MEMORANDUM OF ASSOCIATION

The formation of a public company involves preparation and filing of several essential documents. Two of basic documents are :

1. Memorandum of Association
2. Articles of Association

The preparation of Memorandum of Association is the first step in the formation of a company. It is the main document of the company which defines its objects and lays down the fundamental conditions upon which alone the company is allowed to beformed. It is the charter of the company. It governs the relationship of the company withthe outside world and defines the scope of its activities. Its purpose is to enableshareholders, creditors and those who deal with the company to know what exactly is itspermitted range of activities. It enables these parties to know the purpose, for which theirmoney is going to be used by the company and the nature and extent of risk they areundertaking in making investment. Memorandum of Association enable the partiesdealing with the company to know with certainty as whether the contractual relation towhich they intend to enter with the company is within the objects of the company.

Form of Memorandum (Sec. 14)

Companies Act has given four forms of Memorandum of Association in Schedule I. These are as follows :

Table B	Memorandum of a company limited by shares
Table C	Memorandum of a company limited by guarantee and not having a share capital

Table D Memorandum of company limited by guarantee and having share capital.

Table E Memorandum of an unlimited company

Every company is required to adopt one of these forms or any other form as near there to as circumstances admit.

Printing and signing of Memorandum (Sec. 15).

The memorandum of Association of a company shall be (a) printed, (b) divided into paragraphs numbered consecutively, and (c) signed by prescribed number of subscribers (7 or more in the case of public company, two or more in the case of private company respectively). Each subscriber must sign for his/her name, address, description and occupation in the presence of at least one witness who shall attest the signature and shall likewise add his address, description and occupation, if any.

Contents of Memorandum

1. Name clause

Promoters of the company have to make an application to the registrar of Companies for the availability of name. The company can adopt any name if :

i) There is no other company registered under the same or under an identical name;

ii) The name should not be considered undesirable and prohibited by theCentral Government (Sec. 20). A name which misrepresents the public is prohibited by the Government under the Emblems & Names (Prevention of Improper use) Act, 1950 for example, Indian National Flag, name pictorial representation of Mahatma Gandhi and the Prime Minister of India, name and emblems of the U.N.O., and W.H.O., the official seal and Emblems of the Central Government and State Governments.

Where the name of the company closely resembles the name of the company already

registered, the Court may direct the change of the name of the company.

iii) Once the name has been approved and the company has been registered, then

a) the name of the company with registered office shall be affixed on outside of the business premises;

b) if the liability of the members is limited the words "Limited" or "Private Limited" as the case may be, shall be added to the name; [Sec 13(1) (1)]: Omission of the word „Limited" makes the name incorrect. Where the word" Limited" forms part of a company"s name, omission of this word shall make the name incorrect. If the company makes a contract without the use of the word "Limited", the officers of the company who make the contract would be deemed to be personally liable [Atkins & Co v Wardle, (1889) 61 LT 23]

The omission to use the word „Limited" as part of the name of a company must have been deliberate and not merely accidental. Note the following case in this regard:

Dermatine Co. Ltd. v Ashworth, (1905) 21 T.L.R. 510. A bill of exchange drawn upon a limited company in its proper name was duly accepted by 2 directors ofthe company. The rubber stamp by which the word of acceptance were impressed on the bill was longer that the paper of the bill and hence the word „Limited" was missed.Held, the company was liable to pay and the directors were not personally liable.

(c) the name and address of the registered office shall be mentioned in all letter-heads, business letters, notices and Common Seal of the Company, etc. (Sec. 147). In Osborn v The Bank of U. A. E., [9 Wheat (22 US), 738]; it was held that the name of a company is the symbol of its personal existence. The name should be properly and correctly mentioned. The Central Government may allow a company to drop the word "Limited" from its name.

2. Registered Office Clause

Memorandum of Association must state the name of the State in which the registered office of the companmy is to be situated. It will fix up the domicile ofthe company. Further, every company must have a registered office either from theday it begins to carry on business or within 30 days of its incorporation, whicheveris earlier, to which all communications and notices may be addressed. Registered Office of a company is the place of its residence for the purpose of delivering or addressing any communication, service of any notice or process of court of law and for determining question of jurisdiction of courts in any action against the company. It is also the place for keeping statutory books of the company.

Notice of the situation of the registered office and every change shall be given to the Registrar within 30 days after the date of incorporation of the company or after the date of change. If default is made in complying with these requirements, the company and every officer of the company who is default shall be punishable with fine which may extend to Rs. 50 per during which the default continues.

3. Object Clause

This is the most important clause in the memorandum because it not only shows the object or objects for which the company is formed but also determines the extent of the powers which the comapany can exercise in order to achieve the object or objects. Stating the objects of the company in the Memorandum of Association is not a mere legal technicality but it is a necessity of great practical importance. It is essential that the public who purchase its shares should know clearly what are the objects for which they are paying.

In the case of companies which were in existence immediately before the commencement of the Companies (Amendment) Act. 1965, the object clause has simply to state the objects of the company. But in the case of a company to be registered after be amendment, the objects clause must state separately.

i) **Main Objects** : This sub-clause has to state the main objects to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of main objects.

ii) **Other objects**: This sub-clause shall state other objects which are not included in the above clause.

Further, in case of a non-trading company, whose objects are not confined to one state, the objects clause must mention specifically the States to whose territories the objects extend. (Sec. 13)

A company, which has a main object together with a number of subsidiary objects, cannot continue to pursue the subsidiary objects after the main object has come to an end.

Crown Bank. Re (1890) 44 Ch D. 634. A company"s objects clause enabled it to act as a bank and further to invest in securities land to underwrite issue of securities. The company abandoned its banking business and confined itself to investment and financial speculation. Held, the company was not entitled to do so the powers specified in the Memorandum must not be construed strictly. The company may do anything which is fairly incidental to these powers. Anything reasonable incidental to the attainment or pursuit of any of the express objects of the company will, unless expressly prohibited, be within the implied powers of the company.

While drafting the objects clause of a company the following points should be kept in mind.

i) The objects of the company must not be illegal, e.g. to carry on lottery business.

ii) The objects of the company must not be against the provisions of the Companies Act such as buying its own shares (Sec. 77), declaring dividend out of capital etc.

iii) The objects must not be against public, e.g. to carry on trade with an enemy

country.

iv) The objects must be stated clearly and definitely. An ambiguous statement like "Company may take up any work which it deems profitable" is meaningless.

v) The objects must be quite elaborate also. Note only the main objects but the subsidiary or incidental objects too should be stated.

The narrower the objects expressed in the memorandum, the less is the subscriber's risk, but the wider such objects the greater is the security of those who transact business with the company.

4. Capital Clause

In case of a company having a share capital unless the company is an unlimited company, Memorandum shall also state the amount of share capital with which the company is to be registered and division thereof into shares of a fixed amount [Sec. 13 (4)]. The capital with which the company is registered is called the authorized or nominal share capital. The nominal capital is divided into classes of shares and their values are mentioned in the clause. The amount of nominal or authorized capital of the company would be normally, that which shall be required for the attainment of the main objects of the company. IN case of companies limited by guarantee, the amount promised by each member to be contributed by them in case of the winding up of the company is to be mentioned. No subscriber to the memorandum shall take less than one share. Each subscriber of the Memorandum shall write against his name the number of shares he takes.

5. Liability Clause

In the case of company limited by shares or by guarantee, Memorandum of Association must have a clause to the effect that the liability of the members is limited. It implies that a shareholder cannot be called upon to pay any time amount more then the unpaid portion on the shares held by him. He will no more be liable

if once he has paid the full nominal value of the share.

The Memorandum of Association of a company limited by guarantee must further state that each member undertakes to contribute to the assets of the company if wound up, while he is a member or within one year after he ceased to be so, towards the debts and liabilities of the company as well as the costs and expenses of winding up and for the adjustment of the rights of the contributories among themselves not exceeding a specified amount.

Any alteration in the memorandum of association compelling a member to take up more shares, or which increases his liability, would be null and void. (Sec 38). If a company carries on business for more than 6 months while the number of members is less than seven in the case of public company, and less than two in case ofa private company, each member aware of this fact, is liable for all the debts contracted by the company after the period of 6 months has elapsed. (Sec. 45).

6. Association or Subscription Clause

In this clause, the subscribers declare that they desire to be formed into a company and agree to take shares stated against their names. No subscriber will take less than one share. The memorandum has to be subscribed to by at least seven persons in the case of a public company and by at least two persons in the case of a private company. The signature of each subscriber must be attested by at least one witness who cannot be any of the subscribers. Each subscriber and his witness shall add his address, description and occupation, if any. This clause generally runs in this form : “we, the several person whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of the number of shares in the capital of the company, set opposite of our respective name”.

After registration, no subscriber to the memorandum can withdraw his subscription on any ground.

Alteration of Memorandum of Association

Alteration of Memorandum of association involves compliance with detailed formalities and prescribed procedure. Alternations to the extent necessary for simple and fair working of the company would be permitted. Alterations should not be prejudicial to the members or creditors of the comapany and should not have the effect of increasing the liability of the members and the creditors.

Contents of the Memorandum of association can be altered as under :

1. Change of name

A company may change its name by special resolution and with the approval of the Central Government signified in writing . However, no suchapproval shall be required where the only change in the name of the company isthe addition there to or the deletion there from, of the word "Private", consequent on the conversion of a public company into a private company or of a private company into a public company. (Sec. 21)

By ordinary resolution. If through inadvertence or otherwise, a company is registered by a name which, in the opinion of the Central Government, is identical with or too nearly resembles the name of an existing comapany, it may change its name by an ordinary resolution and with the previous approval of the Central Government signified in writing. [Sec. 22(1) (a)].

Registration of change of name. Within 30 days passing of the resolution, a copy of the order of the Central Government"s approval shall also be field with the Registrar within 3 months of the order. The Registrar shall enter the new name in the Register of Companies in place of the former name and shall issue a fresh certificate of incorporation with the necessary alterations. The change of name shall be completeand effective only on the issue of such certificate. The Registrar shall also make the

necessary alteration in the company‟s memorandum of association (Sec. 23)

The change of name shall not affect any right or obligations of the company or render defective any legal proceeding by or against it. (Sec. 23).

2. Change of Registered Office

This may involve :

a) Change of registered office from one place to another place in the same city, town or village. In this case, a notices is to be give within 30 days afterthe date of change to the Registrar who shall record the same.

b) Change of registered office from one town to another town in the same State. In this case, a special resolution is required to be passed at a general meeting of the shareholders and a copy of it is to be filed with the Registrar within 30 days. The within 30 days of the removal of the office. A notice has to be given to the Registrar of the new location of the office.

c) Change of Registered Office from one State to another State to another State.

Section 17 of the Act deals with the change of place of registered office form one State to another State. According to it, a company may alter the provision of its memorandum so as to change the place of its registered office from one State to another State for certain purposes referred to in Sec 17(1) of the Act. In addition the following steps will be taken.

Special Resolution

For effecting this change a special resolution must be passed and a copy there of must be filed with the Registrar within thirty days. Special resolution mustbe passed in a duly convened meeting.

Confirmation by Central Government

The alteration shall not take effect unless the resolution is confirmed by the

Central Government.

The Central Government before confirming or refusing to confirm thechange will consider primarily the interests of the company and its shareholders and also whether the change is bonafide and not against the public interest. The Central Government may then issue the confirmation order on such terms and conditions as it may think fit.

3. Alteration of the Object Clause

The Company may alter its objects on any of the grounds (I) to (vii) mentioned in Section 17 of the Act.

The alteration shall be effective only after it is approved by special resolution of the members in general meeting with the Companies Amendment Act, 1996, for alteration of the objects clause in Memorandum of Associations sanction of Central Government is dispensed with.

Limits of alteration of the Object Clause

The limits imposed upon the power of alteration are substantive and procedural. Substantive limits are provided by Section 17 which provides that a company may change its objects only in so far as the alteration is necessary for any of the following purposes:

i) to enable the company to carry on its business more economically or more effectively;

ii) to enable the company to attain its main purpose by new or improved means;

iii) to enlarge or change the local area of the company‟s operation;

iv) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company;

v) to restrict or abandon any of the objects specified in the memorandum

vi) to sell or dispose of the whole, or any part of the undertaking of the company;

vii) to amalgamate with any other company or body of persons.

Alterations in the objects is to be confined within the above limits for otherwise alteration in excess of the above limitations shall be void.

A company shall file with the registrar a special resolution within one month from the date of such resolution together with a printed copy of the memorandum as altered. Registrar shall register the same and certify the registration. [Sec. 18].

Effect of non-Registration with Registrar

Any alteration, if not registered shall have no effect. If the documents required to be filed with the Registrar are not filed within one month, suchalteration and the order of the Central Government and all proceedings connected therewith shall at the expiry of such period become void and inoperative. The Central Government may, on sufficient cause show, revive the order on application made within a further period of one month [Sec. 19]

4. Alteration of Capital Clause

The procedure for the alteration of share capital and the power to make such alteration are generally provided in the Articles of Association If the procedure and power are not given in the Articles of Associational, the company must change the articles of association by passing a special resolution. If the alteration is authorized bythe Articles, the following changes in share capital may take place:

1. Alteration of share capital [Section 94-95]
2. Reduction of capital [Section 100-105]
3. Reserve share capital or reserve liability [Section 99]
4. Variation of the rights of shareholders [Section 106-107]
5. Reorganization of capital [Section 390-391]

5. Alteration of Liability Clause

Ordinarily the liability clause cannot be altered so as to make the liability of members unlimited. Section 38 states that the liability of the members cannot be increased without their consent. It lays down that a member cannot by changing the memorandum or articles, be made to take more shares or to pay more the shares already taken unless he agrees to do so in writing either before or after the change.

A company, if authorized by its Articles, may alter its memorandum to make the liability of its directors or manager unlimited by passing a special resolution. This rule applies to future appointees only. Such alteration will not affect the existing directors and manager unless they have accorded their consent in writing. [Section 323].

Section 32 provides that a company registered as unlimited may register under this Act as a limited company. The registration of an unlimited company as a limited company under this section shall not affect any debts, liabilities, obligations or contracts incurred or entered into by the company before such registration.

2.0 ARTICLES OF ASSOCIATION

Every company is required to file Articles of Association along with the Memorandum of Association with the Registrar at the time of its registration. Companies Act defines „Articles as Articles of Association of a company as originallyframed or as altered from time to time in pursuance of any previous companies Acts. They also include, so far as they apply to the company, those in the Table A in Schedule I annexed to the Act or corresponding provisions in earlier Acts.

Articles of Association are the rules, regulations and bye-laws for governing the internal affairs of the company. They may be described as the internal regulationof the company governing its management and embodying the powers of the directorsand

officers of the company as well as the powers of the shareholders. They lay down the mode and the manner in which the business of the company is to be conducted.

In framing Articles of Association care must be taken to see that regulations framed do not go beyond the powers of the company itself as contemplated by the Memorandum of Association nor should they be such as would violate any of the requirements of the companies Act, itself. All clauses in the Articles ultra vires the Memorandum or the Act shall be null and void.

Article of Association are to be printed, divided into paragraphs, serially numbered and signed by each subscriber to Memorandum with the address, description and occupation. Each subscriber shall sign in the presence of at least one witness who shall attest the signatures and also mention his own address and occupation.

Contents of Articles of Association

Articles generally contain provision relating to the following matters; (1) the exclusion, whole or in part of Table A; (ii) share capital different classes of shares of shareholders and variations of these rights (iii) execution or adoption of preliminary agreements, if any; (iv) allotment of shares; (v) lien on shares (vi) calls on shares; (vii) forfeiture of shares; (viii) issue of share certificates; (ix) issue of share warrants; (x) transfer of shares; (xi) transmission of shares; (xii) alteration of share capital; (xiii) borrowing power of the company; (xiv) rules regarding meetings; (xv) voting rights of members; (xvi) notice to members; (xvii) dividends and reserves; (xviii) accounts and audit; (xix) arbitration provision, if any; (xx) directors, their appointment and remuneration; (xxi) the appointment and reappointment of the managing director, manager and secretary; (xxii) fixing limits of the number of directors (xxiii) payment of interest out of capital; (xxiv) common seal; and (xxv) winding up.

Model form of Articles

Different model forms of memorandum of association and Articles of Association of various types of companies are specified in Schedule I to the Act. The schedule is divided into following tables.

Table A deals with regulations for management of a company limited by shares.

Table B contains a model form of Memorandum of Association of a company limited by shares.

Table C gives model forms of Memorandum and Articles of Association of a company limited by guarantee and not having a share capital.

Table D gives model forms of Memorandum and Articles of Association of a company limited by guarantee and having a share capital. The Articles of such a company contain in addition to the information about the number of members with which the company proposes to be registered, all other provisions of Table A.

Table E contains the model forms of memorandum and Articles of Association of an unlimited company.

A Public Company may have its own Article of Association. If it does not have its own Articles, it may adopt Table A given in Schedule I to the Act.

Adoption and application of Table A (Section 28). There are 3 alternative forms in which a public company may adopt Articles:

1. It may adopt Table A in full
2. It may wholly exclude Table A, and set out its own Articles in full
3. It may frame its own Articles and adopt part of Table A.

In other words, unless the Articles of a public company expressly exclude any or all provisions of Table A shall automatically apply to it.

Alteration of Articles

Section 31 grant power to every company to alter its articles whenever it desires by passing a special resolution and filing a copy of altered Articles with the Registrar. An alteration is not invalid simply because it changes the company‟s constitution. Thus in Andrews v Gas Meter Co., A company was allowed by changingarticles to issue preference shares when its memorandum was silent on the point.

Alteration of articles is much easier than memorandum as it can be altered by special resolution. However, there are various limitations under the Companies Act to the powers of the shareholders to alter the articles.

In case of conversion of a public company into a private company, alteration in the articles would only be effective after approval of the Central Government [Section 31]. The power are now vested with the Registrar of Companies.

Alteration of the articles shall not violate provisions of the Memorandum. It must be made bonafide the benefit of the company. All clauses in the articles ultra vires the Memorandum shall be null and void, and the articles shall be held inoperative. Alteration must not contain anything illegal and shall not constitute fraud on the minority.

Alteration in the articles increasing the liability of the members can be done only with the consent of the members.

The Court may even restrain an alteration where is likely to cause a damage which cannot be adequately compensated in terms of money. Similarly, a company cannot by altering articles, justify a breach of contract. Any alteration so made shall be valid as if originally contained in the articles.

Where a special resolution has been passed altering the articles or an alteration has been approved by the Central Government where required, a printed

copy of the articles so altered shall be filed by the company with the Registrar of Companies within one month of the date of the passing of special resolution.

2.1 DISTINCTION BETWEEN ARTICLES OF ASSOCIATION AND MEMO-RANDUM OF ASSOCIATION

The difference between memorandum of association and articles ofassociation is as under:

Memorandum of Association	Articles of Association
1. It is character of company indicating nature of business & capital. It also defines the company‟s relationship with outside world	1. They are the regulation for the internal management of the company and are subsidiary to the memorandum.
2. It defines the scope of the activities of the company, or the area beyond which the actions of the company cannot go.	2. They are the rules for carrying out the objects of the company as set out in the Memorandum.
3. It, being the charter of the	3. They are subordinate to

	company, is the supreme document.	the Memorandum. If there is a conflict between the Articles and the Memo-
		randum, the act of the company
4.	Any act of the company which is ultra vires the Memorandum is wholly void and cannot be ratified even by the whole body of shareholders.	4. Any act of the company which is ultra vires the articles can be confirmed by the share-holders if it is intra vires the memorandum.
5.	Every company must haveits own Memorandum	5. A company limited by Shares need not have Articles of its own. In such A case, Table A Applies.
6.	There are strict restrictions on its alteration. Some of the conditions of incorporation contained in it cannot be altered except with the sanction of the Central Government.	6. They can be altered by a special resolution, to any extent, provided they do not conflict with the Memorandum and the Companies Act.

2.2 DOCTRINE CONSTRUCTIVE NOTICE AND DOCTRINE OF INDOOR MANAGEMENT

Doctrine of Constructive Notice

Section 399 allows any person to electronically inspect, make a record, or get a copy/extracts of any document of any company which the Registrar maintains. There is a fee applicable for the same. The documents include the certificate of incorporation of the company.

By now we know that the Memorandum and Articles of Association are public documents. This section confers the right of inspection to all.

Before any person deals with a company he must inspect its documents and establish conformity with the provisions. However, even if a person fails to read them, the law assumes that he is aware of the contents of the documents. Such an implied or presumed notice is called Constructive Notice.

In simpler words, if a person enters into a contract which is beyond the powers of a company, then he has no right under the said contract against the company. The Memorandum of Association defines the powers of the company. Also, if the contract is beyond the authority of the directors as defined in the Articles, the person has no rights.

Doctrine of Indoor Management

The doctrine of indoor management is an exception to the earlier doctrine of constructive notice. It is important to note that the doctrine of constructive notice does not allow outsiders to have notice of the internal affairs of the company.

Hence, if an act is authorized by the Memorandum or Articles of Association, then the outsider can assume that all detailed formalities are observed in doing the act. This is the Doctrine of Indoor Management or the Turquand Rule. This is based on the landmark case between *The Royal British Bank and Turquand*. In simple words, the doctrine of indoor management means that a company's indoor affairs are the company's problem.

Therefore, this rule of indoor management is important to people dealing with a company through its directors or other persons. They can assume that the members of the company are performing their acts within the scope of their apparent authority. Hence, if an act which is valid under the Articles, is done in a particular manner, then the outsider dealing with the company can assume that the director/other officers have worked within their authority.

Exceptions to the Doctrine of Indoor Management

The Turquand rule or the law of indoor management is not applicable to the following cases:

1. **The outsider has actual or constructive knowledge of an irregularity**

In such cases, the rule of indoor management does not offer protection to the outsider dealing with the said company.

2. **The outsider behaves negligently**

The rule of Indoor management does not protect a person dealing with a company if he does not initiate an inquiry despite suspecting an irregularity. Further, this rule does not offer protection if the circumstances surrounding the contract are suspicious. For example, the outsider should get suspicious if an officer purports to act in a manner outside the scope of his authority.

3. **Forgery**

The doctrine of indoor management is applicable to irregularities that affect a transaction except for forgery. In case of a forgery, the transaction is deemed null and void.

3.0 DEFINITION OF PROSPECTUS

Section 2(36) defines a prospectus an "any document described as issued asa prospectus and includes any notice, circular, advertisement or other docu-ment inviting deposits from the public or inviting orders from the public for the

subscription or purchase of any share in, or debentures of, a body corporate". In simple words, a prospectus may be defined as an invitation to the public tosubscribe to a company's shares or debentures. By virtue of the Amendment Act of 1974, any document inviting deposits from the public shall also come within thedefinition of prospectus. The word "Prospectus" means a document which invites deposits from the public or invites offers from the public to buy shares or debentures of the company.

A document will be treated as a prospectus only when it invites offers from a public. According to Section 67 the term "public" is defined as, "It includes any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner". It further provides that no offer of invitation shall be treated as mode to the public if, (i) the same is not calculated to result in the shares or debentures becoming available other than those receiving the offer or invitation;

(ii) it appears to be a domestic concern of the person making and receiving the offer or invitation. The „public" is a general word. No particular numbers are prescribed. The point is that the offer makes the shares and debentures available for subscription to anyone who brings his money and applies in due form,whether the prospectus was addressed to him on behalf of the company or not. A private communication does not satisfy the above point.

Where directors make an offer to a few of their friends, relatives or customers by sending them a copy of the prospectus marked "not for publication"it is not considered an offer to the public.

The provisions of the Act relating to prospectus are not attracted unless the prospectus is issued to the public. Issued means issued to the public. Whether the prospectus has been issued to the public or not is a matter of fact. The leading caseof this point is Nash v Lynde (1929) A.C. 158. In this case the managing director of a

company prepared a document that was marked “strictly private and confidential” and did not contain the particulars required to be dis-closed in a prospectus. A copy of the document along with application forms was sent to a solicitor who in turn sent it to the plaintiff. The document was held not beprospectus and as such the claim of the plaintiff for compensation was dis-missed.

In the case Re South of England Natural Gas and Petroleum Co. Ltd. (1911) 1 Ch. 573, the distribution of 3,000 copies of a prospectus among the members of certain gas companies was held to be an offer to the public because person other than those receiving the offer could also accept it. One may note that under Section 67 an offer or invitation to any section of the public, whether selected as members or debenture holders of the company or as clients of the person making the invitation, will be deemed to be an invitation to the public.

The term “subscription of purchase of shares” means taking or agreeing to take shares for cash. Any document to be called a prospectus must have the following ingredients:

I. There must be an invitation offering to the public;

II. The invitation must be or on behalf of the company or in relation to an intended company;

III. The invitation must be to subscribe or purchase.

IV. The invitation must relate to shares or debentures.

3.1 OBJECTS OF PROSPECTUS

The main objects of a prospectus are as follows :

1. To bring to the notice of public that a new company has been formed.

2. To preserve an authentic record of the terms of allotment on which the public have been invited to but its shares or debentures.

3. The secure that the directors of the company accept responsibility of the statement in the prospectus.

3.2 REQUIREMENTS REGARDING ISSUE OF PROSPECTUS

The relevant requirements regarding issue of prospectus are given below:

1. Issue after Incorporation

Section 55 of the Act permits the issue of prospectus in relation to an intended company. A prospectus may be issued by or on behalf of the company.

a) by a person interested or engaged in the formation company or

b) through an offer for sale by a person to whom the company has allotted shares.

2. Dating of Prospectus

A prospectus issued by a company shall be dated and that date shall be taken as the date of publication of the prospectus (Section 55). Date of issue of the prospectus may be different from the date of publication.

3. Registration of Prospectus

A copy of every prospectus must be delivered to the Registrar for regis- tration before it is issued to the public. Registration must be made on or before the date of its publication. The copy sent for registration must be signed by every person who is named in the prospectus as a director or proposed director of the company or by his agent authorized in writing. Where the prospectus is issued in more than one language, a copy of its as issued in each language should be delivered to the registrar.

This copy must be accompanied with the following documents:

a) If the report of an expert is to be published, his written consent to such publication;

b) a copy of every contract relating to the appointment and remuneration of managerial personnel;

c) a copy of every material contract unless it is entered in the ordinary course of business or two years before the date of the issue of prospectus;

d) a written statement relating to adjustments; if any, made by the auditors or accountants in their reports relating to profits and losses, assets and li- abilities or the rates of dividends, etc.; and

e) written consent of auditors, legal advisers, attorney, solicitor, banker or broker of the company to act in that capacity.

A copy of the prospectus along with specific documents must been field with the Registrar. The prospectus must be issued within ninety days of its reg- istration. A prospectus issued after the said period shall be deemed to be a prospectus, a copy of which has not been delivered to the Registrar for registra- tion. The company and every person who is knowingly a party to the issue of prospectus without registration shall be punishable with fine which may extend to five thousand rupees (Section 60).

4. Expert to be unconnected with the Formation of the Company

A prospectus must not include a statement purporting to be made by an expert such as an engineer, valuer, accountant etc. unless the expert is a person who has never been engaged or interested in the formation or promotion as in the management of the company (Section 57).

A statement of an expert cannot be include in the prospectus without his written consent and this fact should be mentioned in the prospectus. Further, this consent should not be withdrawn before delivery of the prospectus for registra-tion

Section (58).

5. Terms of the contract not to be varied

The terms of any contract stated in the prospectus or statement in lieu of prospectus cannot be varied after registration of the prospectus except with the approval of the members in the general meeting (Section 61).

6. Application Forms to be accompanied with the Copy of Prospectus

Every from of application for subscribing the shares or debentures of a com- pany shall not be issued unless it is accompanied by a copy of prospectus except when it is issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to shares or debentures or in relation to shares ordebentures which were not offered to the public [(Section 56(3)].

Section 56(5) provides that the prospectus need not contain all the details required by the Act where the offer is made to exiting members or debenture holders of the company or if such shares or debentures are in all respect uniform with shares or debentures already issued and quoted on a recognize stock ex-change.

7. Personation for Acquisition etc. of Shares

The provision, consequences of applying for shares in fictitious names to be prominently displayed must be reproduced in every prospectus and every application form issued by the company to any person.

A person who makes in a fictitious name to a company for acquiring shares or subscribing any shares or subscribing any shares shall be liable to imprisonment which may extend to five years similarly, a person who induces a company to allot any shares or to register any transfer of shares in a fictitious name is also liable to the same punishment. [Section 68(a)].

8. Contents as per Schedule II

Every prospectus must disclose the matters as required in Schedule II of the Act. It is to be noted that if any condition binding on the applicant for shares or debentures in a company to waive compliance with any requirements of the Act asto disclosure in the prospectus or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus shall be void [Section 56(2)].

If a prospectus is issued without a copy thereof, the necessary documents or the consent of the experts the company and every person, who is knowingly a part to the issue of the prospectus, shall be punishable with fine which may extend to Rs. 5,000/-.

3.3 CONTENTS OF PROSPECTUS

We know that a prospectus is issued to the public to purchase the shares or debentures of the company. Every person wants to invest his money in some sound undertaking. The soundness of a company can be known from the prospectus of a company. Thus, the prospectus must disclose the true nature of company's activities which enable the public to decide whether or not to invest money in the company. In fact, the public invest money in the company on the faith of the representation contained in the prospectus. Therefore, everything should be stated with strict accuracy, and the complete and true position of the company should be disclosed to the public.

Section 56 lays down that every prospectus issued (a) by or on behalf of a company, or (b) by on behalf of any person engaged or interested in the for-mationof a company, shall:

1. State the matters specified in Part I of Schedule II, and.

2. Set out the reports specified in Part II or Schedule II both Part I and II shall

have effect subject to the provisions contained in Part III of that ScheduleII.

Part I of Schedule II

1. The main objects of the company with names, descriptions, occupations and addresses of the signatories to the Memorandum of association, and number of shares subscriber by them.
2. The number and classes of shares, and the nature and extent of the interestsof the shareholders in the property and profits of the company.
3. The number of redeemable preference shares intended to be issued with particulars as regards their redemption.
4. The number of shares fixed by the articles of company as the qualification of a director.
5. The names, addresses, description and occupation of directors, managing director or manager or any of those proposed person.
6. Any provisions in the articles or any contract relating to appointment, remuneration and compensation for loss of office of directors, managing director or manager.
7. The amount of minimum subscription.
8. The time of the opening of the subscription list cannot be earlier than the beginning of the fifth day after the publication of prospectus.
9. Amount payable on application and allotment on each share shall be stated. If any allotment was previously made within two preceding years, the details of the shares allotted and the amount; if any, paid thereon.
10. Particulars about any option or preferential right to be given to any person to subscribe for shares or debentures of the company.
11. The number, description and amount of shares and debentures which, within

the last two years, have been issued or agreed to be issued as fully orpartly paid up than in cash.

12. The amount paid or payable as a premium, if any, on such share issued within two years preceding the date of the prospectus or is to be issued stating the necessary particulars.

13. The names of the underwriters of shares or debentures, if any, and the opinion of the directors that the resources of the underwriters are sufficientto discharge their obligations.

14. The names or addresses description and occupations of the vendors from whom the property has been purchased or is to be purchased, and the amount paid or payable in cash, shares or debentures respectively.

15. The amount of underwriting commission paid within two preceding yearsor payable to any person for subscribing or procuring subscription for any shares or debentures of the company.

16. Any benefit given to any promoter or officer in preceding two years and the consideration for giving of the benefit.

17. Particulars as to the date, parties and general nature of every contract appointing or fixing the remuneration of managing director or manager, whenever entered into.

18. Particulars of every material contract not entered into in the ordinary courseof business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of the prospectus.

19. Names and addresses of the auditors of the company.

20. Full particulars of the nature and extent of interested of the directors or promoter in the promotion of the company or in the property acquired by the

company within two years of the issue of the prospectus.

21. If the share capital of the company is divided into different classes of shares, the rights of voting at meeting of the company and the rights in respect of capital and the dividends attached to several classes of shares respectively.

22. Where the articles of the company impose any restriction upon the mem- bers of the company in respect of the rights to attend, speak or vote at meetings of the company or the rights to transfer shares or on the direc-tors of the company in respect of their powers of management, the nature and extent of these restrictions.

23. Where the company carries on business, the length of time during which it has been carried on. If the company proposes to acquire a business which has been carried on for less than three years, the length of time during which the business had been conducted.

24. If any reserves or profits of the company or any of its subsidiaries have been capitalized, particulars of the capitalization and particulars of the surplus arising from any revaluation on the assets of the company.

25. A reasonable time and place at which copies of all balance sheets and profits and loss accounts, if any, on which the report of the auditors under part II below is based, may be inspected.

Part II of Schedule II

I General Information

1. Names and address of the Company Secretary, Legal Adviser, Lead Managers, Co-managers, Auditors, Bankers to the company. Bankers to the issue and Brokers to the issue.
2. Consent of Directors, Auditors, Solicitors/Advocates, Managers to issue, Registrar

of Issue, Bankers to the company, Bankers to the issue andExperts.

3. Expert‟s opinion obtained, if any.
4. Change, if any, in directors and auditors during the last 3 years, and rea- sons thereof.
5. Authority for the issue and details of resolution passed for the issue.
6. Procedure and time schedule for allotment and issue of certificates.

II. Financial Information

1. Report by the Auditors

A report by the auditors of the company as regards (a) its profits and losses and assets and liabilities of the company and (b) the rates of dividend, if paid by the company during the preceding 5 financial years.

If no accounts have been made up in respect of any part of the period of 5 years ending on a date 3 months before the issue of the prospectus, the report shall, in addition, deal with either the combined profits and losses and assets and liabilities of its subsidiaries or each of the subsidiary, so far as they concern the members of the company.

2. Reports by the Accountants

(a) A report by the accountants on the profits or losses of the business for the preceding 5 financial years, and on the assets and liabilities of the busi-nesson a date which shall not be more than 120 days before the date of the issueof the prospectus. This report is required to be given, if the proceeds of the issue of the shares or debentures are to be applied di-rectly on the purchase of any business.

(b) A similar report on the account of a body corporate by an accountant if the proceeds of the issue are to be applied in the purchase of shares of a body

corporate so that body corporate becomes a subsidiary of the acquiring company.

(c) Principal terms of loans and assets charged as security.

3. Statutory and other Information

Statutory and other information minimum subscription, underwriting commission and brokerage; date of allotment, closing date, date of refund, option to subscribe, material contracts and inspection of documents, etc. are required to set out in the prospectus.

Part III of Schedule II

Part III of the schedule consists of provisions applying to Part I and II of the said schedule.

A. Every person shall, for the purpose of this schedule, be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase of any property to be acquired by the company, in any casewhere (a) the purchase money is not fully paid at the date of the issue of the prospectus (b) the purchase money is to be paid or satisfied, wholly or in part, out of the proceeds of the issue offered for subscription by the prospectus; (c) the contract depends for its validity or fulfillment on the result of that issue.

B. In the case of a company which has been carrying on business for less than 5 financial years, reference to 5 financial years means reference to that number of financial years for which business has been carried on.

C. Reasonable time and place at which copies of all balance sheets and profit and loss accounts on which the report of the auditors is based, and mate-rial contracts and other documents may be respected.

"Term year" wherever used herein earlier means financial year.

Declaration

That all the relevant provision of the Companies Act, 1956 and the guide lines issued by the Government have been complied with and no statement made in the prospectus is contrary to the provisions of the Companies Act, 1956 and rules thereunder. The prospectus shall be dated and signed by the directors.

Statement by Experts

1. Experts to be unconnected with formation or management of company (Section 57). Where a prospectus includes a statement made by an expert,he shall not be engaged or interested in the formation, promotion or management of the company. The expression „expert" includes an engineer, accountant, a valor and, any other person whose profession gives authority to a statement made by him.

2. Expert's consent to issue of prospectus containing statement by him (Section 58). A prospectus including a statement made by an expert shall not be issued, unless (a) he has given his written consent to be issued of the prospectus with the statement included in the form and context in which itis included and; (b) statement that he has given and has not withdrawn his consent as aforesaid appears in a prospectus.

   A wholesome rule intended to protect intending investors by making the expert a party to the issue of the prospectus and making him liable for untrue statements (Section 58). Penalty [Section 59 (1)], if any, prospectus is issued in contravention of Section 57 or 58, the company, and every person who is knowingly a party to the issue thereof, shall be punishable with fine which may extent to Rs. 5,000/-

TYPES OF PROSPECTUS

According to Companies Act 2013, there are four types of prospectus.

Deemed Prospectus – Deemed prospectus has mentioned under Companies Act, 2013 Section 25 (1). When a company allows or agrees to allot any securities of the company, the document is considered as a deemed prospectus via which the offer is made to investors. Any document which offers the sale of securities to the public is deemed to be a prospectus by implication of law.

Red Herring Prospectus – Red herring prospectus does not contain all information about the prices of securities offered and the number of securities to be issued. According to the act, the firm should issue this prospectus to the registrar at least three before the opening of the offer and subscription list.

Shelf prospectus – Shelf prospectus is stated under section 31 of the Companies Act, 2013. Shelf prospectus is issued when a company or any public financial institution offers one or more securities to the public. A company shall provide a validity period of the prospectus, which should not be more than one year. The validity period starts with the commencement of the first offer. There is no need for a prospectus on further offers. The organization must provide an information memorandum when filing the shelf prospectus.

Abridged Prospectus – Abridged prospectus is a memorandum, containing all salient features of the prospectus as specified by SEBI. This type of prospectus includes all the information in brief, which gives a summary to the investor to make further decisions. A company cannot issue an application form for the purchase of securities unless an abridged prospectus accompanies such a form.

3.4 MIS-STATEMENT IN THE PROSPECTUS

A prospectus is an invitation to the public to subscribe to the shares or debentures of a company. Every person authorizing the issue of prospectus has a primary responsibility to seed that the prospectus contains the true state of affairs of the company and does not give any fraudulent picture to the public. People invest in

the company on the basis of the information published in the prospectus. They have to be safeguarded against all wrongs or false statements in prospectus. Prospectus must give a full, accurate and a fair picture of material facts without concealing or omitting any relevant fact. This is known as the „Golden Rule" for framing prospectus as laid down in New Brunswick etc. Co. V. Muggeridge [(1860) 3 LT 651]. The true nature of company's venture should be disclosed. The statements which do not qualify to the particulars mentioned in the prospectus or any information is intentionally and willfully concealed by the directors of the company, would be considered as mis-statement.

Thus, the term „venture statement" as „mis-statement" is used in a broader sense. It includes not only false statements which produce a impression of actual facts. Concealment of a material fact also comes within the category of mis-statement.

A statement included in a prospectus shall be deemed to be untrue, if

- The statement is misleading in the form and context in which it is included; and
- the omission from a prospectus of any matter is calculated to mislead (Section 65).

If there is any misstatement of a material fact in a prospectus as if theprospectus is wanting in any material fact, this may arise-

1. Civil Liability
2. Criminal Liability

1. Civil Liability

A person who has induced to subscribe for shares (or debentures) on thefaith of a misleading prospects has remedies against the company, directors, promoters,

and experts. Every person who is a director and promoter of thecompany, and who has authorized the issue of the prospectus [Section (2)].

a) Compensation

The above persons shall be liable to pay compensation to every person who subscribes for any shares or debentures for any loss or damage sustained by himby reason of any untrue statement included therein [Section 62(1)].

In McConnel V. Wright (1903 1 Ch 5460 it has been held that the measure of the damages is the loss suffered by reason of the untrue statement, omissions, etc. the difference between the value which the shares would have had and the truevalue of the shares at the time of the allotment.

b) Recession of the Contract for Misrepresentation

Avoiding the contract is recession. Any person can apply to the court for recession of the contract if the statements on which he has taken the shares are false or caused by misrepresentation whether innocent or fraudulent.

The contract can be rescinded if the following conditions are satisfied:

1) The statement must b a material misrepresentation of fact
2) It must have induced the shareholder to take the shares.
3) The deceived shareholder is an allottee and he must have relied on the statement in the prospectus.
4) The omission of material fact must be misleading before recession isgranted.
5) The proceedings for recession must be started as soon as the allottee comesto know of a misleading statement.

c) Damages for Deceit as Fraud

Any person induced to invest in the company by fraudulent statement in a

prospectus can sue the company and person responsible for damages. The share should be first surrendered to company before the company is used for damages.

Fraud occurs when any statement is made without belief in the truth or carelessly. A statement made with knowledge that it is false, will constitute fraud or deceit. In the leading case on the point - Derry V. Peek (1889 14 AG 337). It has been held that if the person making the statement honesty believes it to be true,he is not guilty of fraud even if the statement is not true. The facts of this

case were:

The Tramway company had power by special Act to make tramways and to use steam power with the consent of the Board of Trade. The plants of thecompany are approved honesty. The directors of the company believed that since the plans were approved, permission to use steam power from Board of Trade was only a formality and would be granted. Prospectus was issued wherein the directors stated that the consent to use steam power was obtained by the com- pany. Subsequently, the consent was refused and company had to be wound up. On the action by plaintiffs for deceit it was held that the directors were not liable for fraud as they honesty believed that the consent would be obtained, though the statement was untrue.

d) Liability for non-compliance

A director or other person responsible shall be liable for damage for non-compliance with or contravention of any of the matters to be stated and reports to be set out in the prospectus as provided [by Section 56(41)].

e) Damages for Fraud under General Law

Any person responsible for the issue of prospectus may be held liable under the general law or under the Act for misstatements or fraud.

f) Penalty for Contravening Section 57 & 58

If any prospectus is issued is contravention of Section 57, (experts to be unconnected with formation or management of company), or Section 58 (expert‟s consent to issue of prospectus containing statement by him) the company and every person who is knowingly party to the issue thereof, shall be punishable

with fine which may extend to Rs. 5,000/-.

4. Penalty for issuing the Prospectus without Registration

If a prospectus is issued without a copy of thereof being delivered to the Registrar, the company and every person who is knowingly a party to the issue of the prospectus shall be punishable with fine which may extent to Rs 5,000 [Section 60(5)].

Defence against Civil Liability

Every person made liable to pay compensation for any loss or damages may escape such liability by proving that :

I. Having consented to become a director of the company, he withdrew his consent before the issue of the prospectus and that it was issued without his authority or consent.

II. The prospectus was issued without his knowledge or consent and that on becoming aware of its issue he forth with gave reasonable public notice thatit was issued without his knowledge or consent.

III. After the issue of prospectus, and before allotment thereunder he, on becoming aware of any untrue statement therein withdrew his consent tothe prospectus and gave reasonable public notice of the withdrawal.

IV. If a director, etc., has reasonable ground to believe that the statement was true and he, in fact, believed it to be true up to the time of allotment, he is not liable. But it is not enough for a director to say that he was honest, he has to show that his honest belief was based on reasonable grounds.

V. If statement is a correct and fair representation or extract or copy of the statement made by an expert who is competent to make it and had given his consent and had not withdrawn it, the director, etc., is not liable. Like-wise, if the statement is a correct and fair representation or extract or copy of an official document or is based on the authority of an official person, no liability attaches to the director etc.

2. Criminal Liability

Every person who authorized the issue of prospectus shall be punishable for untrue statement with imprisonment for a term which may extend to 2 years or with fine which may extend to Rs. 5,000/- or with both [Section 63(1)].

Penalty for fraudulently inducing Persons to Invest Money [Section 68]

- Any person who either knowingly or recklessly makes any statement, promises or forecast which is false, deceptive or misleading or by any dishonest concealment of material facts, induces or attempts to induce another person to enter into;
- Any agreement with a view to acquiring, disposing of, subscribing for, or underwriting shares or debentures;
- An agreement to secure to any of the parties from the yield of shares or debentures; or by reference to fluctuation in the value of shares or debentures; shall be punishable for a term which may extend to 5 years of with fine which may extend to Rs. 10,000/- or with both.

Defence against Criminal Liability

Any person made criminally liable can escape the same as proving that

- the statement was true [Section 63(i)]. statement was immaterial; or
- he had a reasonable ground to believe and did upto the time of the issue of prospectus that the statement was true [Section 63(i)].

3.5 STATEMENT IN LIEU OF PROSPECTUS (SECTION 70)

A company having a share capital which does not issue a prospectus or which has issued a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures, unless at least three days before the allotment of shares or debentures, this has been delivered to the Registrar for registration a „statement in lieu of prospectus" signed by every person who is named therein as a director or a proposed director of the company or by his agent authorized in writing, in the form and containing the particulars set out in Part I of Schedule III and setting out the reports specified in Part II of Schedule III subject to the provisions contained in Part III of that Schedule (Section 70).

A private company on becoming a public company shall deliver to the Registrar a statement in lieu of prospectus in the form containing the particulars specified in Part I of Schedule IV with report set out in Part II of Schedule IV subject to the provisions contained in Part III of that Schedule [Section 44(2) (b)].

If the company acts in contravention of the provisions, the company and every director who is at fault shall be punishable with fine which may extent to Rs.1,000/- .

If the „statement in lieu of prospectus" include any untrue statement, any person who authorized the delivery of the statement in lieu of prospectus shall be, punishable with imprisonment up to two years or with fine which may extent to Rs. 5,000/- or with both. He can avoid liability if he proves either that the statement was immaterial or that he had reasonable ground to believe that the statement was immaterial or that he had reasonable ground to believe that the statement was true. The civil and criminal liability for mis-statements or misrepresentations is the same as in the case of a prospectus [Section 70(5)].

3.6 MINIMUM SUBSCRIPTION (SECTION 69)

When shares are offered to the public the amount of minimum subscription has to be mentioned in the prospectus. It means the amount which, in the opinion of the directors, is enough to meet the purchase price of any property, preliminary expenses and working capital. No allotment shall be made until at least so much amount has been subscribed for. If the minimum subscription has not been received within 120 days, of the issue of the prospectus, the money received from the applicants must be repaid without interest. If the money is not paid back within 130 days, the directors become personally liable to pay it with interest, unless they can show that default was not due to any negligence or misconduct or their part.

ISSUE AND ALLOTMENT OF SHARES

The three basic steps of the procedure of issuing the shares are:

Let us see the provisions of Companies Act related to the issue and allotment of securities –

1. Issue of Prospectus

The first step towards raising money for a company is done by issuing the shares. A Prospectus is an invitation to the public for the purchase of shares in the company. The company has to submit a copy of the prospectus to the SEBI whereas the private companies

do not need to issue any prospectus. The prospectus of a company gives the information about the issuing company – names of Directors, terms of issue, opening and closing date of the share issue, application fees, bank details for deposit and minimum shares for application.

2. Receiving of Application

After going through the prospectus of the company, interested investors applies for shares along with the application fee. When the number of shares applied for is more than the number of shares issued, this is termed as **Over-subscription** while the number of application for the issue of share is less than expected then this is known as **Under-Subscription.** The amount paid for the application money must be at least 5 percent of the nominal amount of share.

3. Allotment of Shares

The decision of the allotment of shares is taken by the company. Allotment of shares to its shareholders is called Acceptance and is not possible until subscription. Minimum Subscription is the minimum amount stated in the prospectus that is required to run the Business. It is unlikely that all the applicants will receive the allotment letter. Some applicants receive regret letters and their application money is returned to them.

After Allotment of shares by the company, the shareholders have to pay the remaining amount due on shares according to the procedures mentioned in the prospectus.

The minimum subscription amount of 90 percent of the issue is to be achieved by the company in 60 days from the date of closure of the issue. In case if it is not met, the company will have to refund the entire subscription amount. There is a relaxation of 18 days. For any delay after 78 days, the company will have to pay an interest of 6 percent per annum as a penalty.

After the Acceptance of shares, the applicants become shareholders in the company.

In case there is no such provision in the prospectus the following rule applies–

- The company cannot ask for more than 25 percent of the nominal value of the share.
- The company can ask the shareholder to pay the next amount of share only after one month.
- A notice of 14 days is given to each member specifying the amount, and date of payment.
- Different shareholders fall under different classes, and hence the call for payment should be made on a regular basis on the particular body of the shareholder.

There are certain restrictions on Allotment of shares as per the Companies Act –

- **Minimum Subscription**

According to Section 69(1) of the Companies Act, no allotment can be made by the company until the minimum Subscription has been received.

- **Application money**

In accordance with Section 69(3), the amount payable on each share should not be less than 5 per cent of the Nominal Value of the shares.

- **Money to be deposited in a Scheduled Bank**

According to Section 69(4), the Money received from the applicants must be deposited in Schedule Banks until the certificate of commencement of Business has been obtained.

- **Returns of Money**

According to section 69(5), if the minimum Subscription has not been raised or the Allotment cannot be made within 120 days from the date of publication of the prospectus, the Director has to return the money received from the applicant.

- **Opening of the Subscription List**

According to Section 72, no allotment can be made until the beginning of the 5th day after the publication of the prospectus or any time later as mentioned in the prospectus.

- **Rejection of Application**

If any person gives public notice of withdrawal of the consent to the issue of the prospectus, any applicant can revoke this application.

FORFEITURE OF SHARES

Forfeiture of shares is a process where the company forfeits the shares of a member or shareholder who fails to pay the call on shares or instalments of the issue price of his shares within a certain period of time after they fall due. In other words, when the shareholder fails to pay the full amount of share which he agreed to pay in instalments the company can cancel his shares.

Legal Framework

When the shares are issued by the company, generally the shareholders are not asked to pay the whole amount of share at once. It happens in instalments. The company makes these calls on shares when it requires further capital.

The company may call up the unpaid money from the shareholders when it is needed from time to time. The board of directors are required to pass a resolution for making a call on shares. The articles of the company should contain the provisions regarding this call on shares and if nothing is mentioned in the articles then Regulations 13-18 of table F of Schedule I of Companies Act, 2013, will apply.

Those provisions provide that

1. the amount called must be not more than one-fourth of the face value of share;
2. the dates of two consecutive calls must differ by at least a month;
3. a minimum of fourteen days' notice must be given to members;
4. the notice has to mention the time, place and amount of the call on shares.

Generally, the company will give 14 days' notice to the shareholder and after 14 days if the shareholder is not willing to pay the money due to the company will forfeit the shares of that shareholder.

The relationship between shareholder and company

Now if we look at the relationship between a shareholder and the company, it is a contractual relationship. The shareholder applies for an offer from the company and gets shares allotted. This process is nothing but the shareholder entering into a contract with the company as the offer and acceptance along with some consideration become a valid contract between him and the company. This contract makes it binding upon the shareholder to pay-up the amount due on the issue price of the share when company calls for it through the call on shares.

So the **non-payment of call on shares amounts to a breach of contract by the shareholder,** and therefore as per the terms and conditions of the issue of shares and after allowing the shareholder prescribed time and opportunity, if he still fails to pay the money due, the company can forfeit the shares of that shareholder. Shares which are forfeited will no longer remain the shares of that shareholder. The money paid by that shareholder is also not refundable by the company.

What happens after the shares are forfeited?

After the shares are forfeited, they may be either disposed of or they may be reissued to some other person. The only condition in reissuing the forfeited shares is that the price which will be fixed by the company for reissue of the forfeited share (i.e., the price of the reissued share + amount paid by the former owner of the share) should not be less than the face value of the share. This is done to ensure that the shares are not allotted at a discount.

If the previous shareholder (whose shares has been forfeited) requests the company to cancel the forfeiture, the board of directors can at any point before the reissue or disposal of such shares can cancel the forfeiture of shares in terms as the board thinks fit. For this, the board of directors has to pass a resolution to cancel the forfeiture.

Procedure for forfeiture of shares

Forfeiture of shares is a serious step since it involves in depriving a person of his property as a penalty of some act or omission. Accordingly, shares of members cannot be forfeited unless the articles of the company confer such power on the directors. The forfeiture of a share should happen only for the non-

payment of the call on shares by the members and in accordance with articles of the company. But forfeiture can also be made for any other reasons which are specified in the articles of the company. Companies normally have their own rules and regulations regarding the forfeiture of shares and in case if those provisions are not present then the Regulations 28-34 of Table F of Schedule 1 of Companies Act, 2013 will apply.

The following is the procedure:

- ## In accordance with articles

Forfeiture of shares must be in accordance with the provisions contained in the articles of the company to be treated as valid forfeiture. The power of forfeiture of shares must be exercised bona fide and in the interest of the company. Thus, where the articles of the company authorize the directors to forfeit the shares of a shareholder, who commences an action against the company or the directors, by making a payment of the full amount of his shares, was held that such a clause was invalid as it was against the rights of a shareholder [**Hope v. International Finance Society (1876) 4 Ch. D. 598**]

- ## Proper notice

A proper notice under the authority of board must be served on the defaulting shareholder. The notice should mention that the shareholder has to pay the amount on a day specified which would not be earlier than fourteen days from the date of notice served. This is provided under Regulation 29 of Table F. the notice should also mention that in the event of non-payment, the shares will be liable to be forfeited.

The objective of sending the notice is to give the defaulting shareholder an opportunity to pay the call money, interest and any other expenses and hence notice should disclose enough information with particulars to the shareholder.

"A proper notice is a condition precedent to the forfeiture of shares and even the slightest defect in the notice will invalidate the forfeiture". [**Public Passenger Services Ltd. v. M.A. Khader [1996]**]

A notice sent for forfeiture by registered post was returned unserved, the forfeiture will be held invalid" [**Promiela Bansali v. Wearwell Cycle Co. Ltd. [1978] 48 Comp. Cas. 202 (Delhi)**.]

A notice sent to the holder of a partly paid share after his death is not a proper notice. Notice in this kind of situations is to be sent to the legal heir [**George Mathai Noorani v. Federal Bank Ltd. [2007] 76 SCL 528 (CLB).**]

- **Resolution for forfeiture**

If the defaulting shareholder does not pay the amount within the specified period mentioned in the notice properly served to him, the directors of the company may pass a resolution forfeiting the shares under regulation 30 of Table F. in the absence of such resolution the forfeiture shall be invalid unless the notice of forfeiture incorporates the resolution of forfeiture as well. For example, the notice may state that in the event of default the shares shall be deemed to have been forfeited.

Effects of forfeiture

Cessation of membership

A person whose shares have been forfeited ceases to be a member in respect of forfeited shares. This is provided under regulation 32(1) of Table F of schedule 1 of Companies Act, 2013.

Cessation of liability

The liability of a person whose shares have been forfeited comes to an end when the company receives the payment in full of all such money in respect of shares forfeited. This is provided in Regulation 32(2) of Table F.

However, notwithstanding the forfeiture of shares, shareholder remains liable to pay to the company all money which, at the date of forfeiture, were payable by him to the company in respect of forfeited shares. Thus, the liability of unpaid calls remains even after the forfeiture of shares.

Liability as past member

The liability of a former shareholder remains as a liability of a past member to pay calls if liquidation of the company takes place within one year of the forfeiture.

Forfeited shares become company's property

The forfeited shares become the property of the company on forfeiture. Accordingly, these may be re-issued or otherwise disposed of on such terms an in such manner which the board of directors thinks fit. This provided under Regulation 31(1) of Table F.

In the same Regulation clause (2) provides that at any point of time before a sale or disposal of forfeited shares the board may cancel the forfeiture of shares in terms as they think fit.

CALL ON SHARES

Definition: A call may be defined as "A demand made by the company on its share holders to pay whole or part of the balance remaining unpaid on each share at any time during the life time of a company".

For example : The price of a share is Rs.100/-. At the time of applying for shares, the investor has to pay Rs.5/- of the nominal value of share i.e. Rs.5, so Rs.95/- is balance on each share. As and when the company needs money its asks its share holders to pay, suppose the company asks its shareholders to pay
per share, that is known as calls on shares.

Procedure regarding calls on shares:

(1) Board Meeting for passing a call resolution: A meeting of the Board of Directors will be called. In this meeting a resolution will be passed regarding making a call. The resolution must specify the amount of
call money, the date and place of its payment.

(2) Closing of the Register of member and the Share Transfer Book: In the same Board meeting a resolution is passed, whereby the secretary is given permission to close the transfer book and the register of members for a period of about 15 days.

(3) Preparing the call lists: After closing the transfer book, the work of preparing the call lists from the register of member, is under taken by the secretary. A call lists shows details like name and address of the share holders, numbers of shares held by them, the amount due on the call etc. This helps the secretary in sending call letters to the members.

(4) Drafting call letters: The secretary prepares a draft of the all letter in consultation with the chairman of the company. He gets the call letters printed in the required quantity. A call letter is divided into three parts. They are: **(i)** A call letter proper, **(ii)** A call receipt, **(iii)** A call slip.

(5) Issuing call letters / Dispatch of call notice: After the preparation of call lists, the secretary issues a call letter to the share holders on their registered address. He also publishes a call notice in a leading newspaper for the information of shareholders.

(6) Arrangement with bankers for call money: The has to make necessary arrangement with the bankers of the company to receive call money from the members. Accordingly instructions are given to the bankers. The amount receive on calls is credited to a separate account called a "Call Account". After receiving the call money, bankers arrange to send the amount to the company. The call letter and call receipt are returned to the shareholder

with necessary entries, signature and stamp.

(7) Entries in the call list and the register of members: After receiving the call money, bankers return call letter and call receipt to the members and send all call slips to the company's office. The secretary then makes entries against the respective names in the call lists and the register of members.

(8) Preparing list of Defaulters: The secretary prepares a list of those members who have not paid the call money on the stipulated date. Such a list is called a list of defaulters. It is placed before the Board for necessary action. Unpaid call money by members is called as "Calls in Arrears".

SECRETARIAL PRACTICE

20

SECRETARIAL DUTIES RELATING TO MEETINGS, NOTICE, AGENDA, PROXY, MOTION, RESOLUTION, MINUTES AND REPORTS

COMPANY SECRETARY?

Section 2(24) of the Companies Act, 2013 defines 'Company Secretary' as a person who is a member of the Institute of Company Secretaries of India (ICSI) and who is appointed by a company to perform the functions of a company secretary. Company having paid up Capital of ₹ 5 crore or more is required to appoint a whole-time Company Secretary.

ROLE AND RESPONSIBILITIES OF COMPANY SECRETARY

A company secretary is a vital link between the Board of Directors, Shareholders, Government and Company.

He ensures that Board procedures are followed and regularly reviewed and provides greater guidance to Chairman and the Directors on their responsibilities under various laws. He commands high position is the value chain and acts as a conscience seeker of the company.

A company secretary is an officer of the company responsible for compliance by the company with the provisions of the Companies Act, 2013 and various other corporate, taxation, industrial and economic laws applicable to companies in general.

Under the Companies Act, the role of a secretary is three-fold, viz.,

- as a statutory officer,
- as a co-ordinator and
- as an administrative officer if so authorized.

The role of a company secretary may conveniently be studied from three different angles :

Statutory Officer

The company secretary is an officer responsible for compliance with numerous legal requirements under different Acts including the Companies Act, 2013. Company Secretary is one of the key managerial personnel of a company. Under Sec. 383A of Companies Act, all companies (including Private Companies) are required to appoint Company Secretary in whole time employment whose paid up Share Capital is ₹ 10 crore or more. The various provisions and rules framed under the Companies Act make it obligatory for the secretary

- to sign the annual return filed with the Registrar [Section 92],
- to sign financial statements [Section 134(1)]
- to report fraud [Section 143(12)] and to
- to make declaration under Section 7(1) of the Act before incorporation of a company confirming that all the requirements of Act and the Rules there under have been complied with. Under the Indian Stamp Act it is the duty of a secretary to see that the

documents such as letter of allotment, share certificate, debentures, and mortgages are duly stamped. Under the Companies Act, he has either to comply with the various provisions of the Act or is liable to be fined or imprisoned for non-compliance of his obligations. Thus the responsibility of a secretary as a statutory officer has been greatly expanded by enactment of various economic statutes, like Competition Act, Foreign Exchange Management Act, SEBI Act, Security Contracts (Regulation) Act, 1956 and Depositories Act.

Co-ordinator

The Board cannot function without proper coordination amongst various departments of the company. In India, most companies have an increasing dependence on the financial institutions for assistance. These institutions expect the Board of directors to oversee the overall management and performance of the assisted companies and for this purpose, would insist on all basic policy issues to be discussed at the Board meetings and decisions reached. For this purpose, it would be necessary for the company?s management to place all the salient features and information before the Board in order that they can arrive at a proper decision. This is evidenced by the various conditions imposed in the loan agreements entered into between the financial institutions and the assisted companies.

Company managements look to the company secretary for implementation of the conditions in the loan agreements. The financial institutions stipulate that in the case of companies assisted by them financially, compliance certificate as per their format duly certified by the company secretary should be furnished periodically at the Board meetings. The Company Secretary as a co-coordinator has an important role to play in administration of the company's business and affairs. It is for the secretary to ensure effective execution and implementation of the management policies laid out by the Board. The position that the company secretary occupies in the administrative set-up of the company makes his function as one of co-coordinator and link between the top management and other levels. He is the link between the Company and its shareholders, the society and the Government. Thus, the role of a company secretary as a co-coordinator has two aspects, namely :

- internal and
- external.

The internal role of a co-coordinator extends to the Board including the Chairman and Managing Director, various line and staff personnel, the trade unions and the auditors of the company. His role as an external co-ordinator extends to the relationship of the company with shareholders, Regulators, Government and Society.

Administrative Officer

Since the secretary has an opportunity of looking at the entire organisation, he has the scope to advise the top management including the Board of directors on the need to develop a good structure. Since the secretary collects and interprets information relating to all aspects of business to help the Board in carrying out its function, he, therefore, gets an opportunity to know the strengths and the weaknesses of the functional executives. In his role as administrator, wherever applicable he has to make a detailed analysis of various activities, decision making machinery, inter-departmental relationship and their functioning. The making of such examination and the consequent advice and recommendation for making changes is a task which the company secretary has to perform. The Company Secretary in consultation with the Finance Manager has to devise suitable and proper systems of accounting procedure, internal control and internal audit with a view to safeguarding the company's funds. The Company Secretary should have a good knowledge of budgetary control and procedures, accounts and other related matters. In many companies, the Secretary is also the Chief Accountant.

SECRETARIAL DUTIES TOWARDS THE BOARD OF DIRECTORS

Secretarial duties of a company secretary in relation to the Board of Directors include :

(i) Facilitating the convening of meetings, Board, General and committee meetings, drafting out the minutes and reports.

(ii) Keeping the Board informed as an advisor on matters regarding legal, financial and other laws and problems as far as they relate to the company.

(iii) He must ensure that all decisions taken by the Board are in consonance with legal requirements, and the powers they exercise do not require approval of the shareholders, Central Government or any other authority.

(iv) Maintaining secrecy regarding matters discussed at such meetings.

(v) He shall ensure the compliance with secretarial standards issued by the Institute of Company Secretaries of India and approved by the Central Government.

(vi) He has to assist and advise the Board in ensuring good corporate governance and in complying with Corporate Governance requirements and best practices.

SECRETARIAL DUTIES TOWARDS THE COMPANY

1. Maintenance of Records of Company

- The Secretary is required to maintain certain other records in addition to those specified under the Companies Act.
- The secretary also has to ensure that the statutory time limits relating to directors' and shareholders' meetings, payment of dividend and interest, filing of returns under the Companies Act, 2013, Income-tax Act and Sales Tax Act, etc., renewals of contracts and leases and the formalities under stock exchange and SEBI regulations and the listing agreements are complied with.

2. Ensuring Adequacy of Systems of Safety and Security

- The secretary has to ensure that adequate systems of safety and security of personnel based on technical advice are available in the factory and office.
- He is also responsible for devising and maintaining systems to safeguard the valuable company records, or information against loss, theft, fire, etc.
- He is to review these from time to time to ensure that the properties of the company are adequately insured.

SECRETARIAL DUTIES IN RELATION TO BOARD MEETINGS
(Meetings, Notice, Agenda, Proxy, Motion, Resolution, Minutes & Reports)

A. Before the meeting

1. The Secretary shall give not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means. [*Section* 173(3)]

2. Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting.

3. In case of first board meeting, the notice must also mention that it is the first Board meeting.

4. It is not obligatory to give agenda in the notice, but it is a good secretarial practice to enclose the agenda to the notice of the meeting.

5. Contact and request all the directors to attend the meeting and arrange the facilities required by them in this regard, like conveyance, stay arrangements, location of venue etc.

6. At least half an hour before the meeting, the persons responsible for the conducting the meeting should place the folders containing Agenda, notes to Agenda, draft minutes to Agenda, statement of expenses incurred/to be incurred, Business Plan etc. for ready reference of all directors to enable them to deliberate and discuss on each item of the agenda in detail.

7. Before holding the meeting, welcome the directors and obtain their signatures on the Attendance Register.

B. At the meeting

1. If quorumis present, declare the meeting in order and inform the names of the directors who sought leave of absence from attending the meeting. The Quorum of a company shall be one third of the total strength of the Board or two directors whichever is higher. The participation of directors by video conferencing or by other means shall also be counted for the purpose of quorum.

2. In case of section 8 companies, the quorum of co. shall be either eight members or 25% of its total strength whichever is less. Provided that the quorum shall not be less than two members.

3. The directors who are present at the meeting may elect one of them as the Chairman of the meeting and request him to take the Chair.

4. Help the Chairman to conduct the meeting as per the agenda.

5. If any director wants to place any other item for the discussion at the meeting, then such item may be taken up with the permission of the Chairman.

6. Every director shall disclose his concern or interest in any company or companies or bodies corporate, firms or other association of individuals, by giving notice in writing

7. Decide the date, time and place of the next Board meeting.

C. After the Meeting

1. After the meeting is over, prepare draft minutes of the meeting; get it reviewed by the chairman of the meeting.

2. Send copy of draft minutes of the meeting to each of the directors of the company for information and comments.

3. Contact and collect draft minutes from each of the directors with their comments. After that, in consultation with the Chairman/Managing Director finalise the minutes and enter them into the Minutes Book. All pages should be consecutively numbered.

4. Such final minutes may be signed and dated by the Chairman of the meeting or by the Chairman of the succeeding meeting. All pages of the minutes are to be initialed and the last page of the minutes should be signed and dated by the Chairman.

5. Ensure that the minutes are entered within 30 days of the conclusion of meeting.

SECRETARIAL DUTIES IN RELATION TO GENERAL MEETINGS
(Meetings, Notice, Agenda, Proxy, Motion, Resolution, Minutes & Reports)

A. Before the General Meeting

1. To convene a Board meeting, after giving notice as per Section 173(3), as soon as the final accounts are ready, invite the Auditors for their report and transact the following business :

(a) To consider and discuss the report of Audit Committee on the Annual accounts.

(b) To approve the accounts and authorise signing of accounts.

(c) To secure Auditor?s report on the accounts.

(d) To approve the draft of the Board's Report and to authorise the Chairman to sign the Report on behalf of the Board.

(e) To consider the payment of dividend, if any, in case it is to be declared in the Annual General Meeting

2. To fix time, date and place for the annual general meeting, approve the draft notice and also authorise the Secretary to issue Notice for the meeting. While fixing the time, date and place for the annual general meeting, care should be taken that the time should be during 9 am to 6 pm, the date should not be a National holiday, and the place should be either the registered office of the company or some other place within the same city, town or village in which the registered office of the company is situated.

3. Listed entity shall give prior intimation to stock exchange atleast 5 days in advance about Board meeting in which financial results are due to be considered.

4. To arrange for the publication in a newspaper of at least 7 days previous notice of closure of the Register of Members and the Share Transfer Books as per Section 91 of the Act.

5. In case of listed company, close the registers for the period as advertised and inform the all the stock exchanges by giving a notice in advance of at least 7 working days.

6. To arrange for the printing of the balance sheet, profit and loss account, reports of the directors and of the auditors and the notice for the meeting.

7. To issue notice to the shareholders, for at least 21 clear days before the date of annual general meeting and where it is to be sent by post, it should be posted 48 hours earlier than the meeting. Notice of the meeting must also be send to the directors, auditors and stock exchanges.

8. Check proxies with the Register of Members as and when they are received, from day to day, so that an up-to-date position is available till the date of the meeting.

9. To arrange for the printing of attendance slips or attendance register and ballot papers.

10. In consultation with the chairman or the Managing Director, prepare a detailed agenda for the meeting.

11. To prepare Dividend List from the Register of Members/beneficial owners, as on the last date of the closure of the Register of Members and the Share Transfer Books.

12. To make arrangement for the printing of a combined document containing 'Notice of Dividend' and 'Dividend Warrant'.

B. At the Meeting

1. To get the Attendance Register signed by the shareholders, and to make them comfortable in their seats, and to look to the comfort and convenience of the directors and the chairman.

2. To help the Chairman in ascertaining quorum.

3. To read out the notice of the meeting if advised by the Chairman.

4. To read out the Auditor's Report, if advised by the Chairman, when the item relating to adoption of accounts is taken up for consideration.

5. To produce copies of Memorandum and Articles of Association of the company.

6. To help the Chairman in the conduct of the meeting, particularly in the conduct of poll, counting of votes etc.

7. To supply to the Chairman any information which he may require in connection with the queries raised by the shareholders relating to accounts and other connected matters.

8. Give advance information to the members who are to propose and second the resolutions to be passed at the meeting.

9. To take notes of the proceedings for the purpose of preparing minutes thereof.

10. To keep at the meeting Register of Members, Minutes Book of the general meeting containing minutes of the previous annual general meeting(s), copies of the accounts, notice of the meeting and reports of the directors and of the auditors.

11. To ensure that the Chairman of the Audit Committee is present at annual general meeting to provide any clarification on matters relating to audit and to answer shareholder queries.

C. After the Meeting

1. To prepare minutes of the proceedings.

2. To record the minutes of the meeting and get them signed by the Chairman within 30 days of the meeting.

3. To send intimation of appointment/re-appointment of directors. File Form DIR-12 with the Registrar of Companies within 30 days of appointment along with filing fee.

4. To send intimation of appointment/re-appointment of auditors.

5. To file copies of the special and other resolutions, if any, passed at the meeting, along with Form MGT-14 with the Registrar of Companies, within 30 days of the meeting.

6. To file balance sheet, profit and loss account, reports of the directors and the auditors and the notice of the meeting in Form AOC-4 within thirty days of the meeting.

7. Deposit dividend distribution tax at the applicable rate within the prescribed time limit under Incometax Act, 1961.

8. Where the company has invited public deposits, a copy of the Balance sheet shall be forwarded to the RBI.

9. To open a separate bank account known as "Dividend Account for the year....." and to deposit the total amount of dividend within 5 days from the date of declaration of dividend.

10. To get the Dividend Warrants and Notice of Dividend signed by authorised persons.

11. To despatch Dividend Warrants together with the Notice of Dividend to the shareholders within 30 days of the declaration of dividend after making arrangement with the banker for payment of dividend warrants at prescribed number of branches at par.

12. To file along with the prescribed filing fee, Annual Return in Schedule V to the Companies Act as an attachment to Form MGT-7 with the Registrar of Companies within 60 days of the meeting prepared as at the date of the annual general meeting, as required by Section 92 of the Companies Act, 2013.

13. To take action on other decisions of the shareholders.

14. If the company is listed thensubmit to the stock exchange, within 48 hours of conclusion of annual general meeting, details regarding the voting results in the following format specified by Board (Regulation 44 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015].

STATUTORY DUTIES OF A COMPANY SECRETARY

Apart from general secretarial duties with regards to organizing Board and general meetings, keeping minutes of meeting, recording approved share transfers, corresponding with directors and shareholders, maintaining statutory records, filing necessary returns with Registrar of Companies etc., the Companies Act, 2013 has also prescribed some duties and authorities, which are as follows :

1. ***Declaration regarding compliance with requirement of registration*** : A company gets incorporated by submitting memorandum and articles duly signed along with a declaration in a prescribed form that all requirements of Act and rules have been complied with in respect of registration of company. Such declaration in prescribed form can be signed by an Advocate, a chartered accountant, cost accountant or company secretary in practice who is engaged in the formation of the company and by a person named in the articles as a director, manager or secretary of the company.

2. ***Authentication of documents, proceedings and contracts*** : A document or proceeding requiring authentication by a company may be signed by any key managerial personnel or an officer of the company duly authorized by the Board in this behalf. In case, a company does not have a common seal, the requirement of law would be complied with if the authorization is done by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

3. ***Signing share certificate*** : Share certificates of the company should be signed by two directors and Secretary or other person authorized by Board.

4. ***Signing annual return*** : Annual return to be filed with Registrar of Companies has to be signed by a director and Company Secretary. If Company does not have Company Secretary, the return can be signed by company secretary in practice.

5. ***Signing of financial statements*** : The financial statements is to be signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed.

6. ***Appear before NCLT*** : A Company Secretary can appear before National Company Law Tribunal (NCLT) on behalf of the company.

7. ***Secretary as Compliance Officer of listed company*** : As per SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, a listed company is required to appoint the company secretary to act as 'Compliance Officer', who will be responsible for the following :

(a) ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.

(b) co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities.

(c) ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information filed by the listed entity.

(d) monitoring email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors.

8. ***Additional duties In addition to statutory duties of company secretary*** : He is often entrusted with additional duties like looking after legal matters, personnel matters, finance and sometime even general administration.

9. ***Nodal Officer*** : Company secretary has to perform duty of nodal officer under IEPF Rules. He shall verify all applications filed to reclaim shares from IEPF.