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CORPORATE REGULATIONS AND GOVERNANCE

B.Com Semester 4 – Farook College

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MODULE 1: INTRODUCTION TO COMPANIES ACT, 2013

Companies Act, 2013

1. Main law governing companies in India.
2. Regulates formation, management and winding up of companies.
3. Replaced most provisions of Companies Act, 1956.

Objects

1. Improve corporate governance.
2. Protect investors.
3. Increase transparency.
4. Strengthen accountability.

Features

1. One Person Company (OPC).
2. Corporate Social Responsibility (CSR).
3. Independent Directors.
4. Strong disclosure requirements.
5. Protection of minority shareholders.

Company: Meaning and Features

Company

1. Artificial legal person created by law.
2. Separate legal entity from its members.

Features

1. Separate Legal Entity.
2. Perpetual Succession.
3. Limited Liability.
4. Common Seal (traditional concept).
5. Transferability of Shares.
6. Separate Property.

Kinds of Companies

1. **Private Company:** Restricts transfer of shares. Minimum 2 members.
2. **Public Company:** Shares can be offered to public. Minimum 7 members.
3. **Associate Company:** One company has significant influence over another.
4. **Dormant Company:** Inactive company formed for future projects.
5. **Government Company:** At least 51% ownership by government.
6. **One Person Company (OPC):** Company with only one member.
7. **Small Company:** Company with limited capital and turnover.
8. **Producer Company:** Formed by producers such as farmers.
9. **LLP (Limited Liability Partnership):** Hybrid of partnership and company. Partners have limited liability.

Lifting of Corporate Veil

Corporate Veil

1. Legal separation between company and members.

Lifting Corporate Veil

1. Court ignores separate legal identity to identify real persons behind company.

Applied In Cases Of

1. Fraud.
2. Tax evasion.
3. Misrepresentation.
4. Improper conduct.

MODULE 2: FORMATION OF COMPANIES

Promotion and Incorporation

Promotion

1. Process of starting a company.

Promoter

1. Person who conceives business idea and forms company.

Functions of Promoter

1. Prepare business plan.
2. Arrange capital.
3. Complete legal formalities.

Incorporation

1. Legal registration of company.

Capital Subscription

1. Raising capital through issue of shares.

Commencement of Business

1. Company starts operations after fulfilling legal requirements.

Pre-Incorporation and Provisional Contracts

Pre-Incorporation Contract

1. Contract entered before company comes into existence.
2. Company generally cannot be bound unless legally adopted.

Provisional Contract

1. Contract made after incorporation but before commencement of business.

Memorandum of Association (MOA)

Meaning

1. Fundamental document defining scope and powers of company.

Contents

1. Name Clause.
2. Registered Office Clause.
3. Object Clause.
4. Liability Clause.
5. Capital Clause.
6. Subscription Clause.

Alteration

1. Can be altered according to Companies Act procedures.

Doctrine of Ultra Vires

Meaning

1. Company cannot act beyond powers stated in MOA.

Effect

1. Ultra vires acts are void.
2. Cannot be ratified even by shareholders.

Articles of Association (AOA)

Meaning

1. Internal rule book of company.

Contents

1. Share capital rules.
2. Director powers.
3. Meeting procedures.
4. Internal management rules.

Alteration

1. Can be altered by special resolution.

MOA vs AOA

MOA	AOA
External charter	Internal rules
Defines powers	Governs management
Superior document	Subordinate to MOA

Constructive Notice

1. Outsiders are presumed to know contents of MOA and AOA because they are public documents.

Effect

1. Outsiders cannot claim ignorance of company documents.

Doctrine of Indoor Management

Meaning

1. Outsiders may assume internal company procedures have been properly followed.

Purpose

1. Protects outsiders dealing with company.
2. Exception to Doctrine of Constructive Notice.

Prospectus

Meaning

1. Document inviting public to subscribe for shares or debentures.

Contents

1. Company details.
2. Capital structure.
3. Financial information.
4. Risk factors.

Liability for Misstatement

1. Civil liability.
2. Criminal liability.
3. Compensation to affected investors.

Share Capital and Public Issue of Shares

Share Capital

1. Capital raised through issue of shares.

Public Issue

1. Offering shares to public for subscription.

Book Building

1. Method of price discovery through investor bids.

Listing of Shares

1. Admission of shares for trading on stock exchange.

Share Certificate, Share Warrant and Buyback

Share Certificate

1. Evidence of ownership of shares.

Share Warrant

1. Negotiable document entitling holder to specified shares.

Buyback of Shares

1. Company repurchases its own shares.

Objectives

1. Increase share value.
2. Utilize surplus funds.
3. Improve financial ratios.

Dematerialization, Rematerialization, Transfer and Transmission

Dematerialization (Demat)

1. Conversion of physical shares into electronic form.

Benefits

1. Safe.
2. Fast transfer.
3. No loss or theft.

Rematerialization

1. Conversion of electronic shares back into physical form.

Transfer of Shares

1. Voluntary transfer by shareholder.

MODULE 3: MANAGEMENT OF COMPANIES

Board of Directors

Meaning

1. Group responsible for management and control of company affairs.

Role

1. Policy making.
2. Strategic decisions.
3. Corporate governance.

Importance

1. Protects shareholder interests.
2. Ensures efficient management.

Directors

Appointment

1. By shareholders or as provided by law.

Types

1. Executive Director.
2. Non-Executive Director.
3. Independent Director.
4. Additional Director.
5. Alternate Director.

Position

1. Agents of company.
2. Trustees of company property.
3. Officers of company.

Powers of Directors

1. Manage company affairs.
2. Borrow money.
3. Invest funds.
4. Appoint officers.
5. Enter contracts.

Rights of Directors

1. Attend meetings.
2. Access company records.
3. Receive remuneration.
4. Participate in decisions.

Duties of Directors

1. Act in good faith.
2. Avoid conflict of interest.
3. Protect company assets.

Transmission of Shares

1. Transfer due to death, insolvency or operation of law.

4. Comply with law.

Liabilities of Directors

1. Liability for fraud.
2. Breach of duty.
3. Misstatements in prospectus.
4. Violation of statutory provisions.

Qualification, Disqualification and Removal

Qualification

1. As prescribed by Companies Act and Articles.

Disqualification

1. Unsound mind.
2. Insolvency.
3. Fraud conviction.
4. Legal disqualification.

Removal

1. By shareholders through prescribed procedure.

Key Managerial Personnel (KMP)

Includes:

1. Managing Director.
2. CEO.
3. CFO.
4. Company Secretary.

Functions

1. Day-to-day management.
2. Compliance.
3. Strategic implementation.

Corporate Governance

Meaning

1. System through which companies are directed and controlled.

Need

1. Prevent fraud.
2. Protect stakeholders.
3. Ensure transparency.
4. Improve accountability.

Importance

1. Investor confidence.
2. Better performance.
3. Ethical management.

MODULE 4: COMPANY MEETINGS AND WINDING UP

Company Meetings

Meaning

1. Gathering of members or directors to conduct company business.

Requisites of a Valid Meeting

1. Proper notice.
2. Quorum.
3. Competent chairman.
4. Legal agenda.
5. Proper voting procedure.

Types of Meetings

1. **Statutory Meeting:** Meeting held by certain companies as required by law.
2. **Annual General Meeting (AGM):** Mandatory yearly meeting of shareholders.
3. **Extraordinary General Meeting (EGM):** Meeting for urgent or special business.
4. **Board Meeting:** Meeting of directors.

Resolutions

1. **Ordinary Resolution:** Passed by simple majority.
2. **Special Resolution:** Requires higher majority as prescribed by law.

Company Secretary

Qualification

1. Professional qualification prescribed under law.

Appointment

1. Mandatory for specified companies.

Duties

1. Ensure legal compliance.
2. Maintain records.
3. Organize meetings.
4. Advise management.

Winding Up

Meaning

1. Legal process of closing a company and settling its affairs.

Objectives

1. Realize assets.
2. Pay liabilities.
3. Distribute remaining assets.

Modes of Winding Up

1. **Winding Up by Tribunal:** Ordered by National Company Law Tribunal (NCLT).
2. **Liquidation under Insolvency and Bankruptcy Code (IBC):** Resolution or liquidation process for financially distressed companies.

Companies (Winding Up) Rules, 2020

1. Rules governing winding-up procedures in India.

Liquidator

Meaning

1. Person appointed to conduct winding-up proceedings.

Powers

1. Collect company assets.
2. Sell assets.
3. Settle claims.
4. Distribute funds.

Duties

1. Protect assets.
2. Pay creditors.
3. Maintain records.
4. Submit reports.

Liabilities

1. Responsible for negligence or misconduct during liquidation.

Consequences of Winding Up

1. Company ceases business operations.
2. Assets are sold.
3. Debts are paid.
4. Employees may lose employment.
5. Company's legal existence ends after dissolution.