

UNIT 02

FORMATION OF COMPANIES

INTRODUCTION

A company, generally, comes into existence when a number of persons come together with a view to forming an association to exploit the business opportunities by bringing together men, material, money, and management.

STEPS TO FORM A COMPANY

In the case of the formation of a private company, only the first two stages are involved as a private company can commence its business and exercise its borrowing powers immediately after securing the certificate of incorporation from the Registrar. Therefore, a public company has to pass two more stages before it can commence business.

Stage I – Promotion of a Company.

Stage II – Incorporation of a Company.

Stage III – Floatation or raising of capital; and

Stage IV – Commencement of Business.

PROMOTION

Promotion of a company is the first important preliminary stage where in necessary steps are taken for the registration of a company. Promotion is the process of organizing and planning the finances of a business enterprise under the corporate form. In other words, promotion means the taking of such steps as would persuade a number of persons to come together for the achievement of a common objective through the company form of organization. It is the discovery of business opportunities and subsequent organization of funds, property and managerial ability into a business concern for the purpose of making profits therefrom. The persons who undertake the task of promotion are called promoters.

WHO IS A PROMOTER

U/S 2(69) of the Companies Act 2013

Promoter means a person:

(a) Who has been named as such in a prospectus or is identified by the company in the annual return referred to in Section 92; or

(b) Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) In accordance with whose advice, directions, or instructions the Board of Directors of the company is accustomed to act.

Provided that nothing in sub-section (c) shall apply to a person who is acting merely in a professional capacity.

RIGHTS OF PROMOTERS

The promoters, being in a fiduciary relation with the company they form, have certain rights and liabilities vis-à-vis the company. The rights of a promoter of the company are :-

1. Right to Receive Preliminary Expenses

The promoters are entitled to receive all the expenses incurred in setting up and registering the company from the Board of Directors. The articles may provide for payment of preliminary expenses to the promoters. The company may pay the expenses to the promoters even after its formation, but such payments should not be ultra vires the articles of the company.

2. Right to Recover Proportionate Amount from the Co-promoters

The promoters are held jointly and severally liable for the secret profits made by them in formation of a company. Therefore, if the entire amount of secret profits is paid to the company by a single promoter, he is entitled to recover the proportionate amount from his co-promoters. Likewise, if the entire liability arising out of misstatement in the prospectus is borne by one of the promoters, he is entitled to recover proportionately from the co-promoters.

3. Right to Remuneration

A promoter having made proper disclosure, has a right to be paid remuneration for his efforts. The payment of remuneration to a promoter in consideration of his services may be in the form of fully or partly paid-up shares, debenture or commission or it can even be in the form of a lump sum-amount.

However, it may be noted that a promoter has no right against the company for his remuneration unless there is a contract to that effect. In the absence of such a contract, he cannot recover from company payments he has made in connection with the formation of the company.

Steps in Company Promotion

The work of promotion of a company involves four stages viz. (1) discovery of an idea and preliminary investigation; (2) detailed investigation, (3) assembling and (4) financing the promotion.

(a) Discovery of an Idea: The promoter starts out with an idea to start some business either in a new field which has not been commercially exploited or in some existing lines of manufacture or business. He makes a preliminary investigation to find out whether it is worthwhile to make a detailed investigation. He makes a rough estimate of probable revenues and expenditure.

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

(c) Assembling: After a detailed investigation, if the promoter is satisfied with the practicability and profitability of the proposed concern, he starts assembling the proposition. "Assembling means getting the support and consent of some other persons to act as directors or founders, arranging for patents, a suitable site for the company, machinery and equipment and making contracts for filling the positions.

(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 complete details of the proposition and also the reports of various experts who have investigated the proposition. The promoter also takes steps to incorporate the company, and to secure the certificate to commence the business. For incorporating the company and also for obtaining the certificate to commence business, the promoter has to fulfil many legal formalities.

Position of Promoter

Since a promoter takes all the required initiatives in the formation of a company, he will be doing the pre-incorporation activities. He is neither an agent, nor a trustee for, the company since the company is not in existence. He enjoys a fiduciary position in relation to the company he promotes and the prospective shareholders. Enjoying this fiduciary position, the promoters will be doing everything in conceiving the business idea and in getting the company incorporated. While enjoying this fiduciary position, the promoters will be everything in the best interest of the company they promote. The promoters may not make, either directly or indirectly, any secret profit at the expense of the company. In case they make any profit while promoting the company, they may be compelled to account for the same and to surrender.

Functions of Promoter

As cited, promoters are those persons who conceive the business idea and convert the business idea into a business reality. Promoters of joint stock companies conceive the idea of forming a company. They undertake everything that is required to get the company incorporated. They also undertake to provide the company with the required capital and loan. They also acquire assets and property for the company they promote.

The promoter will have to decide on the type of company to be incorporated. He then apply to the Registrar of Companies (RoC) for availability of name for the proposed company. Next, he has to get the documents like Memorandum of Association and Articles of Associations of the - proposed company ready. This is followed by vetting these documents and get them printed, stamped and signed. He may be required to execute power of attorney. He may be required to file

additional documents with the RoC. Another important step the promoter undertakes is to file the statutory declaration. He will also pay the required filing fees.

INCORPORATION

A company comes into existence when a number of persons come together with a view to exploit some business opportunity. These persons are called promoters. Under Section 3, any seven or more persons (2 or more in the case of a private company and 1 person in case of a one person company) may form an incorporated company for a lawful purpose by subscribing their names to the memorandum of association and complying with the other requirements in respect of registration. Such an incorporated company may be a company (a) limited by shares, (b) limited by guarantee, or (c) an unlimited company.

Steps before Proceeding with the procedure of filing documents:

1. DIN (Directors Identification Number) has to be obtained.
2. Digital Signatures of the Promoters.
3. Both DIN and Digital Signatures will be registered with the MCA (Ministry of Corporate Affairs) Portal. After registration and verification of DIN and Digital Signatures of the Promoter who is to sign eform the following steps will be taken.

Formalities to obtain Certificate of Incorporation

Application Form. An application shall be filed with ROC in Form No. INC.2 (for one person company) and Form No. INC. 7 (other than one person company) [Under the Companies (Registration Offices & Fees) Rules, 2014 and Companies (Incorporation) Rules, 2014]

Documents to be filed with the Registrar.

After ascertaining the availability of name, the promoter should proceed to file with the Registrar of companies along with the fee and the required documents:

1. **Memorandum of Association (MoA).** The Memorandum of Association is the charter of the company. For purpose of registration, the promoters have to file with the Registrar of Companies, a duly signed and properly stamped printed Memorandum of Association.
2. **Articles of Association (AoA).** The other important document is the articles of association which contains the rules and regulations relating to the internal management of the company. The AoA should be duly signed by all the subscribers to the Memorandum in the prescribed manner.
3. **Declaration.** A declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with.

4. Affidavit. An affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

5. Address. The address for correspondence till its registered office is established.

6. Particulars of Subscribers. The particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed.

7. Particulars of First Directors. The particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity as may be prescribed.

8. Particulars of the interests of first directors in other firms or bodies Corporate. The particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as director of the company in such form and manner as may be prescribed.

9. Power of Attorney. With a view to fulfilling various formalities that are required for incorporation of a company, the promoters may execute a power of attorney in favour of one of them or an advocate or some other professional like the Chartered Accountant or Company Secretary. The power of attorney to be given on a non judicial stamp paper of appropriate value with reference to the State in which the office of the ROC is situated or on a paper affixing non-judicial special adhesive stamps of same value.

10. Consent of the directors [Sec. 152(5)]. According to section 266, in the case of a public limited company having share capital, person cannot be appointed as a director by the Articles of Association unless, he has, before the registration of the articles, either himself or through his agent, signed and filed, with the Registrar, his consent in writing to act director. Consent of the directors is not required in case of private company.

11. Particulars of Directors along with DIN (Directors Identification Number). Where a company by its articles of association appoint any person or persons as a directors, manager or secretary it may also file their particulars with the Registrar at the time of incorporation.

12. Filing of Agreement. The agreement if any, which the company proposes to enter into with any individual for appointment as its (a) managing director (b) whole-time director (c) manager.

Note: A public company or a subsidiary of a public company with paid-up capital of crores or more is required to have a managing or whole-time director or manager.

13. Notice of Registered address must also be made.

14. Statutory Declaration of Compliance. A declaration is to be filed in Form INC-8 with the Registrar of companies. This is known as 'Statutory Declaration of Compliance'. The promoters must file a statutory declaration stating that all requirements of the Companies Act and its rules relating to registration have been complied with.

Certificate of Incorporation and CIN [Sec. 7(2)]

On registration, the Registrar will issue a certificate of incorporation in Form INC-11 whereby he certifies that the company is incorporated and in the case of a limited company, that the company is limited. On and from the date mentioned in the Certificate of Incorporation issued under section 7(2) the Registrar shall allot to the company a "**Corporate Identity Number**", which shall be a distinct identity for the company and which shall also be included in the certificate.

The legal effect of incorporation as per section 9 is as under:

- 1. A company becomes a body corporate distinct from its members.** The life of the company dates from the first moment of the day of incorporation. The company would be treated as having been in existence for the whole of the day on which it was incorporated.
- 2. A company has a perpetual succession and common seal.** It is an immortal being. The death, bankruptcy or lunacy of any of its members does not affect the existence of the company. It remains in existence until it is dissolved by liquidation.
- 3. A company can sue and be sued in its own name.**
- 4. A company has a right to hold and alienate its own property.** The property of the company belongs to the company itself and not to the individual members, so that even the largest shareholder has no insurable interest in the property of the company.
- 5. Company's debts and obligations** are the liabilities of the company only and cannot be enforced against the individual shareholders.

When the memorandum is signed and registered, the subscribers are a body corporate capable immediately of exercising all the functions of an incorporated company. The company thus attains maturity at its birth.

ON-LINE REGISTRATION OF COMPANY

ON-LINE REGISTRATION PROCEDURE

1. Acquire Director Identification Number (DIN)

This is the first process in registration that each director of the company should obtain their identification number. As per the Amendment Act 2006, acquiring a DIN is compulsory for every director. To get DIN one need to file a eForm DIN-1. The DIN-1 form is available on Official site of the ministry of corporate affairs the link is DIN-1 Form.

Registration yourself on MCA Website first and have a login id. After filling DIN-1 Form, one should upload the filled form by clicking to eForm upload button on MCA website and should pay applicable fees. After getting generated DIN one should intimate their company about DIN. The director can intimate their company about DIN by using DIN-2 Form.

The company should intimate the Registrar of Corporates (ROC) about all director's DIN through DIN-3 Form.

If there is any change in DIN or need for any updation like change of address, personal etc., then director should intimate this change by submitting the eForm DIN-4 Form.

2. Acquire Digital Signature Certificate (DSC)

In order to ensure the security or authenticity of document filed electronically the information Act 2000 demands a valid digital signature on the documents submitted electronically. This is the only and safest way that one can submit one's documents electronically. The digital signature certificate should be acquired by only those agencies which are appointed by the Controller of Certification Agencies (CCA). One should not use DSC given by any other agency which is not approved and it's illegal to use others' DSC as yours or the false one.

3. Create a Account on MCA Portal-New user Registration

This is about having a registered user account on MCA Portal for filing a eForm, for online fee payment, for different transactions as registered and business user. Creating an account is totally free of cost. To register yourself on the MCA portal, click on the register link.

4. Apply for the Company to be Registered

This is the final major step in a registration of your company which includes incorporating company name, Registering the office address or notice of situation of office and notice for appointment of company directors, manager and secretary. And also regarding the take and pay for their qualification shares.

SUBSCRIPTION STAGE

A public company has to start accumulating the necessary capital to start its business activity. For this purpose, the promoter issue the prospectus to the public inviting their subscriptions towards capital.

After receiving the applications for shares towards the share capital, public company has to allot shares to the public. The company cannot make allotment of shares unless the following conditions are fulfilled:

- ❖ Minimum subscription as stated in the prospectus is to be received.
- ❖ The application money not less than 5% of the nominal value of shares has to be received.
- ❖ The application money is to be deposited in a Scheduled Bank.

COMMENCEMENT STAGE

A public company is entitled to commence its business activities only after the commencement certificate has been obtained from the Registrar of companies. No public company can start its business without obtaining the certificate of commencement of business. This is the last stage in the formation of a public company.

In order to obtain certificate of commencement of business (COB), a public company shall file the following documents with the registrar of companies as described by section 149:-

A prospectus/ statement in lieu of prospectus should be filed along with the following documents:

- a) List of the members of the company with their shareholdings
- b) Confirmation for paid up share capital to the extent of Rs 5,00,000 and proof thereof a copy of the bank statement etc.
- c) A declaration by a director in the prescribed form that every subscriber to the memorandum has paid the value of shares taken by him and
- d) List of directors, manager, secretary, auditors, and changes among them, if any.
- e) Consent of the auditors to include their name in the prospectus/ statement in lieu of prospectus
- f) Copy of the agreement for appointment of Managing director, underwriter, contracts entered into by the promoters before incorporation of the company etc, if any printed and certified copy of the memorandum and articles of association of the company.
- g) Details of the preliminary expenses incurred by the company.
- h) Power of attorney to make correction in the prospectus/ statement in lieu of prospectus and to obtain certificate for commencement of business from the Registrar of companies.
- i) Certified copy of the resolution passed by the Board for approval of prospectus

MEMORANDUM OF ASSOCIATION (MOA)

MEANING

The memorandum of association is a document which sets out the constitution of a company and is therefore the foundation on which the structure of the company is built. It defines the scope of the company's activities and its relations with the outside world.

Memorandum of Association is one of the documents which has to be filed with the Registrar of Companies at the time of incorporation of a company. The memorandum of association of a company contains the fundamental conditions upon which alone the company has been incorporated.

DEFINITIONS

Sec. 2(56) of the Companies Act, 2013 - Memorandum means “Memorandum of association of a company as originally framed or altered from time to time in pursuance of any previous company law or this Act.”

Cairns – Memorandum of Association of a company is its charter and defines the limitations of the powers of a Company.

Bowen L J – Memorandum contains the fundamental conditions upon which alone the company is allowed to be incorporated.

PURPOSE OF MEMORANDUM

The memorandum of association is a public document available for inspection. It serves two purposes:

- ❖ The intending shareholder who contemplates investing in a company should know the field in or the purpose for which it is going to be used and the risk he is taking in making the investment.
- ❖ The intending shareholder who contemplates investing in a company should know the field in or the purpose for which it is going to be used and the risk he is taking in making the investment.

CONTENTS OF MEMORANDUM

According to Section 4 the memorandum of association of every company must contain the following clauses:

A) NAME CLAUSE [SECTION 4 (1) (A)]

The first clause of the memorandum requires a company to state its name. A company being a legal person, must have a name to establish its identity.

A company must have a name (being a separate legal entity)The name of a company should be unique and should not resemble the name of any other company. It should not contain words like king, queen, emperor, or names of any government bodies. A public company is required to have the

suffix “limited” at the end of its name. Private companies are required to have the suffix “ private limited” at the end of their names. The name of the company must be painted outside every place where the business of the company is to be carried out. If any company has changed its activities which are not reflected in its name, it shall change its name in line with its activities within a period of six months from the change of activities after complying with all the provisions as applicable to the change of name.

B) REGISTERED OFFICE CLAUSE [SECTION 4 (1) (B)]

This clause states the name of the State where the registered office of the company is to situate. A company shall have its registered office. Such office must be in existence on and from the 15th day of its incorporation. Notice of situation of registered office and every change therein must be given to the registrar within 15 days. (Section 12). Registered Office is really the permanent address of the company. It is residence of the company. It decides domicile of the company.

C) OBJECTS CLAUSE [SECTION 4(1)(C)]

The third and important clause which defines the limits and extent of the activities of a company is its objects clause.

Section 4(1)(c) requires a company to divide its objects clause into two parts.

- i) Objects to be pursued on incorporation; and
- ii) Matters necessary for furtherance thereof.

According to section 4(1) [(c)], the object clause must state the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.

Purpose of Objects Clause. The objects clause in the memorandum serves two purposes:

- (1) It enables the subscribers to know the use to which their investment money is put and thus extends protection to shareholders.
- (2) It extends certain degree of protection to creditors also in as much as the company cannot spend its capital on any activities which are not within the scope of the objects clause.

D) LIABILITY CLAUSE [SECTION 4(1)(D)]

This clause has to state the nature of liability that the members incur. In the case of a company limited by shares, the members are liable only to the amount unpaid on the shares taken by them. If his shares are fully paid up his liability is nil. In the case of a company limited by guarantee the members are liable to the amount undertaken to be contributed by them to the assets of the company in the event of its being wound up.

The liability clause is omitted from the memorandum of association of unlimited companies. Any alteration in the memorandum compelling a member to take up more shares, or which increases his liability, would be null and void.

E) CAPITAL CLAUSE [SECTION (4)(1)(E)]

The memorandum of a company limited by shares must state the authorised or nominal share capital, the different kinds of shares and the nominal value of each share. Provisions as to the nature of these shares are more properly to be made in the articles.

The amount of the capital with which the company is to be registered is left to the discretion of those promoting it. It depends upon the needs of the company and the availability of finance. Moneys borrowed on debentures do not form part of the capital of a company.

F) ASSOCIATION OR SUBSCRIPTION CLAUSE [SECTION 13(4)(C)]

This clause provides that those who have agreed to subscribe to the memorandum must signify their willingness to associate and form a company. The association clause generally runs in the following form, "We the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of the memorandum of association and we respectively agree to take the number of shares in the capital of the company set opposite our respective names."

The memorandum has to be signed by each subscriber in the presence of at least one witness who must attest the signatures. One witness to all the signatures is sufficient. But a subscriber cannot attest the signatures of another subscriber. Each subscriber must write opposite his name the number of shares he shall take. No subscriber to the memorandum shall take less than one share. This clause need not be numbered.

G) NOMINATION OR SUCCESSION CLAUSE (IN CASE OF ONE PERSON COMPANY)

In case of a one-person company, there is a requirement to have 7th clause to describe the nominee in the event of the death of the subscriber. Prior written consent of nominee required to be obtained in Form No. INC 3. Nomination, in Form No. INC 2 along with written consent in Form No. INC3 shall be filed with ROC at the time of incorporation of the OPC along with its memorandum and articles.

ARTICLES OF ASSOCIATION (AOA)**MEANING**

Articles of Association is another important document which has to be filed with the Registrar at the time of the incorporation of the company. The articles of association sets out the regulations for the internal management of the company.

The articles of association contains the rules and regulations of a company framed for the purposes of management of its internal affairs.

DEFINITION

According to Section 2(5) of the Companies Act, 2013, 'articles' means the articles of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act.

CONTENTS OF ARTICLES

The articles of company may contain whatever rules the members decide should regulate the business of the company.

The articles usually contain rules regarding following matters:

- 1) Lien on shares:** It means to retain possession of shares in case the member is unable to pay his debt to the company
- 2) Calls on shares:** Calls on shares include the whole or part remaining unpaid on each shares which has to be paid by the share holders of the company's demand.
- 3) Transfer of shares :** The articles of association include the procedure for the transfer of shares by the shareholders to the transferee.
- 4) Transmission of shares:** Transmission includes devolution of title by death, succession , marriage, insolvency etc. it is not voluntary but is in fact brought about by operation of law.
- 5) Forfeiture of shares:** The articles of association provide for the forfeiture of shares if the purchase requirements such as paying any allotment or call money , are not met with.
- 6) Surrender of shares:** Surrender of shares is when the shareholders voluntary return the shares they own to the company.
- 7) Conversion of shares in stock :** In consonance with the AOA, the company can convert the shares into stock by an ordinary resolution in a general meeting.
- 8) Share warrant:** 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.
- 9) Alteration of capital :** Increase , decrease or rearrangement of capital must be done as the articles of association provide.
- 10) General meetings and proceedings:** All the provisions relating to the general meetings and the manner in which they are to be conducted are to be contained in the AOA.
- 11) Voting rights of members, voting by poll, proxies:** The members right to vote on certain company matters in which they are to be conducted are to be contained in the AOA.
- 12) Directors,** their appointment, remuneration, qualifications, powers and proceedings of the Board of Directors meetings.
- 13) Dividends and reserves:** The AOA of a company also provide for the distribution of dividend to the shareholders.

DISTINCTION BETWEEN MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION

Particulars	Memorandum of Association	Articles of Association
Meaning	Memorandum of Association defines the relation of the company with the outside world	Articles of Association deals with the rights of the members of the company Inter se and also establishes the relationship of the company with the members.
Scope	Memorandum of Association is the charter of the company and defines the scope of its activities.	Articles of Association of the company is a document which regulates the internal management of the company These are the rules made by the company for carrying out the objects of the company as set out in the memorandum.
Contents	Name Clause, Registered Office Clause, Objects Clause, Liability Clause, Capital Clause and Association Clause.	Contains Regulations for Company management and those that regulate relationship between members inter se.
Status	Memorandum is a supreme document of the company.	Articles are subordinate to the memorandum. They cannot alter or control the Memorandum of Association.
Alteration	Can be altered only under certain situations and in the manner provided. Approval of Central Government is required, besides approval of Share- holders in a General Meeting by way of Ordinary or Special Resolution.	Can be altered by the members by passing a Special Resolution only.
Ultra vires	A company cannot depart from the provisions contained in its Memorandum, and if it does, it would be ultra vires the company.	Anything done against the provisions of Articles, but which is intra vires Memorandum, can be ratified.

PROSPECTUS

One great advantage of floating a company is the raising of capital required for business from the general public. This is done by issuing a document called ‘**prospectus**’.

DEFINITION

Section 2(70) of the Act defines a prospectus as

“any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate”.

Prospectus is an invitation issued to the public to offer for purchase or subscribe any securities of the company.

Any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offer from the public for the subscription or purchase of any shares in or debentures of a body corporate is called prospectus.

FEATURES OF PROSPECTUS

- ❖ It is a document in writing. An oral invitation is not a prospectus.
- ❖ There must be an invitation to the public. An offer is not to be treated as invitation to the public if it is (a) Directed to specific person or a group of persons.
(b) Not calculated to result in the shares or debentures becoming available to others.
- ❖ The invitation must be made by or on behalf of the company or in relation to the intended company.
- ❖ The invitation must be “to subscribe or purchase”
- ❖ The invitation must relate to any securities of the company.

CONTENTS OF PROSPECTUS

Every prospectus shall state following information:

- The prospectus should be dated and signed.
- The prospectus should contain following information (a) Name of the company, (b) Address of the Registered office of the company and (c) Name of the company secretary, chief financial officer, auditors, legal advisors, bankers, trustees, if any underwriters and such other persons as may be prescribed.
- Dates of the opening and closing of the issue.
- Declaration about the issue of allotment letters and refunds within the prescribed time.
- Statement by the Board of Directors about the separate bank account where all money received out of the issue are to be transferred and disclosure of details of all money including utilized and unutilized money out of the previous issue in the prescribed manner .

- Details about underwriting of the issue.
- Consent of the directors, auditors, bankers to the issue, expert's opinion, if any, and of such other persons, as may be prescribed.
- The authority for the issue and the details of the resolution passed there for.
- Procedure and time schedule for allotment and issue of securities.
- Capital structures of the company in the prescribed manner.
- Main objects of public offer, terms of the present issue and such other particulars as may be prescribed.
- Main objects and present business of the company and its locations, schedule of implementation of the project.
- Particulars relating to management perception of risk factors specific to the project, gestation period of the project, extent of progress made in the project, deadlines for completion of the project and any litigation or legal action pending or taken by a government department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company. Details of Minimum subscription.
- Amount payable by way of premium.
- Issue of shares other than cash.
- Details of directors including their appointment and remuneration and such particulars of the nature and extent of their interests in the company as may be prescribed.
- Disclosures in such manner as may be prescribed about sources of promoters contribution.
- It shall also make a declaration about the compliance of the provisions of the Act (and SEBI, if applicable)

TYPES OF PROSPECTUS

1) Abridged Prospectus:

According to Section 2(1) of the Act, 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. It means that a company cannot issue application form or purchase of securities unless such form is accompanied by an abridged prospectus.

2) Deemed Prospectus:

According to Section 25(1) of the Act, where a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public. Any document by which such offer for sale to the public is made is deemed to be a prospectus by implication of law.

3) Shelf Prospectus:

According to Section 31 of the Act, Shelf prospectus is a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. Only the companies which have been prescribed by the SEBI can issue a Shelf prospectus with the Registrar.

4) Red Herring Prospectus (RHP):

According to Section 32 of the Act, an RHP means a prospectus which does not have complete particulars on the price of the securities offered and quantum of securities to be issued. A company may issue an RHP prior to the issue of a prospectus. The company shall file RHP with Registrar at least three days prior to the opening of the subscription list and the offer. An RHP carries the same obligations as are applicable to a prospectus and any variation between the RHP and a prospectus shall be highlighted as variations in the prospectus.

STATEMENT IN LIEU OF PROSPECTUS

Statement in lieu of prospectus is similar to actual prospectus but without the invitation to the public for subscribing to the shares of the company. This statement is prepared when a company issues shares by private placement. The statement in lieu of prospectus is prepared for the purpose of record, and it is filed with the Registrar of Companies before allotment of share.

- 1) The prospectus contains a summary of the past, present and prospects of the company.
- 2) The prospectus expressly invites the public to buy shares issued by the company.
- 3) It is the basis of share issue. The contents of prospectus are considered legal evidence in the event of dispute between shareholder and company.
- 4) A misleading clause in the prospectus will be taken seriously by the courts.

BOOK BUILDING

It is a process of generating, capturing and recording investor demand for shares during an initial public offering (IPO) or other securities during their issuance process, in order to support efficient price discovery.

DEFINITION :

Book building is the process of determining the price at which an initial public offering will be offered.

It is a method of marketing the shares of a company whereby the quantum and the price of the securities to be issued will be decided on the basis of the 'bids' received from the prospective shareholders by the lead merchant bankers. According to this method, share prices are determined on the basis of real demand for the shares at various price levels in the market.

Book Building is defined to mean a process by which demand for the securities proposed to be issued by a body corporate is elicited and built-up and the price for such securities is assessed for the determination of the quantum of such securities to be issued by means of a notice, circular, advertisement, document or information memorandum or other document.

As per SEBI Regulations 2009, an issuer company may make an issue of securities to the public through a prospectus by making 100% of the net offer to the public through book-building process.

Advantages of Book-building:

- ❖ The demand for security proposed to be issued by a body corporate may be created and build-up.
- ❖ The quantum of security to be issued may be determined with a certain degree of accuracy.

E-Filing**e-filing is electronic filing of documents.**

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

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

REGISTRAR OF COMPANIES(ROC)

Registrar of Companies (ROC) as defined under subsection 75 of Section 2 of the Companies Act, 2013 , is an appointment of the Ministry Of Corporate Affairs which is responsible for the regulation of Indian enterprises in Industrial and Service Sector. At present , there are 22 Registrar of Companies holding offices in the major states of India.

According to Section 2(75), the term “ Registrar” means a Registrar, an additional Registrar, a joint Registrar, a Deputy Registrar or an Assistant Registrar. ROCs as appointed under section 396 of the Act primarily have the duty of registering companies incorporated in the respective states and the Union Territories.

FUNCTIONS OF ROC

- 1) Section 77(2): Issue certificate of registration of charge without which the charge cannot be taken into account by liquidators or creditors.
- 2) Section 78- The Registrar gives a notice to the company in order to enable it to inform whether the company has itself created a charge and if it has not, then inform about the reason for the same.
- 3) Section 81- Registrar is required to keep the register of charges in respect of every company
- 4) Section 93- Return is to be filed with Registrar in case promoters stake changes.
- 5) Section 137- Copy of financial statement to be filed with the Registrar
- 6) Section 157- Company to inform the Registrar of the identification number

7) Section 208- After inspection and inquiry, the Registrar is required to submit a report in writing to the central government

POWERS OF THE ROC

- 1) Section 7- Registration of a company is obtained by filing an application with the ROC
- 2) Section 83- Power to make entries of satisfaction and release without intimation from company
- 3) Section 206- Power to call for information, inspect books, and conduct inquiries
- 4) Section 209- Power of search and seizure
- 5) Section 248- Power to remove the name from the register of companies

Certificate of Commencement of Business

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 a certificate to commence business. From the date of the issue of this certificate, the company is entitled to commence business and also 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 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. All contracts entered into between the date of incorporation and the date of commencement of business are provisional and would become binding on the company automatically only after it is entitled to commence business.

GLOBAL COMPANIES

MEANING

Global companies plan activities on a global basis. By operating in more than one country benefits from savings or economies on activities such R&D, marketing, operations, and finance are achieved which may not be available to domestic companies.

Global Company is a company that does business in many countries.

DEFINITION

A global corporation explores and capitalizes on building a customer base and investment strategy in every market possible. Global corporations leverage a network of entities in these markets to work toward maximizing profitability.

FEATURES OF GLOBAL COMPANIES

1) Large-scale operations :

In international business, all the operations are conducted on a very huge scale. Production and marketing activities are conducted on a large scale. It first sells its goods in the local market. Then the surplus goods are exported.

2) Integration of economies :

International business integrates (combines) the economies of many countries. This is because it uses finance from one country, labour from another country, and infrastructure from another country. It designs the product in one country, produces its parts in many different countries and assembles the product in another country. It sells the product in many countries, i.e., in the international market.

3) Dominated by developed countries and MNCs:

International business is dominated by developed countries and their multinational corporations (MNCs). At present, MNCs from USA, Europe, and Japan dominate (fully control) foreign trade. This is because they have large financial and other resources. They also have the best technology and research and development (R&D). They have highly skilled employees and managers because they give very high salaries and other benefits. Therefore, they produce good quality goods and services at low prices. This helps them to capture and dominate the world market.

4) Benefits to participating countries :

International business gives benefits to all participating countries. However, the developed (rich) countries get the maximum benefits. The developing (poor) countries also get benefits. They get foreign capital and technology. They get rapid industrial development. They get more employment opportunities. All this results in economic development of the developing countries. Therefore, developing countries open up their economies through liberal economic policies.

5) Keen competition:

International business has to face keen (too much) competition in the world market. The competition is between unequal partners, i.e., developed and developing countries. In this keen competition, developed countries and their MNCs are in a favourable position because they produce superior quality goods and services at very low prices. Developed countries also have many contacts in the world market. So, developing countries find it very difficult to face competition from developed countries.

6) Special role of science and technology:

International business gives a lot of importance to science and technology. Science and Technology (S&T) help the business to have large-scale production. Developed countries use high technologies. Therefore, they dominate global business. International business helps them to transfer such top high-end technologies to the developing countries.

7) International restrictions :

International business faces many restrictions on the inflow and outflow of capital, technology and goods. Many governments do not allow international businesses to enter their countries. They have many trade blocks, tariff barriers, foreign exchange restrictions, etc. All this is harmful to international business.

8) Sensitive nature :

International business is very sensitive in nature. Any changes in the economic policies, technology, political environment, etc, has a huge impact on it. Therefore, international business must conduct marketing research to find out and study these changes. They must adjust their business activities and adapt accordingly to survive changes.

TYPES OF GLOBAL COMPANIES**1) Global companies:**

The company which is spreading its operations and trading in many countries across the world .The number of countries in these case would be quite high .It has mostly foreign direct investment in some or all the foreign countries .The strategy in organizational structure and decision making is centralized approach .Since they have investment in many countries, they face regulatory and legal issues in those countries.

2) International companies :

They sell their product and services in foreign countries by exporting them to those countries and they might also be involved in various importing activities. These companies do not have their own establishments in foreign countries .It do not have FDI. The key decision making functions is always taken from the domestic country of the company

3) Multinational companies:

The company which is having operations and trading in two or more countries across the globe is called as a MNC. They have FDI in few of the foreign countries. They mostly use centralized organization structure and key decisions making functions.

4) Transnational companies:

It is mixture of global, multinational and international companies as it combines the feature of these three types of companies. It is pretty flexible companies in terms of operating across the global by adopting the local cultures and consumer behaviors .It has FDI in many countries .They prefer decentralized organizational structure and key decision-making functions .Each of their establishment are responsible to take their own key decisions.

5) Multidomestic companies:

These are similar to transnational companies. They have branches and establishments across many countries in the world. It has FDI in some of the foreign countries. They prefer decentralized

organizational structure and key decision making .

MODES OF ENTRY INTO GLOBAL COMPANIES

1) Exporting: An item produced in a domestic market can be sold abroad. Storing and processing is mainly done in the supplying firm's home country. Export can increase the sales volume. When a firm receives canvassed items and exports them, it is called Passive Export. Alternately, if a strategic decision is taken to establish proper processes for organizing.

2) Licensing : In this mode of entry, the manufacturer of the home country leases the right of intellectual properties, technology, copyrights, brand name, etc. to a manufacturer of a foreign country for a predetermined fee. The manufacturer that leases is known as the licensor and the manufacturer of the country that gets the license is known as the licensee.

3) Franchising : In this mode, an independent firm called the franchisee does the business using the name of another company called the franchisor. In franchising, the franchisee has to pay a fee or a fraction of profit to the franchisor. The franchisor provides the trademarks, operating process, product reputation and marketing, HR and operational support to the franchisee.

4) Turnkey project: It is a special mode of carrying out international business. It is a contract under which a firm agrees - for a remuneration - to fully carry out the design, create, and equip the production facility and shift the project over to the purchaser when the facility is operational.

5) Mergers and Acquisitions: In mergers and acquisitions, a home company may merge itself with a foreign comp to enter an international business. Alternatively, the home company may buy a foreign company and acquire the foreign company's ownership and control. M&A offers quick access to international manufacturing facilities and marketing networks.

6) Joint venture: When two or more firms join together to create a new business entity, it is called a joint venture. The uniqueness in a joint venture is its shared ownership. Environmental factors like social, technological, economic and political environments may encourage joint venture.

LEGAL FORMALITIES AND ADMINISTRATION OF GLOBAL COMPANIES

The legal formalities and administration of global companies can be quite complex due to their cross-border operations and compliance with various jurisdictions. Some key aspects include:

a) Incorporation: Global companies often have subsidiaries in multiple countries, requiring compliance with local laws and regulations to establish legal entities.

b) International Contracts: Companies engage in contracts across borders, necessitating careful consideration of applicable laws, jurisdiction, and dispute resolution mechanisms.

- c) Taxation:** Dealing with international taxation, transfer pricing, and compliance with tax laws in different countries is crucial for global companies.
- d) Employment Laws:** Understanding and adhering to labor laws in various countries to manage employees' rights and obligations.
- e) Intellectual Property:** Protecting intellectual property rights globally and navigating international trademark and patent laws.
- f) Regulatory Compliance:** Complying with industry-specific regulations and international trade laws.
- g) Data Protection and Privacy:** Ensuring compliance with data protection regulations and addressing cross-border data transfers.
- h) Corporate Governance:** Establishing governance structures to oversee the company's operations and decision-making.
- i) Reporting and Disclosures:** Fulfilling financial reporting requirements and disclosures in multiple jurisdictions.
- j) Risk Management:** Developing strategies to mitigate risks associated with global operations and potential legal disputes.

ASSIGNMENT QUESTIONS**SECTION – A**

1. Who is a Promoter?
2. Give the meaning of Promotion.
3. Define Promoter
4. Expand: a) MOA b) AOA c) ROC d) DIN e) CIN f) MCA
5. What is Memorandum of Association?
6. What is Articles of Association?
7. Define MOA.
8. Give the meaning of Prospectus.
9. What is Book Building?
10. What is Statement in Lieu of Prospectus?
11. What is Global Company?
12. What is E-filing?

SECTION - B

1. Briefly explain the Promotion Stage.
2. Explain the steps involved in Incorporation of a Company.
3. Explain the purpose of Memorandum of Association.
4. Distinguish between Memorandum of Association and Articles of Association.
5. Explain the Types of Prospectus.
6. Explain the Functions of ROC.
7. Explain the Types of Global Companies.
8. Write a Note on Incorporation.
9. Write a Note on Certificate of Incorporation and CIN.

SECTION – C

1. Briefly explain the Stages of Formation of a Company.
2. Briefly Explain the Contents of Memorandum of Association.
3. Briefly Explain the Contents of Articles of Association.
4. Explain the Contents of Prospectus.
5. Briefly Explain the Features of Global Companies.
6. Explain the Legal Formalities and Administration of Global Companies.