

EXAMINATION

NOTES

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UNIT-1

*COMPANY

Company is a legal entity formed by a group of individuals to engage in and operate a business enterprise. In the eyes of the law, it is treated as an "artificial person," meaning it has rights and duties similar to a human being, such as the ability to own property and enter into contracts.

Key Characteristics of a Company

What makes a company different from a simple partnership or a solo shop? Here are the defining features that set it apart:

1. Incorporated Association

A company must be officially registered under the relevant government laws (like the Companies Act). Without this formal registration, it does not legally exist.

2. Separate Legal Entity

This is the "golden rule" of corporate law. The company is a distinct legal person, separate from its owners (shareholders).

- It can sue and be sued in its own name.
- It can own property and bank accounts.
- The creditors of the company cannot claim the personal assets of the shareholders to pay off the company's debts.

3. Perpetual Succession

Unlike a partnership which might dissolve if a partner passes away, a company has "immortal" life. Members may come and go, shares may be sold, and directors may change, but the company continues to exist until it is legally wound up.

4. Limited Liability

This is perhaps the biggest draw for investors. In a limited company, the financial liability of a shareholder is limited to the amount unpaid on their shares. If the company goes bankrupt, you only lose the money you invested; your house and personal savings are safe.

5. Common Seal

Since a company is an artificial person and cannot sign documents with a pen, it uses a **Common Seal**. This acts as the official signature of the organization. Any document bearing the common seal and witnessed by authorized directors is legally binding.

6. Transferability of Shares

In public companies, shares are movable property. Shareholders can sell or transfer their ownership to others without needing permission from the company (though private companies often have some restrictions on this).

Summary Table: Company vs. Partnership

Feature	Company	Partnership
Legal Status	Separate legal entity	Not separate from partners
Liability	Generally limited	Usually unlimited
Continuity	Perpetual	Dissolves on death/insolvency
Management	Managed by elected Directors	Managed by the partners

*TYPES OF COMPANIES

Companies are generally categorized based on the liability of members or the number of members involved.

1. By Number of Members

- **Private Limited Company:** Owned by a small group of people. It restricts the right to transfer shares and cannot invite the public to subscribe to its shares. (Min: 2 members, Max: 200).
- **Public Limited Company:** A company that can invite the public to buy its shares or debentures. Its shares are usually traded on stock exchanges. (Min: 7 members, Max: No limit).
- **One Person Company (OPC):** A relatively modern concept that allows a single entrepreneur to operate a corporate entity with limited liability.

2. By Liability

- **Limited by Shares:** The most common type, where a member's liability is limited to the unpaid amount on their shares.
- **Limited by Guarantee:** Members promise to contribute a specific amount to the company's assets if it shuts down. This is common for non-profits.

- **Unlimited Company:** Rare in the modern world; here, members have no limit on their liability for company debts.

Advantages of a Company

Forming a company is like building a "legal shield" for your business. Here is why it's a popular choice:

- **Fundraising Power:** Public companies can raise massive amounts of capital by issuing shares to the general public.
- **Professional Management:** Since ownership (shareholders) is separate from management (Board of Directors), the company can hire specialized experts to run different departments.
- **Risk Mitigation:** Because of **Limited Liability**, your personal assets (car, home, savings) are not at risk if the business fails.
- **Business Continuity:** The business doesn't die with the owner. It can exist for centuries (e.g., British East India Company or Ford).

Disadvantages of a Company

While the benefits are great, they come at a cost—mostly in the form of paperwork and loss of absolute control.

- **Complexity & Cost:** Registering a company is more expensive and time-consuming than a simple partnership. You need legal documents like the **Memorandum of Association (MOA)** and **Articles of Association (AOA)**.
- **Heavy Compliance:** Companies must audit their accounts annually, hold board meetings, and file various tax and legal returns with the government.
- **Double Taxation:** In many regions, the company pays tax on its profits, and then shareholders pay tax again on the dividends they receive.
- **Lack of Secrecy:** Since public companies must publish their financial health every year, your competitors can see exactly how much money you are making (and how).

Comparison: Private vs. Public Company

Feature	Private Company	Public Company
Minimum Members	2	7
Maximum Members	200	Unlimited

Feature	Private Company	Public Company
Transfer of Shares	Restricted	Freely Transferable
Public Subscription	Not Allowed	Allowed
Minimum Directors	2	3

*CORPORATE VEIL

Think of the company as a "mask" or a "curtain." Normally, the law only sees the mask (the company) and ignores the person wearing it. **Lifting the veil** means the court ignores the corporate entity and looks at the human reality behind it.

When is the Veil Lifted

The courts generally dislike lifting the veil because it undermines the principle of limited liability. However, they will do so under two main categories: **Statutory Provisions** (written in law) and **Judicial Interpretations** (decided by judges in court).

1. Fraud or Improper Conduct

If a company is formed solely to defraud creditors or to avoid a legal obligation, the court will not let the "separate entity" rule protect the scammers.

- **Example:** Setting up a "dummy" company to transfer assets away from a lawsuit.

2. Evasion of Taxes

If a company is created purely as a vehicle to evade taxes rather than for a legitimate business purpose, the authorities will treat the company's income as the individuals' income.

3. Determination of Character (Enemy Character)

During wartime, a company registered in one country might be owned by citizens of an enemy country. The court may lift the veil to see who actually controls the company to ensure it isn't aiding the enemy.

4. Avoiding Legal Obligations

If a person is under a "non-compete" agreement and they form a company just to compete with their former employer, the court will lift the veil to stop the individual from using the company as a loophole.

5. Group Entities (Single Economic Unit)

Sometimes, a parent company and its subsidiaries are so closely linked that they function as one. A court might lift the veil to hold the parent company liable for the subsidiary's debts if the subsidiary was just a "facade."

Key Case Law: Solomon v. Solomon (The Foundation)

To understand lifting the veil, you must know the case that created the veil in the first place: **Salomon v. A. Salomon & Co. Ltd (1897)**.

Mr. Salomon sold his shoe business to his own company. When the company failed, creditors wanted Salomon's personal money. The court ruled **no**—the company was a separate person, even if Salomon owned almost all the shares.

Lifting the veil is the exception to the Solomon rule.

Summary: Consequences of Lifting the Veil

Normal Rule	When Veil is Lifted
Shareholders have Limited Liability .	Shareholders/Directors have Unlimited Liability .
The company is responsible for its debts.	The individuals are held personally responsible.
The "mask" protects the owners.	The "mask" is removed to expose the actors.

Incorporation is the legal process of forming a corporate entity or company. While it offers a "corporate shield" that protects your personal life from your business risks, it also brings a heavy suitcase of rules and regulations.

Advantages of Incorporation

The primary reason entrepreneurs incorporate is to create a structure that can outlive them and grow beyond their personal finances.

- **Limited Liability:** This is the "crown jewel" of incorporation. Your personal assets (home, car, savings) are protected. If the company goes bankrupt, you generally only lose what you invested in shares.
- **Perpetual Succession:** A company is a "legal person" that doesn't die. It continues to exist regardless of changes in ownership, death of shareholders, or transfer of shares.
- **Easier Access to Capital:** It is much easier for a company to raise large sums of money. You can issue shares to the public or take out "Debentures" (loans) that are secured against the company's assets.
- **Transferability of Shares:** Ownership is divided into shares, which makes it very simple to sell your stake or bring in new partners without dissolving the entire business.
- **Professional Image:** Being "Inc." or "Ltd." often provides a sense of permanence and credibility to clients, suppliers, and banks compared to a sole proprietorship.

Disadvantages of Incorporation

Incorporation isn't all "shield and profit." It comes with a level of transparency and cost that can be a burden for smaller businesses.

- **High Cost of Formation:** Between legal fees, registration fees, and drafting documents like the **Memorandum of Association (MOA)**, starting a company is significantly more expensive than a partnership.
- **Extensive Record Keeping:** You are legally required to maintain "Minutes" of every meeting, registers of members, and detailed books of accounts. Failure to do so can lead to heavy fines.
- **Double Taxation:** This is a major financial hurdle. The company pays tax on its profits (Corporate Tax). Then, when those profits are paid out to you as dividends, you pay personal income tax on that same money again.
- **Loss of Privacy:** Companies are "public" in nature. You must file your financial statements and list of directors with the government (Registrar of Companies), where anyone—including your competitors—can pay a small fee to see them.
- **Winding Up is Difficult:** Closing a company is just as hard as starting one. It involves a long legal process called "Liquidation" or "Winding Up" to ensure all creditors are paid before the company ceases to exist.

UNIT-2

*COMPANY FORMATION

The **formation of a company** is the legal process of creating a corporate entity that is recognized as separate from its owners. Below is a clear, structured explanation of how a company is formed.

Company formation (also called incorporation) is the process of registering a business as a legal entity under company law, giving it a separate legal identity from its owners.

Main Stages of Company Formation

1. Promotion Stage

This is the initial stage where the idea of the business is conceived.

Key activities:

- Identifying business opportunity
- Conducting feasibility studies
- Deciding the name of the company
- Appointing promoters
- Preparing initial documents

Promoter: A person who undertakes to form a company and takes necessary steps to bring it into existence.

2. Incorporation (Registration) Stage

At this stage, the company is legally registered with the government authority (e.g., Registrar of Companies).

Important documents filed:

- Memorandum of Association (MOA)
- Articles of Association (AOA)
- Consent of directors
- Registered office details

Once approved, the company receives a **Certificate of Incorporation**, and it becomes a legal entity.

3. Capital Subscription Stage (For Public Companies)

If it is a public company, it must raise capital by issuing shares.

Activities include:

- Issuing prospectus
- Receiving applications for shares
- Allotment of shares

(Private companies usually do not need this stage in the same way.)

4. Commencement of Business Stage

- Private companies can start business immediately after incorporation.
- Public companies may need a **Certificate of Commencement of Business** (depending on jurisdiction).

Documents Required for Company Formation

- Identity and address proof of directors
- Registered office proof
- MOA & AOA
- Digital signatures (in many countries)

Advantages of Company Formation

- Separate legal entity
- Limited liability
- Perpetual succession
- Easy transfer of shares
- Better access to capital

Example

Companies like Tata Consultancy Services and Apple Inc. were formed through this legal process and now operate as separate legal entities from their shareholders.

***PROMOTION OF A COMPANY**

Promotion is the first stage in the formation of a company. It involves all the preliminary activities undertaken to bring a company into existence. Promotion refers to the process of conceiving a business idea and taking the necessary steps to incorporate a company.

***Promoter** A **promoter** is a person who:

- Conceives the business idea
- Conducts feasibility studies
- Makes preliminary arrangements
- Gets the company registered

A promoter may be an individual, a group of persons, or even an existing company.

***FUNCTIONS OF A PROMOTER**

1. **Discovery of Business Idea**

Identifying a profitable business opportunity.

2. Feasibility Study

- Technical feasibility
- Financial feasibility
- Economic feasibility

3. Name Approval

Selecting and getting approval for the company's name.

4. Preparation of Important Documents

- **Memorandum of Association (MOA)**
- **Articles of Association (AOA)**

5. Appointment of Professionals

Hiring lawyers, accountants, and other experts.

6. Entering into Preliminary Contracts

Contracts entered on behalf of the proposed company before incorporation.

7. Arranging Initial Capital

Making arrangements for raising funds.

* LEGAL POSITION OF A PROMOTER

- A promoter is **not an agent** of the company (because the company does not yet exist).
- A promoter stands in a **fiduciary relationship** with the company.
- Must not make secret profits.
- Must disclose all material facts.

*LIABILITIES OF A PROMOTER

- Liable for secret profits.
- Personally liable for pre-incorporation contracts (unless adopted by the company after incorporation, where law permits).
- Liable for misstatements in the prospectus.

*IMPORTANCE OF PROMOTION

Promotion is important because without promoters:

- The company cannot be formed.
- Legal documentation cannot be completed.
- Business planning cannot begin.

In Simple Words Promotion is the first stage of company formation where promoters take necessary steps to bring a company into existence by preparing documents like MOA and AOA, arranging capital, and completing legal formalities. Perform all the preliminary activities necessary to bring a company into existence. Their main functions are:

1. Conceiving the Business Idea

- Identify a profitable business opportunity.
- Decide the type and nature of business.

2. Conducting Feasibility Studies

- **Technical feasibility** – availability of technology and resources.
- **Financial feasibility** – availability of capital.
- **Economic feasibility** – profitability and market demand.

3. Deciding the Company Name

- Select a suitable name.
- Obtain approval from the Registrar of Companies.

4. Determining Capital Structure

- Decide the amount of capital required.
- Plan the types of shares to be issued.

5. Preparing Important Documents

- Draft the **Memorandum of Association (MOA)**.
- Draft the **Articles of Association (AOA)**.
- Prepare other legal documents for registration.

6. Appointment of Professionals

- Hire lawyers, accountants, and underwriters.
- Appoint directors and bankers.

7. Entering into Preliminary Contracts

- Make contracts for purchase of property, machinery, etc., on behalf of the proposed company.

8. Arranging Initial Capital

- Raise funds from investors.
- Issue prospectus (in case of a public company).

9. Getting the Company Registered

- Submit required documents to the Registrar.
- Obtain the Certificate of Incorporation.

***DUTIES AND RESPONSIBILITIES OF PROMOTERS**

A promoter stands in a **fiduciary relationship** with the company. Therefore, they must act honestly and in the best interest of the company.

DUTIES OF PROMOTERS

1. Duty of Good Faith

The promoter must act honestly and in the interest of the company being formed.

2. Duty to Avoid Secret Profits

- Promoters must not make any **secret profit** from company transactions.
- If any profit is made, it must be fully disclosed to the company.

3. Duty of Full Disclosure

- All material facts must be disclosed.
- If a promoter sells their own property to the company, the profit made must be disclosed.

4. Duty Not to Defraud

Promoters must not mislead investors or give false information in the prospectus.

5. Duty Regarding Preliminary Contracts

Promoters are personally liable for contracts made before incorporation unless the company legally adopts them after incorporation (where permitted by law).

*** RESPONSIBILITIES OF PROMOTERS**

1. Legal Responsibility

- Liable for misstatements in the prospectus.
- Liable for secret profits.
- Personally liable for pre-incorporation contracts.

2. Financial Responsibility

- Must compensate the company for any loss caused due to fraud or breach of duty.

3. Ethical Responsibility

- Maintain transparency and fairness.
- Protect the interests of investors and shareholders.

*LEGAL STATUS, REMUNERATION AND IMPORTANCE OF PROMOTERS

Legal Status of Promoters

The legal status of a promoter is unique because the company does not exist at the time they act.

(a) Not an Agent

A promoter is **not an agent** of the company since the company is not yet formed.

(b) Not a Trustee A promoter is not technically a trustee, but has similar responsibilities.

(c) Fiduciary Relationship

A promoter stands in a **fiduciary relationship** with the company.
This means:

- Must act in good faith
- Must not make secret profits
- Must disclose all material facts

(d) Personally Liable

Promoters are personally liable for:

- Pre-incorporation contracts
- Misstatements in the prospectus
- Secret profits

2 Remuneration of Promoters

The law does not automatically entitle promoters to remuneration. They are paid only if there is a contract or agreement.

Ways Promoters May Be Remunerated:

- 1 Lump sum payment (cash)
- 2 Commission on shares sold
- 3 Issue of shares or debentures

- 4 Sale of their own property to the company (with full disclosure)
- 5 Appointment as director or manager

Remuneration must be disclosed in the prospectus (in case of a public company).

3 Importance of Promoters

Promoters play a vital role in the formation of a company.

Key Importance:

- 1 Conceive the business idea
- 2 Conduct feasibility studies
- 3 Arrange capital
- 4 Prepare legal documents (MOA & AOA)
- 5 Appoint directors and professionals
- 6 Complete registration formalities

Without promoters, a company cannot come into existence.

*** PRE-INCORPORATION CONTRACTS**

Pre-incorporation contracts are contracts entered into by promoters on behalf of a company **before it is legally incorporated.**

Since the company does not exist at the time of the contract, special legal rules apply.

Features of pre-incorporation contracts

- 1 Made before the company comes into existence
- 2 Entered into by promoters
- 3 Made for the benefit of the proposed company
- 4 Company is not legally bound at the time of contract

*** LEGAL POSITION OF PRE-INCORPORATION CONTRACTS**

1. Company Cannot Be Bound (General Rule)

- A company cannot be bound by a contract made before its incorporation.
- The company was not in existence, so it had no legal capacity.

2. Promoter's Personal Liability

- Promoters are **personally liable** for such contracts.
- They remain liable unless a new contract (novation) is made after incorporation.

3. Adoption of Contract

In some countries (like India under the Specific Relief Act), a company may adopt the contract after incorporation if:

- The contract is for the company's purpose
- The company accepts it after incorporation

However, adoption does not automatically remove promoter's liability unless there is a fresh agreement.

Ways to Avoid Personal Liability

Promoters can:

- Make the contract subject to incorporation
- Enter into a fresh contract after incorporation
- Include a clause limiting personal liability

Example

Suppose promoters enter into a contract to purchase land for a proposed company before registration. If the company is later incorporated:

- The company is not automatically bound.
- The promoter is personally liable.
- A new contract must be made to bind the company.

***INCORPORATION OF A COMPANY**

Incorporation is the legal process by which a company is registered under company law and becomes a separate legal entity.

After incorporation, the company gets a **Certificate of Incorporation** and comes into legal existence.

Steps in Incorporation

- 1 Approval of company name
- 2 Preparation of documents:

- Memorandum of Association (MOA)
- Articles of Association (AOA)
- Consent of directors
- Address of registered office

- 3 Filing documents with Registrar of Companies
- 4 Payment of registration fees
- 5 Issue of Certificate of Incorporation

Effects of Incorporation

- Company becomes a **separate legal entity**
- It can sue and be sued
- It gets perpetual succession
- Members have limited liability

2 Commencement of Business

Commencement of business means the stage when a company is legally allowed to start its business operations.

Private Company

- Can start business immediately after receiving the Certificate of Incorporation.

Public Company

- Must fulfill additional requirements before starting business (such as subscription of minimum capital, if required by law).
- In some jurisdictions, a declaration must be filed before commencing business.

DIFFERENCE BETWEEN INCORPORATION AND COMMENCEMENT OF BUSINESS

Basis	Incorporation	Commencement of Business
Meaning	Legal birth of company	Permission to start business
Certificate	Certificate of Incorporation	Declaration/Certificate of Commencement (if required)
Stage	Comes first	Comes after incorporation
Applicability	All companies	Mainly public companies (in many laws)

***PROSPECTUS**

A **Prospectus** is a legal document issued by a **public company** to invite the public to subscribe to its shares or debentures. It contains detailed information about the company, its financial

position, management, and the terms of the investment so that investors can make informed decisions. A prospectus is an invitation issued by a public company to the public to purchase its securities.

Main Features of a Prospectus

- 1 Issued only by a public company
- 2 Invites the public to invest
- 3 Contains complete and true information
- 4 Must be registered with the Registrar of Companies

Contents of a Prospectus

- Name and address of the company
- Details of directors and promoters
- Capital structure
- Objects of the company
- Financial statements
- Terms of issue of shares or debentures

Importance of Prospectus

- Protects investors
- Provides transparency
- Creates trust
- Helps raise capital

***PUBLIC OFFER**

A **Public Offer** is an invitation made by a company to the general public to subscribe to its securities (such as shares or debentures). It allows the company to raise capital from investors at large. A public offer is the sale of shares or securities by a company to the public to raise funds.

Types of Public Offer

1 Initial Public Offer (IPO)

When a company offers its shares to the public for the **first time** and becomes a listed company.

2 Further Public Offer (FPO)

When an already listed company issues additional shares to the public.

Features of Public Offer

- Open to general public
- Requires issue of prospectus
- Must comply with company law and securities regulations
- Shares are usually listed on a stock exchange

Advantages of Public Offer

- Raises large amount of capital
- Improves company reputation
- Increases liquidity of shares
- Expands investor base

*** CONTENTS OF A PROSPECTUS**

A **prospectus** is a document issued by a public company inviting the public to subscribe to its securities. It must contain all material information about the company so that investors can make informed decisions.

Main Contents of a Prospectus

1 Name and Address of the Company

- Full registered name of the company
- Address of the registered office

2 Objects of the Company

- Main objectives for which the company is formed
- Any other proposed activities

3 Capital Structure

- Authorized, issued, and paid-up capital
- Types of shares and their nominal value
- Details of debentures (if any)

4 Management and Directors

- Names, addresses, and qualifications of directors
- Background of promoters
- Key managerial personnel

5 Financial Information

- Audited financial statements of past years (if applicable)
- Projected profits and loss statements

- Sources and uses of funds

6 Terms of Issue

- Price of shares or debentures
- Number of securities offered
- Mode and time of subscription

7 Risk Factors

- Risks associated with the business or investment
- Warnings to investors

8 Legal Matters

- Pending litigations or disputes
- Regulatory approvals obtained or pending

9 Other Disclosures

- Underwriting details
- Auditor and banker information
- Any material contracts or agreements

*** MISLEADING PROSPECTUS**

A **misleading prospectus** is a prospectus that contains:

1. **False statements** about the company, its financial position, or its business.
2. **Omissions** of important facts necessary for investors to make an informed decision.

In short, any prospectus that **induces investors to invest under false pretenses** is called a misleading prospectus.

Example: Claiming profits when the company is actually making losses.

***Legal Consequences of a Misleading Prospectus**

The consequences can be **civil, criminal, and personal liability for promoters, directors, and experts**.

1 Civil Liability

- Any person who **suffers loss** by relying on the misleading prospectus can **sue the company, directors, promoters, or experts** for damages.
- Investors can **rescind the contract** (cancel subscription and claim refund).

2 Criminal Liability

- **Promoters, directors, and officers** who knowingly issue a misleading prospectus can face **imprisonment or fines** under company law.
- Intentional misstatement or fraud is punishable.

3 Liability of Experts

- Professionals such as **auditors, bankers, lawyers, or valuers** who certify or contribute to the misleading information can also be held liable.

4 Other Consequences

- Company's reputation is damaged.
- Difficulty in raising future capital.
- Possible regulatory action from **securities authorities**.

UNIT-3

* MEMORANDUM OF ASSOCIATION

The **Memorandum of Association (MOA)** is the **charter of a company**. It is a legal document that defines:

- The **object** of the company
- Its **powers**
- The **relationship** of the company with the outside world

In simple words, the MOA is the fundamental document that sets the framework within which the company can operate.

Legal Requirement: Every company must have an MOA at the time of incorporation.

Importance of Memorandum of Association

1 Defines the Scope of Business

- Specifies the main objects and activities the company can undertake.
- Prevents the company from acting beyond its powers (ultra vires acts).

2 Gives Legal Identity

- MOA is submitted to the Registrar of Companies for incorporation.
- Helps the company acquire legal recognition.

3 Protects Shareholders and Creditors

- Clearly defines the powers of the company.
- Helps outsiders know the limits of the company's authority.

4 Acts as a Charter

- Serves as a **constitution for the company** with respect to external dealings.
- Determines the relationship between the company and the public.

5 Essential for Public Companies

- A company cannot issue shares or invite the public without MOA (in most jurisdictions).

Key Clauses of MOA (Optional for Exam)

1. **Name Clause** – Name of the company
2. **Registered Office Clause** – Location of the company's registered office
3. **Object Clause** – Main and ancillary objectives
4. **Liability Clause** – Extent of liability of members
5. **Capital Clause** – Authorized capital and division of shares
6. **Association Clause** – Declaration by subscribers to form the company

- with the Registrar of Companies.

6 Association (Subscription) Clause

- Contains the **names, addresses, and signatures of the subscribers** who agree to form the company.

- Minimum subscribers: **2 for private company, 7 for public company.**

Alteration:

- Cannot be altered after incorporation.

Summary Table: Clauses and Alteration

Clause	Meaning	Alteration Allowed?
Name Clause	Name of the company	Yes, with special resolution & approval
Registered Office	State of registered office	Yes, with resolution + approval (if state changes)
Object Clause	Main & ancillary objects	Yes, with special resolution & approval
Liability Clause	Liability of members	Yes, special resolution; cannot increase without consent
Capital Clause	Authorized share capital	Yes, special resolution & filing
Association Clause	Subscribers' declaration	No, not alterable

***DOCTRINE OF ULTRA VIRES**

The **Doctrine of Ultra Vires** is a principle in company law which states that:

Any act of a company that is **beyond the powers** conferred by its **Memorandum of Association (MOA)** is **ultra vires** (beyond its authority) and **void**.

In other words, a company **cannot act beyond the objects stated in its MOA**.

Features:

1. Acts beyond the **object clause** of MOA are ultra vires.
2. Applies to both **public and private companies**, but more strictly to public companies issuing shares to the public.
3. **Directors or managers cannot authorize such acts**, even if done in good faith.
4. Protects **shareholders, creditors, and the public** from unauthorized acts.

Legal Effect:

1 Void Acts:

- Any ultra vires act is **void and unenforceable**.
- Neither the company nor the third party can enforce it.

2 Directors' Liability:

- Directors who authorize ultra vires acts **cannot escape responsibility**.

3 Protection of Shareholders and Creditors:

- Prevents misuse of company funds for purposes **outside its stated objects**.

Example

If a company formed to **manufacture furniture** enters into a contract to **buy land for real estate development**, the contract is **ultra vires** and **void**.

DOCTRINE VS INTERNAL ACTS

- **Ultra vires acts vs Internal acts:**
 - Acts beyond MOA affecting outsiders → **ultra vires & void**
 - Acts beyond authority of directors within MOA → **intra vires but unauthorized internally** (ratifiable by shareholders)

*ARTICLES OF ASSOCIATION (AOA)

The **Articles of Association (AOA)** is a document that contains the **rules and regulations for the internal management** of a company.

While the **Memorandum of Association (MOA)** defines the **scope of business**, the **AOA regulates the day-to-day management and internal working** of the company.

Legal Requirement: Every company must have an AOA at the time of incorporation.

Contents of Articles of Association

The AOA deals with matters such as:

1 Share Capital and Shares

- Rights and privileges of different classes of shares
- Procedures for issue, transfer, and forfeiture of shares

2 Members' Meetings

- Notice, quorum, and conduct of general meetings
- Voting rights of members

3 Directors and Management

- Appointment, powers, and duties of directors
- Remuneration and retirement of directors

4 Dividends and Reserves

- Declaration and payment of dividends
- Allocation of profits to reserves

5 Accounts and Audits

- Maintenance of books of accounts
- Appointment and powers of auditors

6 Borrowing Powers

- Conditions under which the company can raise loans

7 Winding Up

- Rules for dissolution and distribution of assets

Importance of AOA

- 1 Provides a **framework for internal management**
- 2 Reduces **conflicts between members and directors**
- 3 Regulates **powers of directors and shareholders**
- 4 Helps in **smooth functioning of meetings and decision-making**
- 5 Protects **shareholders' rights**

Legal Position

- AOA **cannot override MOA**; it must be consistent with the memorandum.
- Any rule in the AOA **beyond MOA or law is ultra vires and void.**

*** CONSTRUCTIVE NOTICE**

The doctrine of **constructive notice** states that anyone dealing with a company is **presumed to have knowledge of its Memorandum of Association (MOA) and Articles of Association (AOA).**

In simple words: “You are deemed to know the company’s constitution whether you actually read it or not.”

Purpose:

- Protects the company from claims by outsiders who deal with it without checking its constitutional documents.
- Ensures that outsiders **cannot claim ignorance** of company rules.

Effect:

- If an outsider enters into a contract that **exceeds the company’s powers (ultra vires)**, the company is **not bound**.
- The outsider **cannot enforce such a contract**.

Example:

If a company formed to manufacture furniture issues a contract for real estate development, the outsider is presumed to know this is **beyond the company’s object clause**, and the contract is ultra vires.

*** DOCTRINE OF INDOOR MANAGEMENT**

The doctrine of **indoor management** protects outsiders dealing with the company by **assuming that internal procedures have been properly followed**.

In simple words: “Outsiders can assume that the company’s internal rules have been followed.”

Purpose:

- Protects outsiders from the company’s **internal irregularities**.
- Prevents the company from denying contracts due to **internal procedural defects**.

Key Points:

1. Applies only to **acts within the company’s powers (intra vires)**.
2. Outsiders are **not expected to know internal formalities** like board resolutions or approvals.
3. Protects **third parties dealing in good faith**.

Example:

- Company’s AOA requires board approval for borrowing money.
- A director signs a loan agreement without board approval.
- Outsider can **enforce the contract**, assuming proper internal procedure (unless they knew of irregularity).

Difference Between Constructive Notice and Indoor Management

Basis	Constructive Notice	Doctrine of Indoor Management
Concept	Outsiders are deemed to know MOA & AOA	Outsiders can assume internal rules have been followed
Protects	Company	Outsiders dealing with company
Effect	Ultra vires acts are void	Intra vires acts are valid even if internal irregularities exist
Limitation	No protection to outsider	Only applies when outsider acts in good faith

*VALID MEETING

A **valid meeting** of a company is one that is conducted according to the **provisions of the Companies Act** and the company's **Articles of Association (AOA)**. Only a valid meeting can pass **legally binding resolutions**.

Essentials of a Valid Meeting

1 Proper Notice

- Members must be informed in advance through a **notice** specifying the **date, time, venue, and agenda**.
- Notice period is usually prescribed by law (e.g., **21 days for general meetings** in India).

2 Quorum

- Minimum number of members required to be present to **conduct the meeting legally**.
- Quorum is fixed in the **Articles of Association** or by law.
- If quorum is not present, the meeting **cannot proceed**.

3 Chairperson

- A meeting must have a **chairperson** to preside over it.
- The chairperson ensures proper conduct and maintains order.

4 Agenda

- Business to be transacted must be clearly stated in the **agenda** of the meeting.
- Decisions cannot be taken on matters not included in the agenda without proper approval.

5 Proper Voting Procedure

- Voting must follow the **procedure specified in the AOA or Companies Act** (e.g., show of hands, poll, electronic voting).

- Majority required for passing resolutions depends on the type of resolution: **ordinary or special**.

6 Minutes of Meeting

- All proceedings and resolutions must be recorded in the **minutes book**.
- Minutes serve as **legal evidence** of decisions taken.

7 Compliance with Law

- The meeting must comply with statutory provisions regarding **types of meetings, notice, quorum, voting, and filing**.

UNIT-4

***MEETING OF SHAREHOLDERS**

A **meeting of shareholders** (also called a **general meeting**) is a gathering of the members of a company to discuss and decide on important matters affecting the company. Shareholders exercise their **voting rights** in such meetings.

Types of Shareholders' Meetings

1 Annual General Meeting (AGM)

- **Held once a year** (except for one-person or small companies in some jurisdictions).
- Purpose:
 - Approve **annual accounts**
 - Declare **dividends**
 - Appoint or re-appoint **directors and auditors**
 - Discuss other statutory matters

2 Extraordinary General Meeting (EGM)

- **Called as needed** to deal with urgent or special matters not covered in AGM.
- Purpose:
 - Altering MOA or AOA
 - Issuing additional shares
 - Approving mergers, takeovers, or winding up

Notice of Meeting

- Must be given to all shareholders entitled to vote.
- **Notice period:** Typically **21 days** for general meetings (varies by law).
- Must include:
 - Date, time, and venue of meeting
 - Agenda of business

Quorum

- Minimum number of shareholders required to **legally conduct the meeting**.
- Quorum depends on **company size**:
 - Small companies: 2 members
 - Larger companies: 5, 15, or 30 members depending on total membership

Business Transacted

Types of Business:

1. **Ordinary Business** – Routine matters such as:
 - Approval of accounts
 - Declaration of dividend
 - Appointment of directors and auditors
2. **Special Business** – Requires **special resolution**:
 - Alteration of MOA or AOA

- Issue of new shares or debentures
- Approval of mergers, amalgamations, or buybacks

* VOTING IN SHAREHOLDERS' MEETINGS

- **Ordinary resolution:** Requires **simple majority** (more than 50%)
- **Special resolution:** Requires **3/4th majority** or as prescribed by law

Methods of voting:

- Show of hands
- Poll
- Electronic voting

* ANNUAL GENERAL MEETING (AGM)

An **Annual General Meeting (AGM)** is a meeting of the **shareholders of a company held once every year** to discuss and approve matters related to the company's management and accounts.

AGM is a statutory requirement for certain companies, mainly **public companies**, under company law.

Key Features of AGM

1 Frequency:

- Held **once a year**.
- Gap between two AGMs should **not exceed 15 months** (varies by law).

2 Mandatory for:

- Public companies (except private, one-person, or small companies in some jurisdictions).

3 Notice:

- **21 clear days' notice** to all members and directors.
- Must include **date, time, venue, and agenda**.

4 Quorum:

- Minimum number of members must be present to **conduct the meeting legally**.
- Determined by company's Articles of Association or law.

Business Transacted in AGM

1. Ordinary Business

- Approval of **annual accounts and reports**
- Declaration of **dividends**
- Appointment or re-appointment of **directors**
- Appointment or re-appointment of **auditors**

2. Special Business

- Requires **special resolution**
- Examples:
 - Alteration of MOA or AOA
 - Issue of bonus shares or debentures
 - Approval of mergers, amalgamations, or buybacks

Voting in AGM

- **Ordinary resolution:** Simple majority (>50%)
- **Special resolution:** 3/4th majority or as prescribed
- Voting methods: show of hands, poll, or electronic voting

***EXTRAORDINARY GENERAL MEETING (EGM)**

An **Extraordinary General Meeting (EGM)** is a meeting of the shareholders **called at short notice** to deal with **urgent or special matters** that cannot wait until the next Annual General Meeting (AGM).

EGMs are usually called to approve decisions requiring **special resolution** or immediate action.

Key Features of EGM

1 Called as Needed:

- Not held regularly like AGM; convened **whenever urgent business arises**.

2 Purpose:

- To consider **special business** that cannot be postponed until the AGM.

3 Notice:

- Must be given to **all shareholders and directors**.
- Usually **shorter than AGM notice**, e.g., **14–21 days** depending on law.

4 Quorum:

- Minimum number of members required to conduct the meeting, as specified in the **Articles of Association** or company law.

BUSINESS TRANSACTED IN EGM

EGM is primarily for **special business**, such as:

- Alteration of **MOA or AOA**
- Issue of additional **shares or debentures**
- Approval of **mergers, acquisitions, or takeovers**
- Winding up of the company
- Borrowing beyond authorized limits

Ordinary business can also be conducted if permitted, but EGMs are usually for urgent, non-routine matters.

Voting in EGM

- **Special resolutions** usually require **3/4th majority**
- Ordinary resolutions require **simple majority (>50%)**
- Voting methods: show of hands, poll, or electronic voting

Difference Between AGM and EGM

Feature	AGM	EGM
Frequency	Once a year	As needed
Purpose	Ordinary and some special business	Urgent or special business
Notice	Usually 21 days	Shorter, e.g., 14–21 days
Requirement	Statutory for public companies	Called whenever required
Voting	Ordinary or special resolutions	Usually special resolutions

***MEETING OF BOARD OF DIRECTORS**

A **Board Meeting** is a formal meeting of the **directors of a company** to discuss and make decisions on **policy, management, and operational matters** of the company.

Unlike shareholder meetings, board meetings deal with **internal management**, not ownership matters.

Key Features of Board Meetings

1 Called by the Chairman or Managing Director

- Usually convened by giving **notice to all directors**.

2 Notice of Meeting

- **Clear and sufficient notice** specifying date, time, venue, and agenda.
- Typically **7–21 days’ notice** depending on company law or Articles of Association.

3 Quorum

- Minimum number of directors required to conduct the meeting.
- Determined by **Articles of Association** or law.
- Example: 2 directors or 1/3rd of total directors.

4 Agenda

- Matters to be discussed must be clearly stated.
- Directors cannot usually take decisions on matters not included in the agenda without proper approval.

5 Resolutions Passed

- **Ordinary Resolution:** For routine matters (simple majority)
- **Special Resolution:** For important matters (e.g., borrowing beyond limits, issuing shares)

6 Minutes of Meeting

- All discussions and resolutions must be recorded in the **minutes book**.
- Minutes are **legal evidence** of decisions taken.

Business Transacted in Board Meeting

- Approval of budgets and financial statements
- Appointment or removal of key managerial personnel
- Borrowing or lending of funds within approved limits
- Declaration of interim dividends
- Approval of contracts and agreements
- Policy decisions affecting company operations

*PROXY, VOTING, AND NOTICE

These are key concepts related to **company meetings**, especially shareholders’ meetings.

1. Proxy

A **proxy** is a person appointed by a shareholder to **attend and vote at a company meeting on their behalf** when the shareholder is unable to attend.

Key Points:

- Only a **member of the company** can appoint a proxy.
- The proxy acts **as per instructions** of the shareholder.
- Proxy forms must be submitted **within the prescribed time** before the meeting.

Example:

If Mr. A cannot attend the AGM, he can authorize Mr. B to vote on his behalf as his proxy.

2. Voting

Voting is the process by which shareholders or directors express their **approval or disapproval** on resolutions at a meeting.

Types of Voting:

Type	Meaning
Show of Hands	Each member gets one vote regardless of shareholding
Poll	Votes counted according to the number of shares held
Postal or Electronic Voting	Votes cast remotely, e.g., online or by mail

Resolutions:

- **Ordinary Resolution:** Simple majority (>50%)
- **Special Resolution:** 3/4th majority or as prescribed by law

3. Notice

A **notice** is a **formal intimation sent to members or directors** informing them of the date, time, venue, and agenda of a meeting.

Key Points:

- Must be sent within **prescribed time periods**:
 - **AGM:** usually 21 days
 - **EGM:** usually 14–21 days
 - **Board Meeting:** 7–21 days
- Notice ensures members can **participate and prepare** for the meeting

*AGENDA AND MEETING MINUTES

These are essential elements of company meetings, ensuring **proper procedure and legal validity**.

1. Agenda

The **agenda** is a **list of items or business to be discussed** in a meeting. It guides the members or directors on what will be deliberated.

Key Points:

- Prepared by the **chairperson or management**.
- Includes **ordinary and special business**.
- Sent to members along with the **notice of the meeting**.
- Helps participants **prepare for discussion and decision-making**.

Example:

At an AGM, the agenda may include:

1. Approval of annual accounts
2. Declaration of dividend
3. Appointment of auditors

2. Meeting Minutes

Minutes are the **written record of proceedings and resolutions** of a meeting. They serve as **legal evidence** of what transpired.

Key Points:

- Prepared by the **company secretary or authorized person**.
- Must include:
 - Date, time, and venue of meeting
 - Names of attendees
 - Business discussed
 - Resolutions passed and voting results
- Signed by the **chairperson** of the meeting.
- Maintained in a **minutes book**, which can be inspected as per law.

Example:

If the board approves a loan, the minutes record:

- “Resolved that the company may borrow ₹50 lakh from XYZ Bank at 8% interest.”

Importance

Item	Importance
Agenda	Ensures members know what will be discussed; prevents disputes about unauthorized business

Item	Importance
Minutes	Legal proof of decisions; protects company and members; ensures accountability

***DIRECTORS' POWERS AND LIABILITIES**

The **directors** are the **managers of a company**, entrusted with its **day-to-day management** and **policy decisions**. Their powers and liabilities are governed by **company law** and the **Articles of Association (AOA)**.

(A) Powers of Directors

Directors can exercise powers in the **ordinary course of business** or as delegated by the **Articles of Association or shareholders**.

Key Powers

1. Management Powers

- Manage day-to-day operations of the company
- Appoint officers, managers, and staff

2. Financial Powers

- Approve budgets and expenditures within authorized limits
- Borrow funds (within limits in MOA/AOA)
- Invest company funds

3. Contractual Powers

- Enter into contracts in the **ordinary course of business**
- Sign documents on behalf of the company

4. Policy Powers

- Decide on business strategy, expansion, and operational policies
- Recommend dividend declaration to shareholders

5. Delegation of Powers

- Can delegate powers to **committees or executives** for efficiency

(B) Liabilities of Directors

Directors have **fiduciary and statutory duties**, making them liable for:

A. Fiduciary Duties

- Must act **honestly and in good faith** for the benefit of the company
- Avoid **conflict of interest**
- Not make **secret profits**

B. Statutory Liability

- **Breach of law** under Companies Act (e.g., issuing misleading prospectus)
- Failure to **maintain proper accounts**
- Non-compliance with **statutory provisions**

C. Civil Liability

- Liable for **losses suffered by the company or shareholders** due to negligence or breach of duty

D. Criminal Liability

- Fraud, misstatement, or misappropriation may lead to **penalties or imprisonment**

E. Liability in Ultra Vires Acts

- If directors act beyond the company's MOA (ultra vires), they may be personally liable

***APPOINTMENT AND REMOVAL OF DIRECTORS**

Directors are the **key managerial personnel** responsible for running a company. Their **appointment and removal** are governed by the **Companies Act** and the company's **Articles of Association (AOA)**.

(A) Appointment of Directors

Directors can be appointed in several ways:

A. By Shareholders (Ordinary Resolution)

- Most common method in a general meeting.
- Shareholders appoint directors according to the **Articles of Association**.
- Example: Appointment at an **Annual General Meeting (AGM)**.

B. By Board of Directors (Board Resolution)

- The board may appoint **additional directors** to fill casual vacancies.
- Such appointments are usually **temporary until the next AGM**.

C. By Articles of Association

- The AOA may provide special provisions for appointment.

D. By Government or Tribunal (Statutory Appointments)

- In certain cases, e.g., **public sector companies or companies under financial distress**, the government or company law tribunal may appoint directors.

E. Appointment of First Directors

- The **subscribers to the Memorandum of Association** are usually the first directors of a company.

(B) Removal of Directors

A director may be removed in the following ways:

A. By Shareholders (Ordinary Resolution)

- Under company law, shareholders can remove a director **before the expiry of their term**.
- Special notice (e.g., 14–28 days) must be given to the company and the director.

B. By Board of Directors

- Directors can be removed if permitted under the **AOA** for **non-attendance, misconduct, or incapacity**.

C. By Government or Tribunal

- Statutory authorities may remove directors in cases of **mismanagement or violation of law**.

D. Automatic Vacation of Office

- Certain situations cause automatic removal:
 - Absence from board meetings beyond allowed limits
 - Bankruptcy or insolvency
 - Disqualification under company law