reach with a presence of more than 417 cities and towns in India.

The BSE online trading (BOLT) facilitates online screen based trading in securities on a large scale. BOLT currently operating is 25,000 work stations located over 359 cities in India. In February 2001, BSE introduced the world's first centralized exchange-based internet trading

system, BSEWEBX.com. This initiative of BSE enables investors anywhere in the world to trade on the BSE platform.

The BSE gave up an 'outcry' system of trading and introduced new/modern and completely electronic trading system. BSE'S electronic trading system known as BOLT (BSE online trading)

PROVIDES THE FOLLOWING FACILITIES/ ADVANTAGES:

- (1) Trading system displays, on a continuous basis, scrip and market-related information required by traders. (information includes best five bids and offers, last traded quantity and price, total buy and sell depth (irrespective of rates), open, high, low and value, and index movement. Other company-related information is also displayed.)
- (2) As soon as an order is matched, the confirmation of the trade is generated online.
- (3) The order matching logic is based on best price and time priority.
- (4) The BSE online trading platform has a capacity of conducting 2 million trades per day.
- (5) The latest state-of-the-art technology infrastructure with trader workstations located in more than 400 cities all over the country.
- (6) Trading on the BOLT system is conducted from Monday to Friday between 9:30a.m and 3:30a.m.
- (7) Trading can also be conducted through the BSE internet trading system www.bsewebx.com.
- (8) BSE aims to provide trading anywhere and at any time. With this endeavor in mind, the exchange continuously upgrades the hardware, software and networking system so as to enable it to enhance the quality and standards of service to its members and other market intermediaries, Members and initiates timely actions to discourage or stop malpractices by the members.

Online Surveillance System has the following major objectives:

- (1) To monitor price and volume movement as well as to detect potential market abuses.
- (2) To take timely actions to manage default risk.
- (3) To maintain integrity and fairness in trading.
- (4) To contain risk relating to members and listed securities.
- (5) To curb abnormal price behavior.
- (6) To suspend trading in securities to prevent market manipulation
- (7) To check/control the ability of market participants to influence the price of any security in the absence of meaningful information.

BSE's Surveillance System is smooth and easy to use. Brokers would be able to monitor fraudulent trade practices such as circular trading, pump and dump, wash sales, front running, order book spoofing etc. Usual alerts on order trade, Script-wise gainer and losers would also be available. This system intensely abnormal trends in stock price moments and payment settlements related default. This system has improved the integrity of the market, increases safety regulations and built investor confidence in the working of India's premier stock exchange.

(C) LISTING OF SECURITIES

MEANING OF LISTING OF SECURITIES: (WHAT IS LISTING OF SHARES/SECURITIES)

Listing of securities is one useful service offered by stock exchange to investors and borrowing companies. A stock exchange selects certain companies for the purpose of transactions in securities. The company whose securities are included in the official list is called

a **listed company**. Securities become eligible for trading on the stock exchange only through listing. **Listing is the basis of stock exchange transaction.**

OBJECTIVES OF LISTING OF SECURITIES:

- (1) To secure official permission** from the exchange **for trading purpose.**
- (2) To provide ready marketability and liquidity to securities.**
- (3) To give wide publicity to the company** as the stock exchange quotations relate to listed securities.
- (4) To provide conveniences to investor's** i.e. easy selling, bank loan, etc.
- (5) To provide free negotiability to stocks.**
- (6) To create goodwill and public confidence** on the securities listed.
- (7) To provide mechanism for effective supervision and control on trading in securities.**
- (8) To protect investors and provide wider market to companies.**

The objectives noted above justify the need of listing of securities.

LISTING PROCEDURE/FORMALITIES:

Listing procedure is lengthy and time consuming. However, a **company interested in the listing has to complete all necessary procedural formalities.** This is necessary in order to include company's securities in the official list of one or more recognized stock exchanges for the purpose of trading.

To begin with, the company interested in listing its shares has to submit a **written application to the stock exchange authorities** for listing purpose. The application needs to be submitted in the **prescribed form**. Search application for delisting must be supported **by the following documents and details (Documents required for listing):**

- (1) Certified copies of M/M,A/A, Prospectus, or Statement in lieu of Prospectus.** Underwriting agreements, agreement with vendors and promoters etc.
- (2) A brief history of companies since its incorporation,** giving details of its activities.
- (3) Particulars regarding its capital structure.**
- (4) Particulars of shares and debentures for which permission to deal is applied for and their issue.**
- (5) Specimen copies of shares and debenture certificate, letter of call, allotment, acceptance and renunciation.**
- (6) Copies of balance sheets and audited accounts for the last 5 years.**
- (7) Copies of offers for sale and circulars on advertisements of offering any securities for subscription/sale during last 5 years.**
- (8) Certified copies of agreements with managerial personnel.**
- (9) A statement showing dividend or interest in arrears, if any.**
- (10) Particulars of dividend and bonuses paid during the last 10 years.**
- (11) Certified copies of agreements if any with the Industrial Finance Corporation, ICICI etc.**
- (12) Particulars of shares forfeited.**
- (13) A statement showing the distribution of shares along with a list of highest 10 holders of each class or kind of securities of the company stating the number of securities held by them.**
- (14) Listing agreement with the necessary initial and annual listing fee.**

There are in fact, certain conditions which must be fulfilled prior to submission of application for listing purpose. Such conditions constitute **criteria for listing** and company must satisfy its criteria. This may be treated as **eligibility rules** for listing purpose. The exchange authority will verify actual position of the company before going ahead with the listing formalities.

The conditions for Listing (Listing Criteria/Eligibility/Rules/Listing Requirements) are as noted below:

- (1) The company should be of a fair size having board based capital structure and public interest in its securities.
- (2) There must be at least 10 public shareholders for every Rs. 1 lakh share of fresh issue of capital and it is 20 in the case of subsequent issue of shares. This criterion is different for investment companies.
- (3) At least 60% of each class of securities issued must be offered to public for subscription and minimum issued capital should be Rs.3 crores.
- (4) The minimum public offer for subscription must be at least 25% of each issue and it must be offered through advertisement in newspapers at least for a period of 2 days.
- (5) A company having more than Rs. 5 crore paid up capital must list its securities on more than one stock exchange. Listing on the regional stock exchange is compulsory.
- (6) The company must pay interest on the axis application money received at the rates ranging between 4% and 15 % depending on the delay beyond 10 weeks from the date of closure of subscription list.
- (7) The Articles of Association of the company must provide for the following:
 - (a) **A common** form of transfers shall be used.
 - (b) Fully paid shares will be completely free from lien.
 - (c) Partly paid up shares will be subject to lien only to the extent of call money due at a fixed time.
 - (d) Calls in advance carry only interest and not dividend rights.
 - (e) Claim dividends shall not be forfeited before the claim becomes time barred.
 - (f) The right to call of shares shall be given only after the necessary sanction by General Body Meeting.
 - (g) Transfer of shares shall be registered within 30 days of deposit of request and the balance certificate shall be issued within the same period.
- (8) The existing companies must adhere to the ceiling in expenditure of public issue.
- (9) A certificate to the effect that shares from promoter's quota are not sold or transferred for a period of 3 years must be submitted.

The stock exchange authority's will examine the application (for listing) carefully and will call upon the company to execute a **listing agreement** provided the exchange authority's are satisfied with all the particulars and documents. This listing agreement contains a list of conditions and obligations which the company should strictly observed, failing which the **stock exchange may suspend or withdraw the listing facility**. The listing agreement contain 39 clauses with a number of sub clauses. These clauses related to normal functioning of a company. It may be noted that strict conditions for listing and obligations to be honored by the company after listing have been laid down for protecting the interest of investors and to ensure that application for large number of shares are not given undue preference at the cost of others.

In order to promote and raise the standard of Corporate Governance, the SEBI has issued new "Guidelines on Corporate Governance" (on 21st Feb,2000) and **made it obligatory for a listed company** and a company proposing to get its shares enlisted in the stock exchange to comply with the guidelines through the route of the Listing Agreement. A new clause inserted in the listing agreement for this purpose as **Clause 49**. As a result, corporate governance has improved significantly in Companies. This has boosted the confidence of domestic as well as International investor in Indian securities market.

STEPS IN THE PROCEDURE OF LISTING OF SHARES/SECURITIES:

(1) Submission of application in the prescribed form: A company has to submit suitable application to the stock exchange authorities for the purpose of listing its securities. In addition, copies of M/A, A/A, prospectus, director's report, annual account etc. are required to be submitted for listing purpose. (List of documents to be submitted along with the application for listing are already noted previously). There are certain conditions which must be fulfilled by a company for listing. This is called "**Criteria for Listing**" (Noted previously). Concerned company has to verify its eligibility for listing before submitting application for listing purpose.

(2) Consideration of listing application by Stock Exchange: The stock exchange authorities make scrutiny of documents and information submitted and take decision on listing of securities of Applicant Company. The decision is usually taken by the exchange authorities and is communicated within week or two.

(3) Execution of listing agreement: If the application of the company for listing is approved, the company is informed accordingly by the stock exchange authorities. This means the listing facility is offered to the company. In addition, the company will be requested to **execute a listing agreement**. This agreement contains a list of conditions and obligations which the company must honour strictly, failing which concerned stock exchange may suspend/ withdrawal the listing facility.

(4) Honouring the conditions and obligations by the listed company: The Company whose securities are listed to honour the obligations and restrictions as noted in the listing agreement. For example, it has to intimate the date of the Board meeting at which the rate of dividend will be decided (for recommendation to shareholders for recommendation to shareholders). In addition a listed company has to submit to stock exchange, copies of its annual audited accounts after they are issued.

(5) Filing of appeal by the company, if necessary: If the stock exchange refuses to list the securities of a company, the company is given a right of appeal and it can file an appeal against such a decision with the central government under Section 22A of the Securities Contracts (Regulation) Act, 1956 within 15 days from the date of refusal. It may be noted that secretarial duties relating to listing of company's shares is directly related to the steps in listing procedure (noted above). Company secretary has to see that every step in the procedure is completed quickly and in a satisfactory manner.

ADVANTAGES/ BENEFITS OF LISTING OF SECURITIES:**A. ADVANTAGES OF LISTING TO LISTED COMPANIES:**

- (1) Wide market:** listing widens the market for securities. It also provides a regular and continuous market to corporate securities.
- (2) Easy marketability:** it creates easy market ability to securities.
- (3) Easy publicity:** It gives wide publicity to the company through stock exchange quotations, weekly reports and publications.
- (4) Creates goodwill:** Listing creates goodwill and public confidence on the listed companies. A company gets higher status, market reputation and popularity due to listing.
- (5) Quick marketing:** Companies can collect capital easily through prospectus due to listing its Securities.

B. ADVANTAGES/ BENEFITS OF LISTING TO INVESTORS:

- (1) **Safety:** Investors are in a position to invest their money with reasonable risk due to listing facility.
- (2) **Useful as collateral security:** Listing brings a high Collateral value to securities. Investors get easy bank loan against listed securities.
- (3) **Protection to investors:** The investor's interest is protected because of listing as the stock exchange authorities keep a close watch on the companies whose securities are listed.
- (4) **Ready marketability:** Listing provides ready marketability and liquidity to securities are listed.
- (5) **Guidance to investors:** Listing gives general guidance to the investors while selecting securities for investment.

(C) ADVANTAGES OF LISTING TO THE ECONOMY CORPORATE SECTOR:

- (1) **Control on listed companies:** Listing facilitates supervision and control of stock exchange authority's on the listed companies.
- (2) **Activates stock exchanges:** Listing of large number of securities make stock exchanges active throughout the year.
- (3) **Creates confidence among investors:** Listing creates a sense of confidence among the investors and facilitates the flow of funds.
- (4) **Rises the rate of capital formation:** Listing rise is the rate of capital formation and this lead to Rapid industrial growth.
- (5) **Facilitates inflow of foreign funds:** Listing facilitates inflow of foreign capital as foreign institutional investor invest in listed securities only.

DISADVANTAGES /LIMITATIONS OF LISTING OF SECURITIES:

- (1) **No guarantee about safety to investors:** Listing does not give hundred percent guarantee to the investor that the listed company is financially sound or that there is absolutely no risk in purchasing the listed securities. Listing does not provide guarantee about safety of investment in corporate sector.
- (2) **Listed companies suffer when share prices go down:** The Goodwill of listed companies go down when their share are quoted at low prices due to external factors on which they have no control.
- (3) **Listing is not obligatory:** Listing is not compulsory in India. However, government can compel a company to list its securities as per the provision of Securities Contracts (Regulation) Act, 1956.
- (4) **Limited supervision on listed companies:** Supervision enlisted by this is limited and is not adequate to give protection to investors.
- (5) **Disclosure of information by listed companies:** Listed companies have to supply varied information to exchange authority for scrutiny. This may affect companies adversely.
- (6) **Lengthy procedure:** Listing needs a lengthy procedure and a number of formalities are required to be completed. This arises the botheration of listed companies.
- (7) **Listing is a mere formality:** Listing acts only as a formality which gives recognition and free to cost publicity to the company but limited safety and protection to investors.
- (8) **Encourages undue interest in security prices:** Listing encourages the management to take undue interest in security prices.

(9) Encourages large-scale purchases by interested parties: Due to listing, it is easy for the interested parties to buy a substantial interest in a company with a view to controlling its management.

(10) Not useful for checking malpractices: Listing imposes certain restrictions on listed companies. However, it fails to check the malpractices and artificial price rise of securities.

(11) Not useful for control of speculation: Listing has no positive effect on undesirable and speculative activities of brokers. Excessive speculation takes place in the case of listed securities. Speculative activities in company's securities are encouraged due to the listing.

(12) Listed companies may collect huge capital but may not use it properly: Some listed companies collect huge capital from investors because of their market Goodwill. However, the funds collected may not be utilised properly. This brings down the rate of profitability of the company and the shareholders suffer. Ideal financial resources with companies are also harmful to the national economy.

Disadvantages of listing are limited and are not of serious nature as compared to the advantages available. **Listing practice is universal and proved useful to companies and investors.** There should be no opposition to the concept of listing of securities. In fact, listing need to be made more beneficial to investors and the national economy.

A NOTE ON SCRIPS:

The term scrip is used in relation to shares, payment to employees, in retail trading and so on. The meaning of the term scrip and its use in India is as explained below:

What is a scrip?

A scrip is primarily known as a **document acknowledging debt**. Companies short on cash often pay scrip dividends instead of cash dividends. A scrip is also a temporary document representing fractional share resulting from a split or spin-off. Scrip can also indicate currency issued by a private corporation.

Scrip is a certificate that can be exchanged for a fractional share of stock. Scrip is distributed as the result of a spin-off, a stock dividend, or a stock split in which the stockholder would be entitled to a fractional share of stock. For example, the owner of a single share would receive scrip for one half a share in the event the issuer declared a three-for-two stock-split.

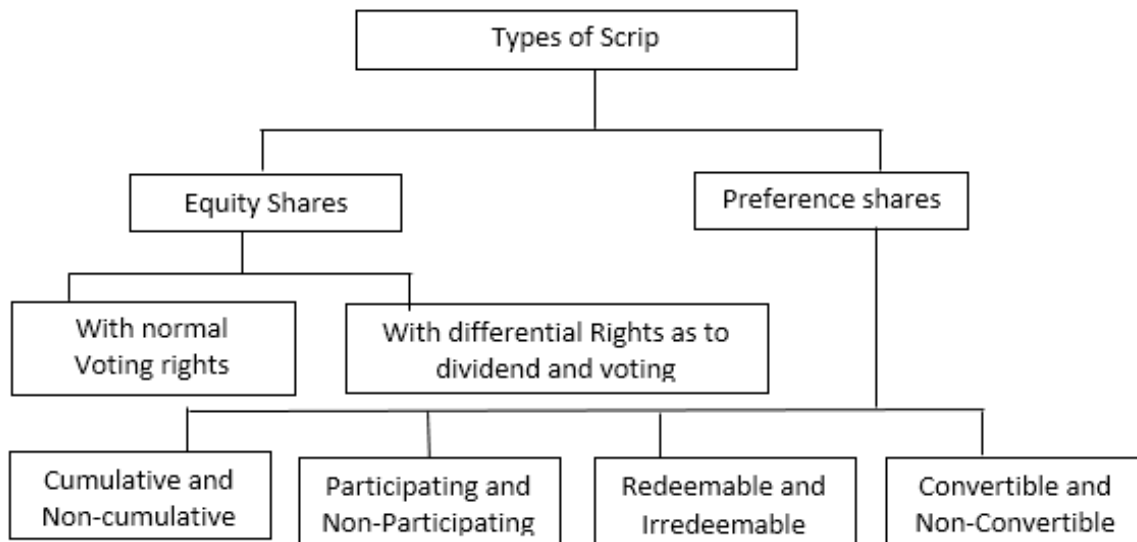
TYPES OF SCRIP:

Script may take on many forms. In certain companies, scrip may take on the form of rewards points or coupons. Other forms for scrip include land scrip; token coins, such as those used on subways; vouchers; IOUs; and token and tickets used at an arcade or game centre. Even points on certain credit cards may be considered scrip.

Scrip (something in India called chit) is a term for any substitute for legal tender and is often a form of credit. Scripts have been created for payment of employees under truck system, and for use in local commerce at times when regular currency was unavailable.

Scrip have gained historical importance and become a subject of study in numismatics due to their wide variety and recurring use. Scrip behaves similarly to a currency and as such can be used to study monetary economics.

In India, the term scrip is used in relation to a **certificate of shares in a company**. In simple words, scrips of companies are share certificates or securities issued. Different kinds of shares with varying rights as to dividends and voting, etc. are issued by companies. These are called scrips of companies i.e. different types of shares issued. Normally, companies issue two types of shares are again sub-divided into different types as shown in the chart given below:



The types of scrip's (noted above) have their special features, merits and suitability from the point of view of investors. They are free to select any scrip of any company for the purpose of short term or long term investment in the corporate sector. Equity shares with normal voting rights are popular among large majority of investor-individual and institutional.

Objective Questions with Answers

- (1) Select most appropriate answer from the option given below:**
- (a)** Dematerialization means transfer of ___ shares into ___ form.
(i) Physical –electronic **(ii)** paper-book **(iii)** physical-invisible **(iv)** unreliable.
- (b)** ___ is one participation of dematerialization.
(i) Bank **(ii)** stock exchange **(iii)** SEBI **(iv)** Beneficial owner
- (c)** In Depository system the complaints of investors ____
(i) increases **(ii)** reduces **(iii)** stops **(iv)** become complicated
- (d)** Depositories Act was passed in ____
(i) 1956 **(ii)** 1985 **(iii)** 1996 **(iv)** 2012
- (e)** Every DP has an _____ for easy identification.
(i) PAN Number **(ii)** Identity Number **(iii)** Identification Mark **(iv)** License Number
- (f)** Online trading is ___ and ___
(i) lengthy-time consuming **(ii)** easy-quick **(iii)** costly-risky **(iv)** None of those.
- (g)** BASE provides online trading system know as ____
(i) NEAT **(ii)** BOLT **(iii)** BOSS **(iv)** Online
- (h)** The chances of fraud are ___ in online trading.
(i) less **(ii)** more **(iii)** unlimited **(iv)** absent
- (i)** Online and offline trading procedure are ____
(i) opposite **(ii)** identical **(iii)** different **(iv)** normal.
- (j)** Online trading is ___ automated trading process.
(i) fully **(ii)** partly **(iii)** not **(iv)** None of the above
- (k)** Advantages of online trading system are ___ than those of traditional method.
(i) more **(ii)** less **(iii)** limited **(iv)** unlimited
- (l)** Online Surveillance System is called ____
(i) BOSS **(ii)** NO BOSS **(iii)** BOLT **(iv)** BALL
- (m)** Listing is ___ in India

- (i) compulsory (ii) not compulsory (iii) optional (iv) not necessary
- (n) L & T is a _____ company
 (i) listed (ii) non listed (iii) bogus (iv) semi-listed
- (o) Listing provides _____ to securities.
 (i) large market (ii) liquidity (iii) stability (iv) flexibility
- (p) Listing _____ inflow of foreign funds.
 (i) encourages (ii) discourages (iii) stops (iv) none of the above.
- (Ans: (a- i); (b-iv); (c-ii);(d-iii);(e-ii);(f-ii);(g-ii);(h-i); (i-iii);(j-i);(k-i);(l-i);(m-ii);(n-i); (o-ii);(p-i)

(2) State whether the following statements are True or False :

- (a) Depositories acts as the custodian of securities of investors.
 (b) Depository system leads to scripless trading system.
 (c) Dealing in demat shares is timing consuming.
 (d) The shares in Depositories are fungible.
 (e) Beneficial owner means the investors who has Demat shares on his name.
 (f) Paper work for transfer of shares is eliminated in demat shares.
 (g) Online trading system needs less time for completing transaction.
 (h) Online trading is fully transparent.
 (i) BOLT system started functioning in 1995.
 (j) BASE is the second exchange in Asia which started online trading system in 1995.
 (k) Company secretary is not involved in the listing of company's shares.
 (l) Listing restrict the inflow of foreign funds.
 (m) Application for listing securities is submitted to SEBI for approval..
 (n) Listing procedure is simple and quick.
 (o) Listing agreement is between stock exchange and SEBI.
 (p) Listing provides wide market to listed securities.
- (Ans: (a- True); (b- True); (c- False); (d- True);(e- True);(f- True);(g- True);(h-True);(i-True); (j- False);(k- False); (m- False) ; (n- False); (o- False); (p- True).

Question Bank for Self-Practice

- (1) What is Demat of shares? Briefly state advantages of demat of shares.
- (2) Justify the need of dematerialisation of securities.
- (3) Explain the importance of dematerialisation of securities.
- (4) Explain briefly the procedure of dematerialisation of shares.
- (5) Write briefly on the participants of dematerialisation.
- (6) Explain secretarial duties relating to dematerialisation.
- (7) What is depository system? Explain its benefits to investors.
- (8) Explain fully the benefits of dematerialization.
- (9) Explain the steps involved in dematerialisation of shares.
- (10) What is online trading ? Explain its advantages.
- (11) Is online training better than traditional trading of shares?
- (12) Explain the procedure of online trading with suitable examples.
- (13) What is BOLT ? Explain the facilities offered by BOLT.
- (14) Explain the advantages and disadvantages of online trading.
- (15) Explain the position of online trading of Bombay Stock Exchange.
- (16) "Online trading is becoming popular among Indian investors", Explain.

- (17) Explain the concept of online trading and state the disadvantages and danger of online trading.
- (18) Explain the meaning and features of online trading.
- (19) What is listing of securities? Explain its advantages.
- (20) Explain briefly the procedure of listing of securities.
- (21) Explain secretary duties relating to listing of securities.
- (22) Explain the benefits of listing to investors and companies.
- (23) Explain the secretary and procedure for listing of securities.
- (24) Listing may be optional in India but it certainly beneficial to investors and companies. Explain.
- (25) List the documents required for listing of securities.
- (26) **Write short note on:**
- (a) Dematerialisation of shares.
 - (b) Online trading of shares.
 - (c) Listing of securities.
 - (d) Need for dematerialisation.
 - (e) Participants in dematerialisation.
 - (f) Secretarial duties in dematerialisation.
 - (g) BOLT.
 - (h) Advantage of online trading.
 - (i) Listing procedure.
 - (j) Secretarial duties in listing of securities.
 - (k) BOSS.
 - (l) Clause 49 of Listing Agreement.
 - (m) Listing Criteria.

HERAMB

4. REPORTS AND WINDING UP

(A) COMPANY REPORTS

MEANING OF COMPANY REPORTS:

There are two types of reports in company secretarial practice. **These are: (a) Statutory Reports, (b) Non-Statutory Reports.**

(a) Statutory reports are compulsory reports as per the provisions in the Companies Act and must be prepared and sent to members for their information. Such reports include: **(a)** Auditor's Report, **(b)** Directors' Report on the working of the company, and **(c)** Reports by inspector appointed to investigate the company's affairs.

(b) Non-Statutory reports are not required by law. Such reports are not compulsory but are useful for information and follow-up actions. Such reports include the following: (a) Special secretarial reports on specific issues given to company secretary for investigation and reporting, (b) Reports of committees of directors (e.g. Report of allotment committee or report of finance committee, etc.) and (c) Reports of directors to shareholders on specific proposal to be submitted to the general meeting.

A NOTE ON DIRECTORS' REPORT/ANNUAL REPORT:

Introduction: Directors' report (also called Annual Report) is one important statutory report of a company. Every year, company directors prepare annual report for the information of members and others. This report gives details of the progress of the company in the near future. This report is informative to shareholders, creditors and all others connected with the company. Wide publicity is given to annual report for the information of general public. Directors' Report is prepared before the AGM. It is approved by the Board of Directors in the Board meeting prior to annual general meeting. Thereafter, Directors' report is printed and sent to all members along with the notice of AGM. In the AGM, this report is placed before the members for consideration discussion and approval. Members express their opinions, suggestions, views, etc. and also approve this report in the AGM.

Meaning and Features of Directors' Report:

The purpose of annual general meeting is to give information to the members regarding the progress and problems of the company. For this, company directors prepare one report called annual Report or Directors' report. The secretary drafts broad outline of the annual report in consultation with the Chairman and the Managing Director. This report is a comprehensive document which gives details of progress made by the company during the financial year and the prospects of the company in the near future.

The draught report is first placed before the Board of Directors for consideration and approval in the board meeting prior to Annual General Meeting. The board approves this report with certain modifications, if suggested by Directors in the Board meeting. Thereafter, the secretary has to arrange for printing of this annual report as this report needs to be sent to members along with the notice of annual general meeting. The purpose is to enable the members to read the annual report and raise their doubt, etc. While considering this report in annual general meeting. During the AGM, the secretary has to read the Annual/Director's report if directed by Chairman. Thereafter, the annual report is discussed and approved by members in the AGM. For the approval of annual report, **ordinary resolution** in the AGM is adequate.

Objectives and Contents of Director's Report:

The basic/main objective of the Directors' Report is to provide an authentic, meaningful and useful information about the progress of the company to the shareholders and others i.e. employees, creditors, society and business community. In this report, the details of state of Company's affairs and the result of year's working along with the future prospects are placed before the shareholders for consideration, discussion, and approval. As a general rule, Directors' Report must deal with the following matters:

- (a) The state of Company's business and financial affairs;
- (b) The amounts, if any, which the Board proposes to carry to any reserves in the Balance Sheet.
- (c) The amount, if any, which the Board recommends should be paid by way of dividend to shareholders.
- (d) Material changes and commitments, if any, affecting the financial position of the company.
- (e) The conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed.

The details given above suggest the wide scope or coverage of the Directors' report of a company.

The Directors' report shall also include a "Directors' Responsibility statement giving details of certain matters. This structural change is certainly good and will make company directors accountable and ensure **good corporate governance**.

In the directors' report, the directors are bound to give the fullest information and explanation on every reservation, qualification or adverse remark contained in the Auditor's report. In the annual report, the Board of Directors shall also include a statement showing the name of every employee of the company who was in receipt of remuneration of one lakh rupees or more per month or twelve lakh rupees or more per annum inclusive of the value of perquisites during the financial year. It also contains information on market conditions, new product plans of the company, R and D activities and financial information about the company.

The annual report of Directors must be signed by the chairman of the Board, if authorizes to do so or it shall be signed by such number of directors as are required to sign the Balance Sheet and the Profit and Loss Account of the company. In case of failure to comply with the above noted provisions, every director of the company would be liable to for punishment as per legal provisions.

A NOTE ON AUDITOR'S REPORT:**Meaning of Auditor's Report:**

As per Companies Act, 2013 audit of company's accounts is mandatory for all types of companies. The regular auditor of the company makes such audit after the completion of financial year and submits his report called **auditor's report** to the shareholders in their annual general meeting. The audit report should state whether the accounts are kept in accordance with the provisions of the Act and whether they give a true and fair view of the state of affairs of the company.

This audit report is presented, discussed and approved by the members in the AGM. Adoption of Auditor's report is an ordinary/routine business in the AGM. Auditor's report is approved by **ordinary resolution**.

Contents of Auditor's Report:

Auditor's report is one statutory report of the company. It speaks about the accounts and financial position of a company. The person appointed as an auditor of the company shall sign

the Auditor's report. The auditor is required to make a report (known as **Auditor's Report**) to the members of the company: (a) On the accounts examined by him, (b) on every balance sheet and profit and loss account, and (c) on every other document which is annexed to the balance sheet or profit and loss account, which are laid before the company in general meeting during the tenure of his office.

The company auditor in his **Audit Report** must, inter alia, expressly state:

- (1) Whether in his opinion and to the best of his information and according to the explanations given to him, the said accounts give a "true and fair view" of the company's state of affairs;
- (2) Whether he has obtained all the information and explanations, which to the best of his knowledge and belief were necessary for the purposes of his Audit;
- (3) Whether proper books of account as required by law have been maintained by the company;
- (4) Whether the company's balance sheet and profit and loss account were in agreement with the books of account;
- (5) Whether in his opinion the Profit and Loss account and Balance sheet complied with the "accounting standards" prescribed by the Central Government; and
- (6) Whether any director is disqualified from being appointed as director under specific section.
- (7) Any qualification, reservation, or adverse remark relating to maintenance of accounts and other connected matters. [Section 143 (3)]

SECRETARIAL DUTIES RELATING TO DIVIDEND PAYMENT MEANING AND FEATURES OF DIVIDEND:

Dividend is the reward/return given to the shareholders for their investment in the company. Dividend is declared and paid only out of divisible profits of the company. The rate of dividend depends on the Profit made by the company within one year. If in a particular year, profit is not earned by the company, dividend

Will not be declared. Similarly, if adequate profit is not available for distribution, no dividend will be paid. This means the dividend payment and the rate of dividend are directly linked with the profit-making capacity of the company. The Central Government may, under special circumstances, authorise a company to pay dividend is implied and does not need authority/sanction either in the Memorandum or in the Articles.

The dividend is recommended by the Board of Directors and the same is approved by the shareholders in their AGM. The dividend declared by the members in the AGM **cannot exceed the rate recommended by the Directors.** It may also be noted that where a company's shares are listed on the Stock Exchange, in terms of the listing agreement with the Exchange, the company is required to notify the Exchange of the date of the Board meeting at which the recommendation of the dividend is being considered and further to notify the Exchange immediately after the Board meeting is held of the exact rate of dividend recommended. Dividend on preference shares is fixed by the Articles of Association and is paid accordingly.

No dividends can be declared unless: (1) there are adequate profits, (2) the distribution of the same as dividend is recommended by the Board of Directors, and (3) the shareholders (general body) approve the recommendation of the Board. These are the conditions under which dividend need not to be paid. It may be noted that dividend on preference shares is fixed and is paid accordingly.

Resolution for Declaration of Dividend: "Resolved: that a dividend at a rate of 20% be and is hereby declared on the equity shares of the company for the year ended 31st March 2014 to

those shareholders whose name appeared on the Register of Members on 28th February 2013". (Ordinary Resolution at A of the company).

STATUTORY PROVISIONS RELATING TO DIVIDEND PAYMENT:

Section 123 of Companies Act, 2013 deals with the Declaration of rate of dividend. According to this Section:

- (1) No dividend shall be declared or paid by a company for the financial year except:
 - (a) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provision of subsection (2), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provision of that subsection and remaining and distributed or out of both; or
 - (b) Out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by the government.
- (2) The Board of Directors of a company made declared **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 declared.
- (3) The amount of dividend including interim dividend shall be deposited in a scheduled bank in a separate account within 5 days from the date of declaration of such dividend.
- (4) No dividend shall be paid by company in respect of any share there in except to the registered shareholder of such share or to his order or to his banker and shall not be payable except in cash.
- (5) A company which fails to comply with the provisions of section 73 and 74 (these Section relate to prohibition on Acceptance of deposit from public) shall not, so long as such failure continuous, declared any dividend on its equity shares.
- (6) **Punishment for failure to distribute dividend:** Where a dividend has been declared by companies but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowing their path to the default, be punishable with imprisonment which may extend to 2 years and with fine which shall not be less than 1000 rupees for every day during which such default continuous.
- (7) Once a dividend is declared, it becomes a *statutory debt* owned by the company to its shareholders and such dividend must be paid *to them within a period of 30 days*.
- (8) If a company declares or pays dividend out of reserves, it can do so only from its free Reserves.
- (9) Bonus shares cannot be issued in lieu of dividend.
- (10) The term dividend includes any interim dividend.

SECRETARY DUTIES REGARDING PAYMENT OF DIVIDEND:

The company secretary has to take following steps regarding payment of dividend to shareholders. His secretary duties relate to the following steps:

- (1) **Arrangement for printing of dividend warrants:** Board of Director decides the rate of dividend in their meeting prior to AGM. Accordingly, the rate is approved in the AGM. This create proper background for starting secretary duties on dividend payment. Before the AGM, the secretary has to make arrangements for printing of dividend warrants. Dividend warrant, for most practical purposes, is nearly a special form of cheque. The Register of Members has to make update for the purpose of dividend payment. He also prepares and keep ready the dividend list

so that the dividend warrant can be sent immediately after the Annual General Meeting as per the rate decided in the meeting.

(2) Closing of register of transfers: The register of transfers is kept closed before the AGM. However, some pending transfer (prior to the closure of transfer register) may be available. The secretary will arrange to post such transfers in the proper books. The secretary will arrange to post such transfers in the proper books the shareholders' account will then be balanced in the Register of Members.

(3) Preparation of dividend list: The secretary will then finalize the "**Dividend List**" for dividend payment. This list shows names and addresses of shareholders, their shareholdings, growth dividend due, tax to be deducted, if any and the net dividend payable'.

(4) Dispatch of dividend notice and dividend warrant: Thereafter, the secretary has to prepare a "**Dividend Notice and a Warrant**". He has to dispatch the dividend warrant to the registered address of the shareholders soon after the declaration of dividend in the Annual General Meeting. The upper portion of dividend notice act as an intimation of dividend paid and Tax deducted at source, etc. The lower part is in the form of preprinted Cheque. It is to be signed and presented to the bank by the shareholder for dividend. The upper portion is useful for income tax purpose. The dividend warrant are issued under the signatures of two directors or of the secretary, if authorized to sign. Duplicate dividend warrant is also issued if the original is lost or misplaced. After dividend payment, the secretary has to transfer and paid and unclaimed dividend to special account called "Unpaid Dividend Account" within seven days after expiry of the period of 30 days of declaration of final dividend.

As a safety measure to prevent fraudulent encashment of dividend warrants, **SEBI** has made it **compulsory** to print it with bank details such as account number of the payee, branch and branch's name and address of the members.

(5) Arrangement for honouring dividend warrant: In order to Honour the dividend warrant issued, the secretary has to make arrangements with the company's bankers by opening a special account and necessary funds required for the

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(9) Arrangement for honouring dividend warrant: In order to Honour the dividend warrant issued, the secretary has to make arrangements with the company's bankers by opening a special account and necessary funds required for the payment of dividend will have to be transferred to that account. The bank will pay dividend out to this account against dividend warrant issued and shall prepare separate Passbook for this account.

(6) Arrangement of dividend payment against dividend mandates: When dividend mandates have been received, the secretary will have to classify all such mandates according to the bank involved. A consolidated cheque (bank wise) will then be prepared and sent along with a statement of the amount to be credited to various accounts of respective shareholders.

(7) Press notice about dividend declaration: Along with the dispatch of dividend warrants, the secretary will also send a Press notice of dividend declaration for the information of all share warrant holders as they are not given dividend notice as well as dividend warrants. The dividend notice in forms the share warrant holders to collect their dividend by presenting the dividend coupon before a specific date.

It may be noted that under Demat, dividend is directly credited to the account of the customer/shareholders and only intimation is given to him. He can verify the dividend amount received by referring to his passbook entries. This new system gives lot of convenience in dividend payment to companies and shareholders. Paperwork is also reduced considerably and quick dividend payment is made to shareholders

SECRETARIAL DUTIES RELATING TO INTEREST PAYMENT:

(1) To issue notification on interest payment to debenture holders: here, the secretary has to issue a press notification informing debenture holders about interest payment due with certain details such as: (a) Date of interest payment, (b) Manner of payment, and (c) Closure of Transfer Register for arrangement about interest payment.

(2) To prepare a list of debenture holders with details for interest payment: Here, the company secretary has to prepare a list of debenture holders to whom interest is payable. This information needs to be given to company's banker for crediting interest amount directly to the account of debenture holders. The list of debenture holders should include the following details:

- (a)** Name of the debenture-holder.
- (b)** Number of debentures held with distinctive number.
- (c)** Interest amount due and payable.
- (d)** TDS, as per Income Tax provisions.
- (e)** Account Number and Name of the Bank and Branch in which debenture holder has his bank account.

Detailed statement on list of debenture holders is useful for office record as well as for requesting bank to pay interest on due date.

(3) To inform bank about interest payment to debenture holders: Here, the secretary informs the bank about interest payment due and the date on which it is to be credited to the accounts of debenture holders. He will send the list of debenture holders already prepared to the bank for its convenience. The bank will be given other instructions about interest payment.

(4) To open a separate bank account for interest payment on debentures: Here, company secretary has to open a separate bank account for interest payment to debenture holders. The

interest amount payable will be credited to this account so as to enable bank to credit interest amount to depositor's bank account.

(5) To request Bank to pay interest on due date: The company secretary has already submitted the list of debenture holders (with full details) to the bank. The total interest amount is also deposited in the separate bank account of the company. With this background, the secretary will request the bank to make payment to debenture holders on due date and intimate the company accordingly.

(6) Letters to debenture holders about interest payment: Here, the interest amount, is already paid through the bank. The secretary informs the debenture holders about payment made and also request them to verify the entry in their passbook. Such letter is sent to every debenture holder for his information and record for the tax purpose.

(7) To comply with legal requirements about interest payment to debenture holders: Here, the interest is already paid and the secretary has to complete legal formalities relating to the payment made. The secretary also informs ROC about interest payment to debenture holders in time i.e. on due date. The TDS collect from debenture holders will be deposited in the government account as per legal provisions. With this, the secretary procedure (duties) relating to interest payment to debenture hold us come to an end. Similar procedure needs to be followed in case of bonds issued by the company. The same procedure of interest payment on debentures needs for followed for next interest payment.

SECRETARIAL DUTIES RELATING TO CHARGES

MEANING OF A CHARGE:

A charge is a right created by any person including a company (i.e. borrower) on its assets and properties (present or future) in favour of a financial institution or a bank (i.e. lender) which has agreed to extend financial assistance i.e. loan.

S. 2(16) of the Companies Act, 2014 define charge as an interest or lien created on property or assets of a company or any of its undertaking or both as security and includes a mortgage.

Lien or mortgage of property while taking loan from a bank is a common/normal practice followed and is acceptable to both borrower and lenders. In the same way, companies borrow for different purposes and agree for lien or mortgage of its property/assets.

Companies use share capital as well as borrowed capital for its business. Financial Institutions /banks offers fund when the funds offered are reasonably safe and secured. For this, bank creates right on the assets/properties of the borrowing company know **as charge on assets**.

There are three **essential features** of a charge. These are:

- (1)** There should be **two parties to a charge**. One is the **creator of the charge** and the other is the **charge holder**.
- (2)** The subject matter of charge maybe current or future assets and other properties of the borrower i.e. borrowing company.
- (3)** The intention of the borrower is to offer one or more of its specific assets or properties as security for repayment of borrowed money with interest as agreed.

A charge be **fixed or floating** depending on its nature.

REGISTRATION OF CHARGE:

Under S.77 of Companies Act, 2013, every company creating a charger shell register the particulars of charge signed by the company and its charge holder together with the instruments creating. Thus, all types of charges are required to be registered under the Act whether creating

within or outside India. If the company fails to register the charge, the charge holder may apply to the ROC for registration.

A charge created by the companies required to be registered with ROC **within 30 days** of its creation in such form and on payment of such fees as may be prescribed. The Registrar has to keep **register of charges** in respect of every company (S.81)

It may be noted that under the Companies Act, 1956 only *nine specific* kind of charges for required to be compulsorily registered. Under the 2013 Act, all charges created by company need to be registered.

CERTIFICATE OF REGISTRATION OF CHARGE:

When charge is registered with ROC, Registrar Vishal issue certificate of registration of charge in Form No. CGH-2 and for **registration of modification of charge** in Form No. CHG-3 to the company and to the person in whose favor the charge is created.

REGISTER OF CHARGES:

Every company is required to keep, at its registered office register of all charges as well as a copy of every instrument creating any charge. Members and creditors of the company have a right of inspection of the register of charges at the registered office of the company during business hours (without fees). Others can inspect the register of charges by paying fees.

SECRETARIAL DUTIES RELATING TO CHARGES:

In the case of Companies borrowing is a normal practice as search borrowings are required for meeting working capital needs as well as for financing expansion and development activities. In all such borrowings, the lender demands security cover and the company owners such demand by charging its assets and properties. Company secretary is connected with the mortgages and charges. He has to manage his work with the corporation of office staff from accounts department and legal department.

Secretarial Work / Duties relating to charges are as briefly noted below:

- (1) To create charges on the assets and properties of the company** for borrowing of funds as per the decisions of the Board. For this, documents are required to be prepared with the corporation of "the lender". Secretary has to prepare such documents carefully as such documents have legal value.
- (2) The company secretary has a duty to register the charge with the Registrar by passing necessary fees.** The secretary has to complete this registration of charges within the time limit fixed (within 30 days of creation).
- (3) To collect Certificate of Registration of charge** from the Registrar. For such registration, Form CHG-2 needs to be submitted to the Registrar. Company secretary has to preserve all such certificates after arranging them properly for ready reference.
- (4) A company secretary has to maintain a register of all charges** as well as a copy of every instrument creating any charge. The register is to be kept at head office for inspection.

In brief, company secretary is closely connected with charges created by the company while borrowing funds from outside agencies.

SECRETARIAL DUTIES RELATING TO PENALTIES (S.447 to 453)**MEANING AND FEATURES OF PENALTIES:**

Offence and penalties move together. Whenever any offence is committed by an individual, he has to face punishment which may be in the form of fine or imprisonment or both. This normal rule is applicable to all aspect of human life and business world is not exception to this rule. Fraud, false evidence, repeated defaults are some events which take place in corporate management. In the Companies Act, penalties are provided for different types of offences.

The Companies Act 2013 provides for stricter enforcement of the act in time-bound manner through necessary mechanism. It is in the form of special courts, appointment of adjudicating offices and so on. The purpose of imposing heavy penalties is to check such offences at the initial level and to impose heavy penalty when the offence is committed by an officer, executive or key managerial personnel. Penalties are provided for different offences. Any person involved in offences is given punishment through proper mechanism. Punishment is possible in the case of all including directors' auditors, top company executives and person working at the lower or middle level of management.

According to Section 439 of the Act any violation of the act which constitute an offence are cognizable only on a complaint by the Registrar, Government, Shareholder or the Company. Offences in the corporate sector are increasing and are harmful not only to the company and stakeholders but also to the entire corporate sector and its progress. As a result, strict punishments are provided in the Act. Penalties provided in Companies Act, 2013 are of higher amount and more strict as compared to the penalties provided in the previous Act i.e. Companies Act, 1956 . As. 448 to 453 deal with serious offences and penalties provided.

OFFENCES AND PENALTIES:

Important offences and penalties provided under the act are as briefly explain below:

(1) Punishment (Penalty) for Fraud (Section 447): The term "Fraud "defined in Section 447 of the Act as:

- (a)** "fraud" in relation to affair of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the convenience in any manner, with intent to deceive, gain and damage from, or to enjoy the interest of, the company or its shareholders or its creditors or any other persons, whether or not there is any wrongful gain or wrongful loss;
- (b)** "wrong loss" means the gain by unlawful means of property to which the person gaining is not legally entitled;
- (c)** "wrongful loss" means the lost by unlawful means of property to which the person losing is legally entitled;

Fraud is a serious crime and is punishable with imprisonment for a term of not less than 6 months but it may extend to 10 years. The liability towards find is not less than the amount involved in the fraud but it may extend to three times the amount. Where the fraud involves public interest, the imprisonment shall not be less than 3 years. This is the without prejudice to the repayment of any debt involved in fraud.

List of offences attracted under S.447 is quite lengthy.

In short, a person involved and found guilty of fraud is punishable with fine as well as imprisonment of Langley period depending upon the nature of offence. Frauds are increasing in the corporate sector in recent years and search heavy punishment is a must. It is also desirable to give quick penalty to a person involved.

The purpose of heavy punishment for fraud is to keep company staff away from this crime and the company also will not suffer.

(2) Punishment (Penalty) for False Statement (Sec.448): Any person making a statement which is false in any material particulars knowing it to be false or omission to make material fact knowing it to be material, in relation to any return, report, certificate, financial statement, prospectus statement or other document required by the provisions of this Act are the rules made there under, the punishment for the same is as applicable for fraud under **Section 447**.

(3) Punishment (Penalty) for False Evidence (Sec.449): If any person intentionally gives false evidence upon any examination on oath or solemn affirmation authorised under this Act or in any affidavit, deposition or solemn affirmation in or about the winding up of any company, he shall be punishable with imprisonment for a term which shall not be less than 3 years but it may extend to several years and with fine which may extend to rupees 10 lakh. In short, heavy penalty is provided for giving false evidence on oath. The purpose is to reduce such offences.

(4) Punishment (Penalty) where no Specific Penalty or Punishment is Provided (Sec.450): If a company or any officer of the company or any other person contravenes any of the provision of proposed act or rules there under or any condition, limitation, or restriction subject to which any approval is given or granted for which no penalty or punishment is provided elsewhere, then the company and every officer there of who is in default or such other person is punishable with fine extending to rupees 10,000 and where the contravention is a continuing offence, with a further fine extending to rupees 1000 for every day during which the contravention continues.

(5) Punishment in case of Repeated Default (Sec.451): in the case of repeated default committed for the second or subsequent occasions within a period of 3 years then the company and every officer thereof who is in default is punishable with twice the amount of fine for such offence, in addition to any imprisonment for the same. This offence is a serious one and is intentional. It is not done by mistake but repeated again and again. Naturally heavy penalty is must.

(6) Punishment for Wrongfully withholding of Property (Section 452): If any officer or employee of a company wrongfully obtains possession of any property including cash or having such property wrongfully withholding it or knowingly applies it for the purpose other than expressed or directed in the articles and authorized by this Act, then, he shall, on the complaint of the company or any member or creditor or contributory thereof, be punishable with fine of not less than rupees one lakh but it may extend to rupees five lakh. The court trying an offence may also order restoration of property and in default thereof, the person is punishable with imprisonment for a period of two years. This type of offence is a serious one. The purpose, is to protect the assets/properties of the company from wrongful withholding.

(7) Punishment for Improper use of the word "Limited" or "Private Limited (Section 453): If any person carries on trade or business under the name or title of which the word "limited" or the words "Private Limited" or any construction or imitation thereof, unless duly Incorporated with limited liability or as a private company with limited liability, as the case may be, is punishable with fine of not less than rupees five hundred but it may extend to rupees two thousand for every day during which that name or title has been used or misused. This small penalty is necessary as people use the word "Ltd" after the name of the organization and cheat people including customers. The objective, here, is to see that the words (Limited or Private Limited) are not wrongly added in the name of the company.

(B) WINDING UP OF A COMPANY**MEANING OF WINDING UP OF A COMPANY:**

Business failure of a company is possible due to various possible reasons such as adequate capital, inefficient management, faulty decisions by company management, recession and management incompetence, Winding up of a company is the process whereby the life of the company comes to an end and its property is administered for the benefit to members and creditors. A liquidator is also appointed. He takes the control of the assets and property of the company and utilizes the same for the benefit of members and creditors. Winding up of a company is undesirable but is necessary when better alternative are not available.

Winding up of a company is a process of putting an end to the life of company. Here, the management of company's affairs is taken out of the hands of directors.

The basic purpose of winding up of company is to realize its assets and repay the debts of the company as quickly as possible. If any surplus is left, it is distributed among the members in accordance with their rights. Winding up of a company is a systematic process of closing business and using its assets for the benefit of creditors, members, etc. As per the provisions in the Act.

MODES OF WINDING UP:

A company registered under the Companies Act may be wound up by any of the following modes:

- (a)** By the Court i.e. Compulsory winding up.
- (b)** Voluntary winding up, which may be either.
 - (i) Members' voluntary winding up; or
 - (ii) Creditors' voluntary winding up;
- (c)** Winding up subject to the supervision of the Court.

In every type/mode of winding up, a liquidator or liquidators is or are appointed to administer the property of the company and he or they must apply the assets of the company, for the payment of the creditors in their proper order. The residue, if any, among the members according to their rights. This brings fair distribution of company's assets (on winding up) among the creditors and members of the company.

MODES OF WINDING UP UNDER COMPANIES ACT,2013:

Winding up modes noted previously are based on the provisions in the previous Companies Act 1956 and modifications made thereafter. At present, under the Companies Act, 2013, the modes of winding up includes the following:

- (1) Winding Up by the Tribunal:** As per Companies Act,2013, Grounds on which a Company may be wound up by the Tribunal are as noted below:
 - (a)** If the company is unable to pay its debts.
 - (b)** If the company has by **special resolution**, resolved that the company be wound up by the Tribunal.
 - (c)** If the company has acted against the interest of the sovereignty any integrity of India, the security of the state, friendly relations with foreign state, public order, decency or morality.
 - (d)** If the Tribunal has ordered the winding up of the company under Chapter XIX (i.e. a Revival and Rehabilitation of Sick Companies)
 - (e)** If on an application made by the Registrar or any other person authorized by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for

fraudulent and unlawful purpose or the persons connected in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up.

- (f) If the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or
- (g) If the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

It may be noted that certain legal furniture are required to be completed for approaching the Tribunal for company's winding up by the Tribunal. For example, when the company wants its winding up through the Tribunal, it has to resolved (through Special Resolution) that the company may be wound up by the Tribunal, it has to **submit an application for winding up by the tribunal.**

Secondly, a petition by the company for winding up before the tribunal will be admitted only when it is accompanied by the **statement of affairs**, prescribed in form-4 and shall state the facts upto the date which shall not be a date more than 15 days prior to the date of making the statement. This statement needs to be certified by a chartered accountant (Se. 272(5)). **Thirdly**, the company creditors can make petition before the Tribunal only when the creditors prove that the claims are undisputed debt. **Finally**, when the Registrar makes petition before the Tribunal for winding up, the Registrar has to obtain the previous sanction of the Central Government for the presentation of a petition. Moreover, the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.

(2) Voluntary Winding Up: In voluntary winding up, **the initiative is taken by the company with support of its members.**

As per Section 304(1), a company may be wound up voluntarily under the following circumstances:

- (a) If the company in general meeting passes a resolution requiring **the company to be wound up voluntarily** as a result of the expiry of the period for its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company should be dissolved.
- (b) If the company passes a **special resolution** that the company be wound up voluntarily.

STEPS FOR VOLUNTARY WINDING UP OF A COMPANY:

The following are the steps involved in a voluntary winding up procedure of a company:

Step 1: Convene a Board Meeting with two Directors or by a majority of Directors. Pass a resolution with a declaration by the Directors that they have made an enquiry into the affairs of the Company and that, having done so, they have informed the opinion that the company has no debts or that it will be able to pay its debts in full from the proceeds of the assets sold in voluntary winding up of the company. Also fix a date, place, time, and agenda for the General Meeting of the company after five weeks of this Board Meeting.

Step 2: Issue notices in writing calling for the General Meeting of shareholders of the Company proposing the resolution, with suitable explanatory statement.

Step 3: In General Meeting, pass the **ordinary resolution for winding up** of the company by ordinary majority or special resolution by $\frac{3}{4}$ majority. The winding up of the company shall commence from the date of passing of this resolution by members.

Step 4: On the same day or the next day of passing of resolution of winding up of the Company, conduct a meeting of the Creditors. If two thirds in value of creditors of the company are of the opinion that it is in the interest of all parties to wind up the company, then the company can wound up voluntarily. If the company cannot meet all its liabilities on winding up, then, the Company must be wound up by Tribunal.

Step 5: Within 10 days of passing of resolution for winding up, file a notice with the Registrar for the appointment of liquidator.

Step 6: Within 10 days of passing of resolution for winding up of company, give a notice of the resolution in the Official Gazette and also advertise in a newspaper with circulation in the district where the registered office is present.

Step 7: Within 30 days of General Meeting for winding up of the company, file certified copies of the ordinary or special resolution passed in the General Meeting for winding up of the company.

Step 8: Wind up the affairs of the company and prepare the liquidator account of the winding up and get the same properly audited.

Step 9: Call for final General Meeting of the Company.

Step 10: Pass a special resolution for disposal of the books and papers of the company when the affairs of the company are completely wound up and it is about to be dissolved.

Step 11: Within two weeks of final General Meeting of the Company, file a copy of the accounts and file and application to the Tribunal for passing an order for dissolution of the company.

Step 12: If the Tribunal is satisfied, the Tribunal shall pass an order dissolving the company within 60 days of receiving the application.

Step 13: The company liquidator would have file copy of the order with the Registrar.

Step 14: The Registrar, on receiving the copy of the order passed by the Tribunal then publish a notice in the Official Gazette that the company is dissolved. With this, the procedure of voluntary winding up of the company comes to any end. Various formalities need to be completed at each step of voluntary winding-up.

Step 15: With this, the procedure of voluntary winding up of a company comes to any end. The very existence of the company comes to an end and follow-up steps are taken.

STATUTORY PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP:

Winding up of a company is possible on voluntary basis or through the National Company Law Tribunal. Such winding is possible through company itself, its members, creditors and contributors. Even Registrar is entitled to present a petition for winding up of the company. For this, suitable procedure as per the provisions in the Companies Act, 2013 must be followed. The provisions for winding up are the same for voluntary winding up as well as winding up through the Tribunal. The Act contains a number of provisions applicable to every mode of winding up.

The provisions applicable to every mode of winding up are stated in Sections 324 to 358 of the Act. These provisions apply to every mode of winding up by the Tribunal.

In short, Section 324 to 358 of Companies Act 2013 contain detailed provisions which are applicable to every winding up of company. The provisions incorporated in Section 324 to 358 are many and varied. **Important provisions (out of many) are as briefly noted below:**

(1) In every kind of winding up (except in the case of an insolvent company) contingent debts as well as all claims against the company whether present or future, certain or uncertain, ascertained or sounding only in damages are admissible to proof against the company. (S.324).

(2) S. 326 of the Act declares two types of payment to be overriding preferential payments, that is, payments to be made in priority to all other debts, namely,

- (a) the dues to the company's workmen; and
- (b) all the debts due to the secured creditors to the extent that such debts rank pari passu with such dues under S.325.
- (3) S.327 lists seven types of payments, referred to as preferential payments, which are to be paid in priority to all other debts after the overriding preferential payments have been made, as for instance:
- (i) all revenues, taxes, cesses, etc. are due to the Central or State Government or to any local authority;
- (ii) all unpaid wages and salaries of employees in relation to the services rendered by them to the company for a period of 4 to 12 months.
- (4) The power is conferred on the Tribunal to set aside any act of the company which amounts to a fraudulent preference (Sec.328).
- (5) All transfer **not** made in good faith as well as any transfer or assignment made by the company of all its properties and assets to trustees for the benefit of all its creditors are declared to be void under Ss.329 and 330 of the Act.
- (6) The Company Liquidator is authorized to make a disclaimer of onerous property under S.333 of the Act.
- (7) All transfer of shares or alteration in the status of members, made by the company after the commencement of voluntary winding up are declared to be void-unless made with the sanction of the Company Liquidator.
- (8) As per Ss. 337 to 339 detailed provisions are made for Punishment for any fraud committed by officer of the company **for not keeping proper accounts** and for fraudulent conduct of business.
- (9) Provision are also made in S. 342 for the prosecution of delinquent officers and members of the company in liquidation.
- (10) As per S. 344, when a company is being wound up in any form, every invoice, order for goods and business letter on which the name of the company appears, must contain a statement that the company is being wound up.
- (11) Even after the company has been dissolved, the Tribunal can pass an order declaring such dissolution to be void on an application by the Company Liquidators or any other interested person. Such an application must be filed/submitted within two years from the date of dissolution of the company (S. 356)
- (12) S. 358 of the Act provides that in calculating the period of limitations of any suit or application filed in the name and on behalf of company which is being wound up, up to the period of one year after the date of winding up order, is to be excluded for the purpose of limitations, notwithstanding anything contained in limitation Act, 1963 or any other law in force.

SECRETARIAL ROLE IN WINDING UP:

Winding up of a company is a process which involves ending the life of the company and administering its property for the benefit of its creditors and members. The assets of the company are collected and used for payment of its debt. If there is any deficit, every member of the company has to contribute to the assets of the company. When these formalities are completed as prescribed under the Companies Act, the company is dissolved and its name is removed by the Registrar of the companies. Winding up process is carried out by the liquidator appointed by the company or the court. Creditors will have to prove their debts.

Voluntary winding up are classified into two types:

- (1) Members voluntary winding up and
- (2) Creditors Voluntary Winding Up.

(1) Members Voluntary Winding Up: Secretarial role with regards to voluntary winding up of the company involves the following:

- (a) To arrange board meeting for decision on voluntary winding up of the company and pass the necessary resolution.
- (b) To hold an extraordinary general meeting of the shareholders to pass a special resolution for winding up.
- (c) To abide by the provision of Section 488 of the Act and to file with the Registrar and declaration of solvency.
- (d) To supervise appointment of liquidator and fix his remuneration.
- (e) To make available to the liquidator all books, papers and documents as well as moveable and immovable properties for follow-up measures.

(2) Creditors Voluntary Winding Up: When no declaration of solvency is made, it is considered as case of creditors; voluntary winding up. Secretarial role with regards to winding up of the company involves:

- a) To call board meeting, and to fix date of general meeting of creditors for winding up decision.
- b) To hold a creditors meeting.
- c) To issue notice of meeting of creditors.
- d) To ensure that the notice of creditors meeting is published in the official gazette and local newspapers.

The Secretary has to perform the following duties with regard to voluntary winding up:

- 1) To prepare and **submit petition of winding up** before Tribunal with necessary documents.
- 2) To submit to the liquidator, an affidavit relating to the affairs of the company.
- 3) To help the liquidator in process of winding up of the company.

(C) SPECIMEN**SPECIMEN 1 – NOTICES:****(1) (i) Notice and Agenda of Annual General Meeting:**

ABC COMPANY LIMITED
(Address of the registered office)
NOTICE

NOTICE HGEREBY GIVEN THAT THE Thirty-ninth **Annual General Meeting** of will be held at the On 20 at P.m. to transact the following business:

- (1) To receive and adopt the Director's report and audited Balance sheet and Profit and Loss Account for the year ended20.....
- (2) To declare a dividend.
- (3) To appoint a Director in place of Mr., who retires by rotation and is eligible for re-appointment.
- (4) To appoint a Director in place of Mr., who retires by rotation and is eligible for re-appointment.
- (5) To appoint auditors and to fix their remuneration.
- (6) To appoint Branch Auditors and to fix their remuneration.

BY ORDER of THE BOARD of DIRECTORS
FOR ABC COMPANY LIMITED

Sd/-
Secretary.

Mumbai.

Dated:

NOTES:

- (1) A MEMBER ENTITLED TO ATTEND AND VOTE IS ENTITLED TO APPOINT A PROXY TO ATTEND AND VOTE INSTEAD OF HIMSELF AND A PROXY NEED NOT BE A MEMBER.
- (2) The Register of Members and Transfer Books of the company will be closed from to Both day inclusive.
- (3) The dividend when sanctioned will be made payable on or after to those shareholders, who names will appears members in the books of the company on

(ii) Notice and Agenda of Annual General Meeting:

XYZ LIMITED
REGISTERED OFFICE: ADDRESS

NOTICE is hereby given that the Second Annual General Meeting of the Members of the XYZ limited will be held on Tuesday, the 24th September, 2017 at 4.30 p.m.at (Address) to transact the following business:

Ordinary Business:

- (1) To receive, consider and adopt the Audited Balance Sheet as at March 31, 2016 the Profit and Loss Account for the year ended on that date together with the schedules and notes attached thereto, along with the Reports of the Auditors and Directors thereon.
- (2) To declare a dividend.
- (3) To appoint a Director in place of Mr. A, who retires by rotation and being eligible, offer himself for reappointment.
- (4) To appoint a Director in place of Mr. B who retires by rotation and being legible, offers himself for reappointment.
- (5) To appoint a Director in place of Mr. c who retires by rotation and being legible, offers himself for reappointment.
- (6) To appoint Auditors and to fix their remuneration for the year 2017-18.

Special Business: Nil

BY ORDER of THE BOARD of DIRECTORS
XYZ COMPANY LIMITED
Company Secretary.

PLACE: Mumbai

Date: 26th August, 2017

GLASS INDUSTRIES LIMITED

Glass House, Mahatma Gandhi Road,
Fort, Mumbai - 400023.

Phone: 2204 26 46

Date: 20th July, 2017

Ref. No GIL/D/195

Mr. D.R. Gadgil,
110, Hamam Street,
Mumbai - 400 025.

Dear sir,

I am directed to inform you that the meeting of the Board of Directors, prior to the annual general meeting, will held at the registered office of the company on Monday, the 10th august 2017, at 4.00 p.m. to consider the following agenda:

You are requested to make it convenient to attend the meeting and oblige.

Yours Faithfully,

Sd/-
(K. Krishnan)
Secretary

- (1) To confirm the minutes of the last Board meeting held on 10th June, 2017.
- (2) To consider for the leave of absence of Shri. P.K. Salvi (Director).
- (3) To consider and approve Directors' Report and Annual Accounts of the company for the year 2016-17.
- (4) To authorize the chairman to sign the directors' Report on behalf of the Board of Directors.
- (5) To recommend the rate of dividend.
- (6) To decide the date and other details of annual general meeting and to authorize the secretary to make suitable arrangements for the meeting and also to send notice of the meeting to all members along with the Directors' Report, Auditor's Report and the Annual Accounts.
- (7) To consider the period during which the Register of Members and the Share Transfer Register will remain issue closed and also to authorize the secretary to issue notice regarding the closure of the Register of Members and the Share Transfer Register.
- (8) To consider any other item with the permission of the Chair.
- (9) To decide the date of the next meeting of Board of Directors.

SPICEMEN 2 – RESOLUTIONS:**(1) Resolution for Appointment of Company Secretary:****(i) Specimen of Board Resolution for Appointment of Company Secretary:**

Resolved that: Shri Vilas N. Bored, of Mumbai who has the qualifications prescribed under the companies (Secretary's Qualification's) Rules be, and he is hereby, appointed (pursuant to the provisions of Article 47 pf he company's Articles of Association) as Secretary of the company with effect from august 13, 2017, on a monthly salary of Rs. 70,460 and on such other terms and conditions as mentioned in the Letter of Appointment placed before the Board, Which has been initiated by the Managing Director for the purpose of identification."

"RESOLVED further that the managing Director is hereby authorized to issue Letter of Appointment duly finalized by the solicitors of the Company to Shri. Vilas N. Borde."

(ii) RESOLVED THAT:

- (a) Shri _____, who is an Associate Member of the Institute of Company Secretaries of India and has had four years' experience in a listed company, be and is hereby appointed as company Secretary on the terms and conditions contained in the letter of appointment, draft whereof was laid on the table of the Board meeting, approved by the meeting and initiated by the chairman if the meeting as a mark of identification; and
- (b) The chairman and managing director of the company, Shri _____ be and is hereby authorized to sign the letter of appointment of the company Secretary, on behalf of the Board of Directors of the company.

(iii)

Shri _____, be and is hereby appointed as Company Secretary on the following terms and conditions:

- (a) Salary Rs. _____ per month in the pay scale of Rs. _____.
- (b) Other allowances Rs. _____ per month.
- (c) Company's leased accommodation for residential Purpose.
- (d) One mobile and phone line at the residence at Company's cost for company's work.
- (e) Leave as per company's leave rules for key managerial personnel
- (f) P.F. contribution as per company's rules
- (g) Gratuity and Leave encashment as per company's rules.
- (h) Company's car with driver for company's work.
- (i) Termination of service on three months' notice by wither party.
- (j) The chairman and managing Director, Shri. _____ be and is hereby authorized to sign the appointment letter of the company secretary, on behalf of the Board of Directors of the company.

(iv)

- (i) Shri _____ be and is hereby appointed Company Secretary on the terms and conditions contained in the agreement, draft whereof was laid on the table of the meeting. Approved by the board meeting and initiated by the chairman of the meeting as a mark of identification; and
- (ii) the chairman and Managing Director of the company, Shri _____ be and is hereby authorized to sign on behalf of the Board, the agreement with the company Secretary.

(2) Specimen of Special Resolution for Alternation of Situation Clause of Memorandum of Association. (Shifting Registered Office of the Company to another Place outside the Local Limits but Within the same State);

Resolved that:

- (1) Pursuant to the section 12(5) and other applicable of the Companies Act, 2013. If any, the registered office of the Company be and is hereby shifted from its present situation at _____ to _____ a place falling under the jurisdiction of _____ police station which is outside the local limit of the town where it is presently situated but within the same state; and
- (2) Shri _____ the company Secretary, be is hereby authorized to file with the concern Registrar of Companies, the FORM INC 22 coating verification of the registered office of the company.

Explanatory statement:

At present, the registers office of the company is situated at _____ (a the required facilities for holding the company's annual general meetings, which are required to be held at the registered office of the company or at a place within the local limits of the same town. The Board of Directors of the company, at its meeting held on _____ resolved that the registered office of the company needs to be shifted to _____ a place outside the local limits of town where the company's registered office is presently situated but which is within the same state, where it would be possible for the company to hold its annual general meetings more conveniently.

The Board, therefore, recommend the proposed special resolution to the members of the company for their consideration and approval.

None of the directors of the company is concerned or interest in the proposed resolution.

SPECIMEN 3 – MINUTES:

(i) Specimen Minutes of Annual General Meeting:

QUALITY ENGINEERING COMPANY LIMITED

**75, Nirmal Chambers,
Fort, Mumbai - 400001**

Minutes of the 15th Annual General Meeting of Quality Engineering Company Limited, 3.00 p.m. on 26th September, 2017 at the Registered office of the company, 75, Nirmal Chambers, Fort Mumbai – 400001.

Present: Shri P.S. Paliwala Chairman
Shri V.P. Menon Director
Shri P. S. Borale Director
Shri G.T. Shroff Director
Shri P.S. Sethi Director

In attendance: Shri N.P. Metha Solicitor
Shri Bipin Benarjee Auditor
Shri Vilas Sawant Secretary

WITH

107 members (list is attached)

Sr. No. of Minutes	Subject of Minutes	of	Details of Minutes
1.	Notice meeting:	of	The secretary Shri Vilas Sawant read the notice dated 2 nd September, 2017 convening the meeting.

2.	Directors' Report and Annual Accounts:	With the permission of the members, the Directors' report and annual accounts of the Company for the year 2016-2017 as printed and circulated were taken as read.
3.	Auditor's Report:	Shri Bipin Banerjee, Auditor, read the auditor's report for the year 2016-17 on the accounts and the Balance Sheet of the Company and was approved.
4.	Chairman's speech	The chairman made a brief review of the working and progress of the company to the satisfaction of the members present.
5.	Adoption of Directors'	Resolved: That the Directors' Report and Accounts for the year ended 31 st March, 2017, as audited and certified by Company's auditor, be received and adopted.
6.	Declaration of Dividend:	Dividend at a rate of 16 per cent on equity shares as recommended by the Board of Directors was approved. It was Resolved: that the dividend recommended by the directors in their Annual Report, viz., 16 per cent on equity shares for the year be approved
7.	Appointment of Director:	Resolved: That Shri V.P. menon, the Director retiring by rotation and being eligible for re-election, be and he is hereby re-elected Director of the company fir the next term.
8.	Appointment of Director:	Resolved: That Shri P.S. Borale, the Director retiring by rotation and being eligible for re-election, be and he is hereby re-elected Director of the company for the next term.
9.	Appointment of Auditor:	Resolved: That Messrs, shah, Banerjee & Co. Auditors of the company be, and they are hereby re-appointed auditors for the year 2017-18 and that their remuneration be fixed at Rs. 1,15,000 payable after the competition of audit work.
10.	Vote of Thanks:	Shri V.P. Rao., Director, proposed a hearty vote of thanks to the chair. The chairman replied suitably to the vote of thanks and the meaning terminated.
Place: Mumbai		Sd/-
Date: 29 th September, 2017.		Chairman
Encl.: A list of 107 members present		
Note: The details given in the minutes are imaginary and are used for easy understanding)		

Objectives Questions with Answer**(1) Select the most appropriate answer from the option given below:**

- (a) Annual report is sent to all members along with ____ of AGM.
(i) notice (ii) agenda (iii) circulars (iv) invitation
- (b) Dividend rate is recommended by the ____.
(i) shareholders (ii) Board (iii) managing director (iv) chairman of the Board.
- (c) Dividend must be paid within ____ days after declaration in AGM.
(i) 30 (ii) 40 (iii) 20 (iv) 50
- (d) Annual report is a ____ report of a company.
(i) non-statutory (ii) statutory (iii) internal (iv) unnecessary
- (e) Secretarial report on labour problems is a ____ report.
(i) statutory (ii) non-statutory (iii) corporate (iv) casual
- (f) Secretary provides ____ in report writing.
(i) financial help (ii) statistical help (iii) secretarial assistance (iv) office tables
- (g) Annual report gives information on ____ of the company.
(i) directors (ii) formation (iii) progress and problems (iv) dividend payment
- (h) Auditor's report is signed by the ____ of the company.
(i) accountant (ii) finance officer (iii) chairman (iv) auditor
- (i) Dividend rate is decided by ____ in the AGM.
(i) shareholders (ii) Board of Directors (iii) Chairman of the Board (iv) Company secretary
- (j) ____ resolution is required for the alteration of M/A.
(i) ordinary (ii) special (iii) resolution requiring special notice (iv) motion
- (k) In voluntary winding up, the initiative is taken by ____
(i) company with support of members (ii) Directors (iii) Tribunal (iv) ROC
- (l) Provisions applicable to every made of winding-up are ____.
(i) different (ii) uniform (iii) states in Companies Act (iv) varied in nature
- (m) Notice and agenda are ____.
(i) different (ii) supplementary (iii) sent separately (iv) exactly opposite
- (n) Normally, resolution for the appointment of secretary is made by ____.
(i) shareholders (ii) managing director (iii) normally absent (iv) unwanted
- (Ans; (a - i); (b - ii); (c-i);(d-ii); (e-ii); (f - iii); (g - iii); (h -iv); (i - ii); (j -ii); (k - i); (l - ii); (m -ii); (n - iii); (o -i)

(2) State whether the following statements are True or False:

- (a) Annual report is an example of non-statutory report.
- (b) Interim dividend is declared by shareholders in AGM.
- (c) Annual report and Directors' report are the same.
- (d) Interest payment is a debt when interest payment is due.
- (e) Rate of dividend is fixed but rate interest changes.
- (f) ECS is a convenient and quick method of dividend payment.
- (g) Dividend notice and dividend warrant move together.
- (h) Report is informative communication with members and others.
- (i) Interest payment is made when profits are substantial.
- (j) Winding up is necessary when company becomes uneconomic or sick.
- (k) Winding up is Tribunal is not possible.
- (l) Shareholders can bring voluntary winding up of their company.

- (m) Notice of AGM is sent to directors but not to auditor.
(n) Business in AGM is ordinary business only.
(o) Approved of minutes of last meeting is the last item on the agenda of Board meeting.
(p) Date of AGM is decided in the Board's meeting prior to AGM.
(Ans: (a – False); (b – False); (c – True); (d – True); (e – False); (f – True); (g – True); (h – True); (i – False); (j – True); (k – False); (l – True); (m -False); (n – False); (o – False); (p – True)

Question bank for Self-Practice

- (1) What are company reports? Explain their importance.
(2) State the types of company report and write a note on any one of them.
(3) "Company secretary plays a useful role in drafting company reports. Explain.
(4) Explain the meaning and types of statutory and non-statutory reports.
(5) Write a detailed note on Directors' Report.
(6) What is auditor's report? State its contents.
(7) Write briefly on:
 (i) Annual report, and
 (ii) Auditor's report
(8) What is dividend? Explain the statutory provisions relating to dividend payment.
(9) Explain secretarial duties with regards to payment of dividend.
(10) What do you mean by interest payment? Explain its features.
(11) Explain secretarial duties relating to payment of interest.
(12) Explain secretarial duties on charges and penalties.
(13) Explain the meaning and modes of winding up.
(14) Write a note on voluntary winding-up of a company.
(15) Explain the procedure of winding up of a company.
(16) Clarify the statutory provisions relating to winding up of a company.
(17) Explain secretarial role in winding up.
(18) What is winding up? Explain winding up procedure.
(19) Explain role of company secretary in winding up procedure.
(20) Draft Notice and agenda of AGM of ABC Company.
(21) Draft the notice and agenda of quarterly Board meeting.
(22) Draft Notice and agenda of AGM of J.K. Industries Limited, Sholapur.
(23) Give specimen of notice and agenda of Board meeting prior to AGM.
(24) Draft resolution for the appointment of company secretary of a large public limited company.
(25) Give a specimen resolution for changing name clause of memorandum of a public company.
(26) Draft resolution for alteration of memorandum of a company.
(27) Draft any two of the following:
 (a) Resolution for appointment of Directors.
 (b) Resolution for appointment of Auditor.
 (c) Resolution for appointment of company secretary.
(28) Draft minutes of annual general meeting of a company.
(29) Draft minutes of Board meeting held prior to AGM.
(30) Draft resolution for changing situation clause of memorandum.

(31) write short notes on:

- (a)** Company Reports.
- (b)** Auditor's Report.
- (c)** secretarial duties relating to dividend payment.
- (d)** Winding up of a company.
- (e)** Secretarial role in winding up of a company.
- (f)** Meaning and Features of interest payment.
- (g)** Specimen of notice and agenda of Extra-ordinary general meeting.
- (h)** Resolution for appointment of Finance Manager.
- (i)** Minutes of AGM.
- (j)** Function of company secretary in company reports.
- (k)** Penalties and Charges.
- (l)** Secretarial duties relating to interest payment.
- (m)** Directors report.

HERAMB