1. FORMATION OF JOINT STOCK COMPANY

INTRODUCTION

Proprietary and partnership forms of business organisation were unable to cope with increased needs of modern industry and commerce. Their main drawbacks were limited resources, unlimited liability and absence of continuity. Some other forms of organisation which would be free of these drawbacks were, therefore, needed. Thus, the joint stock type of organisation was introduced.

Now it is the most widely prevalent form and by far the most important and it would not be an exaggeration to say that modern industrial and commercial development has been primarily due to the growth of the company form of business organisation. This form of organisation placed heavy sums at the disposal of entrepreneurs and at the same time reduced the business risk through the principle of limited liability. This form is very well suited for large undertakings requiring huge capital.

In India, the company form of organisation has attained much importance in the wake of rapid industrialisation through the five-year plans. The functioning of joint stock companies in India was regulated by the Companies Act 1956, as amended to date. However, the new Companies Act, 2013 has now replaced Indian Companies Act 1956.

Meaning of Joint Stock Company

A company is an artificial entity created by law with limited liability, Perpetual succession, common seal and a capital divided into transferable shares.

Definitions

Lord Justice Lindley of England has defined Joint Stock Company as "a voluntary association or organization of many persons who contribute money or money's worth to a common stock and employ it in some trade or business and who share profit or loss arising therefrom".

In words of Haney, "a Joint Stock Company is an incorporated association which is an artificial person created by law having separate entity with a perpetual succession and a common seal".

Chief Justice Marshall of USA has defined a Joint Stock Company as, "a person, artificial, invisible, intangible and existing in contemplation of law".

Section 2(20) of the companies Act, 2013, defines that "a company means a company formed and registered under this Act or an existing company".

Features of Joint Stock Company

1) **Voluntary Association:** A Joint Stock Company is a voluntary association or organization of persons. No persons can be compelled or forced to become the member of Joint Stock Company.

2) **Incorporation or Registration:** The Company is created only when registered under companies Act, 2013. It comes into existence from the date mentioned in the certificate of incorporation. For the formation of a public company at least 7 persons and private at least 2 persons are necessary. These persons agree to come together and lend their names to Memorandum of Association and other legal formalities of registration for the incorporation of a company with or without limited liability.

3) **Specific objectives:** A Joint Stock Company is formed for specific objects only and these objects for which it is formed are stated in Constitution of the company (i.e. Memorandum of Association).

4) **Artificial person created by law:** A Joint Stock Company has no body or soul that is it has no physical or natural existence but it exists in the eyes of law. As a company it can enter into contracts sue and be sued in its own name.

5) **Separate legal entity:** A Joint Stock Company has an entity quite different and independent existence of the members who constitute it.

6) **Common seal:** A company being an artificial entity or person it cannot act on its own. So, it acts through natural person like the directors or the secretary who are authorized. A company cannot by itself put it signature on any documents requiring the company's signature. So, there must be some device which could serve as the company's signature and that device is called as common seal of the company. The seal bears the name engraved on it. Every document issued by the company must bear the seal of the company which is duly witnessed by 2 directors of the company. The common seal is kept in the custody of the secretary of the company.

7) **Perpetual succession or continuous existence:** The company created by law, lives in perpetuality unlike human beings. The life of the company is not affected by death, insanity or insolvency of its members even if all the members of the company were to leave the company it would not affect the company's life. The popular maxim says, "Men may come and men may go but I go on forever" this applies to Joint Stock Company. Joint Stock Company is created by law and it can be bought to an end only by law.

8) **Limited Liability:** Limited liability being a main feature is also most important advantage of company form of organization. A company may be limited by shares (liability of members is limited to the nominal value of the shares held by the shareholders) or limited by guarantee (the liability of the member is limited

to such amount as the members may decide to contribute the assets of the company, in the event of its being wound up.

9) **Transferability of shares:** Section 44 of the companies Act, 2013, provides that "the shares or other interest of any member shall be movable property, transferable in a manner provided for in the articles of the company" therefore a member may:

- Sell his shares in the open market
- Transfer his shares to anybody he likes in a public limited company as per conditions laid down in the articles of the company. However, there are certain restrictions on the transfer of shares in respect to the private limited companies as the very nature of the company indicates, namely, private.

10) **Separate property:** A company is a legal entity distinct from its member. So, it has the right to own, enjoy and dispose the property in its own name. The property of company belongs to the company and not to the individual shareholder of the company. A company can sue and be sued for enforcement or breach of legal rights as the case may be.

11) **Separation of ownership and management:** Being a separate legal entity of its own, Joint stock company cannot be managed by its members or shareholders just because they are real shareholders of the company and there will numerous shareholders and their holdings, positions will be totally different. Therefore, thinking of controlling the company will be an impracticable for all the members. The company will be managed by directors elected by the shareholders. In a company form of organization ownership is separated from that of management.

12) **Large membership:** A Joint Stock Company is an association of many persons. It has a large number of members. Any number of persons can become the members of public limited company as there is no limit to the maximum number of members but in case of a private limited company the maximum number is 50. Hence when compared to other forms of organization joint stock company will have a large membership.

13) **A company is not a citizen:** A Joint Stock Company is a separate legal entity and also exists in the eyes of law. But it cannot claim to be a citizen of the country under the Constitution of India or the citizenship Act, 1955.

Advantages of Joint Stock Company

1. Larger Capital- The huge capital required by modern enterprises would not be possible under other forms of organisations like sole individual proprietorship and even in partnership. The joint stock company

by its widespread appeal to investors of all classes can raise adequate resources of capital required by large-scale enterprise.

2. Limited Liability- Liability of the shareholders of a company is limited to the face value of the shares they have purchased. It has a stimulating effect on investment. The private property of shareholder is not attachable to recover the dues of the company.

3. Stability of Existence- The organisation of a company as a separate legal entity gives it a character of permanence or continuity. As an incorporated body, a company enjoys perpetual existence.

4. Economies of Scale- Since the company operates on a large scale, it would result in the realisation of economies in purchases, management, distribution or selling. These economies would provide goods to the consumer at a cheaper price.

5. Scope for Expansion- As there is no restriction to the maximum number of members in a public company, expansion of business is easy by issuing new shares and debentures.

6. Public Confidence- Formation and working of companies are well regulated by the provisions of the Companies Act. The provisions regarding compulsory publication of some documents, accounts, director's report, etc., create confidence in public. Their accounts are audited by a chartered accountant and are to be published. This creates confidence in the public about the functioning of the company.

7. Transferability of Shares- The shareholders of a public company are entitled to transfer the shares held by them to others. The shares of most joint stock companies are listed on the stock exchange and hence can be easily sold.

8. Professional Management- The management of a company vests in the directors duly elected by shareholders. Normally, experienced persons are elected as directors. Thus, the available skill is utilized for the benefit of the company. The company organisation, therefore, is like a bridge between the skill and capital.

9. Tax Benefits- Company pays lower tax on a higher income. This is because of the reason that the company pays tax on the flat rates. Similarly, company gets some tax concessions if it establishes itself in a backward area.

10. Risk Diffused- The membership of a company is large. The business risk is divided among several members of the company. This encourages investment of small investors.

Disadvantages of Joint Stock Company

1. Difficulty in formation- The legal formalities and procedures required in the formation of a company are many. It has to approach large number of people for its capital and it cannot commence business, unless it has obtained a certificate of incorporation and a certificate to commence business.

2. Lack of Secrecy- Every issue is discussed in the meeting of the board of directors. The minutes of meeting and accounts of the firm's profit and loss etc., have to be published. In this situation maintenance of secrecy is difficult.

3. Delay in Decision Making- In company form of organisation, all important decisions are taken by the board of directors and shareholders in general meeting. Hence, decision making process is time consuming. Board of directors itself has often to be at the mercy of bureaucracy.

4. Concentration of Economic Power- The company form of organisation gives scope for concentration of economic power in a few hands. It gives easy scope for the formation of combinations which results in monopoly. Large joint stock companies tend to form themselves into combinations or associations exercising monopolistic power which may prove detrimental to other firms in the same line or to the consumers.

5. Lack of Personal Interest- In company form of organisation, the day-to-day management is vested with the salaried persons or executives who do not have any personal interest in the company. This may lead to reduced employee motivation and result in inefficiency.

6. More Government Restrictions- The internal working of the company is subject to statutory restrictions regarding meeting, voting, audit, etc. The establishment and running of a company, therefore, would prove to be troublesome and burdensome because of complicated legal regulations.

7. Incapable and Unscrupulous Management- Unscrupulous individuals may bring economic ruin to the community by promoting bogus companies. The fraudulent promoters may be fool the public to collect capital and misuse it for their personal gain. Misuse of property, goods and money by the managerial personnel may harm the interests of the shareholders and create panic among the investing public.

8. Undue Speculation in the Shares of the Company- Illegitimate speculation in the values of shares of a company listed on the stock exchange is injurious to the interest of shareholders. Violent fluctuations in the values of shares as a result of gambling on the stock exchange, weakens the confidence of investors and may lead to financial crisis.

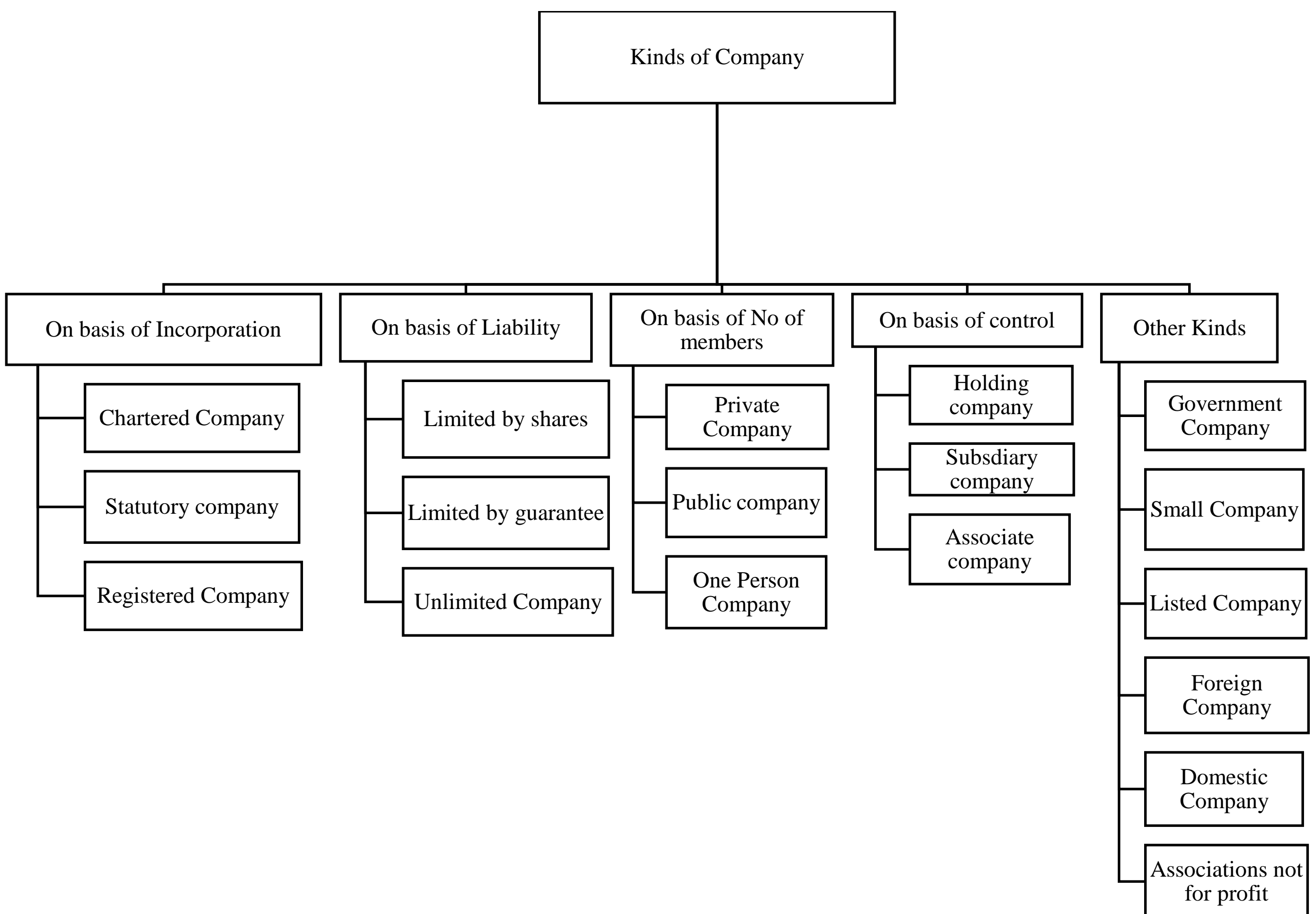
Differences between a Joint Stock Company and a Partnership firm

The major differences between a company and a Partnership firm

Joint Stock Company	Partnership firm
A Company is formed when registered under Indian Companies Act, 2013.	Partnership is created when agreed between the individuals. Registration of partnership firm is optional. If needed can register under partnership Act, 1932.
A private company is formed with a minimum of 2 persons and public company with at least 7 persons.	Partnership firm can be formed by 2 persons.
A private company is limited to 200 members and there is no limit to the maximum number of members in case of public company.	The maximum number of members in a partnership firm is limited to 10 in case of banking business and 20 in case of any other business.
A Joint stock company has a separate legal entity quite distinct from the members constituting it.	A partnership firm has no separate legal entity or existence distinct from the members constituting it.
The liability of member of a company is limited by shares or limited by guarantee.	The liability of partners is unlimited, joint and several.
The shares of the company are freely transferable.	A partner of a firm cannot transfer his transfer his share or interest in a firm to another person without the consents of other partners.
Creditors of the company are not the creditors of the individual shareholders. Creditors can proceed against company and shareholder are not individually liable for the debts of the company.	The creditors of the firm are the creditors of the individual partners and a decree is enforceable against them.
A company has perpetual succession.	Partnership firm comes to an end when a partner dies or becomes insolvent, unless otherwise provided in the partnership deed (if registered).
A member of company is not an agent of the company and so he cannot bind the company by his acts.	Each partner is an agent of the firm and so he can bind the make for all acts done on by him on behalf of the firm.

Every member of company has no right to take part in the day to day management of the company. The management of the company is carried on by the Board of Directors who are elected by the members of the country.	Every partner of a firm is entitled to take part in the day to day management of the firm. Unless if any of the partner is restricted by partnership agreement (sleeping partner).
Controlled by companies act regarding various statutory obligations such as book of accounts, audits, publications etc.,	No such statutory obligations.
The Joint Stock Company is subject to strict Government control.	The Partnership is not subject to strict Government control.

Kinds of companies



I. Classification of companies on the basis of their incorporation

On the basis of their incorporation companies are classified into 3 types. They are as follows:

a) Chartered Company: A chartered company is a form of company which comes into existence under a special charter or proclamation issued by the monarch or crown (i.e. King or queen).

The powers and activities of a chartered company are governed or regulated or controlled by the special charter under which it is established.

Example: The East India Company, The Bank of England etc.,

b) Statutory Company: A Statutory company is a company which is incorporated under a special or separate Act of legislature and it is governed by such an Act. A statutory company requires a special powers and privileges which it does not get under Companies Act 2013. This method of incorporation is adopted for the companies of national importance and public utility companies.

Example: The Reserve Bank of India, The Life Insurance Corporation of India, Electricity supply companies etc.,

c) Registered Company: Registered companies are the companies which are brought into existence by the registration with registrar of the company under Companies Act, 2013.

In short, they are the companies incorporated under Companies Act, 2013.

II Classification of companies on the basis of the liability of the members

a) Companies limited by shares: Companies limited by shares are companies in which the liability of a member is limited to the nominal or face value of the shares held by them. The member will be called upon to pay only the unpaid number of shares held.

b) Companies limited by guarantee: Companies limited by guarantee are companies in which the liability of each member is limited to a fixed amount which he has guaranteed (i.e., agreed to contribute to the assets of the company) to meet up the liabilities of the company in the event of its winding up. The amount guaranteed by each member will be mentioned in the Memorandum of Association.

Example: Trade Association, Clubs etc.,

c) Unlimited liability: They are the companies in which the liability of the members is unlimited i.e., the members of these companies can be called upon to pay from their private assets to satisfy the liabilities of the companies. This type of companies does not exist presently.

III. Classification on the basis of number of member and registered companies

a) Private Company: Under section 2(68) of companies Act,2013 "Private Company" means a company having minimum paid up share capital of 1 lakh rupees or such higher paid up share capital as may be prescribed, and which by its articles,

- restricts the right to transfer its share
- except in case of one-person company, limits the number of its member to 200
- prohibits any invitation to the public to subscribe for any securities of the company.

A private company suits the needs of those who wish to have advantages of limited liability and also keep their business private as possible.

Privileges enjoyed by ALL Private Companies

Because of the advantages of limited liability, privacy in business and simplicity in formation many people prefer to start private companies rather than public companies. Private companies enjoy certain special privileges which is not allowed to a public company. These privileges are enjoyed by both independent private companies and subsidiary Private companies.

- Only two members are sufficient for a private company at the time of registration.
- The company can immediately commence business on obtaining certificate of incorporation. It need not wait for certificate of commencement of business.
- A private company need not file a prospectus or statement in lieu of prospectus with the registrar of the companies.
- A private company is not required to hold statutory meeting or file statutory report with the registrar.
- A private company can proceed to allot the shares without observing the usual restrictions applicable to the allotment of shares.
- Restrictions imposed on public companies regarding further issue of shares do not apply to a private company.
- The minimum number of directors is only two.
- Written consent to act as director need not be filed with the registrar by the director of a private company.
- A private company is not required to maintain a separate index of members.
- Only two members will be sufficient to constitute quorum in case of members meeting of a private company.

Restrictions on a Private company

There are restrictions on Private company with privileges. Following are some restrictions applied on private company.

- A private limited company must have the words "private limited" as the last words at the end of its name.
- The private company shares are subject to restriction on its transfer and private company is prohibited from inviting the public to subscribe to its shares and debentures.
- A private company must have at least two individuals as directors
- Every year a private company must file with the registrar along with the annual return, a statement showing:
  - A certificate that no invitation was made to public for subscribing to its shares and debentures.
  - That the number of its members did not exceed 200
  - That corporate shareholding is less than 25% of its paid-up capital.
- Every private company must appoint qualified auditors for auditing its accounts.
- Every private company must file three copies of profit and loss account and three copies of balance sheet with the registrar within 30 days of the annual general meeting.
- Every private company should send a copy of its audited balance sheet and profit and loss account to all members and debentures holders 21 days before the annual general meeting.
- A private company is prohibited from issuing share warrant. This is because the share warrant can be transferred by delivery and the right to transfer shares in the case of a private company is restricted.
- A private company shall automatically become public company if 25% or more of its share capital is held by one or more other companies.

b) Public Company:

Under 2(71) a "Public Company" means a company which –

- is not a private company
- has minimum share capital of 5 lakh or such higher paid up capital, as may be prescribed.

In the case of a public company the minimum number required to form a company is seven and there is no maximum limit. The most advantageous aspect in case of public company is that it can invite the public to subscribe to its share and there are no restrictions on transferability of shares. To commence its business, it

should obtain a certificate of incorporation and certificate of commencement from the registrar of the companies.

c) One Person Company

under section 2(62) of Companies Act, 2013, “One Person Company” means a company which has one person as a member.

Under this form of company, one man practically holds the entire share capital of the company, but in order to meet its statutory requirement of minimum number of members, some dummy members mostly his relatives, friends and family members hold one or more shares to fulfill the statutory requirement of at least 7 members in case of public company and 2 members in case of private company.

In simple word, one man controls the entire company with limited liability.

IV classification of companies on the basis of control

a) Holding Company: Under section 2(46) of Companies Act, 2013 “Holding Company” in relation to one or more other companies, means a company of which such companies are subsidiary ones.

b) Subsidiary Company: Under section 2(87) of Companies Act, 2013 “Subsidiary Company” as a company in which the holding company –

- controls the composition of Board of Directors
- exercises or controls more than one half of the total share capital either at its own or together with one or more of its companies

c) Associate Company: Under section 2(6) of Companies Act, 2013 “associate company” in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a Joint venture. The influencing power is secured by acquiring 20% or more of share capital in that company and having agreement to influence business decisions.

V Other Kinds

a) Government Company: Under section 2(45) of the companies Act, 2013 a company in which not less than 51% of the share capital is held by the Central Government and/ or by any State Government or Governments is called a Government Company.

- The capital of a Government company is subscribed wholly or to the extent of at least 51% by the Central Government or any of the state Government or Governments.

- The auditors of a government company are appointed or re-appointed by the central government on the advice of the comptroller and Auditor General of India.
- The accounts of Government company are regularly audited by the auditors appointed by the government.
- The examples of Government company are HAL, HMT, BEL etc.,

b) Small Company: Under section 2(85) of Companies Act, 2013 "small company" means a company, other than a public company –

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

This definition excludes,

- A holding company or a subsidiary company
- A company registered under section 8; or
- A company or body corporate governed by any special Act.

c) Listed Company: Under section 2(52) of Companies Act, 2013 "listed company" means a company which has any of its securities listed on any recognized stock exchange.

d) Foreign Company: Under section 2(42) of Companies Act, 2013 "Foreign Company" means any company or corporate body incorporated outside India which-

- has place of business in India whether by itself or through electronic mode
- conducts any business activity in India in any other manner

Following are the documents to filed by every foreign company with the registrar under section 380 of the Companies Act, 2013 to carry on its business,

- A certified copy of its charter, statutes, memorandum of association and articles of association or other instruments defining its constitution.
- The full address of the registered or principal office of the company.
- List of the directors and secretary of the company with the required particulars.
- The name and address of the person authorized to receive any notice or document etc., required to be served on the company in India.

- The full address of the office of the company which is to be deemed its principal office of the business.

e) Domestic Company: As per section 2(22A), "domestic company" means an Indian company, or any other company which in respect of its income liable to tax under this Act, has made the prescribed arrangements for the declaration and payment, within India, of the dividends payable out of such income.

f) Associations not for profit: Under section 8 of the companies Act, 2013 the Central Government may, under a license, direct that an association be registered as a company with limited liability, without addition to its name of such word as 'Limited' or 'Private limited' provided:

a) The company formed is for promoting commerce, science, charity, religion or any other useful social or cultural object, such as chamber of commerce.

b) The company applies its profits or any other revenue income in promoting its objects and not interested in payment of any dividend.

Difference between Private Company and Public Company

Point of Difference	Private Company	Public Company
Formation	Formation of Private company is not difficult	Formation of Public company is difficult
End words of the name	A private company name must have the words "Private Limited" after its name.	The name of public company must end with the word "Limited".
Certificate required	Private company can be formed immediately after obtaining certificate of Incorporation.	For the formation of public company, it requires 2 certificates i.e. Certificate of Incorporation and Certificate of Commencement.
Number of members	Private company requires minimum 2 members for formation and maximum number of members is limited to 200 members.	In public company minimum there must be 7 members and there is no limit to maximum number of members.
Prospectus	There is no need to file a prospectus or statement-lieu-of prospectus.	Public company must compulsorily file a prospectus or statement-lieu-

		of prospectus with the registrar of the company before allotting shares.
Memorandum of association and articles of association	In case of private company Memorandum of association and articles of association have to be signed by 2 members.	In case of public company Memorandum of association and articles of association have to be signed by 7 members.
Transfer of share	There is a restriction on transfer of shares by its articles in private company and its shares cannot be listed in stock exchange.	The shares in public company are freely transferable and its share an be listed in stock exchange.
Preparation of Articles of association	Private company must compulsorily prepare Articles of association as it cannot adopt table ‘A’ by definition.	A public company need not prepare Articles of association as it can adopt table ‘A’ of Companies Act which contain model rules and regulations.
Holding of statutory meeting	A private company is not required hold statutory meeting and file a statutory report with the registrar of companies.	A public company must compulsorily hold a statutory meeting within 6 months from the date of commencement of business and file a statutory report with the registrar of companies.
Invitation to public to subscribe	A private company cannot invite the public to subscribe to its shares and debentures.	Public company can invite the public to subscribe to its share and debentures.
Type of shares	It can issue 3 types of shares they are: Preference shares, Equity Shares and Deferred shares.	It can issue 2 types of shares they are: Preference shares and Equity Shares.
Share warrants	Private company is prohibited from issuing the share warrants.	Public company is allowed to issue share warrants.
Length of notice	The notice of General meeting may be shorter than 21 days.	The notice of General meeting must be of 21 days.
Minimum number of directors	The minimum number of directors in private company is 2.	The minimum number of directors in private company is 3.

Loan to directors	Private company can grant loan to its directors without the approval of Central Government.	Public cannot grant loan to its directors without the approval of Central Government.
Retirement of directors	In private company directors need not retire by rotation every year.	The directors of public company must retire by rotation every year.
Directorship of directors	There is no restriction on the number of directorships a director of a private company can hold.	There is a limit on number of directorships a director pf a public company can hold. A director of a public company cannot hold directorships in more than 20 companies simultaneously.
Remuneration of directors	There are no legal restrictions on remuneration of the directors.	There are legal restrictions on remuneration of the directors.
Proxy	Unless the articles provide it cannot appoint more than one proxy for the same meeting.	It can appoint more than one proxy for the same meeting.
Disclosure of financial report	There is no obligation for a private company to disclose their financial report to the normal public.	Public company needs to disclose its financial reports quarterly and annually.

Companies Act (the legislative background)

Indian Companies Act was always based on English Companies Act. Following is the time line of Companies Act,

- **1850:** The first legislation relating to Indian Joint Stock Companies was enacted in 1850 based on the English Companies Act, 1844. This legislation provided for registration and transferability of shares but did not confer the privilege of Limited liability.
- **1857:** The amendment of Act 1850 was made on 1857 based on English Companies Act, 1856 to introduce the concept of limited liability, where it provided for registration of company with or without limited liability.

- **1866:** The amendment was made on 1866 for consolidating and amending the law related to incorporation regulations. This amendment was based on English Companies Act, 1862. This amendment was followed until Companies Act, 1913.
- **1913:** Companies Act, 1913 was framed incorporating various amendments but this was again an imitation of English Companies Act, 1908. This highlighted the ingenuity of the framers. Though there are several amendments it had been same old Act. And to overcome the back log of the Companies Act, 1913 various amendments was undertaken in 1914, 1915, 1920, 1926, 1930 and 1932.
- **1956:** The committee consisting 12 experts in various fields under the chairmanship of Shri. H C Bhabha was appointed in 1950. The committee submitted its report in 1952, thoroughly revising the amendments to the Indian Companies Act, 2013. Based on the recommendations, a comprehensive bill was drafted and passed by the legislature in November 1955. The Act came into effect from 1st April, 1956.

  The Indian Companies Act, 1956 made substantial changes in the following:

  - Promotion and formation of Companies
  - Structure of capital
  - Issue of prospectus
  - Company meetings
  - Power and responsibilities of directors
  - Audits and accounts of the company
  - Inspection and investigation of the companies
  - Administration of the company law

Amendments to the Companies Act, 1956

1. The companies (Amendment) Act, 1960: The committee known as Shastri Committee was appointed in 1957 to review the working of the Act, 1956 and the amendment to the said Act was passed in 1960 involving as many as 218 sections with new provisions of existing sections.
2. The companies (Amendment) Act, 1962: The amendment was introduced mainly to provide for the contribution to the National Defence Fund by amending Section 293-B.
3. The companies (Amendment) Act, 1963: The amendment 1963 provided for establishment of company tribunal to detect the fraud and misfeasance in the management. Constituted a Board of Company Law administration under section 10E defining the powers and functions.
4. The companies (Amendment) Act, 1964: The amendment provided for the temporary protection to employers of the companies during the period of investigation of pending proceedings.

5. The companies (Amendment) Act, 1965: The amendment provided for Advisory committee in place of advisory commission, no business could be started without the approval of shareholders, restrictions on blank transfer of shares etc.,
6. The companies (Amendment) Act, 1966: The first amendment was related to the production of documents and evidence under section 240, and loans to companies under the same management (sec 370).

   The second amendment related to exempt production of instrument of transfer where shares were deposited as security for payment of loans and advances, or performance of any obligation subject to certain conditions.
7. The companies (Amendment) Act, 1967: The tribunal which was appointed under 1963 was abolished by this amendment. The functions and powers of tribunals were transferred back to Central Government or court as the case may be.
8. The companies (Amendment) Act, 1969: The amendments are: (i) abolishing the institution of managing agent and secretaries and treasurers with effect from 1970 (ii) providing contribution to the political party for the purpose to any individual will be penalised and jailed.
9. The companies (Amendment) Act, 1974: The major amendments made were,
   - Checking abuses
   - Providing remedial measures to prevent malpractices in the administration of the company.
10. The companies (Amendment) Act, 1977: The Amendment 1977 introduced, empowered central government to grant extension of time or exemption of the provisions of section 58 A to the companies in respect of repayment of public deposits due to temporary difficulties.
11. The companies (Amendment) Act, 1993: Due to the wave of LPG (Liberalisation, Privatisation and Globalisation) in the year 1991, incorporation of private company increased drastically. Licensing was abolished for all industrial undertakings including MRTP/FERA companies and small-scale industries and ancillary industries. This bill included 637 clauses and 13 schedules.
12. Companies Bill, 1997: The companies bill was drafted in its revised form. The working draft of the companies bill was tabled in the parliament on 5th may 1997. The draft companies bill in its revised form aimed to strike a balance between the norms and the demands of the industry which wants minimum control in the liberalised environment.
13. The companies (Amendment) Act, 1999: Companies (Amendment) Ordinance,1998 was promulgated by the President on 31st October,1998. This amendment act replaces companies (Amendment) ordinance, 1999 promulgated on 7th January 1999.
14. The companies (Amendment) Act, 2000: The Companies (Amendment) Bill was passed by both the houses of Parliament during the end of November 2000. The amendment includes important

changes aimed at better) corporate governance and investor protection. The companies (Amendment) Act contains 231 clauses. The following are the major changes-

- The provisions relating to managing agents / secretaries and treasurers have been deleted.
- The quantum of fine for certain offences under the Act is enhanced by 10 times.
- Provisions for corporate governance
- The SEBI (Securities and Exchange Board of India) has been entrusted with powers relating to issue and transfer of securities and non-payment of dividend.

15. The companies (Amendment) Act, 2006: The rapid development in technology led to the Ministry of Corporate Affairs to enable operations carried out by the ministry and its field offices to be performed more efficiently through the use of Information Technology. The important e-governance initiative was taken by central government called MCA-21.
16. The companies (Amendment) Act, 2011: This bill included 470 clauses and 29 chapters. It provides for self-regulatory process and stringent compliance.

- **2013:** The Companies Bill, 2011 which was passed by the Lok Sabha on 18th December 2012 and by Rajya Sabha on 8th August 2013 became an act called "The Companies Act, 2013". The Companies Act 2013 received the assent of President of India on 29th August 2013 and came into force with effect from 30th August 2013.
  a. The Companies Act, 2013 consists of 470 sections spread over 29 chapters and 7 schedules.
  b. The Companies Act, 2013 repeals the previous Companies Act, 1956.

  The Companies Act, 2013 is enacted to gradually replace the old Act of 1956, with the objective to bring more accountability and good corporate governance. The Ministry of Corporate Affairs has notified 98 sections of the Act which have come into effect from September 12, 2013 and repealed the corresponding sections of the 1956 Act. This Act will allow the country to have modern legislation for regulation of corporate sector in India.
- **2015:** As per the issues raised by stake holders following are the major amendments made,
  - No minimum share capital required
  - Relaxation in related party transaction
  - Inspection on accounts
  - Common seal is optional
  - Share dividends

Highlights of Companies Act, 2013

The key highlights of the 2013 Act are summarized below:

1. **Immediate changes in letter heads:** Immediate changes in the letter heads, bills or other official communications, as if full name, address of its registered office, corporate identity number (21digit numbers allotted by Government), fax numbers and email id, website address if any.
2. **One-person company (OPC):** It is a private company having only one member and at least one director. OPC can be registered only as a private company which means all the provisions applicable to private company will be applicable to an OPC. OPC cannot be incorporated or converted into section 8 company (i.e. Association not for profit) or non-banking financial activities. No compulsion to hold Annual general meeting (AGM). Conversion of existing private companies with paid up capital up to Rs 50 lakhs and turnover up to Rs 2cr into OPC is permitted. OPC can have at least one meeting of the BOD in each half of a calendar year.
3. **Women Director:** Every listed company/ public company with paid up capital of Rs 100 cr or more/ public company with turnover of Rs 300cr or more shall have at least one women director.
4. **Resident Director:** The Companies Act 2103 outlines the requirement of at least one resident director on board. Among all the other provisions, the provisions relating to the Board of Directors and administration of the company are of prominence. Every company shall have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year.
5. **Accounting year:** All the companies are required to have a uniform financial year, 1st April- 31st March. In words every company's financial year will be the period ending on 31st March every year.
6. **Loans to Directors:** Sec 185 of Companies Act, 2013 prohibits any company from giving loans, guarantees and securities in favour of its directors or to any other person in whom the director in interested directly or indirectly, advance any loan.
7. **Articles of Association:** In the next General Meeting, it is desirable to adopt Table F as standard set of Articles of Association of the company with relevant changes to suit the requirements of the company. Further, every copy of Memorandum and Articles issued to members should contain a copy of all resolutions/agreements that are required to be filed with the Registrar.

Formation of Joint Stock Company

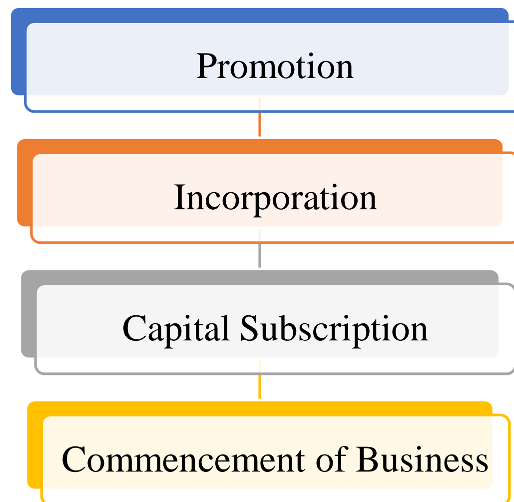
Formation of a company is to establish a new company. A new company is said to be establishing when it is registered under The Companies Act. The formation of the company involves various legal formalities and activities.

In the Formation of a public limited company, mainly four stages are involved, namely:

- Promotion
- Incorporation

- Capital Subscription
- Commencement of business or trading certificate

In case of formation of a Private Company, only the first two stages are involved, because a Private Company can commence its business immediately after securing the Certificate of Incorporation from the Registrar of the Companies. But in the case of formation of the Public Company, there is need for the promoters to secure from the Registrar, the Certificate to commence business, in additional to the Certificate of Incorporation.



Stage 1: Promotion Stage

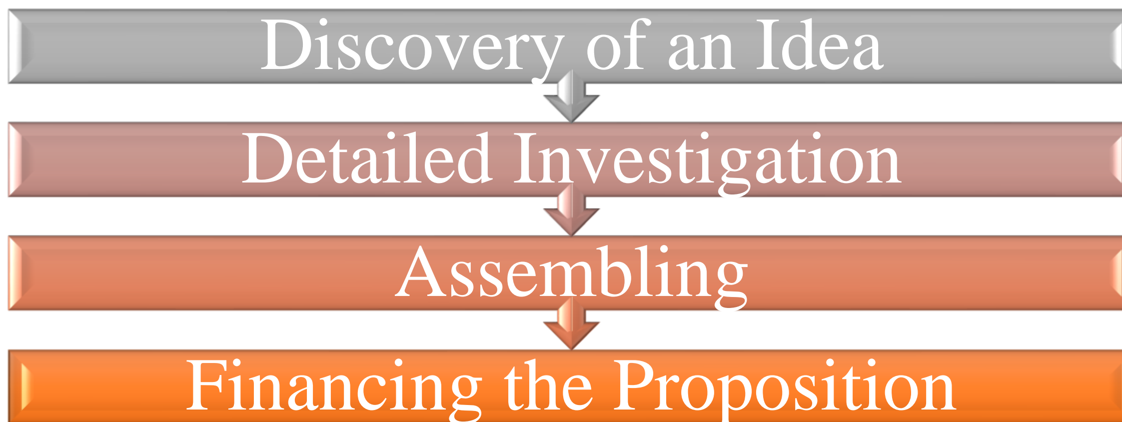
Definition of promotion:

According to Haney, promotion may be defined as the process of organizing and planning the finance of a business enterprise under the corporate form. In other words, the steps which are taken to persuade a number of persons to come together for the achievement of a common objective through the company form of organization is called promotion.

Promoter: The person or persons who undertake responsibility to bring the company into existence are called promoters.

Steps in Company Promotion

The work of promotion of a company involves 4 stages viz,



a) Discovery of an Idea: The first step of promotion is discovery of an idea. The promoter will discover some ideas to start the business either new field which has not been commercially exploited or in some existing lines of manufacture or business. He makes preliminary investigation to find out whether it is worthwhile to make a detailed investigation. He also makes some rough estimation regarding the revenue and expenditures.

b) Detailed Investigation: The promoter needs to make a detailed investigation of his idea with the help of the experts like engineer, chemist, market analyst, financial expert, management consultant etc., on the basis of the reports or advises of these experts, the promoters would be able to know about the capital requirements, place of location, size of unit, demand condition in the market, what should be the price of the product, cost of production, return on capital etc. A detailed investigation will help the promoter to decide whether the estimated income will be adequate to carry on the business and compensation to the owner for risks and services.

c) Assembling: After the detailed investigation, if the promoter is satisfied with practicability and profitability of the proposed concern, he starts assembling the capital. 'Assembling' means getting the support of and consent of some other persons to act as a directors or founders, arranging for patents, suitable location, machinery and equipment and making contracts for filing the prospectus.

d) Financing the Proposition: After assembling the proposition, the promoter prepares a 'prospectus' to present to the public and to underwriters to persuade them to finance the 'proposition'. A prospectus contains the complete details of the proposition and also the reports of various experts who have investigated the proposition. The promoter also takes step to incorporate the company and also for obtaining the certificate of incorporation.

Position of Promoter

The Company Law has not given any legal status of promoters. A promoter is neither an agent nor a trustee for the company. But he occupies a fiduciary position i.e. a relation of trust and confidence. The promoter

must act honestly and sincerely in the best interest of the company. promoters must not make secret gains out of dealings on behalf of the company. if there are any gains out of the dealings, it must be disclosed.
The promoter is not an agent of the company because a person cannot be agent of the company which is yet to come into existence. The company will come in to existence only after it has been incorporated. This means promoters will remain personally liable for preliminary contracts even after incorporation of the company.
The legal obligations of a promoter are as under:

- To exercise due care and intelligence in the work of promotion.
- To disclose full details in nature and extent of money taken by him in the process of promotion.
- To deposit all money received on behalf of the company in the company's bank account.
- To surrender any profits made during promotion of company.

Functions of Promoter

Promoters are the important pillars of the company. They are the one who conceives the idea to start the business and convert their idea into reality. The functions of promoters are as follows:

- Conceive the idea
- Analyses the profitability and feasibility of the idea
- Investigate the workability of the idea by consulting ideas
- Decide the name and location of the company and also amount and form of its share capital.
- Prepare MOA, Prospectus and other necessary documents and file them for incorporation.

Types of Promoters:

1. Professional Promoters: They are experts who specialize in company promotion. They float the company and handover the company to shareholders or the representatives when the business starts. Promotion is their main profession or occupation. In India, there is a lack of professional promoters. In many other countries, professional promoters have played an important role and helped the business community to a great extent.
2. Occasional Promoters: These promoters take interest in floating (promoting) some companies. They are not engaged in promotion work on a regular basis. They take up the promotion of some company and once it is over, they go their original profession. For instance, engineers, lawyers etc may float in some companies.

3. Financial Promoters: Some financial institutions like Investment Banks or Industrial Banks may take up the promotion of a company with a view to find opportunities for investment.

4. Entrepreneur Promoter: They are both promoters and entrepreneurs. They conceive idea of a new business unit, do the ground work to establish it and subsequently a part of the management.

Stage 2: Incorporation

After taking all preliminary steps for registration, an application along with necessary documents, stamp duty, registration and filing fees, has to be made to the registrar for obtaining the certificate of incorporation.

The registrar will scrutinize the documents and will issue the company its birth certificate called Certificate of Incorporation

Steps and Formalities for incorporation of a company

- The Memorandum of Association to which at least 7 persons have subscribed their names and each one of them has taken at least one share. In case of private company 2 persons required to subscribe their names.
- The Articles of Association similarly should be signed in respective forms table F, G, H, I in schedule 1 attached to the Companies Act, 2013 has been adopted to its articles.
- The address of the registered office. If not specified should be delivered within 30 days of incorporation
- List of directors with their names, address and occupations should be filed within 30 days of their appointment (not required to private company).
- Consent in writing of the directors to act as directors. This document is not required in the formation of a private company.
- An undertaking by the directors to take and pay the qualification shares This document is not required in the formation of a private company.
- The statutory declaration by an advocate or an attorney or a chartered accountant practicing in India who is engaged in the formation of a company or by a person named in the articles as a director manager or secretary of the company.

At the time of filing these documents with registrar of companies necessary stamp duty, registration fees and filing fees are to be paid. The registrar will examine these documents and if he is satisfied with

documents, he will enter the name of company in the register and will issue to the company its birth certificate called the 'Certificate of Incorporation'. The Certificate of Incorporation is a conclusive evidence of the fact that:

1) All the requirements of the Act have been complied with.

2) The company has come into existence on the date mentioned therein.

The effects of the Certificate of Incorporation are as under:

i. The subscribers to the memorandum and all those who later become members of the company will be a body corporate.
ii. The body corporate shall be capable of exercising all the functions of an incorporated company immediately, with regard to common seal, perpetual succession and limited liability.

Certificate of Incorporation [sec 7(2)]

On registration, the Registrar will issue a Certificate of Incorporation whereby the certification is given that the company is incorporated and in case of a Limited company, that the company is limited. These days Registrar of Companies issue a Certificate of Incorporation bearing a Corporate Identity Number (CIN) consisting of 21 digits.

A certificate of incorporation is a legal document that shows you've formed and registered your limited company with Companies House. In essence, it's your company's birth certificate.

It shows the name of your company, its registered number and the date it was incorporated. It also shows the type of company you have set up and where your registered office is located.

Stage 3: Capital Subscription

A private company not having any share capital can commence business immediately after obtaining certificate of Incorporation, but a public company having a share capital can commence business only after obtaining another certificate called 'Certificate of Commencement' from the registrar of the companies. Hence, a public company to obtain share capital has to undergo two additional stages i.e. subscription stage and commencement of business stage.

In the capital subscription stage, the company has to make arrangements for obtaining the necessary capital for the company. For this purpose, immediately after getting the certificate of incorporation, the company convenes a board meeting to deal with the following business:

- Appointment of confirmation of the appointment of the secretary if one is already been appointed by the promoters at the promotion state.

- Adoption of preliminary contracts: Before getting incorporation, the promoters enters into several contracts on behalf of the proposed company like contract for the purchasing of properties, assets or contract for purchasing existing business. As these contracts were entered into by the promoter, when the company was not in existence, they become valid only when they are ratified by the company. Hence these contracts are adopted in the first Board meeting.
- Appointment of bankers: According to companies Act, all money received by the company with the application for shares must be deposited in a scheduled bank. Hence before issuing prospectus, the Board of Directors appoint the bankers by passing a special resolution to that effect. For opening an account in the bank, the secretary has to make an application to the bank along with a copy of MOA, Certificate of Incorporation, a certified copy of the board resolution authorizing the opening of a bank account and specimen signatures of the persons who operates the account.
- Appointment of solicitors to handle the litigation on behalf of the company, legal advisors for obtaining the legal advises and a certified chartered accountant for verification of company’s accounts.
- Adoption of draft prospectus or statement-in-lieu of prospectus
- Listing of shares on the stock exchange
- Adoption of underwriting contracts

The promoters generally appoint the secretary, banker, solicitor, auditor and broker in advance and their appointments will be confirmed by the board of directors in its first meeting.

Minimum Subscription: The minimum subscription is the minimum amount which in the opinion of the directors or signatories of memorandum, is required to start a business. In case of public company, the registrar will issue the certificate of commencement only when the amount is raised by allotting shares, is not less than the amount equivalent to the minimum subscription mentioned in the prospectus.

Underwriting: The act of ensuring the sale of shares or debentures of company, even before offering to the public is called underwriting and those engaged in such activities are called underwriters. In other words, underwriters take upon themselves the responsibility of selling the securities to the public. If some securities remain unsold, the underwriters will have to buy them. For this they will charge a commission called underwriting commission.

Stage 4: Commencement of business

I. A prospectus or Statement-in-lieu of prospectus has to be filed with Roc

II The number of shares allotted is not less than the minimum subscription mentioned in the prospectus and qualification shares taken up and paid by directors

III Under section 11 of companies Act, 2013, a declaration has to be filed by directors or the secretary

(1) Section 11 (a) A company having a share capital shall not commence any business or exercise any borrowing powers unless—

(*a*) a declaration is filed by a director in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him and the paid-up share capital of the company is not less than five lakh rupees in case of a public company and not less than one lakh rupees in case of a private company on the date of making of this declaration; and

(*b*) the company has filed with the Registrar a verification of its registered office as provided in sub-section (*2*) of section 12.

(2) Section 11(2) says, if any default is made in complying with the requirements of this section, the company shall be liable to a penalty which may extend to five thousand rupees and every officer who is in default shall be punishable with fine which may extend to one thousand rupees for every day during which the default continues.

(3) Where no declaration has been filed with the Registrar under clause (*a*) of subsection (*1*) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (*2*), initiate action for the removal of the name of the company from the register of companies.

A specimen form of declaration required to be filed by the secretary or a director of the company.

<u>Certificate of commencement of Business</u> (Sec. 11(1)(2)(3) of companies Act,2013)

The registrar after receiving the declaration of compliance from the secretary or one of the directors along with the required filing fees, will scrutinize the declaration and if satisfied, will issue certificate to commence the business. From the date of the issue of this certificate, the company is entitled to commence the business and empowered to exercise its borrowing powers.

If any company commences business or exercises its borrowing powers without securing a certificate from the Registrar to commence business, or in any way contravenes the provisions of the Act, every person who is responsible for the contravention shall be liable to a fine which may extend to Rs 1,000 for every day the default continues. Further, the company should get this certificate within one year of its incorporation. If it fails to secure it within this limit, the court may order it to be wound up.

E-filing:

Companies Act requires companies to file and register documents. Prior to February 2006 companies in India were required to file the documents manually at the office of registrar of companies (ROC). However, with effect from February 10 2006 the central government has notified e-forms to facilitate electronic filing of documents. This important of e-governance initiative of the Ministry of Corporate Affairs is called MCA-21.

At the incorporation stage a company is required to file memorandum of association and articles of association with ROC. In addition to this e-filing is also required. This involves filing certain additional documents with ROC in e-form. The following are the additional documents that are required to be e-filed in e-form,

E Form No. 18 – Name of the registered office of the proposed company

E Form No. 32 – particulars of directors

E Form No. 1 – Statutory declaration to the effect all the requirements under the Companies Act and rules complied. This declaration is to be made by advocate of the supreme court or a high court, company secretary or chartered accountant practising in India and who is engaged in the formation of company or by person named in the AOA as director, manager or secretary of the company.

Under MCA 21 Director's Identification Number (DIN)is mandatory. Similarly, Corporate Identification Number (CIN).

Registrar of Companies

The registrar of companies (ROC) is an office under Ministry of Corporate Affairs (MCA), which is the body that deals with the administration of companies and Limited Liability Partnerships in India. At present 25 ROC's is operating in all major state's and Union Territories. The Registrar of Companies takes care of registration of a company (also referred to as incorporation of the company) in the country. At the formation stage of a company, the required documents shall be filed along the prescribed filing fee at the office of the ROC. After verifying the documents and if all documents are found correct and are in tune with statutory requirement, the ROC will issue certificate of incorporation and thereafter after scrutinizing the declaration made by the company certificate of commencement.

Duties of Secretary before and after Incorporation

Duties of Secretary before Incorporation

The Secretary who will be appointed even before obtaining incorporation certificate and will assist the promoter in convening and conducting the meetings, making of preliminary contracts and arranging the documents for incorporation etc. The duties to be performed by the secretary before incorporation are as follows:

1. To help the promoter in making detailed investigation of the proposed venture.
2. If necessary, on the advice of the promoters to secure the opinion of the experts in different fields on the proposed venture.
3. To help the promoters in drawing up the financial plan for the proposed venture.
4. To attend to all preliminary meetings of the promoters, keep a record of proceedings of their meetings and to help in the discussion.
5. To secure the approval of the registrar for the proposed name of the venture.
6. To help the promoters in the preparation of preliminary contracts.
7. To help the promoters in drafting and finalizing of documents such as MOA, AOA etc.,
8. To follow the guidelines issued by SEBI.
9. To see that all the requirements of the Act as to incorporation and registration are complied with and that documents such as MOA, AOA etc., with required stamp duty, filing fees and registration fees are duly filed with the registrar.
10. To collect the Certificate of Incorporation from the registrar of the companies
11. To send a notice of the registered address of the company to registrar within 30 days of the date of registration.

Duties of Secretary after Incorporation

The private company can commence the immediately after obtaining the certificate of incorporation, but a public company can commence business only after obtaining certificate of commencement from the registrar. This involves arranging for subscription to the shares of the company and complying with the legal requirements before applying to the registrar for the certificate to commence the business. The duties of Secretary after incorporation:

1. To make himself thoroughly conversant with contents of the MOA and AOA.
2. To prepare the draft of prospectus or statement in lieu.
3. To call the first board meeting and get the draft prospectus, preliminary contracts etc., approved by the board.
4. To see that his own appointment is made and confirmed at the first meeting.
5. To get the necessary resolution passed for the appointment of bankers, legal advisors and other responsible officers of the company.
6. To arrange for listing of securities of the company.
7. To arrange for the opening of a bank as per the directions of the board.
8. To secure the necessary forms and stationery and to arrange for the preparation of the common seal of the company.

9. To see to that the prospectus or statement in lieu of prospectus is filed with the registrar and arrange for the issue of the prospectus to the public.
10. To arrange bankers to receive the application money from the intending investors.
11. To arrange a board meeting as soon as the minimum subscription is reached.
12. To see that a declaration is filed with the registrar of company by one of the directors or secretaries himself, stating that the conditions required to be fulfilled for getting the certificate of commencement of business have been complied with.
13. To collect the certificate of commencement from the registrar.

Company Documents

Memorandum of Association

The Memorandum of Association is the most important and legal document of the company. This is a document which sets out the constitution of a company and as such its charter. It defines the company's relations with the outside world, and the scope of its activities. Its purpose is to enable the shareholders, creditors as well as those who deal with the company to know the company's permitted limit of enterprises.

Section 4 of companies Act, 2013 defines MOA and its clauses. The memorandum of a company limited by shares must contain the following important clauses:

a) Name clause: This clause contains the name of the company. The name selected should not be similar to or identical with that of any existing company. Also, the name must not be one which is considered undesirable by the central government. The name of the company should end with word 'limited' in case of public company and 'private limited' if it is a private company. The purpose of adding 'limited' is to enable all those who deal with the company to know the liability of the members is limited.

b) Situation clause: In this clause, the state in which the company's registered office is located should be given. To avoid any unnecessary legal formalities and expenses if there is a subsequent change in the address of the company, the exact address within the state is not given and only the name of the state is given.

c) Object clause: Among all the clauses in the memorandum, the object clause is the most important. It should specify in unambiguous language the objects for which the company is formed. This clause should be drafted very carefully, as the company will not be allowed to do any business which is not specifically mentioned here. As it is difficult to alter the object clause later, it is necessary for the promoters to include in this clause all possible types of business in which a company may engage in the future.

d) Liability clause: This clause states that the liability of members is limited to the face value of shares taken up by them. If a member has already paid some amount on shares, he can be called upon to pay only the unpaid amount of the shares.

Section 4(d), companies Act,2013 stipulates that the liability of members whether limited or unlimited, is as follows:

I. In the case of company limited by shares, that liability of its members is limited to the unpaid, if any, on the shares held by them.

II. In case of a company limited by guarantee, the amount up to which each member undertakes to contribute.

e) Capital clause: In this clause, particulars regarding the amount of share capital with which the company is proposed to be registered and the division of that capital into shares of the fixed amount are included. Provision regarding the character of shares and rights to be attached to them need not be mentioned here. They are usually mentioned in the articles.

f) Association or subscription clause: This clause contains a declaration by the subscribers to the memorandum. This declaration just precedes the names of the signatories to the memorandum.

Forms of Memorandum

Memorandum of Association of a company should be prepared according to the respective forms specified in tables A, B, C, D and E of the schedule I section 4 of the companies Act, 2013

- ✓ Form in Table A: Applicable to companies “Limited by shares”
- ✓ Form in Table B: Applicable to companies “Limited by guarantee and not having share capital”
- ✓ Form in Table C: Applicable to companies “Limited by guarantee and having share capital”
- ✓ Form in Table D: Applicable to companies “Unlimited companies and not having share capital”
- ✓ Form in Table E: Applicable to companies “Unlimited companies”

Alteration of the Memorandum

Alteration of Name clause [sec.13(2) and (3)]

a) The name of company can be altered by passing the special resolution with the approval of Central Government.

b) If through inadvertence, a company is registered under a name similar or identical with that of an existing company, the alteration can be affected by passing ordinary resolution and with the previous consent of Central Government.

c) Similarly, if central government directs the company within 12 months of its registration to change its resolution to change its name, the company must do so within 3 months of that direction by passing ordinary resolution.

When company change its name, the secretary is required to communicate the change to the Registrar of company. Thereupon, registrar enters the new name on register in place of former, and issues a fresh certificate of incorporation with the changed name.

The procedure to be followed by the secretary to change the name clause can be as followed:

a) Secretary has to convene the meeting of Board of directors to consider the need and reason for changing of the company and get approval for the change in name of company.

b) An application (form No.IN61) has to be filed with registrar of companies to know the availability of the proposed name. the name should be in accordance with the name guidelines given in Rule 8 of companies (incorporation) rules, 2014.

c) The ROC after scrutinizing the application, will give approval and issue a letter stating there in availability of name for the proposed company. Availability of name will be valid for 60 days from the date of letter on which applicability for reservation was made.

d) On receipt of letter from ROC, secretary shall convene a board meeting to convene the extra ordinary general meeting of members to get approval of members through "special resolution", amending the name clause.

e) Send a notice of Extra ordinary general meeting to all members, directors and auditors of the companies.

f) Conduct Extra ordinary general meeting on the fixed date and pass necessary "special resolution" to change the name.

g) The secretary has to get special resolution passed at the Extra ordinary general meeting and get copies of the resolution signed by chairman of the meeting.

h) The secretary has to file a copy of the special resolution with registrar within 30 days of passing of the resolution.

i) On filing the resolution, the registrar makes the necessary change in the register and issues a fresh certificate of Incorporation with changed name.

j) The secretary has to arrange for the changing of name on all the necessary documents of the company.

k) Finally, secretary has to arrange for the changing name on all documents and for getting new common seal. And should intimate all the members of the company regarding change of name.

Alteration of Situation clause / Domicile

Any change of place i.e. state of registration office shall take effect only after the approval of central government. The procedure for changing the company's registered office are as follows:

1) within the city limit: The registered office of a company can be changed from locality to another by passing a resolution of the board of directors and an intimation of new address to the registrar within 30 days of shifting.

2) Within the same state: if registered office is to be shifted from one city to another city, town or village to another within same state and within the jurisdiction of the same registrar, a special resolution should be passed at a general meeting of the company and a printed or type written copy of the resolution will be filed with the registrar within 30 days of shifting. Then within 30 days of removal of the office, a notice of the new location should be given to the registrar.

3) Inter-state change of registered office: The removal of registered office from one state to another involves following steps:

a) Passing a special resolution at General meeting to alter MOA.

b) Filing a copy of the resolution with the registrar within 30 days of passing of the resolution (form MGT 14).

c) For changing the registered office from one state to another state of India, the company has to obtain prior approval from the central government in Form No. INC-23. Following are the documents to be attached to the form.

- A copy of MOA and AOA.
- A copy of the notice of convening the general meeting with the explanatory statement.
- A copy of special resolution sanctioning alteration by the members of the company.

- A copy of minutes of General meeting at which alteration was passed giving the details of number of votes cast in favor and against the resolution.
- An affidavit verifying the application shall be given by the company secretary.
- The list of creditors and debenture holders to object to the application.
- A copy of board resolution or power of attorney.

d) Application in form no.2.28 has to be filed with the central government along with above documents and a copy there on shall also be made to chief secretary.

e) To hear the concerned parties, advertisement has to be released in vernacular and English newspaper, circulating in district where the registered office of the applicant is situated at the time of application.

f) Individual notice has to be sent to all the creditors and debenture holders to hear their reactions.

g) Objections if any received before hearing date shall be forwarded to Central government. If no objections are received, central government may dispose the application without hearing within 60 days of receipt of application.

h) On receipt of the approval of alteration of registered office clause, the secretary has to file the certified true copy of the order in the Form – 2.29 with ROC of each state and registrars of both the states shall affect the same in the records.

i) Registrar of the state where the registered office is being shifted to, shall issue a new incorporation certificate indicating alteration.

The interest of shareholder and not the state should be the main reason for shifting of the registered office of the company.

Alteration of Objects clause

A change in the object's clause can be affected by passing a special resolution and with the sanction of the central government. The central government has to be satisfied that the alteration is necessary in order to carry in the business, to attain the main motto of the business, to amalgamate with any other company, to enlarge or change local area of operations etc.

Steps to change object clause:

- **Convening the Board meeting:** As per the provision in section 173(3) of the companies Act, 2013, secretary has to convene the meeting of board of directors and issue notice accordingly to all board of directors.
- **Holding Extra Ordinary Meeting:** Conduct Extra Ordinary Meeting on the notified date and pass resolution to alter object clause of Memorandum of Association under section 13(1) of companies Act,2013.
- **Filing special resolution with registrar of companies:** After passing a special resolution in Extra Ordinary Meeting, a copy has to be filed with concerned ROC in the prescribed for (MGT-14) within 30 days of passing special resolution in Extra Ordinary Meeting by shareholders. Prescribed fee has to be paid.
- **Duties of registrar:** Section 13(10) says that "No alteration made under this section shall have any effect until it has been registered in accordance with the provision of section. Therefore, the concerned registrar of companies has to register the alteration of object clause.

Alteration of Capital

The procedure for alteration of capital and power to make a such an alteration is generally provided in the articles of the company.

a) **For increasing the capital:** A company may increase its share capital in two ways-

- **By the issue of unissued shares:** When the issued capital is less than the authorized capital, a company after expiry of 2 years from date of formation or one year from its first allotment of shares, whichever is earlier, may increase its share capital by further issue of unissued shares.
- **By increasing the authorized capital:** If the company has already issued the shares of subscriptions for the entire or nearly the entire amount of its authorized capital, and if wants to increase its capital by further issue of shares, it can do so by first increasing its authorized capital by passing resolution in the general meeting as per the articles.

b) **Reduction of share capital:** It means reduction of issued, subscribed and paid-up capital of a company by a special resolution under section 100 of the Act. As the issued capital of the company represents the fund available to meet the debts and obligations of the company in case of companies Act protects the interest of creditors and others by ensuring that the capital reduction is affected by the company only for legitimate purpose.

Following are the procedure to be followed to reduce the share capital

- To arrange for the board meeting
- To send notice of Extra Ordinary Meeting to all the members with explanatory statement.
- To pass the special resolution in Extra Ordinary Meeting
- To file special resolution with the registrar of companies
- To apply for court along with resolution copy.
- To take necessary steps for the settlement of the list of objecting creditors
- To receive court order of confirmation
- To notify the causes of reduction
- To file copy of confirmation order of court with the registrar
- To obtain new incorporation certificate
- To file altered MOA and AOA with the registrar and to insert the words “and reduced” in the company’s name.

Articles of Association

Every unit or institution must have its own rules and regulations for an effective management of its affairs. In the case of public company, it is the articles of association that serve for this purpose.

Articles of association is a document that specifies the regulations for a company’s purpose. The document lays out how tasks are to be accomplished within the organization, including the process for appointment of directors and the handling of financial records.

Importance of articles

While the memorandum lays down the objects and purpose for which the company formed, the articles prescribes the regulations for the attainment of those objects. The articles provide the rules for the conduct of the day to day administration of the company.

Effects of MOA and AOA

The memorandum and articles when registered, bind the company and the members thereof to the same extent as if they had been signed by each member and contain covenants members to observe all the provisions therein. The members, however are bound in their capacity as members and not in any other capacity.

Contents of AOA (Table F to J of companies Act, 2013)

- Share capital and variation of rights: It includes sub-division, rights of various shareholders, the relationship of these rights, share certificates, payments of commission.
- Lien on shares (how lien is exercised): To retain or hold the possession of shares in case the member is unable to pay his debt to the company.
- Calls on shares: calls on share include the whole or part remaining unpaid in each share which has to be paid by the shareholders on the company's demand.
- Transfer, transmission, forfeiture and surrender of shares: the articles include the procedure for the transfer of shares by the shareholder to transferee.

  Transmission of shares means the transfer of title to shares by the operation of law affected by insolvency, death, inheritance or lunacy of the member.

  Articles provides for forfeiture of shares if the purchase requirement such as paying any allotment or call money are not met with.

  Surrender of shares is when the shareholders voluntarily return the share's they own to the company
- Conversion of shares into stock, share warrants: The company can convert the shares into stock by an ordinary resolution in a general meeting. A share warrant is a bearer document relating to the title of shares and cannot be issued by private companies only public limited companies can issue a share warrant.
- Alteration of share capital, reduction of share capital: Increase, decrease or rearrangement of capital must be done as the articles of association provide.
- Capitalization of profits (Bonus, share issue provisions): The capitalization of profits refers to the process of converting a company's retained earnings which represent the profits held in business overtime, into capital stock. The capitalization of profits process involves issuing a stock dividend or bonus shares to existing shareholders.
- Buy back of shares: Buy back describes a procedure which enables a company to go back to the holders of its shares and offer to purchase the shares held by them.
- Proceedings at general meetings: All the provisions relating to the general meetings and the manner in which they are to be conducted are to be contained in the articles of association.

- Votes of members: The members right to vote on certain company matters and the manner in which voting can be done is provided in the articles of association.
- Proxy: A proxy is someone who attends a general meeting and votes in place of a member of the company. Every member of a company has a statutory right to appoint a proxy.
- Board of directors and their nature of work: Directors, their appointment, remuneration, qualification, powers and proceedings of the board of directors meeting.
- Borrowing powers: Every company has power to borrow, the same has to be consonance with AOA of the company.
- Appointment of managing director, manager or secretary (his powers and duties): The articles of association provides for the appointment, remuneration, powers of CEO, CS, CFO or manager.
- The seal: The common seal has become optional with effect from Companies (Amendment) Act, 2015.
- Rules regarding dividends and reserves: Regarding the share of dividends and maintenance of reserves. The company in the general meetings may declare the dividends but no dividend shall exceed the amount recommended by the board.
- Accounts and audit procedural rules: Manner in which the books of accounts are to be kept in detailed in AOA.
- Winding up rules: Provisions relating to the winding up of the company and must be done accordingly.

Alteration of articles

Steps to alter Articles

- To arrange a board meeting to decide on the alterations in the articles and to fix the day for extraordinary general meeting for passing a special resolution to effect a change in the articles.
- To see that the alterations do not violate any provisions of companies Act, the general law or the company's MOA. Further, it should not be a fraud on a small minority and it should be in general interests of the members and the company.
- To issue notice of the general meeting along with the proposed special resolution and an explanatory statement at least 21 days before the meeting.
- To get the special resolution passed at an extraordinary meeting.

- To file a copy of the resolution along with the explanatory statement with the registrar within 30 days of passing the resolution.
- To file with the registrar and altered or revised printed copy of AOA within three months of the passing resolution.

Difference between Memorandum of Association and Articles of Association

Basis	MOA	AOA
Power	The memorandum is the charter of the company setting out its constitution. It lays down the conditions of incorporation and defines the limits and powers of the company.	Articles contains the bye-laws of the company for the conduct of its internal administration. They define the rights and duties of directors, members etc.,
Object	The memorandum states the objects for which the company is established.	Articles states the rules or manner of carrying out the business as stated in the memorandum.
Filing / Preparation	A company cannot be incorporated without preparation and filing of the memorandum with the registrar	The preparation of articles is not compulsory. If the articles are not prepared by any company table F to J of the companies Act is applied.
Relationship	The memorandum governs the external relations of the company between company and public.	The articles define the relationship between members and management of the company.
Document	The memorandum is a primary and fundamental document. It is the foundation of the company's structure and is responsible for the company's birth.	The articles are a secondary, subordinate and subsidiary document. They should be read and understood in the light of the memorandum.
Alteration	The memorandum can be altered only by a special resolution and subject to sanction of the court or the central government.	Articles can be altered by a special resolution and sanction either from the court or the central government is not necessary.

Prospectus

After the receipt of the certificate of Incorporation, if promoter of a company wishes to invite the public to subscribe for its shares or debentures, he must prepare and issue a document known as Prospectus, giving required information.

Section 2(70) of companies Act, 2013, prospectus can be defined as "any document which is described or issued as a prospectus this also includes any notice, circular, advertisement or any other document acting as an invitation to offers from the public for the subscription of or purchase of any securities of a body corporate".

Features of prospectus

- It is the document in writing. An oral invitation is not a prospectus.
- The invitation must be made on behalf of the company or in relation to an intended company.
- Invitation must be to subscribe the shares.

Contents of Prospectus

Under section 26 of Companies Act, 2013

1. Name and address of the registered office of the company, company secretary, chief financial officer, auditors, legal advisors, bankers, trustees, if any, underwriters and such persons as any be prescribed.
2. Dates of opening and closing of the issue and declaration about the issue of allotment letters and refunds within the prescribed time.
3. A statement by the Board of directors about the separate bank where all monies will be received out of the issue are to be transferred and disclosure of details of all monies including utilized and unutilized monies out of the previous issue in the prescribed manner.
4. Details about the underwriting of issue.
5. Consent of directors, auditors, bankers to the issue, expert's opinion, if any and of such persons or may be prescribed.
6. The authority for issue and details of resolution passed there on.
7. Procedure and time schedule for allotment and issue of securities.
8. Capital structure of the company.

9. Main objects of public offer, terms of present issue and such other particulars as may be prescribed.
10. Main objects and present business of the company and its location, schedule of implementation of the project.
11. Minimum subscription, amount payable by way of premium, issue of shares otherwise than cash.
12. Details of directors including their appointment and remuneration
13. Declaration in such manner as may be prescribed about the sources of promoter’s contribution.
14. Declaration regarding compliance of conditions
15. A statement to be made that the provisions of the Act,2013 and provisions of SEBI Act, 1992
16. Aspects to be stated in detail

    a) Regarding directors

        - Name of the directors
        - Designation of the directors
        - Director’s Identification Number (DIN)
        - Remuneration payable or paid
        - Particulars of the nature and extent of interest
        - Particulars of qualification shares

    b) Regarding capital structure

        - Authorized capital, paid-up capital, issued shares, unsubscribed shares
        - Details of existing shares
        - Details regarding individual allotment from date of incorporation, in case of Initial public offerings (IPO)

    c) Regarding objects

        - The objects of the issue
        - The funding plans
        - Summary of the project

- Schedule of implementation of the project

Types of prospectus

1.Statement-in-lieu of prospectus

The Statement-in-lieu of prospectus is a document filed with the registrar of the companies when the company has not issued prospectus to the public for inviting them to subscribe for shares. The statement must contain the signature of all the directors or their agents authorized in writing. It is similar to a prospectus but contains brief information.

2. Deemed prospectus

Section 25 of the companies Act, 2013 provides that all documents containing offer of shares or debentures for sale shall be included within the definition of the term prospectus and shall be known as deemed prospectus.

3. Abridged prospectus

Abridged prospectus means a memorandum containing such salient features of a prospectus as may be specified by the SEBI by making regulations in this behalf. No form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by abridged prospectus. The purpose of it is to reduce the expense of a public issue

4. Shelf prospectus

According to section 31 of companies Act, 2013 shelf prospectus is a prospectus in respect of which the securities included therein are issued for subscription in one or more issues over a certain period without the issue of further prospectus. Only the companies which have been prescribed by the SEBI can issue this type of prospectus.

5. Red Herring Prospectus

Red herring prospectus means a prospectus that does not have a complete particular of price of the securities offered and quantum of the securities to be issued. Thus, Red Herring Prospectus is an incomplete prospectus. The company may issue this type of prospectus prior to the issue of a prospectus.

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Assignment – 1

Section A

1. Define a Private company.

2. What is meant by Articles of Association?

3. Who is a promoter?

4. What is an Associate company?

5. State the forms of e-filing.

6. What is Memorandum of Association?

7. What is company limited by shares?

8. What is certificate of Incorporation?

9. What do you mean by One-person company?

10. What is Minimum Subscription?

Section B

1. State the privileges of private company.

2. Explain the clauses of Memorandum of Association.

3. Briefly explain the types and functions of promoters.

4.What is Joint Stock Company? Explain the advantages and disadvantages of Joint stock companies?

5.State the differences between Memorandum of Association and Articles of Association?

6. What is promotion? Explain the stages of promotion.

7. Explain steps to alter the object clause

Section C

1. What is a Prospectus? State the contents of Prospectus.

2. Explain the different types of Joint stock companies.

3. Discuss the important Highlights of companies Act, 2013.

4. Differentiate between Private company and Public Company.

5. Briefly explain the stages involved in Formation of a company.

6. What is Incorporation of a company? Explain the steps and formalities for incorporation of a company.

7.What is Articles of Association? Explain the contents of Articles of Association.