

# **LONG QUESTIONS (15–20 MARKS)**

## **Company Formation & Structure**

1. Define a company and explain its **features and kinds**.
2. Explain the **incorporation procedure** under the Companies Act, 2013.
3. Explain the **Memorandum of Association and its clauses**.
4. Define **Articles of Association** and explain its **alteration and limitations**.
5. Distinguish between **Memorandum of Association and Articles of Association**.

## **Corporate Personality**

6. Explain the concept of **separate legal entity** with case laws.
7. Explain **corporate veil and circumstances where it can be lifted**.

## **Legal Doctrines**

8. Explain the **Doctrine of Ultra Vires** with case laws and consequences.
9. Explain the **Doctrine of Indoor Management and its exceptions**.
10. Explain the **Doctrine of Constructive Notice and its exceptions**.
11. Explain the **Rule in Foss v. Harbottle and its exceptions**.

## **Share Capital & Securities**

12. Define shares and explain the **types of shares**.
13. Explain **share capital and its kinds/alteration**.
14. Explain **allotment of shares and irregular allotment**.
15. Explain **forfeiture of shares**.
16. Distinguish between **shares and debentures**.
17. Explain **debentures and their kinds**.

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19. Explain **appointment and removal of directors**.
20. Explain **borrowing powers of directors and limitations**.

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21. Who is a **promoter**? Explain duties and liabilities.
22. Define **prospectus**, its contents, and remedies for misrepresentation.

## **Membership**

23. Who are **members of a company**? Distinguish between member and shareholder and explain termination.

## **Meetings & Governance**

24. Explain **kinds of meetings and procedure**.

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25. Explain **dividend and legal provisions for its payment**.

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26. Explain **winding up, its modes and grounds**.
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28. Explain the **powers and duties of a liquidator**.

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## **SHORT NOTES (5 MARKS)**

## **Core Doctrines**

1. Doctrine of Ultra Vires
2. Doctrine of Indoor Management
3. Doctrine of Constructive Notice
4. Rule in Foss v. Harbottle
5. Corporate Veil

## **Shares & Capital**

6. Calls on Shares
7. Allotment of Shares
8. Shares at Premium and Discount
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10. Forfeiture and Surrender of Shares
11. Kinds of Share Capital
12. Reduction of Capital

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14. Fixed and Floating Charge

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17. One Person Company
18. Holding and Subsidiary Company

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21. Key Managerial Personnel

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22. Quorum

23. Kinds of Resolutions

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26. Contributories

27. Liquidator

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28. Auditor

29. Prospectus

30. Promoter

31. Incorporation of Company

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# **Q.1 Define a Company and Explain its Features and Kinds**

## **Introduction**

In modern commercial law, a company is one of the most important forms of business organization. It enables large-scale industrial and commercial activities by providing a structured legal framework. A company combines capital, management, and legal identity, making it suitable for business expansion and economic growth.

## **Definition of Company**

According to Section 2(20) of the Companies Act, 2013, a company means a company incorporated under this Act or any previous company law.

In simple words, a company is an artificial legal person created by law, having a separate legal identity, perpetual succession, and limited liability.

## **Features of a Company**

### **1. Separate Legal Entity**

A company has an independent legal existence distinct from its members. It can own property, enter into contracts, and sue or be sued in its own name.

This principle was established in the famous case of *Salomon v. Salomon & Co. Ltd.*, where the court held that the company is separate from its shareholders.

### **2. Artificial Person**

A company is not a natural person but is treated as a legal person by law. It acts through its directors, officers, and agents.

### **3. Perpetual Succession**

A company continues to exist irrespective of changes in its membership. Death, insolvency, or transfer of shares does not affect its existence.

### **4. Limited Liability**

The liability of members is limited to the amount unpaid on shares or the amount they have guaranteed. This feature encourages investment.

## **5. Transferability of Shares**

Shares of a company can be transferred, especially in public companies. This provides liquidity to investors.

## **6. Separate Property**

The company owns its assets in its own name. Shareholders do not have direct ownership over company property.

## **7. Capacity to Sue and Be Sued**

A company can enforce its rights and can also be held liable in legal proceedings.

# **Kinds of Companies**

## **1. Based on Liability**

A company limited by shares: Liability limited to unpaid share value.

A company limited by guarantee: Members agree to contribute a fixed amount at winding up.

Unlimited company: Members have unlimited liability.

## **2. Based on Members**

Private company: Minimum 2 members, maximum 200, restriction on transfer of shares.

Public company: Minimum 7 members, no maximum limit, free transfer of shares.

One Person Company: Single member company introduced under the Companies Act, 2013.

## **3. Based on Control**

Holding company: Controls another company.

Subsidiary company: Controlled by holding company.

## **4. Based on Ownership**

Government company: At least 51 percent shares held by government.

Foreign company: Incorporated outside India but operating in India.

## **Conclusion**

A company is a unique legal entity that provides advantages such as limited liability, perpetual existence, and ease of raising capital. It plays a vital role in economic development and industrial growth.

# **Q.2 Explain the Incorporation Procedure under the Companies Act, 2013**

## **Introduction**

Incorporation is the legal process through which a company comes into existence. It gives the company a separate legal identity and allows it to function under the law.

## **Steps in Incorporation**

### **1. Promotion Stage**

At this stage, promoters identify the business opportunity and take preliminary steps such as feasibility studies and planning.

### **2. Name Approval**

The proposed name of the company is submitted to the Registrar of Companies (ROC) through the SPICe+ form. The name must not be identical or misleading.

### **3. Preparation of Documents**

The following documents are prepared:

- Memorandum of Association
- Articles of Association
- Declaration by professionals
- Details of directors and subscribers
- Address of registered office

#### **4. Filing of Documents**

All documents are submitted online to the ROC through the Ministry of Corporate Affairs portal.

#### **5. Payment of Fees**

Prescribed registration fees and stamp duty are paid.

#### **6. Certificate of Incorporation**

After verification, the ROC issues the Certificate of Incorporation. This certificate is conclusive evidence that the company has been legally formed.

#### **7. Allotment of Corporate Identity Number**

The company is allotted a unique Corporate Identity Number (CIN).

#### **8. Commencement of Business**

A private company can start business immediately after incorporation. A public company must fulfill additional requirements before commencing business.

### **Effects of Incorporation**

The company becomes a separate legal entity.

Members get limited liability.

The company can own property and enter into contracts.

It can sue and be sued in its own name.

### **Conclusion**

The incorporation process ensures that a company is formed in accordance with legal requirements. It provides a solid legal foundation for business operations.

## **Q.3 Explain the Memorandum of Association and its Clauses**

## **Introduction**

The Memorandum of Association is the most important document of a company. It defines the scope of its activities and establishes its relationship with the outside world.

## **Definition**

The Memorandum of Association is a document that contains the fundamental conditions upon which a company is incorporated.

## **Importance**

It acts as the charter of the company.  
It defines the limits of company powers.  
It protects the interests of shareholders and creditors.

## **Clauses of Memorandum of Association**

### **1. Name Clause**

It specifies the name of the company. The name must end with “Limited” or “Private Limited”.

### **2. Registered Office Clause**

It specifies the state in which the registered office of the company is situated.

### **3. Object Clause**

It defines the main objects and incidental objects of the company. The company cannot undertake activities beyond these objects.

### **4. Liability Clause**

It states whether the liability of members is limited or unlimited.

### **5. Capital Clause**

It specifies the authorized share capital of the company and its division into shares.

## **6. Subscription Clause**

It contains the names and details of the subscribers who agree to form the company.

## **Conclusion**

The Memorandum of Association is the foundation of the company. It determines the scope of its activities and ensures that the company operates within legal limits.

# **Q.4 Define Articles of Association and Explain its Alteration and Limitations**

## **Introduction**

Articles of Association regulate the internal management of a company and provide rules for its administration.

## **Definition**

Articles of Association is a document containing rules and regulations for the internal management of a company.

## **Contents**

It includes provisions related to share capital, meetings, directors, dividends, and accounts.

## **Alteration of Articles**

The Articles of Association can be altered by passing a special resolution. The alteration becomes effective after it is registered with the Registrar of Companies.

## **Limitations on Alteration**

The alteration must not violate the Companies Act.  
It must not conflict with the Memorandum of Association.  
It must be made in good faith for the benefit of the company.  
It must not be illegal or against public policy.  
It must not affect vested rights unfairly.

## **Conclusion**

Articles of Association ensure proper internal functioning of the company, but their alteration is subject to legal restrictions.

# **Q.5 Distinguish between Memorandum of Association and Articles of Association**

## **Introduction**

Memorandum of Association and Articles of Association are essential documents of a company but serve different purposes.

## **Differences**

The Memorandum of Association defines the scope and objectives of the company, whereas the Articles of Association govern its internal management.

The Memorandum deals with external relations, while the Articles deal with internal matters.

The Memorandum is the supreme document, whereas the Articles are subordinate to it.

Alteration of the Memorandum is difficult, while alteration of the Articles is comparatively easier.

The Memorandum defines the powers of the company, while the Articles regulate how those powers are exercised.

## **Conclusion**

Both Memorandum and Articles are essential for the functioning of a company. The Memorandum sets the limits of the company, while the Articles provide rules for its internal administration.

# Q.6 Explain the Concept of Separate Legal Entity with Case Laws

## Introduction

One of the most fundamental principles of company law is that a company has a separate legal identity distinct from its members. This concept forms the basis of corporate existence and distinguishes a company from other forms of business like partnership.

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## Meaning of Separate Legal Entity

A company is recognized by law as an independent legal person. It has its own rights, duties, and liabilities separate from its shareholders and directors.

This means:

The company can own property in its own name.

It can enter into contracts independently.

It can sue and be sued in its own name.

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## Features of Separate Legal Entity

### 1. Independent Existence

The company exists independently of its members. Even if all shareholders change, the company continues.

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### 2. Separate Ownership of Property

The property of the company belongs to the company itself and not to its shareholders.

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### **3. Legal Capacity**

The company can enter into contracts and legal relations in its own name.

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## **Case Laws**

### **Salomon v. Salomon & Co. Ltd. (1897)**

This is the landmark case establishing the principle of separate legal entity.

Mr. Salomon formed a company and transferred his business to it. When the company went into liquidation, creditors argued that the company and Salomon were the same.

Held: The House of Lords held that the company is a separate legal person distinct from its members.

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### **Lee v. Lee's Air Farming Ltd. (1961)**

Mr. Lee was a shareholder and also an employee of the company. After his death, his wife claimed compensation.

Held: The court recognized that Lee was separate from the company and entitled to employee status.

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### **Macaura v. Northern Assurance Co. (1925)**

Macaura insured timber in his own name though it belonged to the company.

Held: He could not claim insurance because the property belonged to the company, not him.

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## **Importance**

Provides limited liability protection  
Encourages investment  
Ensures business continuity

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## **Conclusion**

The concept of separate legal entity is the cornerstone of company law. It gives a company an independent existence and protects shareholders from personal liability.

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# **Q.7 Explain Corporate Veil and Circumstances Where it Can Be Lifted**

## **Introduction**

Although a company is a separate legal entity, sometimes courts ignore this separate identity to prevent misuse. This is known as lifting or piercing the corporate veil.

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## **Meaning of Corporate Veil**

The corporate veil is a legal concept that separates the identity of the company from its members.

Lifting the veil means ignoring this separation and holding members personally liable.

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## **Circumstances Where Corporate Veil is Lifted**

### **1. Fraud or Improper Conduct**

If the company is used to commit fraud, courts will lift the veil.

Case: Gilford Motor Co. v. Horne

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## **2. Tax Evasion**

If a company is formed to evade taxes, courts may disregard it.

Case: Sir Dinshaw Maneckjee Petit case

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## **3. Agency Relationship**

If a company acts as an agent of its members, they may be held liable.

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## **4. Avoidance of Legal Obligations**

If a company is used to avoid contractual or legal duties.

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## **5. Protection of Public Interest**

Courts may lift the veil in the interest of justice or public policy.

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## **6. Enemy Character**

In times of war, courts may determine the real nationality behind the company.

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## **Conclusion**

The doctrine of lifting the corporate veil ensures that the concept of separate legal entity is not misused for unlawful purposes.

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# Q.8 Explain the Doctrine of Ultra Vires with Case Laws and Consequences

## Introduction

The doctrine of ultra vires is an important principle in company law which ensures that a company does not act beyond the powers given in its Memorandum of Association.

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## Meaning of Ultra Vires

Ultra vires means “beyond powers.”

Any act done beyond the object clause of the Memorandum is void.

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## Case Law

### Ashbury Railway Carriage & Iron Co. v. Riche (1875)

The company entered into a contract beyond its object clause.

Held: The contract was void and unenforceable.

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## Consequences of Ultra Vires Acts

### 1. Void and Null

Such acts are completely void and cannot be ratified.

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### 2. Directors' Liability

Directors may be personally liable for losses caused.

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### **3. Protection of Shareholders**

Ensures company funds are used only for authorized purposes.

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### **4. Injunction**

Members can restrain the company from doing ultra vires acts.

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## **Exceptions / Relaxations**

Acts incidental to main objects are valid

Doctrine has reduced importance under Companies Act, 2013

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## **Conclusion**

The doctrine protects shareholders and creditors by restricting company activities within defined limits.

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# **Q.9 Explain the Doctrine of Indoor Management and its Exceptions**

## **Introduction**

The doctrine of indoor management protects outsiders dealing with a company by allowing them to assume that internal procedures have been properly followed.

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## Meaning

Outsiders are not expected to know internal management rules.  
They can assume that company officials have complied with procedures.

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## Case Law

### Royal British Bank v. Turquand (1856)

This case established the doctrine.

Held: Outsiders can assume internal compliance of company procedures.

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## Exceptions to Doctrine

### 1. Knowledge of Irregularity

If the outsider knows about irregularity, protection is not available.

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### 2. Suspicion of Irregularity

If circumstances create doubt, outsider must inquire.

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### 3. Forgery

Doctrine does not apply in case of forgery.

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### 4. Acts Outside Authority

If officer acts beyond authority, doctrine does not apply.

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## **Conclusion**

This doctrine protects outsiders and ensures smooth business transactions.

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# **Q.10 Explain the Doctrine of Constructive Notice and its Exceptions**

## **Introduction**

The doctrine of constructive notice assumes that every person dealing with a company has knowledge of its public documents.

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## **Meaning**

Documents like MOA and AOA are public documents.  
Anyone dealing with the company is presumed to have read them.

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## **Effects**

Outsiders cannot claim ignorance of company rules.  
They must ensure transactions are within company powers.

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## **Case Law**

### **Kotla Venkataswamy v. Ram Murthy**

A person dealing with company failed to verify AOA provisions.

Held: Transaction was invalid due to constructive notice.

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## **Exceptions**

### **1. Doctrine of Indoor Management**

Protects outsiders from internal irregularities.

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### **2. No Suspicion**

If outsider acts in good faith without suspicion.

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## **Conclusion**

The doctrine protects the company but is balanced by indoor management to protect outsiders.

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# **Q.11 Explain the Rule in Foss v. Harbottle and its Exceptions**

## **Introduction**

The rule in Foss v. Harbottle is a principle that the company itself is the proper plaintiff in legal actions concerning its rights.

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## **Meaning**

If a wrong is done to the company, only the company can sue, not individual shareholders.

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## **Case Law**

### **Foss v. Harbottle (1843)**

Two shareholders filed a case for wrong done to company.

Held: Only the company can sue for such wrongs.

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## **Principles**

Majority rule prevails

Courts do not interfere in internal management

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## **Exceptions**

### **1. Ultra Vires Acts**

Acts beyond company powers can be challenged.

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### **2. Fraud on Minority**

If majority commits fraud against minority.

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### **3. Violation of Personal Rights**

If shareholder's personal rights are affected.

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### **4. Illegal Acts**

If act is illegal or against law.

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## **Conclusion**

The rule ensures majority control but protects minority through exceptions.

# **Q.12 Define Shares and Explain the Types of Shares**

## **Introduction**

In company law, capital is the lifeblood of a company, and shares are the fundamental units into which this capital is divided. By issuing shares, a company raises funds from investors who, in return, become members of the company. Shares represent not only a financial interest but also certain rights and obligations. Understanding the nature and types of shares is essential for appreciating how ownership and control are structured within a company.

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## **Definition of Share**

According to Section 2(84) of the Companies Act, 2013, a share means a share in the share capital of a company and includes stock. In simple terms, a share is a unit of ownership that represents a proportionate interest in the company's capital.

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## **Nature and Characteristics of Shares**

Shares are movable property and can be transferred in accordance with the provisions of the Articles of Association. They represent a bundle of rights such as the right to vote, receive dividends, and share in surplus assets upon winding up. However, shareholders are not the owners of company property; rather, the company as a separate legal entity owns its assets.

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# Types of Shares

## 1. Equity Shares

Equity shares are the most common form of shares and represent the real ownership of the company.

### Features

Equity shareholders have voting rights and participate in the management of the company.

Their dividend is not fixed and depends on the profits of the company.

They bear the highest risk but also enjoy the potential for higher returns.

### Types of Equity Shares

Equity shares with voting rights provide full control over company decisions.

Equity shares with differential rights may carry limited voting rights but offer higher dividends.

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## 2. Preference Shares

Preference shares carry preferential rights over equity shares in respect of dividend and repayment of capital.

### Features

Preference shareholders receive a fixed rate of dividend.

They have priority over equity shareholders during liquidation.

Generally, they do not have voting rights except in special circumstances.

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## Types of Preference Shares

Cumulative Preference Shares allow unpaid dividends to accumulate.

Non-cumulative Preference Shares do not carry forward unpaid dividends.

Participating Preference Shares share in surplus profits.

Non-participating Preference Shares do not share additional profits.  
Convertible Preference Shares can be converted into equity shares.  
Non-convertible Preference Shares cannot be converted.  
Redeemable Preference Shares are repaid after a fixed period.

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## **Conclusion**

Shares form the basis of ownership in a company. Different types of shares are designed to meet the needs of both investors and companies, balancing risk, control, and return.

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# **Q.13 Explain Share Capital and its Kinds/Alteration**

## **Introduction**

Share capital refers to the funds raised by a company through the issue of shares. It is a primary source of finance and plays a crucial role in determining the company's financial structure.

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## **Meaning of Share Capital**

Share capital is the total amount of money contributed by shareholders in exchange for shares. It represents the ownership stake of members in the company.

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## **Kinds of Share Capital**

Authorized Capital is the maximum capital stated in the Memorandum of Association that a company can issue.

Issued Capital is the portion of authorized capital that is offered to the public.

Subscribed Capital is the part of issued capital that investors agree to purchase.

Called-up Capital is the amount that the company has demanded from shareholders.

Paid-up Capital is the amount actually paid by shareholders.

Reserve Capital is the portion of capital reserved for use only during winding up.

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## **Alteration of Share Capital**

A company may alter its share capital if authorized by its Articles of Association and by passing an ordinary resolution.

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## **Methods of Alteration**

A company can increase its share capital by issuing new shares.

It can consolidate shares into larger units.

It can subdivide shares into smaller units.

It can cancel unissued shares.

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## **Reduction of Share Capital**

Reduction requires a special resolution and approval from the Tribunal. It may involve extinguishing liability or reducing paid-up capital.

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## **Importance**

Share capital provides financial stability and flexibility for expansion. It reflects the financial strength of a company.

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## **Conclusion**

Share capital is the backbone of a company's financial structure. Its proper management and lawful alteration ensure smooth functioning and growth.

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# **Q.14 Explain Allotment of Shares and Irregular Allotment**

## **Introduction**

Allotment of shares is a crucial step in raising capital, as it creates a binding contract between the company and the applicant. It must be carried out in accordance with legal provisions to ensure fairness and transparency.

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## **Meaning of Allotment**

Allotment refers to the acceptance by the company of an offer made by an applicant to purchase shares. Once allotment is made, a contractual relationship is established.

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## **Essentials of Valid Allotment**

The allotment must be made by proper authority.  
It must be made within a reasonable time.  
It must be communicated to the applicant.  
It must comply with provisions of the Companies Act.

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## **Irregular Allotment**

Irregular allotment occurs when shares are allotted without fulfilling legal requirements, such as failure to file a prospectus or not receiving minimum subscription.

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## **Effects of Irregular Allotment**

The allotment becomes voidable at the option of the applicant.

Directors may be personally liable for losses.

The company must refund application money.

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## **Importance**

Proper allotment ensures investor confidence and legal compliance.

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## **Conclusion**

Allotment must be done carefully to avoid legal consequences and protect the interests of investors.

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# **Q.15 Explain Forfeiture of Shares**

## **Introduction**

Forfeiture of shares is a remedy available to companies when shareholders fail to pay calls on shares. It ensures discipline and financial stability.

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## **Meaning**

Forfeiture means cancellation of shares due to non-payment of call money.

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## **Conditions**

It must be authorized by Articles of Association.

Proper notice must be given.

The shareholder must fail to pay within the specified time.

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## **Procedure**

Notice is issued to the shareholder.

A reasonable time is given.

A resolution is passed by the Board.

Shares are forfeited.

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## **Effects**

Membership is terminated.

Shares revert to the company.

Company can reissue the shares.

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## **Conclusion**

Forfeiture protects company interests and enforces compliance among shareholders.

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# **Q.16 Distinguish between Shares and Debentures**

## **Introduction**

Shares and debentures are two primary methods of raising capital, but they differ in nature and characteristics.

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## **Differences**

Shares represent ownership, while debentures represent debt.

Shareholders are owners; debenture holders are creditors.

Dividend is variable; interest is fixed.

Shares carry voting rights; debentures generally do not.

Shares are not usually redeemable; debentures are redeemable.

Debenture holders have priority during liquidation.

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## **Conclusion**

Shares involve risk and ownership, whereas debentures provide fixed income and security.

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# **Q.17 Explain Debentures and their Kinds**

## **Introduction**

Debentures are instruments used by companies to raise long-term loans from the public. They establish a creditor relationship between the company and investors.

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## **Definition**

A debenture is a written acknowledgment of debt issued by a company.

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## **Features**

It carries a fixed rate of interest.  
Debenture holders are creditors.  
They may be secured or unsecured.

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## **Kinds of Debentures**

Secured debentures are backed by company assets.  
Unsecured debentures are not backed by assets.  
Convertible debentures can be converted into shares.  
Non-convertible debentures cannot be converted.  
Redeemable debentures are repayable after a period.  
Irredeemable debentures are repayable only on winding up.  
Registered debentures are recorded in company books.  
Bearer debentures are transferable by delivery.

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## **Conclusion**

Debentures are an important source of finance that provide fixed returns with relatively lower risk compared to shares.

## **18. Who is a Promoter? Explain Duties and Liabilities.**

Who is a Promoter?

A promoter is a person who conceives the idea of forming a company, takes necessary steps to incorporate it, and ensures it begins operations. Promoters act before the company is legally born.

Example: Mr. A decides to start a tech company, arranges for directors, files incorporation documents, and raises initial capital – he is a promoter.

Duties of a Promoter (Fiduciary in nature):

1. Not to make secret profits – Any profit from company transactions must be disclosed.

2. Duty to disclose interest – If a promoter sells personal property to the company, full disclosure is required.
3. Duty to appoint independent directors (in good faith).
4. Duty to act in good faith – Always in the best interest of the future company.
5. Duty to account – For any money or property received on behalf of the company.

#### Liabilities of a Promoter:

Type	Liability
Civil Liability	For breach of fiduciary duty – company can rescind contract, recover secret profits, or claim damages.
Criminal Liability	For false statement in prospectus (under Companies Act, 2013 – fine/imprisonment).
Liability for misstatement in prospectus (Section 35 & 36 of Companies Act, 2013)	Damages to subscribers.
Liability even after incorporation	Until company ratifies past contracts.

## 19. Define Prospectus, Its Contents, and Remedies for Misrepresentation.

Definition of Prospectus (Section 2(70) of Companies Act, 2013):

Any document issued by a company inviting offers from the public for subscription to its securities (shares/debentures).

## Contents of a Prospectus [Section 26 of CA, 2013]:

1. General information (name, registered office, etc.)
2. Capital structure
3. Terms of the present issue
4. Management and directors (names, addresses, qualifications)
5. Litigation and material contracts
6. Financial information (audited reports, profit/loss)
7. Statutory and other disclosures (PAN, CIN, regulatory approvals)
8. Risk factors
9. Outstanding litigation

## Remedies for Misrepresentation in Prospectus:

Remedy	Against Whom	Nature
Rescission of contract	Company	Cancellation of allotment + refund
Damages for deceit (tort)	Promoters/directors	Civil suit for fraudulent misrepresentation
Compensation under Section 35	Directors, promoters, experts	Statutory liability for untrue statement
Criminal prosecution (Section 34 & 36)	Responsible persons	Imprisonment up to 10 years + fine

Note: Defense available – if person had reasonable ground to believe statement true.

## 20. Who are Members of a Company? Distinguish Between Member and Shareholder and Explain Termination.

Who are Members (Section 2(55) of CA, 2013)?

A person is a member if:

- Subscribed to memorandum of association, or
- Agreed in writing to be a member, and
- Their name is entered in the Register of Members.

Distinction: Member vs Shareholder

Basis	Member	Shareholder
Ownership of shares	Must hold shares	Holds shares
Name in Register of Members	Yes	Yes (if holds shares)
Can exist without the other?	No	No (both are same in law)
Usage	Legal term (Companies Act)	Common term
Practical difference	None – both refer to same person	Same

Note: In modern company law, "member" and "shareholder" are used interchangeably. However, a member includes subscribers to memorandum even before share allotment.

## Termination of Membership:

1. Transfer of shares – Member transfers all shares.
  2. Death – Membership passes to legal heirs (transmission).
  3. Insolvency – Shares vest in Official Receiver/Assignee.
  4. Resignation – If articles permit.
  5. Forfeiture – For non-payment of calls.
  6. Buyback of shares by company.
  7. Winding up – After dissolution.
  8. Sale by court – In execution of decree.
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## 21. Meetings & Governance: Explain Kinds of Meetings and Procedure.

### Kinds of Meetings:

#### A. Shareholders' Meetings:

1. Statutory Meeting – First meeting after incorporation (only for public companies limited by shares). Held within 1 to 6 months from commencement of business.
2. Annual General Meeting (AGM) – Mandatory every year. Gap between two AGMs  $\leq$  15 months. First AGM within 9 months of closing first financial year.
3. Extraordinary General Meeting (EGM) – Called for urgent matters between AGMs. By Board or requisition by members.

#### B. Board Meetings:

- First board meeting within 30 days of incorporation.
- Minimum 4 board meetings per year (gap  $\leq$  120 days).

#### C. Class Meetings:

- Meeting of holders of a particular class of shares (e.g., preference shareholders).

### Procedure for Calling a Meeting (General):

Step

Action

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1	Issue notice (21 days clear – can be shorter if consent given)
2	Notice to contain date, time, place, agenda (business to be transacted)
3	Quorum present (e.g., for AGM – 5 members personally present in case of public company)
4	Chairman elected
5	Business conducted as per agenda
6	Resolutions passed (Ordinary – simple majority; Special – 75% majority)
7	Minutes prepared and signed
8	Filing with Registrar (for special resolutions)

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## 22. Explain Dividend and Legal Provisions for Its Payment.

### Definition of Dividend:

Dividend is the portion of a company's profits distributed to its shareholders. It is declared as a percentage of paid-up capital or per share.

## Legal Provisions for Payment of Dividend (Sections 123-127 of CA, 2013):

1. Source of Dividend – Only out of:
  - Current year's profits (after depreciation), or
  - Past years' undistributed profits (after providing for depreciation), or
  - Money provided by Central/State Government.
2. No dividend out of capital – Prohibited.
3. Depreciation – Must be provided before declaring dividend.
4. Transfer to Reserves – Optional, but if dividend > 10% of paid-up capital, certain percentage may be transferred to reserves.
5. Dividend on preference shares – Must be paid before equity dividend.
6. Time limit for payment – Within 30 days from declaration.
7. Unpaid/Unclaimed Dividend – To be transferred to "Unpaid Dividend Account" within 7 days. After 7 years, to Investor Education and Protection Fund (IEPF).
8. Penalty for failure – Imprisonment up to 2 years + fine.

### Prohibited Dividends:

- If rate of dividend exceeds average rate of last 3 years without approval.
  - If company fails to comply with loan covenants.
  - If previous dividend unpaid/unclaimed not transferred to IEPF.
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## 23. Explain Winding Up, Its Modes and Grounds.

### Definition of Winding Up:

Winding up (or liquidation) is the process by which a company's life is ended, its assets are sold, debts are paid, and surplus (if any) is distributed to members.

### Modes of Winding Up (Section 270 of CA, 2013):

Mode	Description
1. By Tribunal (Compulsory Winding Up)	Ordered by NCLT (National Company Law Tribunal)

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2. Voluntary Winding Up	Initiated by members/creditors without court order
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a) Members' Voluntary	Company solvent – declaration of solvency
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b) Creditors' Voluntary	Company insolvent
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Grounds for Winding Up by Tribunal (Section 271):

1. Company unable to pay its debts (including statutory demand of ₹1 lakh+ not paid within 21 days).
  2. Special resolution passed for winding up by tribunal.
  3. Acted against sovereignty/integrity of India.
  4. Fraudulent purpose or mismanagement.
  5. Just and equitable ground (e.g., deadlock, oppression).
  6. Default in filing financial statements/returns for 5 consecutive years.
  7. Tribunal thinks it is just and equitable.
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## **24. Explain Compulsory Winding Up and Its Effects.**

Compulsory Winding Up (Section 271-303 of CA, 2013):

Winding up ordered by the National Company Law Tribunal (NCLT) when grounds under Section 271 exist. A liquidator (Official Liquidator) is appointed by the Tribunal.

Effects of Compulsory Winding Up:

Area	Effect
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On company	Corporate existence continues only for winding up purpose; business operations cease except for beneficial winding up.
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On employees	Automatic discharge from service (except if company continues as going concern for winding up).
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On creditors	Cannot sue company without Tribunal permission. Must prove debts before liquidator.
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On members	Can transfer shares only with liquidator's consent; liability to contribute to assets if shares partly paid.
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On legal proceedings	Any pending suit/legal proceeding stays; new suits require Tribunal permission.
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On property	All property vests in liquidator.
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On directors	Powers cease; cannot act on behalf of company.
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Commencement of Winding Up:

From the date of presentation of winding up petition (not order date).

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## 25. Explain the Powers and Duties of a Liquidator.

Who is a Liquidator? (Section 2(44) of CA, 2013):

A person appointed to take control of the company's assets, realize them, pay debts, and distribute surplus during winding up.

Powers of a Liquidator (Section 309 & 310 of CA, 2013):

Type	Powers
General Powers (with Tribunal approval)	Institute/defend suits, carry on business for beneficial winding up, sell assets, borrow money, compromise with creditors.
Without approval	Appoint agents, fix remuneration (subject to Tribunal), inspect records, ask for documents.
Other powers	Summon meetings of creditors/members, investigate fraud, apply for directions from Tribunal.

Duties of a Liquidator:

1. Duty to take custody – Of all company property and records.
2. Duty to prepare inventory – List all assets and liabilities.
3. Duty to realize assets – Convert into cash.
4. Duty to pay debts – In order of priority (Secured creditors, preferential creditors, unsecured creditors, then members).
5. Duty to call meetings – Of creditors/members when required.
6. Duty to maintain accounts – And submit to Tribunal.
7. Duty to report fraud – To Tribunal if found during winding up.
8. Duty to distribute surplus – Among members according to their rights.

9. Duty to file final report – And apply for dissolution.
10. No misappropriation – Acts as officer of the court/Tribunal.

Removal of Liquidator:

By Tribunal for misconduct, negligence, or incapacity.

# Shorts questions

## 1. Doctrine of Ultra Vires

“Ultra vires” means **beyond the powers** of the company. Every company is created for specific purposes written in its Memorandum of Association (MOA). The company can only do those activities. If it does something outside those objectives, the act becomes invalid (void).

Example: If a company is formed to manufacture medicines but starts real estate business, it is ultra vires. Such acts cannot be approved even by shareholders. This rule protects investors and ensures company money is not misused.

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## 2. Doctrine of Indoor Management

This doctrine protects outsiders who deal with the company in good faith. Outsiders are not expected to check whether all internal rules (like approvals or meetings) are properly followed. They can assume everything inside the company is done correctly.

Example: If a manager signs a contract without proper internal approval, the company is still bound.

However, this protection is not available if the outsider knew about the mistake or acted fraudulently.

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## 3. Doctrine of Constructive Notice

This doctrine means that outsiders are **assumed to know** the contents of company documents like MOA and Articles of Association (AOA), because these are public documents.

Example: If the AOA says a director cannot sign contracts alone, and an outsider still makes a deal with one director, they cannot later claim ignorance.

This rule protects the company from outsiders who ignore official rules.

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## 4. Rule in Foss v. Harbottle

This rule says that if any wrong is done to the company, **only the company itself can take legal action**, not individual shareholders. It supports the principle of majority rule.

Example: If directors misuse funds, normally the company must sue.

However, there are exceptions where minority shareholders can file a case, such as fraud or illegal acts.

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## 5. Corporate Veil

A company is treated as a **separate legal person**, different from its owners (members). This separation is called the corporate veil.

Example: If a company takes a loan, members are not personally liable.

But in cases of fraud or illegal activities, courts can “lift the veil” and hold the real persons responsible.

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## 6. Calls on Shares

When a company issues shares, shareholders may not pay the full amount immediately. The company can later ask for the remaining amount—this demand is called a “call.”

Example: A ₹100 share may be paid in parts—₹50 now, ₹50 later.

If a shareholder fails to pay calls, the company can charge interest or even cancel (forfeit) the shares.

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## 7. Allotment of Shares

Allotment means **giving shares to people who applied for them**. It creates a legal relationship between the company and the shareholder.

The company must follow proper rules like minimum subscription and fair process.

If rules are not followed, the allotment can be cancelled.

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## 8. Shares at Premium and Discount

- **At Premium:** Shares are issued at a price higher than face value. The extra money is called premium and is kept in a special account.
  - **At Discount:** Shares issued below face value are generally not allowed (except in special cases like sweat equity).  
Example: Face value ₹10, issued at ₹15 → ₹5 is premium.
- 

## 9. Bonus Shares

Bonus shares are **free shares given to existing shareholders** from company profits or reserves.

Example: If you have 10 shares, you may get 5 extra shares free.

This does not increase company wealth but increases the number of shares held by investors.

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## 10. Forfeiture and Surrender of Shares

- **Forfeiture:** When a shareholder fails to pay calls, the company cancels their shares.
- **Surrender:** Shareholder voluntarily returns shares to the company.  
In both cases, the shareholder loses ownership and money already paid.

## 11. Kinds of Share Capital

Share capital means the money raised by a company through shares. It is divided into types:

- **Authorized Capital:** Maximum capital company can raise
  - **Issued Capital:** Capital offered to public
  - **Subscribed Capital:** Capital accepted by investors
  - **Paid-up Capital:** Amount actually paid by shareholders  
This classification helps understand the company's financial structure.
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## 12. Reduction of Capital

Reduction of capital means decreasing the company's share capital. This may be done to adjust losses or return excess money to shareholders.

It requires approval of the National Company Law Tribunal and must follow legal procedure.

It protects creditors by ensuring their interests are not harmed.

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## FINANCIAL INSTRUMENTS

### 13. Debentures

Debentures are a way for a company to borrow money from the public. People who buy debentures are called debenture holders and are creditors, not owners.

They receive fixed interest and are repaid after a certain period. Debentures may be secured or unsecured.

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### 14. Fixed and Floating Charge

A charge is a security given for a loan:

- **Fixed Charge:** On specific assets like land or building; company cannot sell without permission
  - **Floating Charge:** On changing assets like stock; company can use assets in normal business  
If the company fails to pay, the lender can take control of these assets.
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### 15. Public Company

A public company can invite the general public to buy its shares. It has no restriction on transfer of shares.

Minimum 7 members are required. It is suitable for large businesses needing big capital.

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## **16. Private Company**

A private company restricts transfer of shares and cannot invite the public to invest. Minimum 2 members are required. It is suitable for small or family businesses and offers more control.

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## **17. One Person Company (OPC)**

An OPC has only one member (owner). It gives benefits of a company like limited liability while being run by a single person. It is useful for small entrepreneurs.

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## **18. Holding and Subsidiary Company**

A holding company controls another company (subsidiary) by holding majority shares or controlling decisions. Example: Parent company controlling its branch company. This helps in managing large business groups.

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## **19. Director**

A director is a person who manages the company's affairs. Directors act as agents and trustees of the company. They make important decisions and must act honestly, in good faith, and in the best interest of the company.

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## **20. Independent Director**

An independent director is not involved in daily management and has no personal interest in the company. Their role is to provide unbiased decisions and ensure transparency, fairness, and good governance.

## 21. Key Managerial Personnel (KMP)

Key Managerial Personnel are top-level officers who manage the daily operations of the company. These include CEO/Managing Director, Company Secretary, and CFO.

They are responsible for decision-making, compliance, and smooth functioning of the company. They act as a link between the board of directors and day-to-day business activities.

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## 22. Quorum

Quorum means the **minimum number of members required** to be present to conduct a valid meeting.

If quorum is not present, the meeting cannot proceed.

Example: In many cases, at least 2 members are required in a private company meeting.

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## 23. Kinds of Resolutions

Resolutions are decisions taken in meetings:

- **Ordinary Resolution:** Passed by simple majority (more than 50%)
  - **Special Resolution:** Passed by at least 75% majority  
Special resolutions are used for important matters like changing company name or objects.
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## 24. Kinds of Meetings

Main types of company meetings:

- **Annual General Meeting (AGM):** Held yearly to discuss performance
  - **Extraordinary General Meeting (EGM):** For urgent matters
  - **Board Meetings:** Held by directors to manage company affairs
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## **25. National Company Law Tribunal (NCLT)**

National Company Law Tribunal is a special legal body that deals with company-related issues like disputes, mergers, insolvency, and oppression cases.

It provides faster resolution compared to regular courts.

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## **26. Contributories**

Contributories are persons who are liable to contribute money when a company is being wound up.

This includes present and past shareholders. Their liability depends on unpaid share amount.

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## **27. Liquidator**

A liquidator is a person appointed to wind up the company.

Their job is to collect company assets, sell them, pay debts, and distribute remaining money among shareholders.

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## **28. Auditor**

An auditor is an independent person who checks the company's financial records.

They ensure that accounts are true, correct, and follow legal rules.

This increases trust among investors and stakeholders.

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## **29. Prospectus**

A prospectus is a document issued by a company to invite the public to buy its shares or debentures.

It contains details like company information, financial data, risks, and purpose of raising funds.

Misleading information can lead to legal action.

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## **30. Promoter**

A promoter is a person who starts the company.

They take initial steps like planning business, preparing documents, and arranging capital.

They have a duty to act honestly and in the interest of the company.