**BBA FIFTH SEMESTER**

**COMPANY LAW**

**Unit-I INTRODUCTION**

Meaning of Company

The word 'company' is derived from the Latin words, '*com*' which means 'together' and the word '*panies*' which means 'bread'. A company is thus *an association of persons* who took their meal together. In simple language the term company means an association of persons formed for some common purpose. When a few person form a company for the purpose of some business of profit it is called a joint-stock company. The persons forming the company are called 'share holders' The liability of the members of the company is usually limited.

**Definition**

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**The Indian Companies Act 1956 section 3(1)** defines a company as "a company formed and registered under this act or under other previous Acts". This is not a comprehensive definition.

A more popular definition is the one given by the **Lord Justice Lindley**. According to him a company is "an association of many persons who contribute money or money's worth to a common stock and employed it in some trade or business and who share the profit or loss arising there from. The common stock so contributed is denoted in money and is the capital of the company. The persons who contributed it or to whom it belongs are members. The portion of capital to which each member is entitled is his share The shares are always transferable although the right to transfer them may be restricted".

From the above definition it is clear that, a company is an incorporated association, which is an **artificial person created by law**, having an independent **legal entity,** with capital divisible into transferable shares carrying limited liability, having a **common seal** and **perpetual succession**.

**Characteristics of a Company**

A company as an entity has several distinct features, which together make it a unique organization. The following are the defining characteristics of a company: -

**1. Separate Legal Entity**

On incorporation under law, a company becomes a separate legal entity as compared to its members. The company is different and distinct from its members in law. It has its own name and its own seal, its assets and liabilities are separate and distinct from those of its members. It is capable of owning property, incurring debt, borrowing money, having a bank account, employing people, entering into contracts and suing and being sued separately. The importance of the separate entity of the company was however firmly established in the following case.

**Salomon v. Salomon & co. Ltd.(1897) A.C. 22**. S sold his boots business to a newly formed company for £ 30,000. His wife, one daughter and four sons took up one share of £ 1 each. S took 23,000 shares of £1 each and £ 10,000 debentures in the company. The debentures gave S a charge over the assets of the company as the consideration for the transfer of the business. Subsequently when the company was wound up, its assets were found to the worth £ 6,000 and its liabilities amounted to £ 17,000 of which £ 10,000 were due to S (secured by debentures) and £ 7,000 due to unsecured creditors, the unsecured creditors claimed that S and the company were one and the same person and that the company was a mere agent for S and was hence they should be paid in priority to S. Held, the company was, in the eyes of the law, a separate person independent from S and was not his agent. S, though virtually the holder of all the shares in the company, was also a secured creditor and was entitled to repayment in priority to the unsecured creditors.

**2. Limited Liability**

The liability of the members of the company is limited to contribution to the assets of the company up to the face value of shares held by him. A member is liable to pay only the uncalled money due on shares held by him when called upon to pay and nothing more, even if liabilities of the company far exceeds its assets. On the other hand, partners of a partnership firm have unlimited liability i.e. if the assets of the firm are not adequate to pay the liabilities of the firm, the creditors can force the partners to make good the deficit from their personal assets. This cannot be done in case of a company once the members have paid all their dues towards the shares held by them in the company. For example, if the face value of the share in a company is Rs. 10 and a member has already paid Rs. 5 per share, he can be called upon to pay not more than Rs. 5 per share during the lifetime of the company.

**3. Perpetual Succession**

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

**4. Separate Property**

A company is a distinct legal entity. The company’s property is its own. A member cannot claim to be owner of the company’s property during the existence of the company.

**5. Transferability of Shares**

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

**6. Common Seal**

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

**7. Capacity to sue and Being Sued**

A company can sue or be sued in its own name as distinct from its members.

**8. Separate Management**

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

# What are the different types or kinds of Companies ?

From the point of view of **formation**, the companies are of three kinds:

1. **Chartered Companies**

Those companies which are incorporated under a special charter by the king or sovereign such as East Indian Company. Such companies are rarely formed now-a-days as trading companies.

**(2) Statutory Companies**

These companies are formed by special acts of Legislatures or Parliament. e.g.; the Reserve Bank of India, the Industrial Finance Corporation, Damodar Valley Corporation.

**(3) Registered Companies**

Such Companies which are incorporate under the Companies Act, 1956 or were registered under the previous Companies Act.

Form the point of view of **liability** there are three kinds of Companies

**(1)LimitedCompanies**In case of such companies, the liability of each member is limited to the extent of a face value of shares held by him. Suppose A takes a share of Rs 10., he remains liable to the extent of that amount. As soon as that amount in paid, he is no more liable.

**(2) Guarantee Companies**

The liability of the member of such companies is limited to the amount he has undertaken to contribute to the assets of the company in the event of its wound up. This guaranteed amount is limited to fixed sum which is specified in the memorandum. Cambers of commerce, trade associations and sports clubs are usually guarantee concerns. The object of such companies is not to make profit and distribute dividend.

**(3) Unlimited Companies**

They are nothing but large partnership registered under the Companies Act and the members just like partners have unlimited liability and both share contribution as well as their property are at stake when the company is to be wound up. Such companies are rare these days.

From the point of view of Public investment companies may be of two kinds:

**(1) Private Companies :**

A private company means a company which by its articles (a) restricts the right to transfer its shares, if any (b) limits the number of its members to fifty excluding past or present employees of the company who are also members of the company. (c) Prohibits any invitation to the public to subscribe for any shares in our debentures of the company.

**(2) Public Companies:**

Public companies are those companies which are not private companies. All the three restrictions are not imposed on such companies.

**Procedure for Formation of Private & Public Company in India**

**Step by Step procedure to Formation / Registration / Incorporation of Private and Public Company in India**

Company is a a legal entity, allowed by legislation, which permits a group of people, as shareholders, to apply to the government for an independent organization to be created, which can then focus on pursuing set objectives, and empowered with legal rights which are usually only reserved for individuals, such as to sue and be sued, own property, hire employees or loan and borrow money.

Incorporation / Formation of company involve a number of steps. We have tried to simplify the procedure to the maximum extent possible.

Minimum Requirement of a Private Company:

1. Minimum 2 Shareholders
2. Minimum 2 Directors (The directors and shareholders can be same person)
3. Minimum Authorised Share Capital shall be Rs. 100,000 (INR One Lac)
4. DSC (Digital Signature Certificate) for all the Directors (for applying of DIN)
5. DIN (Director Identification Number) for all the Directors

Minimum Requirement of a Public Company:

1. Minimum 7 Shareholders
2. Minimum 3 Directors (The directors and shareholders can be same person)
3. Minimum Authorised Share Capital shall be Rs. 500,000 (INR Five Lac)
4. DIN (Director Identification Number) for all the Directors
5. DSC (Digital Signature Certificate) for one of the Directors

Brief of procedure / steps to company incorporation:

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| --- | --- | --- |
| **S.No.** | **Procedure** | **Detail** |
| 1 | Obtain Digital Signature Certificate (DSC) | Obtain a Digital Signature Certificate from authorized DSC issuing authority. |
| 2 | Obtain Director Identification No. (DIN) [S.153] | Make Application in Form DIR-3  [Rule 9 of Chapter XI Rules] |
| 3 | Register DSC in the name of Director on MCA portal |  |
| 4 | Apply for Reservation of Name [S.4(4)] | Application in Form No. INC.1 [Rule 9]. The same shall be reserved for a period of 60 days |
| 5 | Drafting and Printing of Memorandum and Articles of Asociation |  |
| 6 | Filing of INC -7, DIR 12 & INC 22Adoption of Memorandum of Association [S.4(6)]Adoption of Articles of Association [S.5(6)] | Discussed Later |
| 7 | Commencement of business [S.11] | Mandatory to file Declaration with ROC in Form No. INC.21 [Rule 24] |
| 8 | Registered Office [S.12] | A company shall have a registered office within 15 days of Incorporation and it shall file Form No.INC.22 [Rule 25] to verify the same |

**Step 1: DSC**

The basic step to company incorporation is to get DSC made of all directors.

The Information Technology Act, 2000 provides for use of Digital Signatures on the documents submitted in electronic form in order to ensure the security and authenticity of the documents filed electronically. This is the only secure and authentic way that a document can be submitted electronically. As such, all filings done by the companies under MCA21 e-Governance programme are required to be filed with the use of Digital Signatures by the person authorised to sign the documents.

**Names of Certification Agency (CA) from where DSC can be acquired are** MTNL CA, TCS, IDBRT, SAFESCRYPT (SATYAM), nCODE Solutions, NIC, Central Excise & Customs (Does not issue DSCs to person other than those from the Department), e-Mudhra (3i Infotech Consumer Services Limited).

**Step 2: Acquire Director Identification Number**

The concept of a Director Identification Number (DIN) has been introduced for the first time with the insertion of Sections 266A to 266G of Companies (Amendment) Act, 2006. As such, all the existing and intending Directors have to obtain DIN within the prescribed time-frame as notified.

**INCOME TAX PAN IS MANDATORY**, so before applying of DIN a person must have his PAN number. Details on PAN and DIN must be same.

**Step by step Process**

Step by step process to be followed by the applicant is as under:

As per the revised procedure for DIN Allotment, any person intending to apply for DIN shall have to make an application in eForm DIR 3 and should follow the following procedure:

eForm DIR -3 has to follow the offline eFiling process i.e. the form can be downloaded from MCA 21 portal and thereafter be filled up without internet connection. The connection is required only for validating the form.

Attach the photograph and scanned copy of supporting documents i.e. proof of identity, and proof of residence as per the guidelines. Physical documents are not required to submit at DIN cell.

**Identity Proof:**

* In case of Indian nationals, Income-tax PAN is a mandatory requirement for proof of identity.
* In case of foreign nationals, passport is a mandatory requirement for proof of identity.
* Proof of identify enclosed with eForm DIR-3 should also contain the date of birth of the applicant and the same should match the date of birth filled in the application form. In case the proof of identify does not indicate the Date of Birth then additional proof of Date of Birth, duly certified/ attested, should be attached.

**Address Proof:**

Passport, Election (voter identity) card, and Ration card, driving license, electricity bill, telephone bill or aadhaar

**All Documents should be verified by CA/CS/CMA.**

Name of person proposed to be the directors, address of directors and other details should be correctly filed.

**Step 3: Register DSC**

Third step is to register DSC of the person authorized to sign E-forms on MCA21 or click on the link http://www.mca.gov.in/DCAPortalWeb/dca/MyMCALogin.do?method=setDefaultProperty&mode=36

**Step 4: Apply for Reservation of Name [S.4(4)]**

As per section 4(4) of Companies Act, 2013 read with rule 9 of Companies Incorporation Rules, 2014, application is to be made to registrar for reservation of name. 6 names can be proposed after checking its availability at MCA21 and as per guidelines given in the said rules

While applying for a name in the Form INC -1, using Digital Signature Certificate (DSC), the applicant shall be required to verify that:

1. he is a promoter (proposed first subscriber to the MoA) and is authorized by the other proposed first subscribers to sign and submit he application.
2. He has gone through the provisions of Companies Act, 2013, the Rules there under and prescribed guidelines framed there under in respect of reservation of name, understood the meaning thereof.
3. he has used the search facilities available on the portal of the Ministry of Corporate Affairs (MCA) i.e., www.mca.gov.in/MCA21 for checking the resemblance of the proposed name(s) with the companies and Limited Liability Partnerships (LPs) respectively already registered or the names already approved. He has also used the search facility for checking the resemblances of the proposed names with registered or applied trademarks.
4. the proposed name(s) is/are not in violation of the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950 as amended from time to time;
5. the proposed name is not offensive to any section of people, e.g., proposed name does not contain profanity or words or phrases that are generally considered a slur against an ethnic group, religion, gender or heredity (vi) the proposed name(s) is not such that its use by the company will constitute an offence under any law for the time being in force.
6. he has complied with al the mandated requirements of the respective Act/regulator, such as IRDA, RBI, SEBI, MCA etc. (applicable only in case proposed name includes words like Insurance, Bank, Stock Exchange, Venture Capital, Asset Management, Nidhi, Mutual Fund, Finance, Investment, Leasing, Hire purchase etc. or any combination thereof)
7. to the best of his knowledge and belief, the information given in the application and its attachments is correct and complete, and noting relevant o this form has been suppressed.
8. he undertakes to be fully responsible for the consequences, in case the name is subsequently found to be in contravention of Section 4 of the Act, rules made there under and the prescribed guidelines.

**Following documents have to be attached to INC – 1:**

1. Copy of Board resolution of the existing company or foreign holding company as a prof of no objection
2. Copy of direction from Central Government, if name is changed due to direction received from the Central Government
3. Trademark or authorization to use trade mark, if the name of the company is based on trade mark or application for deed of assignment or a copy of application of registered trademark.
4. In case the proposed name contains such word or expression for which the approval of Central Government is required, a copy of Central Government’s approval.
5. Proof of relation.
6. In principal approval from the concerned regulator wherever is applicable.
7. NOC from sole proprietor/ partners/ other associates.
8. NOC from existing company ,
9. Copy of affidavit in case of proposed name includes phrase ‘Electoral Trust’
10. Resolution of unregistered companies in case of Chapter XXI (Part I) companies,
11. Order of competent authority.
12. NOC as required in Rule 8(4)

**Validity of Name approved by ROC:** As per section 4(5), maximum time for which name will be available has been prescribed in the law itself under section 4(5). The name will be valid for a period of 60 Days from the date on which the application for Reservation was made.

Where after reservation of name, it is found that name was applied by furnishing wrong or incorrect information, then, –

1. if the company has not been incorporated, the reserved name shal be canceled and the person making application shall be liable to a penalty which may extend to one lakh rupees;
2. if the company has been incorporated, the Registrar may, after giving the company an opportunity of being heard –

* either direct he company to change its name within a period of three months, after passing an ordinary resolution;
* take action for striking of the name of the company from the register of companies; or
* make a petion for winding up of the company. [Section 4(5)] Rule 8 of The Companies (Incorporation) Rules 2014 contain provisions relating to undesirable names and Rules 9 has provisions relating to reservation of name.

Object of company incorporation should be mentioned carefully as the same should be the first object of memorandum of association; or else eform INC 7 will be rejected on this ground of mis-match.

**Note:**

* The applicant cannot start business or enter into any agreement, contract, etc. in the name of the proposed company until and unless a certificate of registration is issued by the registrar of companies as per the provisions of the Companies Act, 2013 and the rules made there under.
* **BE CAREFUL WHILE GIVING THE DETAILS OF PROPOSED DIRECTOR** because after reservation of name, i.e. while filing INC – 7, details of promoter as given in e-form INC 1 can be changed but details of director cannot be changed. You will have to wait for 60 days, i.e. expiry of the name and have to file e-form INC 1 with new directors as proposed.

**Step 5: Drafting and Printing of Memorandum and Articles of Association**

After ascertaining name availability from the Registrar of Companies steps should be taken to get the memorandum and articles of association for the proposed company drafted and printed. The memorandum of a company limited by shares shall be in Tables – A in Schedule – I of the Companies Act, 2013.

A public company limited by shares may adopt all or any of the regulations contained in model articles of association registered along with its memorandum of association.

The model articles of a company shall be in Tables – F in Schedule – I of the Companies Act, 2013 as may be applicable to the company. A company may adopt all or any of the regulations contained in the model articles applicable to such company. There is no concept of “other objects” now. Main object can be at maximum 4 (not given in law but practically followed); where first object should be clearly the same as mentioned in eform INC 1.

The memorandum and articles shall be in conformity with the provisions of Section 4 and 5 of the Companies Act 2013.

If the promoters plan to get the securities of the proposed company listed with one or more designated stock exchanges, it is advisable to send the draft of the memorandum and articles of association to those stock exchanges for their scrutiny and suggestion to the effect whether they would like to have certain articles incorporated therein in compliance with the provisions of the Listing Agreements of the stock exchanges.

**In subscriber’s page:**

Name, Fathers name, Address, Designation and Occupation along with number of Equity shares proposed to be subscribed is to be given.

In Witness Column:

“I witness to subscribers who have subscribed and signed in my presence. Further I have verified their Identity Details for their identification and satisfied myself of their identification particulars as filled in”

Sign

CA ………………..,

Membership No. ………

Address, Mob.-

Occupation: Chartered Accountant

is given.

**Step 6: Filing of Company Incorporation form – eform INC 7, DIR 12 & INC 22**

As per Rule-12 of Companies (Incorporation) Rules, 2014, application for incorporation of a private and Public company, with the Registrar, within whose jurisdiction the registered office of the company is proposed to be situated, shall be filed in Form no. INC 7 [Rule 12 to 18] along with Form no. INC.22 for situation of registered office of the Company, (as the case selected in form no. INC 7) and DIR -12.

**Note:**

* Form is required to be filed within 60 days as the name is reserved only for this time period.
* Stamp Duty is payable online as it exceeds Rs. 100/-
* **If you have to file INC 22 with INC 7, then:**

In point 3(c.) of INC 7, i.e. Whether the address for correspondence will be the address for Registered of the company should be given YES, otherwise NO.

**INC 7*:***

According to Section 7 of the Companies Act, 2013 al document related to incorporation shall be filed be filed before the registrar, in whose jurisdiction registered office of a company is proposed to be situated. A Registrar may have jurisdiction over several states or only a part of a state.

INC 7 is for registering a company. Here details of work to be done by a company, promoter, directors, number of shares to be subscribed, etc is to be filed along with many documents.

As per Rule-16(1) of Companies (Incorporation) Rules, 2014, Particulars of every subscriber to be filed with the Registrar at the time of incorporation:

1. Name (including surname or family name) and recent Photograph affixed and scan with MOA and AOA,
2. Father’s/Mother’s/ name,
3. Nationality,
4. Date of Birth
5. Place of Birth (District and State)
6. Educational qualification:
7. Occupation:
8. Income-tax permanent account number:
9. Permanent residential address and also Present  address (Time since residing at present address and address of previous residence address (es) if stay of present address is less 24 than one year) similarly the office/business addresses.
10. E-mail id of Subscriber;
11. Phone No. of Subscriber;
12. Fax no. of Subscriber (optional)
13. Proof of Identity:

For Indian Nationals:

* PAN Card (mandatory) and any one of the following
* Voter’s identity card
* Passport copy
* Driving License copy
* Unique Identification Number (UIN)

For Foreign nationals and Non Resident Indians

* Passport

1. Residential proof such as Bank Statement, Electricity Bill, Telephone / Mobile Bill:

Provided that Bank statement Electricity bill, Telephone or Mobile bill shall not be more than two months old.

1. Proof of nationality in case the subscriber is a foreign national.
2. If the subscriber is already a Director or Promoter of a Company(s), the particulars relating to:

* Name of Company
* Corporate Identity Number
* Whether Interested as a Director or Promoter

**Documents required to be filed:**

**1. Memorandum of Association** as per Table A of schedule I

**2. Articles of association** as per Table F of Schedule I

1. Declaration in Form No.**INC-8** by Professionals.

(As per **Rule-14** of Companies (Incorporation) Rules, 2014, Pursuant to section 7(1) (b) and rule 14 of the Companies (Incorporation) Rules, 2014:

Require to take a Declaration from Professionals Like: ( CS-CA-CWA), Giving declaration that, all the requirements of Companies Act, 2013 and the rules made there-under relating to registration of the company under the Act and matters precedent or incidental thereto have been complied with. On Stamp Paper, Value of Stamp Paper as per the State stamp Act (State: Where register office of Company will be situated). Instead of Stamp Paper, Stamp Tickets can also be used.

Professional will sign the declaration and will mention Date, Place and Membership No.

1. Affidavit from each of the subscriber to the Memorandum in Form No.**INC-9** as per **Rule-15** of Companies (Incorporation) Rules, 2014, (an affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that AFFIDAVIT FROM SUBSCRIBERS AND FIRST DIRECTORS IN INC 9

Declaration is that:

* I have not been convicted of any offence in connection with the promotion, formation or management of any company during the preceding five years; and
* I have 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
* 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 my knowledge and belief.

INC 9 must be on Stamp Paper, Value of Stamp Paper as per the State stamp Act.

Declaration should be signed, Dated and Place.

**5. Proof of residential address**

1. For verification of signature of subscribers [Pursuant to rule 16 (1)(q) of companies (Incorporation) Rules, 2014 in form no.**INC – 10**

**7. NOC** in case there is change in the promoters (first subscribers to Memorandum of Association)

**8. Proof of Identity** (the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum and the particulars of the persons mentioned in the articles as the first directors of the company 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;)

**9. Entrenched Articles** of Association, if any.

**Note:** Where the articles contain the provisions for entrenchment, the company shall give notice to the Registrar of such provisions in Form No. INC.7, as the case may be, along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 at the time of incorporation of the company.

**10. PAN Card** (in case of Indian national)

1. Copy of **certificate of incorporation** of the foreign body corporate and proof of registered office address
2. Certified true copy of **board resolution/consent** by all the partners authorizing to subscribe to MOA
3. Optional attachment, if any

**Shapatpatra** can be sent where signature is made by Director/ Promoter in Hindi.

**DIR 12 for giving details of Directors:**

As per Rule-17 of Companies (Incorporation) Rules, 2014, the particulars of each person mentioned in the articles as first director of the company and his interest in other firms or bodies corporate along with his consent to act as director of the company shall be filed in Form No.DIR-12 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014. Along with the above details in the Form no.INC.7, Form no.DIR 12 to be filed with the following attachments:

1. Declaration by first director in Form **INC-9**is mandatory to attach in case of a new company.
2. Declaration of the appointee Director, in **Form DIR-2**;
3. Interest in other entities of director it is mandatory to attach in case number of entities entered is more than one. Only a declaration can be filed that interest of directors is taken on record by company.
4. Optional attachment(s), if any

**INC 22 for giving details of Registered Office:**

As per Rule 25 of Companies (Incorporation) Rules, 2014, verification of registered office shall be filed in Form No.INC.22 along with the fee.

Section 12(2) of the Companies Act, 2013 states that the Company shall furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation in such manner as may be prescribed.

Section 12(4) of the Companies Act, 2013 states that Notice of every change of the situation of the registered office, verified in the manner prescribed, after the date of incorporation of the company, shall be given to the Registrar within fifteen days of the change, who shall record the same.

**Attachments:**

1.  Proof of Registered Office address (Conveyance/Lease deed/Rent Agreement along with the rent receipts) etc.; or

(the notarized copy of lease / rent agreement in the name of the company along with a copy of rent paid receipt not older than one month; or the authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office); and

1. Copies of the utility bills as mentioned above (not older than two months) (the proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months)
2. List of all the companies (specifying their CIN) having the same registered office address, if any;
3. Optional attachment, if any

**MOA Registration Fes**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Nominal Share capital** | **Other than OPCs and Small Companies** | | **OPCs and Small Companies** | |
| **Fixed** | **For every 10, 00 or part thereof** | **Fixed** | **For every 10, 00 or part thereof** |
| Up to 1,00,000 | 5,000 | NA | 2,000 | N/A |
| More than 1,00,000 up to 5,00,000 | 5,000 + | 400 | 2,000 | N/A |
| More than 5,00,000 up to 10,00,000 | 21,000 + | 300 | 2,000 | N/A |
| More than 10,00,000 up to 50,00,000 | 36,000 + | 300 | 2,00 0+ | 200 |
| More than 50,00,000 up to 1,00,00,000 | 1,56,000 + | 100 | N/A | N/A |
| More than 1,00,00,000 | 2,06,000 + | 75 | N/A | N/A |

On receipt of the aforementioned documents, the office of the Registrar of Companies will scrutinize them and if they are found complete in al respects, the Registrar will register the company and generate a CIN. If the Registrar finds any defect or deficiency in any of the documents or forms, the Registrar will send an electronic communication pointing out he defects and after the deficiencies are removed, the Registrar will register the company.

After the registration of the company, the Registrar will issue under his hand and seal of his office, the Certificate of Incorporation in the name of the company and send it electronically. One may also take printout of the Certificate of Incorporation generated online. The date mentioned by the Registrar in the Certificate of Incorporation shall be the date of incorporation of the company, on which date the company will be considered to have come into existence as a legal entity separate from its subscribers.

The Certificate of Incorporation shall be in From INC – 1 of the Companies (Incorporation) Rules, 2014.

Now comes the last step.

**Step 7: Filing of Commencement of Business – eform INC 21**

On registration, a company cannot commence business or exercise any borrowing powers until it files a declaration by directors in Form INC – 21 to the effect hat every subscriber to the memorandum has paid the value of the shares agreed to be taken by them as specified in section 1(1)(a).

E-form INC.21 is required to be filed with concerned Registrar of Companies for obtaining approval for commencement of Business and exercise of borrowing powers. This E-form is required to be filed by all companies incorporated under Companies Act 2013.

**Procedure for commencement of Business under Companies Act, 2013**

A promoter must pay its subscription money in cash or through bank account for the number of shares as mentioned in eform INC 7 / MOA after which this form will be filed.

Following documents required to be filed as an attachment of form INC.21:

1. E-form INC.10 of Specimen Signature, which you would have attached with Form INC 1 at the time of incorporation.
2. A declaration on stamp paper of Rs. 20/- signed by the directors. This stamp paper should be in the name of the Company and you may write the following statement on this stamp paper for stamp duty payment related compliance:

*“This E- Stamp paper is for E-Form INC.21 (Declaration prior to the commencement of business or exercising borrowing powers) of ­\_\_\_\_\_\_\_\_\_\_ Private Limited.”*

**Note: Rs. 20 as stamp duty or as the case may be can be paid online or offline as payment of stamp duty of above Rs. 100 is mandated for taking online route. Name of vendor, serial number of stamp paper and registration number of vendor is mandatory to enter if the amount of stamp duty is more than or equal to Rs 50/-**

1. Board Resolution stating that Company has received the subscription money in full, which will be deposited into company bank account.
2. In case the affairs of the Company is regulated by any sectoral regulator (like RBI in case of NBFI activities), Certificate of Registration issued by the RBI (Only in case of Non-Banking Financial Companies)/ from other regulators must be attached.
3. You may also attach Bank Account statement as an optional attachment.
4. You may also attach duly certified signed minutes of First Board Meeting of the Company as an optional attachment.

ROC processes the e-form INC.21 filed by the Company if it finds all the necessary attachments and related compliance proper.

Status of the form can be checked at MCA.

After this approval, THE COMPANY IS READY TO RUN & PROSPER.

### Memorandum of Association

Memorandum of Association (MOA) is the supreme public document which contains all those information that are required for the company at the time of incorporation. It can also be said that, a company cannot be incorporated without memorandum. At the time of registration of the company, it needs to be registered with the ROC (Registrar of Companies). It contains the objects, powers and scope of the company, beyond which a company is not allowed to work, i.e. it limits the range of activities of the company.

Any person who deals with the company like shareholders, creditors, investors, etc. is presumed to have read the company, i.e. they must know the company’s objects and its area of operations. The Memorandum is also known as the charter of the company. There are six conditions of the Memorandum:

* **Name Clause –** Any company cannot register with a name which CG may think unfit and also with a name that too nearly resembles with the name of any other company.
* **Situation Clause –** Every company must specify the name of the state in which the registered office of the company is located.
* **Object Clause –** Main objects and auxiliary objects of the company.
* **Liability Clause –** Details regarding the liabilities of the members of the company.
* **Capital Clause –** Total capital of the company.
* **Subscription Clause –** Details of subscribers, shares taken by them, witness etc.

### Definition of Articles of Association

Articles of Association (AOA) is the secondary document, which defines the rules and regulations made by the company for its administration and day to day management. In addition to this the articles contain the rights, responsibilities, powers and duties of members and directors of the company. It also includes the information about the accounts and audit of the company.

Every company must have its own articles, however, a public company limited by shares can adopt Table A instead of Articles of Association. It comprises of all the necessary details regarding the internal affairs and the management of the company. It is prepared for the persons inside the company, i.e. members, employees, directors, etc. The governance of the company is done according to the rules prescribed in it. The companies, can frame its articles of association as per their requirement and choice.

## Key Differences between Memorandum of Association and Articles of Association

The major differences between memorandum of association and articles of association are given as under:

1. Memorandum of association is a document that contains all the condition which are required for the registration of the company. Articles of association is a document that contains the rules and regulation for the administration of the company.
2. Memorandum of Association is defined in section 2 (28) while the Articles of Association is defined in section 2 (2) of the Indian Companies Act 1956.
3. Memorandum of Association is subsidiary to the Companies Act, whereas Articles of Association is subsidiary to both Memorandum of Association as well as the Act.
4. In any contradiction between the Memorandum and Articles regarding any clause, Memorandum of Association will prevail over the Articles of Association.
5. Memorandum of Association contains the information about the powers and objects of the company. Conversely, Articles of Association contain the information about the rules and regulations of the company.
6. Memorandum of Association must contain the six clauses. On the other hand, Articles of Association is framed as per the discretion of the company.
7. Memorandum of Association is obligatory to be registered with the ROC at the time of registration of Company. As opposed to Articles of Association, is not required to be filed with the registrar, although the company may file it voluntarily.

### Conclusion

Memorandum and Articles are the two very important documents of the company, which are to be maintained by them as they guides the company on various matters. They also help in the proper management and functioning of the company throughout its life. That is why every company is required to have its own memorandum and articles.

# PROSPECTUS

Clause (70) of Section 2 of this Bill define “prospectus” means 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.

Section 26 deals with matters to be stated in prospectus.

**MATTERS TO BE STATED IN PROSPECTUS (SECTION 26):**

A prospectus may be issued by or behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company.

**Information in Prospectus:**

Every prospectus shall state following information:-

      i.        names and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed;

     ii.        dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time;

    iii.        a statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilised and unutilised monies out of the previous issue in the prescribed manner;

   iv.        details about underwriting of the issue;

    v.        consent of the directors, auditors, bankers to the issue, expert’s opinion, if any, and of such other persons, as may be prescribed;

   vi.        the authority for the issue and the details of the resolution passed there for;

  vii.        procedure and time schedule for allotment and issue of securities;

 viii.        capital structure of the company in the prescribed manner;

   ix.        main objects of public offer, terms of the present issue and such other particulars as may be prescribed;

    x.        main objects and present business of the company and its location, schedule of implementation of the project;

   xi.        particulars relating to—

1. management perception of risk factors specific to the project;
2. gestation period of the project;
3. extent of progress made in the project;
4. deadlines for completion of the project; and
5. 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;

  xii.        minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash;

 xiii.        details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed; and

 xiv.        Disclosures in such manner as may be prescribed about sources of promoter’s contribution.

**Reports with Prospectus:**

Every prospectus shall set out following reports for the purpose of financial information:

      i.        Reports by the auditors of the company with respect to its profits and losses and assets and liabilities and such other matters as may be prescribed;

     ii.        Reports relating to profits and losses for each of the five financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries and in such manner as may be prescribed. Where company has not completed five financial years than such report for all financial years is required.

    iii.        Reports made in the prescribed manner by the auditors upon the profits and losses of the business of the company for each of the five financial years immediately preceding issue and assets and liabilities of its business on the last date to which the accounts of the business were made up, being a date not more than one hundred and eighty days before the issue of the prospectus. Where company has not completed five financial years than such report for all financial years is required.

   iv.        Reports about the business or transaction to which the proceeds of the securities are to be applied directly or indirectly.

**Declaration of Compliance:**

Every prospectus shall make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made there under.

**Other matters in Prospectus:**

Clause (d) of Sub – section (1) of section 26 give unlimited power to central government to list other matters and set out other reports to be included in a prospectus.

**Delivery of Prospectus with Registrar:**

A copy of prospectus shall be delivered to the Registrar for registration signed by every person who is named as a director or proposed director of the company or by his duly authorised attorney on or before the date of its publication and only then it shall be issued by or on behalf of a company or in relation to an intended company.

**Statement of an Expert:**

A statement made by an expert shall be included only if expert is or was engaged or interested in the formation or promotion or management of the company and has given his written consent to the issue of the prospectus. Such consent of expert must not be withdrawn by his before the delivery of prospectus to the Registrar for registration and a statement to that effect shall be included in the prospectus.

Every prospectus issued shall state that a copy has been delivered to the Registrar and specify attached documents.

The registrar shall not register a prospectus all requirements has been complied with and the prospectus is accompanied by the consent in writing of all the person named in the prospectus.

Prospectus shall not be valid if it is issued more than ninety days after the date on which a copy thereof delivered to the Registrar.

**Caution:**

If a prospectus is issued in contravention of the provisions of section 26, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

**VARIATION IN TERMS OF CONTRACT OR OBJECTS IN PROSPECTUS (SECTION 27):**

A company may vary the terms of a contract refered in the prospectus or object for which the prospectus was issued, only under approval or authority given by way of special resolution.

The notice of such resolution to shareholders shall also be published in the newspapers (one in English and one in vernacular language) in the city where the registered office of the company is situated. These notices shall clearly indicate justification for such variation.

The shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus, shall be given an exit offer by promoters or controlling shareholders at exit price as determined in accordance with regulation made by the Securities and Exchange Board of India.

**Requirement in Deemed Prospectus (Section 25):**

Section 26 as applied by Section 25 shall have effect as if —

1. it required a prospectus to state in addition to the matters required by section 26 to be stated in a prospectus—

                                          i.    the net amount of the consideration received or to be received by the company in respect of the securities to which the offer relates; and

                                         ii.    the time and place at which the contract where under the said securities have been or are to be allotted may be inspected;

1. the persons making the offer were persons named in a prospectus as directors of a company.

## Unit-III

## Meaning of a Director

*One who supervises, regulates, or controls.*

A director is the head of an organization, either elected or appointed, who generally has certain powers and duties relating to management or administration. A corporation's board of directors is composed of a group of people who are elected by the shareholders to make important company policy decisions.

Director has been used synonymously with manager.

Appointment Of Directors – Process, Qualifications & Disqualifications

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Who can be appointed as a Director

Appointment of a Director is not only a crucial administrative requirement, but is also a procedural requirement that has to be fulfilled by every company. Under the Companies Act, only an individual can be appointed as a Director; a corporate, association, firm or other body with artificial legal personality cannot be appointed as a Director.

Appointment of Directors

Generally, in a public company or a private company subsidiary of a public company, two-thirds of the total numbers of Directors are appointed by the shareholders and the remaining one-third is appointed in accordance with the manner prescribed in Articles failing which, the remaining one-third of the Directors must be appointed by the shareholders. The Articles of a public company or a private company subsidiary of a public company may provide for the retirement of all the Directors at every AGM.

In a private company, which is not a subsidiary of a public company, the Articles can prescribe the manner of appointment of any or all the Directors. In case the Articles are silent, the Directors must be appointed by the shareholders.

The Companies Act also permits the Articles to provide for the appointment of two-thirds of the Directors according to the principle of proportional representation, if so adopted by the company in question.

Nominee Directors can be appointed by a third party or by the Central Government in case of oppression or mismanagement.

Appointment of Managing Directors

A Managing Director must be an individual and can be appointed for a maximum term of five (5) years at a time.

A person who is already a Managing Director / Manager of a public company or a private company subsidiary of a public company can become the Managing Director / Manager of only one other company (whether private or public) with the prior unanimous approval of the Board of such company. However, no such restrictions are applicable to a Manager or a Managing Director of "pure" private companies.

In case of a public company or a private company that is a subsidiary of a public company, if the appointment is not in accordance with Parts I and II of Schedule XIII of the Companies Act, such appointment must be approved by the Central Government.

Remuneration

In the case of a public company or a private company which is a subsidiary of a public company, the remuneration payable is subject to the provisions of the Companies Act, and may be determined either by the Articles or, if the Articles so provide, by a special resolution of the company in general meeting.

Qualifications for Directors

The Companies Act does not prescribe any qualifications for Directors of any company. An Indian company may, therefore, in its Articles, stipulate qualifications for Directors. The Companies Act does, however, limit the specified share qualification of Directors which can be prescribed by a public company or a private company that is a subsidiary of a public company, to be five thousand rupees (Rs. 5,000/-).

Conditions for appointment of managing / Whole-time Directors; Disqualifications

The Companies Act, under Schedule XIII, also prescribes certain other conditions that are to be fulfilled for the appointment of a Managing or a Whole-time Director or Manager in case of a public company and a private company that is a subsidiary of a public company. Accordingly, no person shall be eligible for appointment as a Manager, a Managing Director or a Whole-time Director if he or she fails to satisfy the following conditions:

1. He or she should not have been sentenced to imprisonment for any period, or a fine imposed under any of the following statutes, namely:

i. The Indian Stamp Act, 1899;

ii. The Central Excise Act, 1944;

iii. The Industries (Development and Regulation) Act, 1951;

iv. The Prevention of Food Adulteration Act, 1954;

v. The Essential Commodities Act, 1955;

vi. The Companies Act, 1956;

vii. The Securities Contracts (Regulation) Act, 1956;

viii. The Wealth Tax Act, 1957;

ix. The Income Tax Act, 1961;

x. The Customs Act 1962;

xi. The Monopolies and Restrictive Trade Practices Act, 1969 – now the Competition Act, 2002;

xii. The Foreign Exchange Regulation Act, 1973 – now the Foreign Exchange Management Act, 1999;

xiii. The Sick Industrial Companies (Special Provisions Act) 1985;

xiv. The Securities Exchange Board of India Act, 1992; and / or

xv. The Foreign Trade (Development and Regulation) Act, 1973.

2. He or she should not have been detained or convicted for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

3. He or she should have completed twenty-five (25) years of age, but be less that the age of seventy (70) years. However, this age limit is not applicable if the appointment is approved by a special resolution passed by the company in general meeting or the approval of the Central Government is obtained.

4. He or she should be a managerial person in one or more companies and draws remuneration from one or more companies subject to the ceiling specified in Section III of Part II of Schedule XIII.

5. He or she should be a resident of India. 'Resident' includes a person who has been staying in India for a continuous period of not less than twelve (12) months immediately preceding the date of his or her appointment as a managerial person and who has come to stay in India for taking up employment in India or for carrying on business or vocation in India. However, this condition is not applicable for companies in the Special Economic Zone, as notified by Department of Commerce from time to time.

Restrictions on number of Directorships

The Companies Act prevents a Director from being a Director, at the same time, in more than fifteen (15) companies. For the purposes of establishing this maximum number of companies in which a person can be a Director, the following companies are excluded:

1. A "pure" private company;

2. An association not carrying on its business for profit, or one that prohibits the payment of any dividends; and

3. A company in which he or she is only appointed as an Alternate Director.

Failure of the Director to comply with these regulations will result in a fine of fifty thousand rupees (Rs. 50,000/-) for every company that he or she is a Director of, after the first fifteen (15) so determined.

Director Identification Numbers

All Directors of Indian companies are required to obtain Director Identification Numbers ("**DINs**"). Primarily, DINs are required to authenticate any electronic filings made by the company.

Additional disqualifications in case of a public company

In addition to the requirements mentioned above, the Companies Act further provides that a person shall not be eligible to be appointed as a Director of any other public company for a period of five (5) years from the date on which the public company, in which he or she is a Director, has failed to file annual accounts and annual returns or has failed to repay its deposits or interest thereon or redeem its debentures on the due date or pay dividends declared.

Additional disqualification in case of a "pure" private company

A private company that is not a subsidiary of a public company can, by its Articles, provides that a person shall be disqualified for appointment as a Director on any grounds in addition to those specified in the Companies Act.

Additional disqualifications for Managing and Whole-time Directos

An individual cannot be appointed as a Managing or a Whole-time Director of a company if he or she:

1. is an undischarged insolvent, or has at any time been adjudged an insolvent;

2. suspends, or has at any time suspended, payment to his or her creditors, or makes, or has at any time made, a composition with them; or

3. is, or has at any time been, convicted by a court of an offence involving moral turpitude.

These requirements are not only more stringent than the requirements for an ordinary Director, but are also of an absolute and mandatory nature.

Retirement of Directos

In any public company or a private company that is a subsidiary of a public company, one-third of the Directors must retire at every AGM. However, every retiring Director is eligible for re-appointment. If the vacancy is not filled and the meeting has not expressly resolved to fill such vacancy, he or she shall be deemed to have been re-appointed until the next election meeting, unless he or she is not otherwise disqualified or is unwilling to so act as a Director or no resolution for such appointment has been put to the meeting and lost.

Removal of Directors

A Director can be removed by an ordinary resolution of the general meeting after a special notice has been given, before the expiry of his term of office. However, this is not applicable to Directors appointed by proportional representation or the Directors appointed by the Central Government.

Vacation of Office

The office of a Director of a public company, or of a private company which is a subsidiary of a public company, becomes vacant if he or she:

1. Becomes subject to any of the three (3) disqualifications mentioned above (with regard to disqualifications for a Managing or a Whole-time Director) during his or her term of office;

2. Fails to obtain within any time period as may be specified in the Articles (two months in case of a public company), or at any time thereafter ceases to hold, the necessary share qualification if any as prescribed by the Articles;

3. Absents himself or herself from three (3) consecutive meetings of the Board, or from all meetings of the Board for a continuous period of three (3) months, whichever is longer, without obtaining leave of absence from the Board;

4. Whether by himself or herself, or by any person on his or her account or any firm in which he or she is a partner or company in which he or she is a Director, accepts a loan or guarantee or security for a loan from the company in contravention of the requirements governing loans etc to Directors;

5. Acts in contravention of the requirements regarding disclosure of interests;

6. Is removed from office under the Companies Act; or

7. Having been appointed as Director by virtue of his or her holding an office or other employment in the company (for instance, that of Managing Director), he or she fails to hold such office or other employment.

Also, in such public companies and private companies that are subsidiaries of public companies, if a Director or his or her relative holds an office of profit without the consent of the company, and with such Director's knowledge, such Director shall be deemed to have vacated his or her office.

In addition to these reasons for the Director's office becoming vacant, a "pure" private company may prescribe other such reasons in its Articles.

If a person continues to act as a Director, despite knowing that his or her office has become vacant, he shall be punishable with a fine up to five thousand rupees (Rs. 5,000/-) for every day that he or she continues to function and act as such.

Resignation

The Companies Act is silent with respect to resignation of Directors. However, in a majority of cases, the Articles provide for Directors to resign. Even in cases where the Articles are silent, there is no absolute bar on Director's resigning, which becomes effective upon submission of such resignation letter and the filing of the necessary form for such resignation with the Registrar of Companies (whether or not the Board formally accepts the same, unless the Articles provide otherwise). The filing of such resignation related form with Registrar of Companies is an obligation to be discharged by the company in question.

The only exception to the above rule is in the case of Managing, Whole-time and Executive Directors who are employees of the company, and where the terms of their respective service contracts will ordinarily refer to resignations, notice periods and / or compensation in lieu thereof.

Compensation of Loss of Office

Only a Managing Director, a Director holding the office of a Manager and Wholetime Directors can receive compensation for loss of office or consideration for retirement, subject to the conditions specified by the Companies Act.

# Differences between directors and managers

There are many fundamental differences between being a director and a manager. It’s not simply a trivial matter of getting a new job title and a bigger office. The differences are numerous, substantial and quite onerous. The table below outlines the major differences between directing and managing.

|  |  |  |
| --- | --- | --- |
|  | **DIRECTORS** | **MANAGERS** |
| **Leadership** | It is the board of directors who must provide the intrinsic leadership and direction at the top of the organisation; establish and maintain its vision, mission and values | It is the role of managers to carry through the strategy on behalf of the directors. |
| **Decision making** | Directors are required to determine the future of the organisation, its strategy and structure and protect its assets and reputation. They also need to consider how their decisions relate to‘stakeholders’ and the regulatory framework. Stakeholders are generally seen to be the company’s shareholders, creditors, employees, customers, and increasingly, a community in which it operates. | Managers are concerned with implementing the decisions and the policies made by the board. |
| **Duties and responsibilities** | Directors, not managers, have the ultimate responsibility for the long-term prosperity of the company. Directors are required in law to apply skill and care in exercising their duty to the company and are subject to fiduciary duties. If they are in breach of their duties or act improperly, directors may be made personally liable in both civil and criminal law. On occasion, directors can be held responsible for acts of the company. Directors also owe certain duties to the stakeholders of the company as listed above. | Managers have far fewer legal responsibilities. See Factsheet “What are the duties, responsibilities and liabilities of directors?” |
| **Relationship with shareholders** | Directors are accountable to the shareholders and other stakeholders for the company’s performance and can be removed from office by them or the shareholders can pass a special resolution requiring the directors to act in a particular way. Directors act as “fiduciaries” of the shareholders and should act in the best interests of the company (as a separate legal entity). | Managers are usually appointed and dismissed by directors or management and do not have any legal requirement to be held to account. |
| **Ethics and values** | Directors have a key role in the determination of the values and ethical position of the company. | Managers must enact the ethos,  taking their direction from the board. |

# Meetings of Board and Board's powers and restrictions thereon

Notice of every meeting of the Board of directors of a company shall be given in writing to ever director for the time being in India, and at his usual address in India to every other director.

**Board to meet once in every three months**  
In the case of every company, a meeting of its Board of directors shall be held at least once every three months and at least four such meetings must be held every year.  
  
**Notice of meetings**  
Notice of every meeting of the Board of directors of a company shall be given in writing to ever director for the time being in India, and at his usual address in India to every other director.  
  
Every officer of the company whose duty it is to give notice as aforesaid and who fails to do so shall be punishable with fine which may extend to one hundred rupees.  
  
**Quorum for meetings**  
The quorum for a meeting of the Board of directors of a company shall be one-third of its total strength (any fraction contained in that one-third being rounded off as one), or two directors, whichever is higher.  
  
Provided that where at any time the number of interested directors exceeds or is equal to two-thirds of the total strength, the number of the remaining directors, that is to say, the number of the directors who are not interested, present at the meeting being not less than 2 shall be the quorum during such time.  
  
Interested director means any director whose presence cannot, by reason of his being interested in some manner in the subject matter of discussion be counted for the purpose of forming a quorum at a meeting of the Board, at the time of the discussion or vote on any matter.  
  
**Procedure where meeting adjourned for want of quorum**  
If a meeting of the Board could not be held for wand of quorum, then, unless the articles otherwise provide, the meeting shall automatically stand adjourned till the same day in the next week, at the same time and place, or if that day is a public holiday, till the next succeeding day which is not a public holiday, at the same time and place.  
  
**Passing or resolutions by circulation**  
No resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or to all the members of the committee, then in India (not being less in number than the quorum fixed for a meeting of the Board of committee, as the case may be), and to all other directors or members at their usual address in India, and has been approved by such of the directors as are then in India, or by a majority of such of them, as are entitled to vote on the resolution.  
  
**Validity of acts of directors**  
Acts done by a person as a director shall be valid, notwithstanding that it may afterwards be discovered that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles.

## Board's powers and restrictions thereon

**General powers of Board**  
Subject to the provisions of this Act, the Board of directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do.  
  
However, the Board shall not exercise any power or do any act or thing which is directed or required, whether by this or any other Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting.  
  
**Certain powers to be exercised by Board only at meeting**  
The Board of directors of a company shall exercise the following powers on behalf of the company, and it shall do so only by means of resolutions passed at meetings of the Board:-

1. the power to make calls on shares holders in respect of money unpaid on their shares
2. the power to issue debentures
3. the power to borrow moneys otherwise than on debentures
4. the power to invest the funds of the company
5. the power to make loans

However, the Board may, by a resolution passed at a meeting delegate to any committee of directors, the managing director, or the manager of the company or any other principal officer of the company or in the case of a branch office of the company, a principal officer of the branch office, the powers specified in clauses (c), (d) and (e), to the extent specified in the resolution and subject to such conditions as may be imposed.  
  
Acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise or the placing of moneys on deposit by a banking company with another banking company on such conditions as the Board may prescribe, shall not be deemed to be borrowing of moneys or making of loans by a banking company for the purpose of these provisions.  
  
These provisions also do not apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other banks.  
  
In respect of dealings betwwen a company and its bankers, the exercise by the company of its powers to borrow money otherwise than on debentures shall mean the arrangement made by the company with its bankers for the borrowing of money by way of overdraft or cash credit or otherwise and not the actual day-to-day operation of overdrafts, cash credit or other accounts.  
  
Every resolution delegating the power referred to in clause (c) ( the power to borrow moneys otherwise than on debentures ) shall specify the total amount outstanding at any one time up to which moneys may be borrowed by the delegate.  
  
Every resolution delegating the power referred to in clause (d) (the power to invest the funds of the company ) shall specify the total amount up to which the funds may be invested, and the nature of the investments which may be made, by the delegate.  
  
Every resolution delegating the power referred to in clause (e) (the power to make loans ) shall specify the total amount up to which loans may be made by the delegate, the purposes for which the loans may be made, and the maximum amount of loans which may be made for each such purpose in individual cases.  
  
Nothing in this section be deemed to affect the right of the company in general meeting to impose restrictions and conditions on the exercise by the Board of any of the powers specified above.