MODULE 2

COMPANIES ACT 2013

With a phenomenal change in the domestic and international economic landscape, the Government of India decided to replace the Companies Act, 1956 with a new legislation. The Companies Act, 2013, endeavors to make the corporate regulations in India more contemporary.

MEANING

The Companies Act 2013 is an Act of the Parliament of India on Indian company law which regulates incorporation of a company, responsibilities of a company, directors, dissolution of a company. The Act came into force across India on 12th September 2013 and has a few amendments to the previous act of 1956. It has also introduced new concepts like a One Person Company.
Section 2(20) of the Companies Act, 2013, defines the term 'Company' as follows: "Company means a company incorporated under this Act or under any previous company law."

Definition: A company is that form of business organization, which is created by law. It refers to an association of persons, created to undertake business activities, having a separate legal existence, perpetual succession and a common seal.

CHARACTERISTICS of a Company

A company as an entity has many distinct features which together make it a unique organization. The essential characteristics of a company are following:

i. **Separate Legal Entity: -** Under Incorporation law, a company becomes a separate legal entity as compared to its members. The company is distinct and different from its members in law. It has its own seal and its own name, its assets and liabilities are separate and distinct from those of its members. It is capable of owning property, incurring debt, and borrowing money, employing people, having a bank account, entering into contracts and suing and being sued separately.

ii. **Limited Liability: -** The liability of the members of the company is limited to contribution to the assets of the company upto the face value of shares held by him. A member is liable to pay only the uncalled money due on shares held by him. If the assets of the firm are not sufficient to pay the liabilities of the firm, the creditors can force the partners to make good the deficit from their personal assets. This cannot be done in the case of a company once the members have paid all their dues towards the shares held by them in the company.

iii. **Perpetual Succession: -** A company does not cease to exist unless it is specifically wound up or the task for which it was formed has been completed. Membership of a company may keep on changing from time to time but that does not affect life of the company. Insolvency or Death of member does not affect the existence of the company.

iv. **Separate Property: -** A company is a distinct legal entity. The company's property is its own. A member cannot claim to be owner of the company's property during the existence of the company.

v. **Transferability of Shares: -** Shares in a company are freely transferable, subject to certain conditions, such that no share-holder is permanently or necessarily wedded to a company. When a member transfers his shares to another person, the transferee steps into the shoes of the transferor and acquires all the rights of the transferor in respect of those shares.

vi. **Common Seal: -** A company is an artificial person and does not have a physical presence. Thus, it acts through its Board of Directors for carrying out its activities and entering into various agreements. Such contracts must be under the seal of the company. The common seal is the official signature of the company. The name of the company must be engraved on the common seal. Any document not bearing the seal of the company may not be accepted as authentic and may not have any legal force.

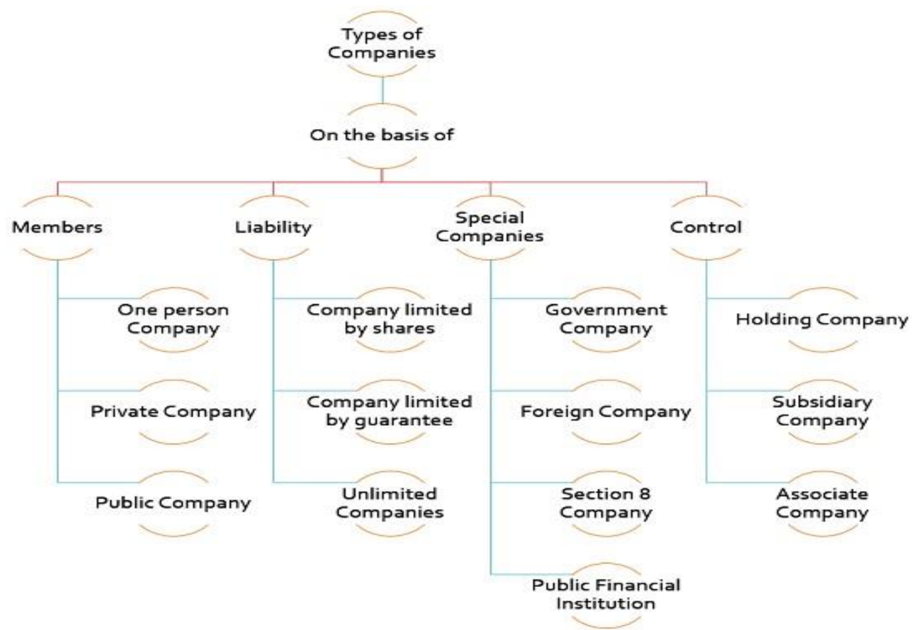
vii. **Capacity to sue and being sued: -** A company can sue or be sued in its own name as distinct from its members.

Separate Management: - A company is administered and managed by its managerial personnel i.e. the Board of Directors. The shareholders are simply the holders of the shares in the company and need not be necessarily the managers of the company.

viii. **One Share-One Vote: -** The principle of voting in a company is one share-one vote i.e. if a person has 10 shares, he has 10 votes in the company. This is in direct distinction to the voting principle of a co-operative society where the "One Member - One Vote" principle applies i.e. irrespective of the number of shares held, one member has only one vote.

TYPES of Company

On the basis of members



a) ***One person Company:* -** OPC or one Person Company is a new category of company introduced to encourage startups and young entrepreneurs wherein a single person can incorporate the entity. It also promotes the concept of corporatization of the business. It should be noted that it is not the same as a sole proprietorship firm, in a way that OPC has separate legal existence with limited liability.

b) ***Private Company:* -** A private company is one in which two or more persons get the company registered under the Companies Act. The securities of such a company are not listed on a recognized stock exchange, and they cannot invite the public to subscribe for the shares/debentures. The members of a private company are restricted from transferring the shares. The maximum number of members in a private company is 200.

c) ***Public Company:* -** A company which is formed by a minimum number of seven members with a lawful object is termed as a public company. Its securities are listed on a recognized stock exchange, and its shares are freely transferable. Further, there is no limit on the maximum number of members in such a company. The subsidiary of the public company is also considered as a public company.

On the basis of liability

a) ***Company limited by shares:* -** Company limited by shares is one in which memorandum of association of the company specifies that the liabilities of the shareholders are limited to the amount unpaid on shares which they own. Hence, the shareholders are liable only to the extent of the amount that is not paid on their holdings.

b) ***Company limited by guarantee:*** - A company in which the liability of members is limited to a definite sum stated in the memorandum of association of the company. Meaning that the liability of the members is confined by the MoA to a stipulated sum, as they have guaranteed to contribute to the company's assets, in the event of winding up of the company.

c) ***Unlimited Company:*** - An unlimited company is a company whose liability does not have any limit. In this type of company, the liability of the member ends when he/she ceases to be a member of that company.

Special companies

a) ***Government Company:*** - The company whose at least 51% paid up share capital is owned by Central Government/State Government, or partly by central and partly by the state government. Further, it also covers a company whose holding company is a government company.

b) ***Foreign Company:*** - Any company registered outside the country that has a business place in India or by way of an agent traditionally or electronically and undertakes business operations in the country in any manner.

c) ***Section 8 Company:*** - A company formed for a charitable object, i.e. to encourage commerce, science, sports, art, research, education, social welfare, environment protection religion, etc. comes under the category of Section 8 Company. These companies are given special license by the Central Government. Further, they use the money earned as profit for the promotion of the object and thus, dividend to members is not paid.

d) ***Public Financial Institution:*** - The companies, which are engaged in financial and investment business and whose 51% or more paid up share capital is held by Central Government and are established under any act are termed as public financial institutions. It includes LIC, ICICI, IDFC, IDBI, UTI etc.

On the basis of the control

a) ***Holding Company:*** - A parent company that owns and controls the management and composition of the Board of Directors of another company (i.e. subsidiary company) is termed as a holding company.

b) ***Subsidiary Company:*** - A company whose more than 51% of its total share capital is owned by another company, i.e. a holding company either itself or together with its subsidiaries, as well as the holding company also governs the composition of Board of Directors is called the subsidiary company.

c) ***Associate Company:*** - A company in which another company possess a considerable influence over the company, then the latter is called as an associate company. The term considerable influence implies controls a minimum 20% of total share capital, or business decisions, as per an agreement.

FORMATION of a Company

Section 3 of the Companies Act, 2013, details the basic requirements of forming a company as follows:

- Formation of a public company involves 7 or more people who subscribe their names to the memorandum and register the company for any lawful purpose.
- Similarly, 2 or more people can form a private company.
- One person can form a One-person company.

REGISTRATION AND INCORPORATION of a Company

The Companies Act, 2013 details the regulations and company registration papers essential for the incorporation of a company.

Promoters: - Section 2(69) of the Companies Act, 2013, defines promoters as an individual who:-

- Is named as a promoter in the prospectus or in the annual returns of the company.
- Controls the affairs of a company, directly or indirectly.
- Advises, directs, or instructs the Board of Directors.

Hence, we can say that promoters are people who originally come up with the idea of the company, form it and register it.

Documents and Registration of a Company

Section 7 of the Companies Act, 2013, details the procedure for incorporation of a company.

A. **Filing of company registration papers with the registrar**

To incorporate a company, the subscriber has to file the following company registration papers with the registrar within whose jurisdiction the location of the registered office of the proposed company falls.

1. The Memorandum and Articles of the company. All subscribers have to sign on the memorandum.
2. The person who is engaged in the formation of the company has to give a declaration regarding compliance of all the requirements and rules of the Act. A person named in the Articles also has to sign the declaration.
3. Each subscriber to the Memorandum and individuals named as first directors in the Articles should submit an affidavit with the following details:
   - ✓ Declaration regarding non-conviction of any offence with respect to the formation, promotion, or management of any company.
   - ✓ He has not been found guilty of fraud or any breach of duty to any company in the last five years.
   - ✓ The documents filed with the registrar are complete and true to the best of his knowledge.
4. Address for correspondence until the registered office is set-up.
5. If the subscriber to the Memorandum is an individual, then he needs to provide his full name, residential address, and nationality along with a proof of identity. If the subscriber is a body corporate, then prescribed documents need to be provided.
6. Individuals mentioned as subscribers to the Memorandum in the Articles need to provide the details specified in the point above along with the Director Identification Number.
7. The individuals mentioned as first directors of the company in the Articles must provide particulars of interests in other firms or bodies corporate along with their consent to act as directors of the company as per the prescribed form and manner.

B. **Issuing the Certificate of Incorporation**

Once the Registrar receives the information and company registration papers, he registers all information and documents and issues a Certificate of Incorporation in the prescribed form.

C. **Corporate Identity Number (CIN)**

The Registrar also allocates a Corporate Identity Number (CIN) to the company which is a distinct identity for the company. The allotment of CIN is on and from the company's incorporation date. The certificate carries this date.

D. **Maintaining copies of Company registration papers**

The company must maintain copies of all information and documents until dissolution.

Effect of Registration of a Company

According to Section 9 of the Companies Act, 2013, these are the effects of registration of a company:

a) From the date of incorporation, the subscribers to the Memorandum and all subsequent members of the company are a body corporate.

b) A registered company can exercise all functions of a company incorporated under the Act. Also, the company has perpetual succession with power to acquire, hold, and dispose of property of all forms. Also, it can contract, sue and be sued by the said name.

c) Further, the company becomes a legal person separate from the incorporators from the date of incorporation. Also, a binding contract comes into existence between the company and its members as mentioned in the Memorandum and Articles of Association. Until the company dissolves or the Registrar removes it from the register, it has perpetual existence.

DIRECTORS

According to the Companies Act, only an individual can be appointed as a member of the board of directors. Usually, the appointment of directors is done by shareholders. A company, association, a legal firm with an artificial legal personality cannot be appointed as a director. It has to be a real person.

Number of directors

The Companies Act, 2013 fixes the minimum and maximum number of directors a company can appoint. Under the 2013 Act, a private company is required to appoint at least two directors; while a public company must appoint at least three directors and a one person company is required to appoint at least 1 director. A company can appoint a maximum of 15 directors (a maximum of 12 directors were allowed under the Companies Act, 1956). It is possible for a company to increase the number of directors beyond 15 by passing a special resolution to this effect. Moreover, one of the directors of the company must be resident in India, that is, he must have stayed in India for a period of not less than 180 days in the previous calendar year.

How are directors appointed?

Generally for a private company, typically the promoters (i.e. the founders who are signatories to the articles of association) of the company become the first directors of the company.
Although the articles of association should ideally mention names of the first directors of the company, if that is not done, the subscribers to the memorandum (that is, the initial shareholders who incorporate the company) shall be considered as the directors. In all other cases, the directors can be appointed by the company through a resolution passed in the general meeting. However, before such appointment can be made, the members must be informed by either email or through postal communication at least seven days before the meeting about the candidature of the person as a new director.

How to accept appointment as director

A person who is intended to become a director must apply to the Registrar for obtaining a Director Identification Number (DIN) in Form No DIR-3. The prospective director should give a declaration to the company that he holds a DIN and is not otherwise disqualified to become a director. A person who has been appointed as a director must notify the company about his consent to act as director in Form No DIR-2 and to the Registrar within thirty days of appointment in Form No DIR-12.

What will happen if the director or the company fails to notify the Registrar within the specified date?

Failure to notify the Registrar of one’s appointment as a director is an offence – if a director fails to notify the Registrar of his appointment within the specified dates as mentioned in the previous paragraph, he is punishable with imprisonment for a period of six months or may have to a pay fine which may extend to fifty thousand rupees and if the non-compliance continues he might have pay an additional fine of rupees five hundred per day of non-compliance.

Special requirements for public companies

The new Companies Act has imposed additional requirements with respect to appointment of independent directors and women directors on public companies (whether they are listed or not). All listed companies are required to appoint special categories of directors like independent directors, small shareholders (minority) directors and woman directors in the Board. Some of these requirements even apply to unlisted public companies, if certain share capital, debt or turnover thresholds are exceeded.

Independent Director – All listed public companies must appoint independent directors (i.e. those who are not related to the promoters of the company and do not have a financial relationship with the company) as per the listing agreement, however, the proportion of independent directors cannot fall below more than one-third of the total directors, for better transparency and good governance.

Unlisted public companies must appoint at least two independent directors in the following circumstances:

1. If their paid up share capital exceeds Rs. 10 crores.
2. If their turnover exceeds Rs. 100 crores.
3. If the aggregate of all the outstanding loans, debentures and deposits exceeds Rs 50 crores.

Woman director – All listed companies and other public companies having a paid-up share capital of more than Rs 100 crores or turn-over of more than three hundred crore must appoint atleast one woman director.

Director appointed by minority shareholders– To have a fair representation of the minority shareholders in a listed company (a shareholder having shares whose nominal value is less than twenty thousand rupees), the minority shareholders may elect one director.

Term of appointment of directors

Generally a director is appointed in the Annual General Meeting (AGM), and can hold the post till the next AGM. However, the articles of the company can provide for appointment of permanent directors in the articles of the company. In case of a public company or its subsidiaries, only one-third of the directors can be appointed as permanent directors, rest of the directors must retire by rotation at the AGM of the company.
An independent director can be appointed for a period of consecutive five years. Such directors can be re-appointed after passing a special resolution by the Board for a period of another 5 years. After two consecutive terms, an independent director can be re-appointed only after a gap of three years (provided that the person was not appointed or associated with the company during these three years).

Removal of Directors

The following authorities are responsible for the process of removal of directors from the board of directors.

1. **The company in general meeting: -** A company can remove a director from the board before his term of office expires. They can pass a resolution in a general meeting upon special notice. However, there are certain exceptions :
    a) This does not apply to a director appointed by the Central Government.
    b) This does not apply to companies who have adopted two-thirds of its directors by the principle of proportional representation.

c) Directors appointed by financial institutions under an agreement like IDBI, IFCI under their respective acts.
d) Directors that have been appointed by the Board for Industrial and Financial Reconstruction.

2. **Removal by the Government: -** A director can be removed from office under advice from Central Government. The Central Government chooses to use this power on the recommendation of the Company Law Board/National Company Law Tribunal.

3. **Removal by Company Law Board/National Company Law Tribunal: -** The Company Law Board or the National Company Law Tribunal may remove a director from the board. If found guilty of any inappropriate conduct like fraud, harassment, oppression or any other justifiable cause, he will be removed. The terminated director cannot assume the position of director in any other company for the next five years.

POWERS of Directors

On incorporation, a company becomes a legal artificial person but it cannot act by itself and consequently it has to depend upon some human agency to act in its name. The members have no inherent right to participate in the management of the company. A large sized company may have its members running into lakhs, who are dispersed all over the country and they even lack the expertise to manage the affairs of the company, which makes it impossible to give the management of the company in their hands. Therefore a specialized body of persons called as directors are appointed by the members to manage the affairs of the company. The directors must act as a body without improper exclusion of any of the directors. The directors collectively referred to as BOARD. The board is the managerial body constituted by the members to whom is entrusted the whole management of the company.

The powers which vest in the board can be classified under different heads:
1) General Powers: - General Powers are those which can be exercised in accordance with the articles. These powers are laid down in sec. 179 of the Companies Act, 2013. It empowers the board to exercise all such powers and do all such acts and things, as the company is authorized to exercise and do. There are, however, two limitations upon their powers:
(a) First, the Board shall not do any act which is to be done by the company in general meeting
(b) Second, the Board shall exercise its powers subject to the provisions contained in the Companies Act, or in the Memorandum or the Articles of the company or in any regulations made by the company in general meeting.

2) Powers to be exercised at Board meetings [Sec. 179 (3)] -: The Board of directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at the meetings of the Board, viz, the power to:
a) Make calls on shareholders in respect of money unpaid on their shares
b) Issue debentures
c) Borrow money otherwise than on debentures
d) Invest the funds of the company
e) Make loans
f) To approve financial statement and the board's report
g) To diversify the business of the company.

3) Powers to be exercised with the approval of company in general meeting (Sec. 180): -

(a) Sale or lease of the company's undertaking
(b) Extension of the time for payment of a debt due by a director
(c) Investment of compensation received on acquisition of the company's assets in securities other than trust securities
(d) Borrowing of money beyond the paid-up capital of the company
(e) Contributions to any charitable fund beyond Rs.50,000 in one financial year or 5% of the average net profits during the preceding three financial years, whichever is greater.

4) Powers under rule 8: - Rule 8 of the Companies rule, 2014 provides that, the following powers shall be exercised only by means of resolutions passed at meeting of the board, namely:

a) To make political contribution;
b) To appoint or remove key managerial personnel;
c) To appoint internal auditors and secretarial auditors;
d) To take note of the disclosure of director's interest and shareholding
e) To accept or renew or review the terms and conditions of public deposits.

5) Other powers: - In addition to the items referred above, there are various other matters, as illustrated below in the routine working of a company which are considered by the board at board meeting:

(a) Issuance of shares;
(b) Allotment of shares and debentures;
(c) Appointment of directors and managing directors;
(d) Merger and acquisition of companies;
(e) Capitalisation of reserves and issuance of bonus shares.

DUTIES of the Directors

A. Fiduciary duties: - As fiduciaries, the directors must:

(a) Exercise their powers honestly and bona fide for the benefit of the company as a whole; and
(b) Not to place themselves in a position in which there is a conflict between their duties to the company and their personal interests. They must not make any secret profit out of their position. If they do, they have to account for it to the company.

B. Duties of care, skill and diligence: - Directors should carry out their duties with reasonable care and exercise such degree of skill and diligence as is reasonably expected of persons of their knowledge and status. He is not bound to bring any special qualifications to his office.

C. Standard of care: - The standard of care, skill and diligence depends upon the nature of the company's business and circumstances of the case. They are various standards of the care depending upon:

a) The type and nature of work
b) Division of powers between directors and other officers
c) General usages and customs in that type of business; and
d) Whether directors work gratuitously or remuneratively

D. Duty to disclose interest: - Where a director is personally interested in a transaction of the company, he is required to disclose his interest to the board. An interested director is neither to vote on the matter of his interest nor his presence shall count for the purposes of quorum.

E. Duty to attend board meetings: - The Act only says that the office of a director is automatically vacated if he fails to attend three consecutive meetings of the board or all meetings for a period of 3 months, whichever is longer. Moreover, a director's habitual absence may become evidence of negligence.

F. Duty not to delegate: - A director should not delegate his functions to another person. But delegation of functions may be made to the extent to which it is authorized by the Act or the constitution of the company.

LIABILITIES of Directors

Along with duties, liabilities accompany, liabilities can also be statutory liabilities as provided in specific statutes, and it can also be general duties which are applicable to all uniformly. They can be:

Liability to the Company

The liability of a director could arise in the following manner:

1. **Breach of fiduciary duty**: As the directors hold the office of trust along with power they are expected to exercise this power in the best interest of the company. Whenever there comes dishonesty in fulfilling this duty, there is a breach of fiduciary duty. There is always a possibility of a conflict of interests but should such a conflict arise the concerned director should make complete disclosure and try to obtain the confidence of stakeholders in the general meeting. If such is not a case then it shall be held as a breach of fiduciary duty and he will be liable for indemnification to the company. It has been held that directors being the trustee have to deal with business and its property the way they treat their own personal property and interest.
2. **Ultra virus act**: Directors have powers subject to Companies Act, Memorandum and Articles of association. Whenever they exceed these limits they are personally liable for the act being ultra-virus. But if acts are intra-virus the company such acts can be subsequently ratified by the shareholders in the general meeting, otherwise, if a company suffers a loss on ultra-virus acts of its directors, the company can claim such loss from the directors.
3. **Negligence**: As long as the Directors exercise reasonable care and due diligence, they are fulfilling their duties to the company. But as soon as there is the failure to exercise such care and precaution they are deemed to be negligent in their conduct and are personally liable for the consequent damages. However, the error of judgment will not be deemed as negligence. "Business runs on a going concern, which will not be possible if people doubt every step of the trust holders or office holders."
4. **Mala fide acts**: Directors are the trustees for the money and property of the company. They hold an office of trust and if they misuse their powers they will be liable for breach of trust and may be required indemnify the losses incurred due to they need to make regular disclosures on their profits, if any, earned in course of the performance of duties. Director can also be held liable for misconduct, provided it is not willful.

***Liability to third parties*: -** The directors as agents of the company are not most of the times personally liable to third parties for any transaction entered on behalf of the company. Their acts bind the company to third parties. Generally, the rule is that wherever an agent, in a principal- agency concept liable, directors would be liable. They can be held personally liable only in exceptional circumstances when they contract in a personal capacity, or when the principal is not disclosed, or when it is a pre-incorporation contract or when the contract is ultra-virus the company and is not ratified subsequently.

COMPANY MEETING

The word "meeting" is not defined anywhere in the Companies Act. Ordinarily, a company may be defined as gathering, assembling or coming together of two or more persons (by previous notice or by mutual arrangement) for discussion and transaction of some lawful business.

A meeting therefore, can be defined as a lawful association or assembly of two or more persons by previous notice for transacting some business. The meeting must be validly summoned and convened. Such gatherings of the members of companies are known as company meetings.

Essentials of Company Meetings

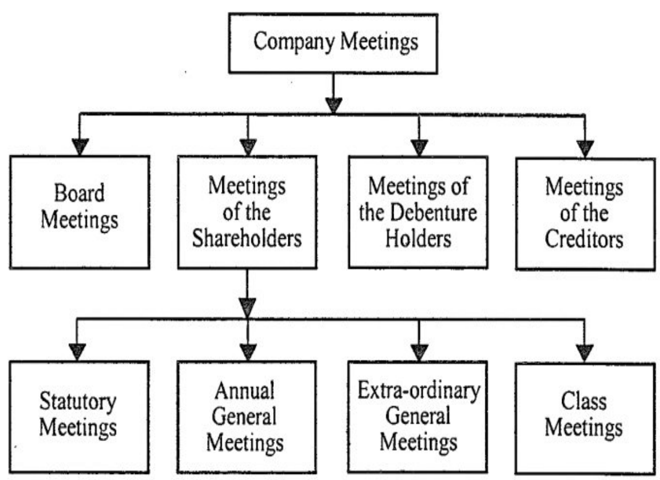
The essential requirements of a company meeting can be summed up as follows:

1. **Two or More Persons:** To constitute a valid meeting, there must be two or more persons. However, the articles of association may provide for a larger number of persons to constitute a valid quorum.
2. **Lawful Assembly:** The gathering must be for conducting a lawful business. An unlawful assembly shall not be a meeting in the eye of law.
3. **Previous Notice**: Previous notice is a condition precedent for a valid meeting. A meeting, which is purely accidental and not summoned after a due notice, is not at all a valid meeting in the eye of law.
4. **To Transact a Business**: The purpose of the meeting is to transact a business. If the meeting has no definite object or summoned without any predetermined object, it is not a valid meeting. Some business should be transacted in the meeting but no decision need be arrived in such meeting.

Kinds of Company Meetings

The meetings of a company can be broadly classified into four kinds.

1. Meetings of the Shareholders.
2. Meetings of the Board of Directors and their Committees.
3. Meetings of the Debenture Holders.
4. Meetings of the Creditors.



1. Meeting of the Share Holder: - The meetings of the shareholders can be further classified into four kinds namely,

(a) Statutory Meeting
(b) Annual General Meeting,
(c) Extraordinary General Meeting, and
(d) Class Meeting.

The chart given below gives a classification of company meetings.

(a) ***Statutory Meeting: -*** This is the first meeting of the shareholders conducted after the commencement of the business of a public company. Companies Act provides that every public company limited by shares or limited by guarantee and having a share capital should hold a meeting of the shareholders within 6 months but not earlier than one month from the date of commencement of business of the company.

Usually, the statutory meeting is the first general meeting of the company. It is conducted only once in the lifetime of the company. A private company or a public company having no share capital need not conduct a statutory meeting.

(b) ***Annual General Meeting: -*** The Annual General Meeting is one of the important meetings of a company. It is usually held once in a year. AGM should be conducted by both private and public ltd companies whether limited by shares or by guarantee; having or not having a share capital. As the name suggests, the meeting is to be held annually to transact the ordinary business of the company.

(c) ***Extra-ordinary General Meetings (EOGM): -*** Statutory Meeting and Annual General Meetings are called the ordinary meetings of a company. All other general meetings other than these two are called Extraordinary General Meetings. As the very name suggests, these meetings are convened to deal with all the extraordinary matters, which fall outside the usual business of the Annual General Meetings.

EOGMs are generally called for transacting some urgent or special business, which cannot be postponed till the next Annual General Meeting. Every business transacted at these meetings is called Special Business.

Persons Authorized to Convene the Meeting

The following persons are authorized to convene an extraordinary general meeting.

- The Board of Directors.
- The Requisitionists.
- The National Company Law Tribunal.
- Any Director or any two Members.

(d) ***Class Meetings: -*** Class meetings are those meetings, which are held by the shareholders of a particular class of shares e.g. preference shareholders or debenture holders.

Class meetings are generally conducted when it is proposed to alter, vary or affect the rights of a particular class of shareholders. Thus, for effecting such changes it is necessary that a separate meeting of the holders of those shares is to be held and the matter is to be approved at the meeting by a special resolution.

For example, for cancelling the arrears of dividends on cumulative preference shares, it is necessary to call for a meeting of such shareholders and pass a resolution as required by Companies Act. In case of such a class meeting, the holders of other class of shares have no right to attend and vote.

2. Meetings of the Director: - Meetings of directors are called Board Meetings. These are the most important as well as the most frequently held meetings of the company. It is only at these meetings that all important matters relating to the company and its policies are discussed and decided upon.

Since the administration of the company lies in the hands of the Board, it should meet frequently for the proper conduct of the business of the company. The Companies Act therefore gives wide discretion to the directors to frame rules and regulations regarding the holding and conduct of Board meetings.

The directors of most companies frame rules concerning how, where and when they shall meet and how their meetings would be regulated. These rules are commonly known as Standing Orders.

3. Meetings of Debenture Holder: - The debenture holders of a particular class conduct these meeting. They are generally conducted when the company wants to vary the terms of security or to modify their rights or to vary the rate of interest payable etc. Rules and Regulations regarding the holding of the meetings of the debenture holders are either entered in the Trust Deed or endorsed on the Debenture Bond so that they are binding upon the holders of debentures and upon the company.

4. Meetings of the Creditors: **-**Strictly speaking, these are not meetings of a company. They are held when the company proposes to make a scheme of arrangements with its creditors. Companies like individuals may sometimes find it necessary to compromise or make some arrangements with their creditors, In these circumstances, a meeting of the creditors is necessary.

OPPRESSION

Whenever there is a group of people it becomes very difficult to manage them properly. Each and every person has their own view, thinking and idiosyncrasies. To ensure proper rules and regulation to be maintained in the company we have Companies Act.
According to Lord Keith," **Oppression means, lack of morality and fair dealings in the affairs of the company which may be prejudicial to some members of the company.** Oppression is the exercising of authority or power in a burdensome, merciless, or unjust manner.

Acts held as Oppressive

Looking to the various judicial pronouncements, some of the acts amounting to oppression may be summarized as under:-

- Not calling a general meeting and keeping shareholders in dark.
- Non-maintenance of statutory records and not conducting affairs of the company in accordance with the Companies Act.
- Depriving a member of the right to dividend.
- Refusal to register transmission under will.
- Issue of further shares benefiting a section of shareholders.
- Failure to distribute the amount of compensation received on nationalization of business of company among members, where required to be so distributed.

Acts held as not Oppressive

The following acts have been held as not oppressive:-

- An unwise, inefficient or careless conduct of director.
- Non-holding of the meeting of the directors.
- Not declaring dividends when company is making losses
- Denial of inspection of books to a shareholder.
- Lack of details in notice of a meeting.
- Non-maintenance/Non-filing of records.
- Increasing the voting rights of the shares held by the management.

Relief against Oppression

If, on any application, the Court is of opinion—

(a) that the company's affairs are being conducted in a manner oppressive to any member or members; and
(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be would up;

The Court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

MISMANAGEMENT

Mismanagement is said to be done if the affairs of the company are being conducted in a manner prejudicial to the interests of the company; or a material change has taken place in the management of control of the company, whether by an alteration in its Board of directors, or if its managing agent or secretaries and treasurers, or in the constitution or control of the firm or body corporate acting as its managing agent or secretaries and treasurers, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to the interests of the company.

Acts held as Mismanagement

The following acts have been held as amounting to mismanagement:-

- Where there is serious infighting between directors.
- Where Board of Directors is not legal and the illegality is being continued.
- Where bank account(s) was/were operated by unauthorized person(s).
- Where directors take no serious action to recover amounts embezzled.
- Continuation in office after expiry of term of directors.
- Sale of assets at low price and without compliance with the Act.
- Violation of Memorandum.
- Violation of statutory provisions and those of Articles.
- Company doomed to trade unprofitably.

Acts held as not Mismanagement

The following acts have been held to not to amount to Mismanagement:-

- Building up of reserves or non-declaration of dividend especially when it does not result in devaluation of shares.
- Merely because company incurs loss, mismanagement can't be alleged.
- Arrangement with creditors in company's bonafide interest.
- Removal of director and termination of works manager's services.

Relief against Mismanagement

If, on any application the Court is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the court may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit.

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