Meaning of company:

The word "company" is an amalgamation of the Latin word "com" it means with or together "pains" it means bread originally it refers to a group of persons who took their meals together

A company is a association of many person who contribute money or money’s worth to a common stock &employees it in some trade or business & who share the profit loss arising there from

Definition:

Section 3 of the companies Act of 1956 define word “company “as accompany formed & registered under the act or an existing company formed & registered under any of the previous company laws

Characterstices of a company:

- Separate legal entity:
  - The co- is registered under law a co- become a separate legal entity as compared to its members
  - It is different from its members it have its own name ,seal & assets & liabilities are separate
  - Co- have its capable of own property

- Limited liability:
  - Liability of the co- members is ltd to contribution to the assets of the co- up to the face value of shares held by them.
  - Even if liability of the co- for exceeds its assets creditors can force the members to pay but members are not responsible to pay

- Perpetual succession:
  - Membership of on co- keep on changing from time to time but that does not affect the life of the co-
Death or insolvency of members does not affect the existence of the co-

**Separate property:**
- A co- is a distinct legal entity. the co-‘s property is its own a members cannot claim to be owner of the co-‘s property

5. **Transferability of shares**
- Share in a co- is freely transferable, subject to certain condition

6. **Common seal:**
- A co- is a artificial person it does not have a physical presence there four its board of directors are use the common seal as the official signature of the co- the name of the co- should be there in the seal.

7. **Separate management:**
- A co- is administered & managed by its board of directors the share holders are simply holders of the share in the co- & not the managers of the co-

8. **One share one vote:**
- Here one members one vote applies
  E.g.:if a person having 10 shares he does not have 10 votes in the co- only he have one share

**Kinds of the co-**

A. **Based on mode of incorporation**
   1. **Charted co-**: co-‘s incorporated (formed ) under a special royal charter issued by the king or queen is called charted co-
      E.g. in 17th & 18th century the east India co- , Bank of England

   2. **Statutory co-**s : co- incorporated under a special Act of parliament or legislation are called “statutory co-‘s” e.g. RBI, SBI, LIC, the Indian airline & the state trading corporation of India

   3. **Registered co-**s : co-‘s incorporated through registration with register of co-‘s under provisions of the co-‘s Act of 1956 are called “Registered co-‘s”
B. Based on the liability of the member

1. Unlimited co-’s: A co- does not have any limit on the liability of its members called as unlimited co- members of this co-may be sole proprietor or partnership of a firm

2. Co-’s Limited by guarantee :
   It is formed to promote Art, science, religion, trade & sports it may be formed with or without share capital.

3. co-’s limited by shares or limited co-:
   In a ltd co- the liability of the members is ltd to the amount of the shares held by them in the event of its winding up a share holder can be called up on pay only the unpaid amount (if any) on share held by him

   It is classified in to 2 types
   • Private co-
   • Public co-

   • Private co- it is a co- in which there can be maximum no .of share holders is 50 & minimum no. of share holders is 2 no invitation can be made to the public for subscription of share or debentures it can’t accepts deposits from public & restriction of transfer of share

Conversion of private in to public co-
Pvt co- can converted into public co- by any of 3 modes
1. By default
2. By operation of law
3. By an act of volition (own decision)

1. By default:
   a. Restriction on transfer of share
   b. Restriction on public invitation to subscribe to its shares debentures
   c. Restriction on the maximum no. of its members which should not exceeds 50

These 3 aspects should be converted
2. **By operation of law:**

Pvt co- should be consider public co- in the following cases

   a. When 25% or more of its paid –up share capital is held by one or more bodies corporate

   b. When its average annual turnover (during the last 3 years) exceeds Rs -10 cores

   c. When it holds 25% or more of the paid-up share capital of a public co-

   d. When it accepts deposits from the public after making on invitation by an advertisement

4. **By an act of volition:**

   a. Conduct a board meeting & decide the time, place & alter the articles of association

   b. Send notice for the general meeting with special resolution along with the expletory statement

   c. Prepare & file a prospectus within 30 day of passing the resolution

   d. File the special resolution & expletory statement along with the prescribed fee within 30 days

   a. The no. of directors should be raised

   ❖ **public co**-

   * It means the co- which is not a pvt co-

   * It as minimum paid up capital of 5 lakh Rs it needs a minimum no. of 7 share holders

   * Before commencing by business a public co- is obliged to obtain a certificate from the registrar of co-

   * Every public co- can start its business with a paid up capital of less than 5 lakh shall with in a period of 2 years from such commencement it can increase its paid up capital to 5 lakh

**Conversion of public co- into pvt co-**

1. The name of the co- included pvt

2. No special resolution should be passed for amending the articles
3. After alteration has been approved a printed copy of the articles as altered shall be filled with the register within one month

Difference between private & public co-

Private co-

1. Requires minimum paid up capital of 1 lakh Rs
2. Requires minimum 2 members
3. Minimum limit of 50 members
4. At least 2 directors required
5. Share are not transferable expect for the provisions in the articles
6. No restriction on managerial remuneration
7. The words private ltd are added top of the co-name
8. It can raise capital by pvt arrangements public subscription is not allowed

Public co-

1. Requires minimum paid up capital of 5 lakh Rs
2. Requires minimum 7 members
3. No maximum limit
4. At least 3 directors
5. Shares are freely transferable and may be even quoted on stock exchange.
6. Restriction on total managerial remuneration
7. The word ltd is added to the co-‘s name
8. Raiser capital by inviting public subscription or by pvt arrangement


CHAPTER -2

COMPANY SECRETARY

Meaning

The term secretary is derived from Latin word "Secretaries" which means "Confidential Officer".

Acco. To Oxford Dictionary the term secretary as “ One who is employed to conduct correspondence, to keep records & to transact various other b’ss, for on other person, for a society, corporation, public body “

Acco. To Company Secretary act of 1980 Section 2(c) “A Company Secretary is a person who is a member of ICSI (Institute of Company Secretary of India)

Qualification

As per the co-rules 1988 co-having a paid up capital of Rs 2 crore / more. To appoint a full time secretary the qualifications are as follows (any one or more)

- He should be member of ICSC
- He should pass the intermediate examination conducted by the ICSC
- Or post graduation degree in commerce
- Degree in law granted by any university
- Membership of Institute Cost & Works Accounts of India
- Post graduation degree or diploma in management science
- Post graduation diploma in law & Secretarial practice granted by the university

Other qualifications are

- Sound education
- Proficiency in language
- Knowledge of office organization & b’ss methods
- Knowledge of accountancy & taxation
- Knowledge of mercantile law
- Knowledge of economics, banking & finance
**Appointment**

As per Companies act of 1956 it is not compulsory to appoint co- secretary how ever in practice all co- is appointing secretary

As per the co-’s (amendment) act of 1974 only one person is appointed as secretary is obligatory for every co- having a paid up capital of Rs 2 crore / more. To appoint a full time secretary

As per the rule (1) of the co- secretary rules of 1983 it is obligatory or responsibility for a co- having a paid up capital of Rs -50 lakh to appoint a co- secretary

**Procedures for appointment of a co- secretary**

Board of directors has a power to appoint regular secretary by passing a resolution in its meeting

1. A resolution has to be passed at Board of directors meeting for appointing a secretary on certain terms & conditions.

2. The particulars of appointment must be filled in duplicate with a registrar within 30 days of appointment

3. If the person appointed as a secretary to other co- he has to notify other co- within 20 days of his appointment

4. if a person appointed as a secretary & he is a relative of a director, a special resolution has to be passed in general meeting for such appointments.

**Rights, Duties & Liabilities**

**Rights & power**

1. He has right to control & manage the departments under his control

2. As a principle officer he has right to sign the documents which require for authentication (verification)

3. As a employee of the co- he has right to claim his salary as a preferential creditor in case of winding up of a co-

4. He can be given right to allot the shares

5. He can serve notice under the section 53
Duties

Duties can be classified under falling heads

1. Statutory duties
2. Duties towards directors
3. Duties towards public
4. Duties towards Share holders
5. Duties towards Organization & staffing
6. Duties before & after incorporation

1. **Statutory duties**

The Statutory duty of a co-secretary by co’s act or any of legislation i.e income tax act, sales tax act, factories act

1. He as to maintain books & register of a co-
2. Supervising the issue of shares, allotment, transfer, forfeiture of share & debentures
3. Filling of the necessary returns with the registrar of the co-
4. He as to attend the meeting of the directors & share holders & record their proceedings
5. He should sign the documents & proceedings
6. He should make statutory declaration with regards to commencement b’ss
7. He should ensure the safe custody & proper use of the common seal of the co-
8. He should arrange for timely Subscription of returns & payment of tax

2. **Duties towards directors**

1. He is required to arrange board meeting, record the proceedings of the board meeting
2. He should look after all the correspondence in which the directors are interested
3. He act as a guide to board of directors
4. He act as a confidential clerk of a board of directors
5. He act as an agent of board of directors & carry out their instructions
6. He should draft the directors report for presenting at the general meeting
7. He communicate the board decision to the staff & share holders
3. **Duties towards public**

1. He should inform the debenture holders & creditors about matters affecting their interest

2. He should arrange for the payment of interest to debenture holders promptly

3. He should supply the necessary explanation & clarification to public when they demand

4. He should bring the complaints & suggestions of the public to the notice of the director

5. He should take care the confidential matters that should not delivered to public

4. **Duties towards Share holders**

1. The secretary has to safeguard the interest of share holders & he should attend their inquiries

2. He should attend the work of registration, transfer & transmission of shares

3. He should arrange for payment of dividends & issue of shares to share holders

4. He should keep the registration documents open to members for inspection

5. He has to organize & supervise correspondence with share holders regarding application, allotment & forfeiture of shares

5. **Duties towards Organization & staffing**

1. He should plan, organize, direct, co-ordinate & control the office work properly

2. He has to ensure that office work with maximum efficiency

3. He should attend the work of recruitment, training & placement of office staff

4. He should attend the purchase of office furniture, equipment & stationary

5. He should observe the work of various departments such as shares department, accounts department & filling & records department
6. **Duties before & after incorporation**

**Duties before**
1. He has to attend the preliminary meeting of the promoters
2. He has to guide the promoters regarding the provisions of the act
3. He should also help them in the preparation of memorandum of association, articles of association & prospectus
4. He should arrange the files of the co- for registration

1. **Duties after incorporation**

1. He has to arrange for the first board meeting & get necessary resolution passed
2. He should take steps to get certificate of incorporation
3. He should prepare statutory report & arrange for the statutory meeting after getting the certificate
4. He has to look after the work of application, allotment & calls on shares
5. He should look after transfer & forfeiture of shares
6. He has to observe strictly the provisions for forfeiture of shares
7. He has to prepare the list of defaulters & place it before the board meeting
8. He should remove the names of the defaulters from the register of the co-

**Liabilities**

1. **Statutory liabilities**
   1. If he fails to holds a statutory meeting
   2. If he does not circulate the statutory report
   3. If he fails to hold annual general meeting
   4. If he fail to submit to the register of the co-regarding copies of annual accounts
   5. If he fail to give a notice of the board meeting
   6. If he fail to record the minutes of the board &general meeting
   7. If he fails to maintain register of directors, share holders &debenture holders
   8. If he fails to rectify the mistake with in a period of 2 months
   9. If he fails to filing of documents with the registrar which is required by act
   10. If he fails to submit the annual returns of income of the co-
   11. If fails to have name & address of register office
12. If he fail to issue every employee, share holders & debenture holders a certificate in respect of tax deducted at a source

2. **Contractual liabilities**

1. He must carry out the obligations of a service on agreement with the co-
2. He must carry out the order given by the director
3. He should not disclose any confidential information of the co-
4. He should not be anything beyond his authority
5. He is liable for any damages/loss suffered by the co- by his default
6. He should liable for any fraud on the part of any of his assistance if it is proved
7. If a secretary of a co- falsify the books of the co-reports, certificates, documents then he will be punishable with imprisonment

**Removal of co-secretary**

The secretary may be removed from the office by the BOD under the power expressed in the articles
1. The service of secretary may be terminated without notice if he makes secret profit from the co-
2. He may be dismissed for his disobedience & misconduct
3. He may be permanently dismissed if he show negligence
**Directors & Managing directors**

The directors are the brain of the co-who generally control the co- he act as a agent on behalf of the co-

A director is a person who is responsible for the management of the co-

Acc .. to section 252 of co’-s act of 1956 every public co- must have a 3 directors in case of private co- 2 directors the minimum no. of directors are fixed by articles of association

**Appointment**

1. First director of the co- is appointed by the subscribers to the memorandum of association
2. The subsequent directors are appointed by passing an ordinary resolution at the meeting of the co-
3. The directors should hold the office in accordance with the provision of the articles

**Qualifications**

1. The co- act as not made any obligation to the directors in holding shares of the co-
2. The articles prescribes the qualification of the director that any director should be hold specified numbers of shares of a co- which is called as a qualification of shares
3. A co- want to appoint a director the director has to hold the nominal value of shares of 5000
4. If he should not hold such amount of shares he can hold within 2 months of appointment

**Disqualification of directors**

1. If he is found to be unsound
2. If he is in solvent
3.

**Whole time secretary**

It means the director has to spent his time in carrying out of affairs of the co-as may be assigned by the board of directors

**Remuneration of directors**
Acc. To sec. 198 director remuneration includes free accommodation, insurance, pension, gratuity along with this fixed amount of salary

**Rights of the director**

**Right to refuse transfer of shares**

In case of private co- or deemed public co-director has right to refuse transfer of shares

**Right to elect chair men**

Regulation 76 (1) of table A Provides that the directors are entitle to elect chair person for a board meeting

**Right to appoint a managing director**

Acc. to the act of co- the director has right to appoint a managing director with the help of board

**Right to recommend dividend**

The board of director has right to decide whether to provide dividend to share holders are not thy can reduce the rate of dividend which is recommended by share holders

**Responsibility of director**

1. He has responsibly of prepare & deliver the documents on behalf the co-
2. Verifying the annual returns
3. Verifying the annual accounts
4. Notification to the register regarding the changes In the officers of the co-
5. Allotment of shares
6. Registration of cheques
7. He has to give day today information

**Managing director**
Formation of a company is 4 stages

1. Promotion

2. Incorporation / Registration

3. Capital subscriptions

4. Commencement of business

1. Promotion

Promotion is the discovery of business opportunities & the subsequent organization of funds, property & managerial ability into a business concern for the purpose of making profits.

In other words, promotion is the process of organizing, planning the finance of a business enterprise under the corporate form.

Or it refers to various steps taken to persuade a number of persons to come together for achieving common objectives through the co-operative form of organization.

The work of promotion is done by a person is called promoter. A group of persons are called promoters.

Steps in promotion

1. Discovery of a business idea / opportunity / proposal

2. Detailed investigation of the business idea

3. Assembling the various requirements for the business idea

4. Financing the business proposal
1. **Discovery of a b’ss idea /opportunity/proposal**

   It means an idea of some b’ss to be started in existing line or a new field of a b’ss. The step also includes preliminary investigation of the b’ss proposal to find out whether it is worthwhile to make the detailed investigation.

2. **Detailed investigation of the b’ss idea**

   It involves the careful & detailed study of the proposal to find out profitability & practicability of the project. It is an investigation about the availability of the raw materials, lab, power, labour, transportation, etc & it is required amount of capital probable cost of production demand for product & competition the market this information collected & analyzed with the help of experts & specialist & the decisions are taken about the profitability & practicability of the b’ss proposal.

3. **Assembling the various requirements for the b’ss idea**

   After the detailed investigation of the proposal if the profitability is satisfied the promoter proceeds with the work of assembling the requirement of the proposal it means arrangement of necessary things to start the b’ss promoter is entered into to preliminary contracts for purchase of land, building, machinery, patents rights etc & also for the securing the license from the govt, power supply & raw material supply license & appointment of technical & managerial personnel.

4. **Financing the b’ss proposal**

   It is the last step in the promotion stage in this stage the promoter proceeds with the preparation of financial arrangement & he will make decision regarding the types of securities for raising the capital thy also enter into the contract with the underwriters for the subscribing of shares & debentures.
2 **Incorporation /Registration**

It is the second stage in the formation of a co- it having the following steps

1. **Getting the approval of the registrar of the co-‘s for the proposed name of the co-**

   The co- can chose any name it likes but the proposed name should not be similar to the existing co- & it should not be undesirable name the promoter has to submit the application to the co-registrar & obtain the approval of proposed name

2. **Getting the memorandum & articles of association prepared & printed**

   M/A & A/A this two are important documents for incorporation of the co-.it is required to be prepared & filed with the registrar of the co- M/A is compulsory for every co-but A/A is not compulsory for public ltd co- having share capital .it can adopt table “A” as A/A

3. **Fixing up the signatories to the M/A**

   The promoters should fix up the signatures of auditors, solicitors, bankers , underwriters & brokers to the M/A

4. **Filing the application with the registrar of co- along with the various documents**

   a. The M/A properly stamped & signed by minimum subscribers & attested by the signature of the witness.

   b. A/A properly stamped & signed

   c. A copy of the letter received from the co registration office for the approval of proposed name

   d. A statement of the nominal capital of the co-

   e. A list of person who act as a first director of the co-

   f. The written agreement of the directors act as a first director of the co-

   g. Statutory declaration prepared & signed by the directors & secretary

   h. An undertaking by the first directors to take up the qualification share amount
5. **Payment of stamp duty, filing fees & registration fees**

6. **Obtaining the certificate of incorporation**

After the receipt of application & necessary documents & required fee, the registrar will carefully examine the documents & enter the name of the co- in the register of the co- & then issue the certificate of incorporation.

---

**CERTIFICATE OF INCORPORATION**

I hereby certify that ----------------------------- is this day incorporated under the co-‘s act, 1956 & that the co- is ltd.

Given under my hand at Bangalore this --------- day of ---------- two thousand eight.

Fees and stamp---------------------------------- Rs----------------------------------

Stamp duty on capital--------------------------- Rs---------------------------

Seal of the Register

Signature------------------
Registrar of co-‘s
Karnataka
3 Capital subscriptions

It is the third stage in the formation of the co-

Steps for capital subscription

1. convey the first board meeting in this meeting the following b’ss are conducted

a. Appointment of the regular secretary of the co:- the part time secretary is confirmed as a regular secretary of the co by the board of directors or they can appoint new person as a secretary

b. Appointment of bankers, auditors, solicitors, brokers etc: This persons are appointed by the promoter before incorporation now they are confirmed by the board of directors

c. Adoption of preliminary contract: The promoter was entered into the preliminary contract before incorporation now this contracts are adopted by board of directors in their first board meeting

d. Approval of listing of shares of the co- in a recognized stock exchange: The public co is going to raise the capital through public. if it wish to list their shares in stock exchange it can list by the approval of board by passing resolution at the board meeting.

e. Adoption of the under writing agreement: when the co decided to raise the shares capital from public through under writer then the co- has to make agreement with underwriters

f. Adoption of draft prospectus or statement in lieu of prospectus: If the public co wish to raise the share capital from the public it should prepare prospectus & that should be registered before the subscription from the public. if the co- wish to raise the share capital within friends & relatives instead of public then it has to prepare statement in lieu of prospectus & it should be approved by the board of directors at board meeting.

2. Filling a copy of prospectus or statement in lieu of prospectus with the registrar of co:-

Prospectus should file with registrar of the co- before issue of shares to the public but the statement in lieu must file with the registrar before the allotment of shares

3. Issue of prospectus to the public & calling application for shares: After completion of filing of prospectus with registrar it should be issued to public inviting application for its shares this process will be look after by co-banker.

4. Allotment of shares: After receiving the application the co- will scrutinize & sort out the application then the co- is ready to allot the shares on certain conditions the allotment of shares should be finalized within 120 days of the issue of prospectus. letter of allotment should
be sent to share holders to whom the shares are allotted & letter of regret will be sent to whom the shares are not allotted & their application money will be refunded After allotment returns has to be filed with the registrar of the co- within one month of such allotment & register of members should prepared & share certificate will be issued by the exchange of letter of allotment from public.

4 Commencement of business

The following are the steps for commencement of b’ss

1. **Making of application to the registrar**
   
   For obtaining the certificate an application must be made by the co- to registrar of the co- requesting him to grant the b’ss commencement certificate.

2. **Filling documents & statements:**
   
   a. The declaration of the co- relating to minimum subscription received & shares are allotted
   
   b. The declaration that the director taken up the qualification shares & paid the amount in cash
   
   c. The declaration of the co- relating no money will be refundable to the applicants
   
   d. Statutory declaration signed by the secretary or director of the co-stating that all the requirement of the co-’s act in respect of commencement of b’ss have been completed.

3. **Payment of the required registration fees:**

   Along with the application & declaration the co- has to pay required fees to the registrar of the co-

4. **Obtain the b’ss commencement certificate:**

   After receiving the application, declaration & fees the registrar will verify whether all the requirement of the co-’s act is fulfilled by the particular co- then only he will provide b’ss commencement certificate.
CERTIFICATE OF COMMENCEMENT OF BUSINESS

I hereby certify that -----------------------------company ltd of (address) ----------------

Which was incorporated under the companies act of 1956, on the --------- day of
----------2013 & which has this day field a statutory declaration in the prescribed
Form that the conditions of section 149 have been complied with, is entitled to
Commence business

Given under my hand at (place) -----this (date) -----day of (month) ---------

Two thousand eight.

Seal of the Registrar

Signature-------------------
Registrar of companies
Karnataka
DOCUMENTS OF COMPANIES

For incorporation of a co- two important documents are prepared they are

1 Memorandum of Association

2 Articles of Association

1. Memorandum of Association

The M/A is the *life giving document of the co* - it is the document which brings the co- into existence it is the charter or constitution of the co- , contains the fundamental conditions up on which the co- is incorporated. It is the foundation upon which the structure of the co- is built. It contains the objects or purpose of the incorporation of the co- & defines or determines the external operations of the co-

Form of M/A

It should be in prescribed form as per section 14 of the co- act the M/A should be in one of the forms in table B,C,D & E given in schedule I of the co-’s act

TABLE “B” is the form of memorandum for company limited by shares.

TABLE” C” is the form of memorandum for a co- limited by guarantee not having share capital

TABLE “D” is the form of memorandum for a co- limited by guarantee having share capital

TABLE “E” ” is the form of memorandum for a co- unlimited

Section 15 of the co-‘s act of 1956 requires that every M/A should be printed, divided into paragraphs & numbered. & it must contain the name, address &occupation of the minimum subscribers; the signature of subscribers must be attested by at least one witness.
The clauses in the M/A of a co- are six

As per section 13 of the co-‘s act of 1956

1 **Name clause:**

This clause states the name of the co- the co- can adopt any name it wants but before that the following points must be born in mind .

   a. The co- can adopt any name .but as per sec.20 of the co-‘s act it cannot be similar to other co-
   b. The name of the co- must end with limited or private limited
   c. The name of the co- must printed on signboards & displayed outside the registered office of the co-

2 **Situation clause**

This clause states the state in which the registration office of the co- is to be situated. The actual address of the registered office of the co- can be sent to the registrar of co- within 30 days of incorporation

3. **Object clause:**

This clause states the objects of the do- & also power of the co- as per the amendments act in 1956

1 the main object of the co-

2 the object incidental to the attainment of the main objects

3 the other object of the co- not included in the 1& 2

4. **Liability clause:**

This clause states that the liability of the co- is limited to the extent of the face value of the shares held by them it may be noted that the liability of the directors, managing directors & manager shall be unlimited

5. **Capital clause:**
This clause states the details of share capital of the co- in case of limited co- having share capital, the capital clause states the registered /authorized / nominal capital of the co- & the divisions of the share capital in to shares of fixed amount & also clause of shares.

6. Association clause/subscription /declaration:

This clause contains a declaration by the minimum subscribers to the M/A. usually this clause runs as follows “ We the several persons ,whose names, address & occupation are subscribed ,& we respectively agree to take the number of shares in the capital of the co-set opposite our respective names.”

Articls of Association

A/A is a second important document of a co- it is a document of a bye-law of a co- or rules & regulations for the internal management of a co- it prescribes the power of the director & officers of the co- as well as the rights of the share holders of the co-

Contents of the Articles of Association

1. Share capital & it’s different clause
2. Rights of different classes of share holders
3. Allotment of shares
4. Making of calls on shares
5. Transfer & transmission of shares
6. Surrender & forfeiture of shares
7. Conversions of shares in to stock
8. Co-’s lien on share (control of co- on some shares)
9. Alteration of share capital
10. Powers, duties, qualification, remuneration etc of directors, managing directors
11. Share holders & directors meeting
12. Quorum of meeting
13 Voting system

14. Method of keeping accounts

15. Common seal of the co-

16. Winding up of the co-

17. Dividend & reserve fund

18. Rules for meeting

19. Borrowing power of the co-
Prospectus

Meaning:

The invitation to the public to subscribe to the shares & debentures of a co by issuing a statement or document “is known as prospectus.

Prospectus contains all material & essential information about the co-affairs & its future prospectus.

Definition:

Sec.2(36) the co’s act defines prospectus as “any document, notice, circular, prospectus, advertisement or other document inviting deposits from the public or inviting offers from the public for subscription or purchase of any shares in or debentures of a body corporate.

Statement in lieu of prospectus:

If the promoters of a public co-can secure capital without public subscription, he need not issue the prospectus, but instead can prepare a statement known as statement in lieu of prospectus it contains same contents of prospectus.

Contents of prospectus:

A) Part I of schedule –II

I General Information

1. Name & address of registered office of the co-
2. Consent of the central govt for the present issue & declaration of central govt about non responsibility for financial matters
3. Date of opening of the issue closing of issue
4. Name & address of auditors & managers
5. Name & address of underwriters & the amount of underwritten by them
6. Declaration by board of directors that the underwriters have sufficient resources to discharge their respective obligation

II Capital structure of the co-

1. Authorized, issued, subscribed & paid up capital
2. Size of present issue giving separately reservation for preferential allotment to promoters.

III Terms of the present issue

1. Terms of payment & rights of the instrument holders
2. How to apply availability of forms, prospectus & mode of payment

IV particulars of the issue

1. Object
2. Project cost
3. Means of financing

V Co-management & project

1. History & main objects & present conditions of the b’ss
2. Promoters & their background
3. Names, address & occupation of managers M.D & other directors
4. Location of the project
5. Plant & machinery, technology, process etc
6. Infrastructure facilities, raw materials, utilities like water, electricity.

B) Part II of Schedule –II

I General information

1. Consent of directors, auditors, solicitors, advocates, managers, issue bankers to the co-
2. Expert opinion obtained if any
3. Change if any in directors & auditors during the last 3 years, & reason for their of
4. Authority for the issue & details of resolution passed for the issue
5. Procedure & time Schedule for allotment & issue of certificates
6. Names & address of the co-. secretary, legal adviser, managers, auditors, banker to the co-
II Financial information

1. A report by the auditor of the co- with respect to
   a) Profit & losses & assets & liabilities of the co
   b) Rate of dividends if any paid by the co- in respect to each class of shares in the co-

III Statutory & other information

1. Minimum subscription
2. Underwriters commission or brokers
3. Expenses of the issue giving separately the fee payable to advisers, managers, registrar to the issue
4. Previous issue for cash
5. Commission or brokerage on previous issue
6. Issue of shares otherwise than for cash
7. Details of purchase of property
8. Material contracts & inspection of documents
9. Rights of members regarding voting, dividend, lien on shares, forfeiture of share
10. Revaluation of assets, if any during last 5 years
11. Restrictions if any on transfer & transmission of shares
CHAPTER 4  CORPORATE LAW ON MEETING

Meaning:
A meeting is a “congregation, assemble, gathering or get to gather of the members of on organization at a place. For the purpose of discussing & deciding all important matters concerning the b’ss of their organization

Definition:
A meeting may be defined as “any gathering, assembly of two or more person in a particular place to discus some law full b’ss of common concern &to take decisions in the form of resolutions on the basics of opinion expressed by the members at meeting “

Essentials of meeting

1. Proper authority to convey the meeting
2. Proper notice of the meeting
3. Quorum of the meeting
4. Proxies
5. Proper person in the chair
6. Agenda of meeting
7. Motion
8. Sense of meeting
9. Resolution
10. Minutes of meeting.
1. **Proper authority to convey the meeting:**

   A meeting must be called by the proper authority. The proper authority to convey a general meeting of a company is the board of directors. The board of directors must convey the general meeting by passing a resolution that will effect at a validly held board meeting.

2. **Proper notice of the meeting:**

   This is the second important requirement of a valid general meeting. A proper notice of the meeting should be given to all those who are entitled to attend the meeting. The notice should contain particulars relating to the kind of meeting, place, date, time of meeting, and agenda of meeting.

3. **Quorum of the meeting:**

   Next essentials is the presence of quorum in the meeting. Quorum is the minimum number of members required to attend the meeting and transact business validly.

   Acc to co’s act in case of a private company the quorum is 2 in case of a public company it is 5 members.

4. **Proxies**

   As per provision of the company’s act, a member of a company may vote at a meeting either in person or by proxy. “Proxy” is a person who is authorized by a member of a company to attend and vote at a meeting on behalf of a shareholder.

   Types of proxies are:
   - Special proxy: he is a person who is authorized to attend and vote on a particular proposal or resolution.
   - General proxy: he is a person who is authorized to vote and attend all proposals or resolutions.

5. **Proper person in the chair:**

   A chairmen is a person who has been designated or elected to act as a guide and to preside over the meeting and conduct the presiding of the meeting. He is the chief authority at a meeting and controls and regulates the speech of members at the meeting. Every meeting must have the chairmen in order to regulate the proceedings of the meeting.
6. **Agenda of meeting**

Agenda means the things to be done

& it is a statement of b’ss to be discussed & transacted at meeting

Simple the agenda means the matters to be discussed at the meeting it is list of items of

The b’ss to be transacted at the meeting

Types of agenda are

1. Brief agenda: in this agenda the items of b’ss briefly mentioned to be transacted in b’ss
2. Detailed agenda: it gives more details about each item of the b’ss to be transacted

7. **Motion**

No discussions will take place at a meeting unless there is a definite proposal for discussing before the meeting

A motion is a definite proposal placed before the meeting for discussion & decision

8. **Sense of meeting**

Co-’s meeting are held for discussing the specific issues relating to the working of the co- 7 for taking decisions on the same

To arrive at the decision the chairmen has to ascertain the views of the members on each of the matters under discussion.

9. **Resolution**

When a motion or a proposal is passed in a meeting it becomes a resolution

Resolution may be defined as “formal expression of the decision of a meeting on any motion / proposal before it

Types of resolution are

1. Ordinary resolution: As per the co-’act it is one which is passed by simple majority of votes of members present in the meeting or more than 50% of voting right share holders
2. Special resolution: At least 75% of voting right share holders presented in the meeting
3. Resolution requiring special notice: To appoint auditors, retiring of auditor, removal of the director before the date expiry of his period & appointment of new director in the place of removed director

9. Minutes of meeting
   It refers to the written record of the b’ss transacted & discussions arrived at a meeting

Kinds of meeting

1. Statutory meeting
2. Annual general meeting
3. Extra ordinary general meeting
4. Directors meeting / board meeting

1. Statutory meeting

   Meaning:
   Statutory meeting is the first official general meeting of share holders .sec.165 of co-'s act lays down that every public co- limited by shares /limited by guarantee & having share capital must hold statutory meeting within a period of not more than 6 months from the date of commencement of b’ss

   Objectives
   1. To provide an opportunity to the members to discuss the finance of the co-
   2. To enable the members to know the progress of the co- since its incorporation &its present position future prospectus.
   3. To help the members to know one on other.

Provisions of co-'s act relating to statutory meeting

Section 165 lays down the following provisions
1. Every co-limited by shares & limited by guarantee & having share capital must hold the statutory meeting within a period of 6 months but not earlier than one month from the date of commencement of b'ss

2. The board of directors must send the notice of the statutory meeting along with statutory report to all the members of the co-at least 21 days before the date of meeting

3. Immediately after sending statutory report to members one copy of report should be registered with register office of the co-

4. At statutory meeting the board must place a list showing the name, address, occupation of members & the number of shares held by them

5. At the meeting the members shall have a right to discuss any matter relating to the formation of the co-

**Statutory report**

It is a report which is to be set along with the notice of the statutory meeting

**Contents of statutory meeting**

1. Number of shares fully paid / partly paid
2. Number of shares allotted for consideration thereof
3. The total amount of cash received in respect of shares allotted
4. The names, address, occupation of directors, auditors, managing directors / managers & secretary
5. Estimated amount of preliminary expenses
6. Particulars of underwriting contracts
7. Particulars of any commission / brokerage
8. Particulars of any contracts to be submitted to meeting for approval
9. Arrears of calls due from directors, managing directors or manager.
2. **Annual general meeting**

**Meaning:**

It is a general meeting of shareholders which is held every year. Every public and private company must hold an annual general meeting.

**Purpose of annual general meeting:**

The annual general meeting is the most important meeting of shareholders of a company. In this meeting, the performance of the company for the past year is reviewed and discussed based on the directors' report and audited accounts. Directors and auditors are appointed and re-appointed, and dividend declared by shareholders.

**Provisions of company's act regarding annual general meeting:**

1. According to section 166 of the act, every company should hold the annual general meeting of shareholders every year.
2. The first annual general meeting must be held within 18 months from the date of incorporation. If it is held, any annual general meeting in the year of incorporation or in the following year.
3. Every subsequent annual general meeting must be held each year within 6 months after closing of financial year of the company and within 15 months from the date of previous annual general meetings.
4. Notice of meeting must be sent to all members, directors, and auditors at least 21 days before the date of meeting.
5. Notice of the meeting must be accompanied by a copy of the audited balance sheet and profit & loss account for the previous year and also annual report of directors.

3. **Extra Ordinary General Meeting:**

Extra ordinary general meeting means “any general meeting other than the statutory meeting and also the annual general meeting. It is a meeting which is held between two annual general meetings.

**Objects of Extra ordinary General Meeting:**
The extra ordinary general meeting is held between two annual general meetings. It is convened for transacting some special. Extra ordinary or urgent business or matters which cannot be postponed to the next annual general meetings.

Example: Alteration of M/A, A/A, Issue of debentures, increase of share capital, Removal of directors from office before the expiry of his term etc..

The extra ordinary general meeting is held only for transacting special business. The extra ordinary general meeting may convened by the board of directors by board of directors on the requisition by members, company law board.

4 Directors meeting :

Board meeting or directors meeting

The meetings of the director are called board meeting

Sec. 285 of the co’s act of 1956 lay down that the board meeting must be held at least once in every month & 4 times in annually

Provisions of co-s act regarding board of directors

1. Board meeting must held in every 3 months in a year & 4 times in annually

2. For conveying board meeting a notice specifying the date time & place of the meeting & the agenda of the meeting must be sent to every director of the co-

3. The quorum of meeting may be fixed by A/A or by directors from time to time the quorum of board meeting is one third of the total directors or two directors whichever is higher

4. Quorum should be present thought the meeting

5. Every board meeting must have a chairman to priced over the meeting

6. Decisions on any matter discussed at a board meeting are usually taken by passing the required resolution which is called “Board Resolution “

7. All board resolution s are passed generally passed by a simple majority of votes.
Unit-5

WINDING UP OF COMPANIES

Meaning:

“Winding up is defined as the process by which the life of a company is ended and its property is administrated for the benefits of its members and creditors”

Reasons For Winding Up:

If the main object of the company for which it was found have been accomplished.

If the company is unable to carry out its main objects.

If the company has to dispose of its business to another company.

If the company has become insolvent.

If the company undergone for illegal activities.

Types/Modes of Winding up:

The Companies act provides three kinds of Winding up, They Are:

1. Winding up by the court/ Compulsory Winding up
2. Voluntary Winding Up
   A. Members Voluntary Winding Up.
   B. Creditors Voluntary Winding Up.
3. Winding Up subject to supervision of Court.

1. Winding up by the court/ Compulsory Winding up
A Company may be wound up by an order of the court. This is called Compulsory winding up. Section 433 lays down the following grounds for the winding up of a company by the court.

A. Special resolution of the company.
   If the company itself, has passed a special resolution in the general meeting to wound up its affairs.

B. Default in holding Statutary Meeting.
   If a company makes a default in delivering the statutory report to the registrar or in holding the statutory meeting, the court may order winding up of the company.

C. Failure to commence or Suspension of business
   Where a company does not commence its business within a year from incorporation, or suspends its business for a whole year, then the court may order for its winding up.

D. Reduction of members below Minimum.
   Where the number of members is reduced below 7 in case of public company and below 2 in case of a private company, the court may order the winding up of the company.

E. Inability to pay Debts:
   If the company is unable to pay debts, where the financial position of the company is such that it has more liabilities than asset, and after disposing off the assets.

F. If the court itself is of the opinion that the company should be wound up.

Procedure for Compulsory winding up

1. Making an application or petition to the court.
2. Hearing and disposing of petition.
3. Appointment of official liquidator/ communication of winding up order to the liquidator and registrar of the company.
4. Liquidation proceedings by official liquidator.
5. Dissolution of the Company.

2) Voluntary Winding Up

* Company may Voluntary wind up its affairs, if it is unable to carry on its business.

* If it was formed only for a limited purpose.

* If it is unable to meet its financial obligation.

* When the period fixed for the duration of the company by the articles has expired.
* If the company passes a special resolution that the company is to wind up voluntarily.

Types of Voluntary Winding Up:

A. Members Voluntary Winding Up:
* This form voluntary winding up exists only when company is solvent.
* Members of the company usually initiate this winding up.
* Management will be looked after by them.
* The liquidator will be appointed by the shareholders.
* Director of the company shall call a board of meeting.
* The company will repay its debts if any within 3 years from the commencement of winding up.

Procedures for Members Voluntary Winding Up:
- The company shall appoint one or more liquidators in a general meeting, who shall look after the affairs of winding up procedure, and distribution of assets.
- The liquidator who appointed shall be paid remuneration for his services which shall also be fixed in general meeting.
- The company shall also give notice of application of liquidator to the registrar within 10 days of appointment.
- Once the company has appointed liquidator the powers of BOD’S, MD, managers shall be ceased.
- The liquidator is generally given a free hand to carry out the winding up procedure.
- In case the winding up procedure takes more than one year, then the liquidator will have to call a general meeting, at the end of each year and shall present, a complete account of the procedure, and position of liquidator.

B. Creditors Voluntary Winding Up.

If any company desires to wind up voluntarily and the creditors fail to make statutory declaration of solvency, such voluntary winding up is termed as creditor’s voluntary winding up.

Where the resolution for winding has been passed but the Board of directors are not in the position to give a declaration on liability of the company they may call a meeting of creditors for the purpose of winding up.

Procedures for Creditors Voluntary Winding Up:
- Call a general meeting and pass a resolution for winding up of the company.
• Creditors will appoint the liquidator, they may agree on one or two forms of liquidators.
• Any director, or member or creditor may approach the court for the direction that:
  Liquidator appointed in general meeting shall act or
  He shall act jointly with liquidator appointed by creditors or
  Appointing official liquidator
  Some other person to be appointed as liquidator.
• The remuneration of liquidator shall be fixed by the creditors, or by the court.
• On appointment of liquidator, all the powers of Board of directors shall cease.
• In case the winding up procedure takes more than one year, then the liquidator will have to call a general meeting, and meeting of creditors, at the end of each year and shall present, a complete account of the procedure, and position of liquidator.

3) Winding up subject to supervision of Court:

Winding up subject to supervision of Court is completely different from winding up by the court & Vice versa.

• At any time after a company has passed a resolution for voluntary winding up, the court may make an order that the voluntary winding up shall continue.
• Here the court only supervises the winding up procedure.
• The court may also appoint liquidators in addition to already appointed.
• Liquidator is entitled to do such things like proceedings of winding up.

**Liquidator**

**Meaning**

**Definition**

‘In the most general sense, a person or entity that liquidates something. More specifically, a liquidator refers to an officer that is specially appointed to wind up the affairs of a company. The liquidator is legally empowered to act on behalf of the company in various capacities’.

‘Person appointed by the shareholders or unsecured creditors, or on a court order, to
manage the winding up of a firm by selling off its assets. Most countries require a suitably qualified liquidator’.

He is a person appointed to wind up the affairs of a company or firm.

Types of Liquidators:
- Official Liquidator
- General Liquidator

Official Liquidators:
He is a person who is appointed by court to wind up the affairs of the company or firm.

General Liquidator
He is a person who is appointed by members, creditors or company to wind up the affairs of the company or firm.

APPOINTMENT OF COMPANY LIQUIDATOR (SECTION 310):
1. The company in its general meeting, where a resolution of voluntary winding up is passed, shall appoint a Company Liquidator from the panel prepared by the Central Government for the purpose of winding up its affairs and distributing the assets of the company and recommend the fee to be paid to the Company Liquidator.
2. Where the creditors have passed a resolution for winding up the company under sub-section (3) of section 306, the appointment of the Company Liquidator shall be effective only after it is approved by the majority of creditors in value of the company.
3. Where creditors do not approve the appointment of a Company Liquidator by members, creditors shall appoint another Company Liquidator.
4. The creditors, approving of appointing a company liquidator, shall a suitable resolution with regard to the fee of the Company Liquidator.
5. On appointment as Company Liquidator, such liquidator shall file a declaration within seven days of the date of appointment disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the company and the creditors and such obligation shall continue throughout the term of his or its appointment.
FUNCTIONS AND POWER / DUTIES OF COMPANY LIQUIDATORS (SECTION 290):

- To carry on the business of the company so far as may be necessary for the beneficial winding up of the company;
- To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose, to use, when necessary, the company’s seal.
- To sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels;
- To sell the whole of the undertaking of the company as a going concern;
- To raise any money required on the security of the assets of the company;
- To institute or defend any suit, prosecution or other legal proceeding, civil or criminal, in the name and on behalf of the company;
- To invite and settle claim of creditors, employees or any other claimant and distribute sale proceeds in accordance with priorities established under this Act;
- To inspect the records and returns of the company on the files of the Registrar or any other authority;
- To draw, accept, make and endorse any negotiable instruments including cheque, bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if such instruments had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business.
- To take all such actions, steps, or to sign, execute and verify any paper, deed, document, application, petition, affidavit, bond or instrument as may be necessary,—
  (i) For winding up of the company;
  (ii) For distribution of assets;
  (iii) In discharge of his duties and obligations and functions as Company Liquidator; and
  (n) To apply to the Tribunal for such orders or directions as may be necessary for the winding up of the company.
CHAPTER—6

SECURITIES EXCHANGE BOARD OF INDIA (SEBI)

INTRODUCTION

SEBI was established on 12th of April 1988. On January 30, 1992 an ordinance/Act was passed to give SEBI a legal status.

SEBI out the functions of supervisory and advisory body of the government. It had initiated their redressed with companies, licensing of merchant banks and evolving guidelines for them and preparing for mutual funds, the legislation for backing up these activities and others to act as a watchdog of the capital market was recommended to the Government.

The legislation giving powers to SEBI was passed on 4th April 1992 in the form of the Securities and Exchange Board of India Act 1992. The Act provided for the establishment of a Board to protect the interest of investors in securities and to promote development of and to regulate the securities market and for matters connected therewith.

ORGANISATION/CONSTITUTION OF SEBI

The Board of SEBI consist of SIX members

- Chairman---- nominated by the central government
- Two members from the office of central ministers who are well versed with finance and law.
- One member—deputed by RBI
- Two members nominated by the Central Government.

OBJECTIVES OF SEBI:

1. To protect the interest & rights of investors in securities.
2. To promote the development of the securities market
3. To regulate the securities market & for matters connected there with / incidental there to
4. To prevent trade mal – practices
5. To stimulate competition & encourage innovations
6. To provide a market place.
7. To provide efficient mobilization
8. To allocation of resources through the securities market
9. To offer competitive market

FUNCTIONS OF SEBI

Regulatory function
1. Regulation of stock exchange & regulatory organizations.
2. Registration & regulation of stock brokers and sub-brokers, registrar to issue, merchant bankers, underwriters.
3. Registration of collective investment schemes and mutual fund.
4. Calling for information, undertaking inspection, conducting audits of the stock exchanges, mutual funds.
5. Regulation of stock exchange of stock exchange and SRO’s (self-regulatory organizations)
6. Prohibition of all fraudulent and unfair trade practices.
7. Controlling insider trading and takeover bids and imposing penalties for such practices.

Development function
1. Investors’ education
2. Training of intermediaries
3. Promotion of fair practices and a code of conduct for all SRO’s
4. Conducting research and publishing information useful to all market participants.

SEBI GUIDELINES

SEBI has brought out a number of guideline separately from time to time, for Primary market, secondary market, mutual funds etc. The Guidelines are as follows:

1. Guidelines for Primary Market.

New Company

A new company is one

- Which has not completed 12 months of commercial production and doesnot have audited results.
- Where the promoters do not have any track record.
- These companies has to issue shares at par(Face value)

A New company setup by Existing Company

When a new company is being setup by existing companies with a 5 years track record of consistent profitability, it will be free to price its issue. (i.e. The company can issue share at any price, face value, premium or Discount).
Private Companies

These companies having a track record of 3 years consistent profitability, shall be permitted to price their issues freely. (i.e. The company can issue share at any price, face value, premium or Discount).

Existing Listed Companies

These companies will be allowed to raise fresh capital by freely pricing expanded capital.

(i.e. The company can issue share at any price, face value, premium or Discount).

Composite Issues

It is the Combination of Right issue and IPC (Initial Public offer)

In case of composite issue i.e. right issue cum public issue by existing listed companies differential pricing shall be allowed. That means the public can be priced differentially as compared to issue to right shareholders.

Lock in Period:

Lock in period is 5 years for promoter’s contribution from the date of allotment or from the commencement of commercial production whichever is late.


- Prospectus has to be attached with every application.

- A company has to highlight the risk factors in the prospectus.

- Objectives of the issue and project cost should be mentioned in the prospectus.

- Companies management, past history& present business of the firm should be highlighted in the prospectus.

- Justification for premium, if any.

- Subscription list for public issues should be kept open for a minimum of 3 days and a maximum of 10 working days.

- The collection agents are not to collect application money in cash.
- Underwriting has been made mandatory.

2. **Guidelines for Secondary Market:**

**Stock exchange**

- Board of Directors of stock exchange have to be constituted so as to include non-members, public representatives, and govt. representatives to the extent of 50% of total number of members.
- Capital adequacy norms have been laid down for members of various stock exchanges.
- Working hours for all stock exchanges have been fixed to be from 12 noon to 3.pm.
- All recognized stock exchanges will have to inform about the transactions within 24hrs.

**Brokers**

- Registration of brokers and sub-brokers is made compulsory.
- Capital adequacy norms for registration of brokers have been evolved.
- Compulsory audit of broker’s book and filing of audit report within SEBI.
- Brokers have to disclose transaction price and brokerage separately in the contract notes issued to clients.

3. **Guidelines for Bonus Issue:**

- There should be a provisions in articles of association of the company for issue of bonus shares.
- The Bonus is made out of the free reserves created out of the genuine profits.
- Bonus issues are permitted unless the partly paid shares existing are fully paid up.
- No bonus can be made within 12 months of public/right issue.
- Reserves created by revaluation of the fixed assets not permitted to be capitalized.

4. **Guidelines for Right Issue:**

**Composite Issue**

- When the company is making composite issue, a public and right issue can be made at different prices where the prices must be fixed by the BOD’s in consultation with lead manager to the issue.

**Appointment of Merchant Bankers**

- It is not mandatory if the size of rights issue by a listed company does not exceeds rs, 50lakhs.
Minimum Subscription

- If the company does not receive minimum subscription of 90% of the amount within 120 days from the date of opening of issue, the company has to refund the entire subscription within 128 days.

Underwriting
- Underwriting of right issue is not mandatory but as per the SEBI rules and regulation, rights issue can be underwritten.

Over subscription not be retained
- The quantum of right issue should not exceed as specified in the letter of offer. The Companies are not allowed to retain oversubscription under any circumstances.

5. Guidelines for Debenture:
- The debt equity ratio should not exceed 2:1
- The rate of interest can be fixed by the company.
- Debentures are to be redeemed after the expiry of 7 years from the date of allotment
- Normally debentures above 7 years cannot be issued.
- Debenture redemption reserves is to be set up out of the profits of the company.
- Right issue of shares should affect the interest of Debentures.

6. Guidelines for protection of the interest of Debenture holders:
- Trustees to the debenture issue shall be vested with the requisite powers for protecting the interest of debenture holders.
- Existing companies need not create Debenture Redemption Reserves (DRR) upto the date of Commercial Production.
- For new Companies, creation of DRR will commence from the year company earns profit.
- In the case of partly convertible debentures, DRR should be created only for non convertible debenture portion.
- DRR shall be treated as a part of general reserves for the purpose of Bonus Issue.

7. Guidelines for Underwriters:
- No person can act as underwriter unless he holds certificate of registration granted by SEBI.
- Certificate of registration is valid for a period of 3 years from the date of issue.
- The books of Accounts should be maintained for a period of 5 years.
8. **Guidelines for investor protection:**
- The issuing company should provide fair and correct information.
- Allotment process should be transparent.
- No delay in refunds or dispatch of share certificates.
- Underwriting obligations is necessary to inspire confidence of investors.
- Risk factors should be stated in prospectus.
- Listing of securities should be timely.
- Prohibition of unfair trade practices.
- Regulation of insider trading.
LEASING AND HIRE PURCHASING

LEASING – Concept, Meaning and Definition

Lease financing denotes procurement of assets through lease. The subject of leasing falls in the category of finance. Leasing has grown as a big industry in the USA and UK and spread to other countries during the present century. In India, the concept was pioneered in 1973 when the First Leasing Company was set up in Madras and the eighties have seen a rapid growth of this business. Lease as a concept involves a contract whereby the ownership, financing and risk taking of any equipment or asset are separated and shared by two or more parties. Thus, the lessor may finance and lessee may accept the risk through the use of it while a third party may own it. Alternatively the lessor may finance and own it while the lessee enjoys the use of it and bears the risk. There are various combinations in which the above characteristics are shared by the lessor and lessee.

“A lease transaction is a commercial arrangement whereby an equipment owner or Manufacturer conveys to the equipment user the right to use the equipment in return for a rental”. “In other words, lease is a contract between the owner of an asset (the lessor) and its user (the lessee) for the right to use the asset during a specified period in return for a mutually agreed periodic payment (the lease rentals)”. The important feature of a lease contract is separation of the ownership of the asset from its usage.

CLASSIFICATION OF LEASING

1. Financial Lease:

Long-term, non-cancellable lease contracts are known as financial leases. The essential point of financial lease agreement is that it contains a condition whereby the lessor agrees to transfer the title for the asset at the end of the lease period at a nominal cost. At lease it must give an option to the lessee to purchase the asset he has used at the expiry of the lease.
2. **Operating Lease:**

An operating lease stands in contrast to the financial lease in almost all aspects. This lease agreement gives to the lessee only a limited right to use the asset. The lessor is responsible for the upkeep and maintenance of the asset. The lessee is not given any uplift to purchase the asset at the end of the lease period.

3. **Sale and Lease Back:**

It is a sub-part of finance lease. Under this, the owner of an asset sells the asset to a party (the buyer), who in turn leases back the same asset to the owner in consideration of lease rentals. However, under this arrangement, the assets are not physically exchanged but it all happens in records only. This is nothing but a paper transaction. Sale and lease back transaction is suitable for those assets, which are not subjected depreciation but appreciation, say land. The advantage of this method is that the lessee can satisfy himself completely regarding the quality of the asset and after possession of the asset convert the sale into a lease arrangement. The sale and lease back transaction can be expressed with the help of the following figure.
4. **Leveraged leasing:**

Under leveraged leasing arrangement, a third party is involved beside lessor and lessee. The lessor borrows a part of the purchase cost (say 80%) of the asset from the third party i.e., lender and the asset so purchased is held as security against the loan. The lender is paid off from the lease rentals directly by the lessee and the surplus after meeting the claims of the lender goes to the lessor.

5. **Direct Leasing:**

Under direct leasing, a firm acquires the right to use an asset from the manufacturer directly. The ownership of the asset leased out remains with the manufacturer itself. The major types of direct lessor include manufacturers, finance companies, independent lease companies, special purpose leasing companies etc

**ADVANTAGES OF LEASING**

There are several extolled advantages of acquiring capital assets on lease:
(1) **SAVING OF CAPITAL:** Leasing covers the full cost of the equipment used in the business by providing 100% finance. The lessee is not to provide or pay any margin money as there is no down payment. In this way the saving in capital or financial resources can be used for other productive purposes e.g. purchase of inventories.

(2) **FLEXIBILITY AND CONVENIENCE:** The lease agreement can be tailor-made in respect of lease period and lease rentals according to the convenience and requirements of all lessees.

(3) **PLANNING CASH FLOWS:** Leasing enables the lessee to plan its cash flows properly. The rentals can be paid out of the cash coming into the business from the use of the same assets.

(4) **IMPROVEMENT IN LIQUIDITY:** Leasing enables the lessee to improve their liquidity position by adopting the sale and lease back technique.

**HIRE PURCHASING – Concept, Meaning and Definition**

Hire purchase is a type of installment credit under which the hire purchaser, called the hirer, agrees to take the goods on hire at a stated rental, which is inclusive of the repayment of principal as well as interest, with an option to purchase. Under this transaction, the hire purchaser acquires the property (goods) immediately on signing the hire purchase agreement but the ownership or title of the same is transferred only when the last installment is paid. The hire purchase system is regulated by the Hire Purchase Act 1972. This Act defines a hire purchase as “an agreement under which goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of the agreement and includes an agreement under which:

1) The owner delivers possession of goods thereof to a person on condition that such person pays the agreed amount in periodic installments.

2) The property in the goods is to pass to such person on the payment of the last of such installments, and

3) Such person has a right to terminate the agreement at any time before the property so passes.”
### DIFFERENCE BETWEEN HIRE PURCHASE AND LEASING

<table>
<thead>
<tr>
<th>BASE OF DIFFERENCE</th>
<th>LEASE FINANCING</th>
<th>HIRE PURCHASING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meaning</td>
<td>A lease transaction is a commercial arrangement, whereby an equipment owner or manufacturer conveys to the equipment user the right to use the equipment in return for a rental.</td>
<td>Hire purchase is a type of installment credit under which the hire purchaser agrees to take the goods on hire at a stated rental, which is inclusive of the repayment of principal as well as interest, with an option to purchase.</td>
</tr>
<tr>
<td>Option to user</td>
<td>No option is provided to the lessee (user) to purchase the goods.</td>
<td>Option is provided to the hirer (user)</td>
</tr>
<tr>
<td>Nature of Expenditure</td>
<td>Lease rentals paid by the lessee are entirely revenue expenditure of the lessee.</td>
<td>Only interest element included in the HP installments is revenue expenditure by nature</td>
</tr>
<tr>
<td>Components</td>
<td>Lease rentals comprises of 2 elements (1) Finance charge and (2) Capital recovery</td>
<td>HP installments comprise of 3 elements (1) Normal trading profit (2) Finance charge and (3) recovery of cost of goods/assets.</td>
</tr>
</tbody>
</table>

### CREDIT RATING

Credit rating is an unbiased and independent opinion as to an issue’s capacity to meet its financial obligations. It does not constitute a recommendation to buy, sell or hold a particular security.
In India, the first rating agency CRESIL, Credit Rating Information Services if India Ltd, was promoted by ICICI in 1987. Then ICRA (Investment Information and Credit Rating Agency) was formed and promoted by IFCI in 1991. Then CARE (Credit Analysis and Research) was promoted by IDBI.

With economic liberalization, industrial development and increasing trend or financial disintermediation, there is a genuine need for authentic investment information specifically designed to facilitate the decision making process of investors and other participants of the financial services world. This information is provided by Credit Rating Agencies.

SYNDICATION OF LOAN

Syndication of loan refers to the process performed by a lead bank that is responsible for negotiating terms with the borrowers. Then the lead bank organizes a group of banks to underwrite the loans. The syndicate of banks is usually formed in about six weeks or less if the borrower is well known.

FACTORIZING AND FORFEITING SERVICES

Factoring is a service involving the purchase by a financial organization called a factor, or receivables owned to manufacture and distributors by their customers, with the factor assuming full credit and collection responsibilities.

Forfeiting is a form of receivables pertaining to International Trade which denotes the purchase of trade bills and promissory notes by a bank/ financial institution without resources to the seller.