

UNIT 1

FORMATION OF COMPANY

INTRODUCTION

The word 'company' is derived from Latin word 'Com' which means 'Together' and the word 'panies' which means 'bread'. A company is thus an association of persons who took their meal together. In simple language the term company means an association of persons formed for some common purpose. When a few persons form a company for the purpose of some business of profit it is called Joint Stock Company. The persons forming the company are called 'shareholders'. The liability of the members of the company is usually limited.

MEANING

A joint stock company is an artificial person created by law having separate legal entity with a perpetual succession and common seal.

DEFINITION'

- ❖ According to Section 3(1) of the Companies Act 1956, "a company means a company formed and registered under the act or an existing company" and "Existing Company means a company formed and registered under any of the previous companies act."
- ❖ According to section 2(20) of the Companies Act, 2013, "The term Company means a Company incorporated under the Companies Act 2013 or any previous Company Law".
- ❖ According to Lord Justice Lindley "Company is a voluntary association of many persons who contribute money or money's worth to a common stock and employs it in some trade or business and who share the profit and loss arising there from"

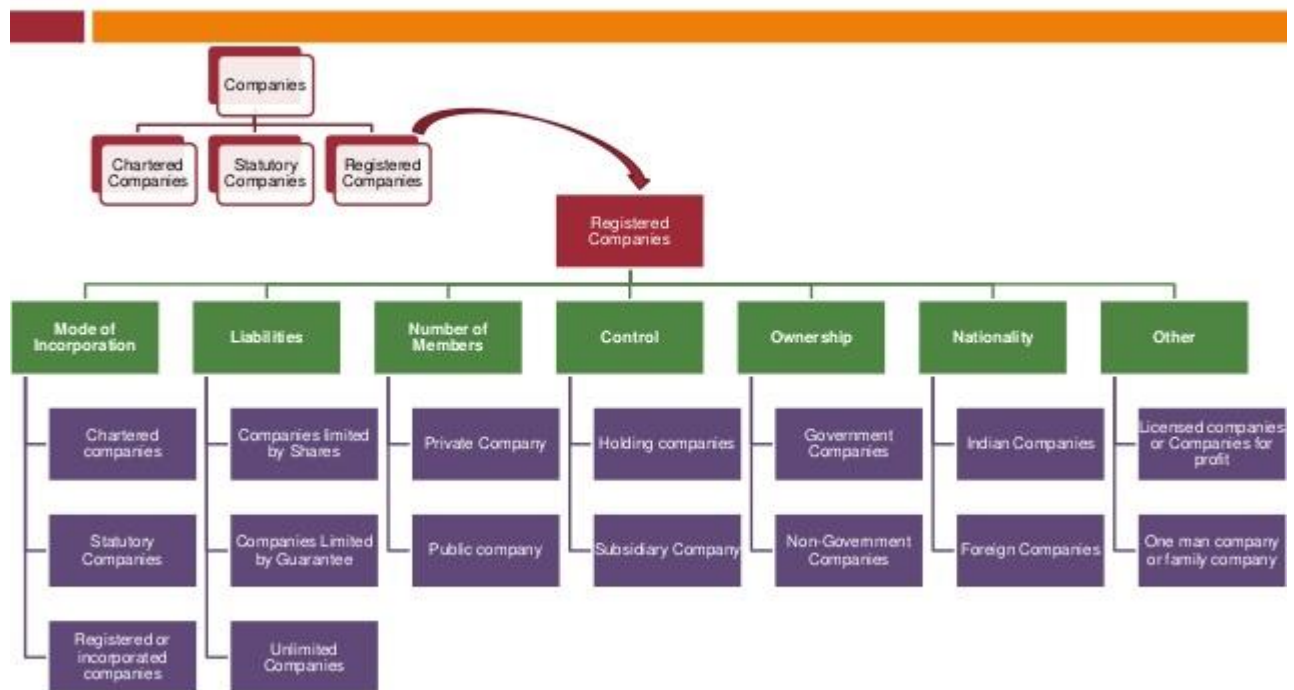
FEATURES

1. **Voluntary association-** A joint stock company is a voluntary association or organization of persons. No person can be compelled to become a member of a company, or to give up the membership
2. **Registration-** The Company is created only when registered under the companies Act 1956. But for the formation of a public company at least seven persons and for private company at least two persons are necessary. It is on incorporation that company becomes a body corporate and gets separate legal entity.
3. **Legal Entity**
 - **Artificial legal entity-** A company is an artificial person created by law. The company can acquire and dispose of property, can enter into contract with third parties in its own name, can sue and be sued in its name. It acts through the board of directors elected by the shareholders.
 - **Separate legal entity-** A company has a legal entity distinct from and independent of its members. It is regarded as an entity separate from its shareholders or members. Hence a

shareholder can sue the company and be sued by it. The property of the company is for the benefit of the company and not for its members, shareholders or individuals.

4. **Common seal-** The company being an artificial legal entity or person cannot act on its own. So it acts through the natural persons like directors or secretary who is authorized hence, there is a need for a common seal of the company for all the contracts entered into by the company through the directors. The common seal is like the signature of the company and the seal bears the name of the company engraved on it.
5. **Perpetuity-** The Company created by law has continuous existence. It never dies or has any retirement and therefore it is commonly said that 'Men may come, men may go but company goes on forever'
6. **Limited liability-** A company may be limited by shares or limited by guarantee.
 - If a company is limited by shares then the shareholder is liable to pay only to the extent of face value of the shares held by him.
 - If a company is limited by guarantee the liability of the members is limited to such an amount as the members may decide to contribute to the assets of the company in the event of winding up.
7. **Separate of Ownership and Management-** in a company, the shareholders are the owners but the management is entrusted to the board of directors who are separate from the body of shareholders. Further a shareholder is not an agent of the company or the other shareholders cannot bind them by his act.
8. **Transferability of shares-** The shares of public limited company can be easily transferable from one person to another.
9. **Separate property-** A company has a right to own and transfer property in its own name since it is a legal entity. The shareholder has no proprietary rights in the company but merely to their shares. Therefore the claims of the company's creditors will be against the company property and that of shareholders.
10. **Specific objectives-** A joint stock company is formed for specific objectives only which are expressly stated in the constitution. This objective is laid down in the Memorandum of Association. A company can undertake only those activities which are intended to achieve the special objective.
11. **Large Membership-** A JSC has a large number of membership and there is no maximum limit on number of members in case of public company.
12. **A company is not a citizen-** A company on incorporation assumes a legal personality distinct from its members but it cannot claim to be citizen of a country under the constitution of India.

Types of Companies



KINDS OF COMPANIES

1. On the basis of incorporation:

a. Chartered Company:

If a company is incorporated under a special charter granted by the monarch, it is called a Chartered Company. This form of organisation does not exist in India, as there is no monarchy. Eg: East India Company, Chartered Bank of Australia.

b. Statutory Company:

A company which is created by a special act of the legislature is called statutory company, and it is governed by the provisions of such an act. EG: State Bank of India, The reserve bank of India, LIC etc

c. Registered Company:

A company brought into existence by registration with Registrar of Companies under the Companies Act of 1956 is called a registered company. In short, they are the companies incorporated under the Companies Act.

2. On the basis of liability of members:

- a. **Company limited by shares:** IN case of the company limited by shares the liability of the members is limited to the nominal value of the shares held by them. According to section 2(22) of companies act 2013 “ ‘company limited by shares ‘means a company having liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them”.

- b. **Company limited by Guarantee:** In this company the liability of the members is limited to such amount as the members may decide to contribute to his assets of the company in the event of its being wound up. E.g.: Clubs, societies, trade associations etc.
Section 2(21) of companies Act 2013 “ ‘company limited by guarantee ‘means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;”
- c. **Unlimited liability:** in this case the members are liable to an unlimited extent in the event of winding up of the company. But this type of the company has become rare. Unlimited companies are found in the UK, Ireland, Hongkong, Pakistan, etc.

3. On the basis of number of members:

- a. **Public company:** the company which can invite the public to subscribe to its shares is called a public company.
- b. **Private company:** Company which requires minimum number of 2 persons for registration and limits the number of member to 200 and prohibits an invitation to the public to subscribe its shares and debentures is called a private company

Difference between private company and public company:

Sl. no	Basis of Difference	Public company	Private company
1	Formation	It is difficult	It is not so difficult
2	certificates	Certificate of Incorporation and Business commencement certificate is required	Only Certificate of Incorporation is required
3	Name of the Company	It must have the word “Limited” in its name	It must have the word “Private Limited” in its name
4	Membership	Minimum 7 Maximum Unlimited	Minimum 2 Maximum 200
5	Prospectus	Filing prospectus and statement in Lieu of Prospectus is compulsory	It’s not compulsory
6	Allotment of shares	There are number of legal restrictions on the allotment	No legal restrictions
7	Signing of Memorandum and Articles	7 members have to sign	2 Members have to sign

8	Preparation of Articles	It need not prepare Articles instead can adopt Table A which contains model rules and regulations	Compulsory preparation of Articles
9	Public issue of Capital	It can invite the public for subscription of shares	It cannot invite the public for subscription
10	Transfer of shares	Freely transferable	Shares are not freely transferable
11	Statutory meeting	Must hold a Statutory meeting and file a statutory report with the Registrar with in 6 months from the date of obtaining the Commencement Certificate	It need not hold statutory meeting
12	Share Warrant	It is allowed to issue share warrant	Not allowed to issues share warrant
13	Shares	Cannot issue deferred shares and it issues only equity and preference shares	Can issue differed equity and preference shares.
14	Directors	3 Directors	2 Directors
15	Retirement	Directors are subject to retirement by rotation	The Directors are not subject to retirement by rotation.

4. On the basis of Ownership:

- a) **Government company-** A company in which not less than 51% of the share capital is held by the central government and/or by any state government or governments is called a government company. It also includes a company which is subsidiary of a government company .

Example: HMT, BEL, Indian telephone industries, Hindustan Aeronautics Limited

According to Sec 2(45) “Government company means any company in which not less than 51% of the paid up share capital held by the central government or by any state government or governments, or partly by central government and partly by one or more state governments and includes a company which is subsidiary company of such a government company.”

- b) **Non-Government company-** it is a company whose capital is subscribed by promoters and investing publics. In this case the shareholders appoint or reappoint the auditors in the general meeting. The audit and annual reports are placed before the shareholders for discussion and there is no need to submit them to parliament.

5. On the basis of Nationality

- a) **Foreign company-** A foreign company is that company which is incorporated in a foreign country but which has established a place of business in India. Although foreign company are not registered in India, some of the provisions of the companies act are applicable to them.

According to Sec 2(42) of Companies act 2013 “Foreign company means any company or body corporate incorporated outside India which – a) has a place of business in India whether by itself or through by agent, physically or through electronic mode; and b) conducts any business activity in India in any other manner.”

b) **Domestic company**- it is the company which is incorporated in India.

6. On the basis of control:

a) Holding company: As per section (4) of Companies Act 1956 a Holding company is a company which controls a subsidiary company. Holding company is a company,

(a) Which holds more than 50% of nominal value of share capital of another company.

(b) Which controls the composition of board of directors of another company.

(b) Subsidiary company: As per section (4) of Companies Act 1956 Subsidiary company which is controlled by a holding company.

(a) Company whose 50% of nominal value of equity share capital is held by other company.

(b) Other company controls the composition of board of directors.

7. Other kinds of company:

(a) Association not for profit: Under section 25 of the companies act the central government may under a license direct that an association be registered as a company with limited liability, without addition to its name of such words as ‘limited’ or ‘private limited’ provided:

(a) the company to be formed is for promoting commerce, science, charity, religion, or any other useful social or cultural object such as Chamber of Commerce.

(b) The company applies its profits or any other income in promoting its objects and is not interested in payment of any dividend.

(b) One man company / one person Company: As the name suggests, under this category, one man holds practically the entire share capital of the company, but in order to meet the statutory requirements of minimum number of members, some dummy members, mostly his relative or obliging friends, hold one or two shares each. Thus, one man controls the entire company with limited liability. According to section 2(62) “‘One Person Company’ means a company which has only one person as a member”

STEPS IN FORMATION OF JOINT STOCK COMPANY:

In the formation of a public limited company having share capital, mainly four stages are involved viz.,

1. Promotion
2. Incorporation
3. Capital Subscription
4. Commencement of business

In the case of formation of a private company, only the first two stages are involved.

1. PROMOTION OF A COMPANY:

The person who undertakes responsibility to bring the company into existence are called **promoters**.

The steps which are taken to persuade a number of persons to come together for the achievement of a common objective through the company form of organisation are called **promotion**.

According to Guthmann and Doughall, “A **Promoter** is a person who assembles the men, money and the materials into a going concern.”

Steps in Company Promotion:

- **Discovery of an idea:** The promoter starts out with an idea to start some business either in a new field which has not been commercially exploited or in some existing lines of manufacture or business. He makes a preliminary investigation to find out whether it is worthwhile to make a detailed investigation.
- **Detailed Investigation:** The promoter needs to make a detailed investigation of his idea with the assistance of many experts. It will help him to know whether the estimated income is adequate to cover the estimated costs and compensate the owner for the risks and services.
- **Assembling:** After a detailed investigation, if the promoter is satisfied with the practicability and profitability of the proposed concern, he starts assembling. Assembling means getting the support and consent of some other persons to act as directors or founders, arranging for patents, a suitable site for the company, machinery and equipment and making contracts for filling the positions.
- **Financing the proposition:** After assembling the proposition, the promoter prepares a prospectus to present to public and to underwriters to persuade them to finance the proposition.

Functions of promoters:

- **Promotion of the company:** The most important function of the promoters is the promotion of the company. They undertake various processes of promotion.
- **Incorporation of the company:** Promoters also undertake the function of getting the company registered. They prepare necessary documents such as M.O.A, A.O.A, etc and submit them to the registrar and the company incorporated
- **Raising Capital:** In the case of public limited company having Share capital promoters raise the required capital and obtain business commencement certificate.
- **Nursing the company:** Promoters are also associated with the company and nurse the company (They work for the growth of the company).

Types of promoters:

- **Professional promoters:** They are experts who specialise in company promotion. They float the company and hand it over to the shareholders or their respective. Promotion is their main profession or occupation.
- **Occasional promoters:** They promoters take interest in floating some companies. They are not engaged in promotion work on a regular basis. They take up the promotion of some company and once it is over they go to their original profession. For instance, engineers, lawyers etc. May float some companies.

- **Entrepreneur promoters:** They are both promoters and entrepreneurs. They conceive idea of a new business unit, does the ground work to establish it and subsequently become a part of the management.
- **Financier Promoters:** Some financial institutions, like investment banks or industrial banks, may take up the promotion of a company with a view to find opportunities for investment.

Position of a promoter:

The company not being in existence, a promoter is neither an agent of, nor a trustee for, the company. But he occupies a fiduciary position (i.e. position of trust of confidence) in the relation to the company he promotes.

The fiduciary relation requires full disclosure of the relevant facts, including any profile made.

A promoter does many extraordinary things from the initial planning till the commencement of business of a company. It, therefore, becomes important to know what exactly the relationship between the promoter and the company is and what the legal status of the promoter is. This is an important questions; but the crux of the question is- on whose initiative does the promoter act? Who gives the orders or the directions? In other words-what is the position or status of the promoter? To clarify the status of the promoter, it is important to consider the following:

- Is the promoter an agent of the company?
- Does the promoter act as a trustee of the company?
- Is the promoter the owner, or one of the owners of the company?
- Or is he an official or an employee of the company?

A promoter starts working for the company even before the company is an entity or is in existence. There being no entity or existence of the company, there can be no contract between the promoter and the company.

2. INCORPORATION:

The second stage is the formation of the company is incorporation stage where in, the company must be registered with the registrar of the companies.

a) Approval of name

It has to be ensured that the name selected for the company does not match with the name of any other company. For this, the promoter has to fill in a “name availability form” and submit it to the registrar of companies along with necessary fees.

b) Filing of documents

For registration an application has to be filed with the registrar of the companies along with the following documents:

- Memorandum of association properly stamped and signed by the signatories
- Articles of association properly stamped and signed by the signatories.
- Notice of the address of the registered office of the company.
- Copy of the letter received from the department of company law and administration of the Government, giving intimation about the availability of the proposed names of the company.

- Statutory declaration stating that all the requirements of the companies act have been complied with
- Statement of nominal capital of the company
- Details of persons(name, addresses, occupation etc.) who have accepted to act as the first directors of the company
- The written consent of the directors to act so
- An undertaking by the directors to take up and pay for the qualification shares
- Particulars of managing directors, manager, secretary, etc., if any.

c) Payment of filing and registration fees

Along with application and the necessary documents promoter must also pay required stamp duty, filing fees, registration fees. The registrar will scrutinise the documents and if satisfied will enter the name of the company in the register and will issue the company its birth certificate called the 'Certificate of Incorporation.'

3. CAPITAL SUBSCRIPTION OR RAISING OF SHARE CAPITAL

A private company can commence the business immediately after incorporation but a public company having a share capital can commence business only after obtaining another certificate called "Certificate of Commencement of Business" from the registrar of companies.

In this stage the company has to make arrangements for obtaining the necessary capital for the company.

a) Issue of prospectus: In order to raise the requires capital a prospectus has to be issued inviting the public to subscribe for the shares. After receiving the applications from the public the company proceeds with the allotment if the minimum subscription has been reached.

b) Minimum Subscription: It is the minimum amount of capital that should be subscribed for by the public before the company can proceed with allotment of shares. This amount should be stated in the prospectus. It has to be 90% of the issued share capital.

c) Allotment of shares: it means distribution of the shares among the applicants or subscribers. A company can proceed with the allotment of shares only after receiving the minimum subscription from the public. After the distribution is done by the director's letter of allotment should be sent to those applicants who have been allotted the shares and letter of regret should be sent to those applicants who have not been allotted any shares and their application money should be returned.

Commencement of Business:

To obtain certificate of commencement of business the promoter should apply to the registrar together with prescribed fees. This will be granted only if the following conditions are fulfilled:

- A prospectus or a statement in lieu of prospectus has to be filed with the registrar of companies. A statement in lieu of prospectus has to be prepared by those companies which do not find it necessary to issue a prospectus.
- Company has received the minimum subscription amount.
- Directors have paid the application and allotment money payable on the shares held buy them
- Declarations by the directors or secretary of the company that the requirement of companies act have been complied with

If the registrar is satisfied he will issue the **business commencement certificate**. From the date of receipt of this certificate the company is legally authorised to commence the business.

MEMORANDUM OF ASSOCIATION:

The Memorandum of association is the most important document of the company. This is a document which sets out the constitution of a company. It defines the company's relations with the outside world, and the scope of its activities. Its purpose is to enable the shareholders, creditors as well as those who deal with the company to know the company's permitted range of enterprises.

CLAUSES of Memorandum:

- **Name Clause:** The clause contains the name of the company. The name selected should not be similar to or identical with that of any existing company. Also the name must not be one which is considered undesirable by the Central Government. The name of the company should end with the word 'Limited' if it is a public company. If it is a private company the name should end with the words 'private limited'. The purpose of adding the word 'Limited' is to enable all those who deal with the company to know that the liability of the members is limited.
- **Situation Clause:** In this clause, the state in which the company's registered office is located should be given. To avoid any unnecessary legal formalities and expenses if there is a subsequent change in the address of the company, the exact address within the state is not given and only the name of the state is given.
- **Object Clause:** It should specify in unambiguous language the objects for which the company is formed. Great care would be taken in drawing up this clause, as the company will not be allowed to do any business which is not specifically mentioned here. As it is difficult to alter the object clause later, it is necessary that promoters should include in this clause, all possible types of business in which a company may engage in the future.
- **Liability Clause:** This clause states that the liability of members is limited to the face value of shares taken up by them. If a member has already paid some amount on the shares, he can be called upon to pay only the unpaid amount of the shares.
- **Capital Clause:** In this clause, particulars regarding the amount of share capital with which the company is proposed to be registered and the division for the capital into shares of fixed amount are included.
- **Association or subscription clause:** This contains a declaration by the subscribers to the memorandum. This declaration just precedes the names of the signatories to the memorandum.

ARTICLES OF ASSOCIATION:

Meaning: The articles are the internal regulation of the company on the basis of which its internal affairs are managed. They lay down the powers of the directors, shareholders and officers.

It is not compulsory for a public company to prepare its own article of association as it can follow Table A of companies act whereas preparation of articles of association is compulsory for private company.

Contents:

The following are the contents of AOA:

- Share capital and variation of rights
- Exercise of lien by the company
- Calls on shares
- Transfer, transmission, forfeiture and surrender of shares
- Issues of shares warrants
- Alteration and reduction of capital
- Voting powers of members
- Borrowing powers
- Proceedings at the board and at the general body meetings
- Appointment, powers, duties, qualifications, remuneration etc., of directors.

- Appointment of manager, managing director and secretary
- Dividends and reserves
- Maintenance of books of accounts and their audit
- The company's seal
- Winding up

Doctrine of ultra vires memorandum and articles:

The term is derived from two latin words 'ultra' and 'vires'. Ultra means beyond and vires means power or authority. Ultra vires means doing an act which is beyond the legal powers and authority of the company. In corporate law, ultra vires describes acts attempted by a corporation that are beyond the scope of powers granted by the corporations' object clause, articles of association or in a clause in its Bye-laws, in the laws authorizing a corporation's formation or similar documents. Acts attempted by a corporation that are beyond the scope of its character are void and voidable.

Differences between Memorandum and Articles of Association:

SI No	Memorandum of Association	Articles of Association
1.	It is the charter of the company setting out its constitution.	It is the bye-law of the company for the internal administration.
2.	It lays down the conditions of incorporation and defines the limits and powers of the company.	It defines the rights and duties of directors, members etc.
3.	It states the objects for which the company is established.	It states the rules or manners of carrying out the business as stated in the memorandum. They cannot be contrary to the powers and objects set forth in the memorandum.
4.	Its preparation is compulsory without which incorporation is not possible.	Its preparation is not compulsory for the public company. Table A will be applicable in its absence.
5.	It governs the external relations of the company.	It defines the relationship between members and the management of the company. Internal administration is its main area.
6.	It is a primary and fundamental document, foundation for company's structure, responsible for company's birth; it is unchallenged on statutory matters.	It is a secondary, subordinate, subsidiary document. It should be read and understood in light of memorandum. It compliments or supplements memorandum.
7.	It lays down the area or scope of the company beyond which the company cannot go.	Its activities must be confined to the area and scope of memorandum. All the articles which are ultra vires articles and intra vires memorandum are not void and can be ratified by a special resolution.
8.	It can be altered only by a special resolution and subject to the sanction of the court or central government as the case may be.	It can be altered by a special resolution and the sanction is not necessary.

PROSPECTUS

MEANING:

According to sec 2(70) of the companies act of 2013, "A prospectus, notice, circular, advertisement or Other document inviting offers for the public for the subscription or purchase of any shares in

Or debentures of a body corporate”.

Objects of prospectus

- ✓ To inform the public about the forming of a new company
- ✓ To induce the investors to invest in its shares and debentures
- ✓ To preserve an authentic record of the terms on which the investors have been invited and to make the directors responsible for the statements in the prospectus

Types of prospectus

- **Red-herring prospectus**

A prospectus for stocks and bonds are issued in different stages – the first stage is the preliminary prospectus, which contains the details of the business and proposed financial action. It is nicknamed as *Red Herring*. When a company decides to attract investors to invest in their company, they use a prospectus named Red Herring Prospectus. It is basically a prospectus which is used in the public issue to attract different investors. In this prospectus, the *price* and *quantum* are not mentioned or disclosed.

- **Pink-herring prospectus**

A prospectus that is issued without disclosure of the number of securities being offered or, in an initial public offering, the estimated or indicative price range. It is a preliminary prospectus that precedes the filing of a red-herring prospectus.

- **Free-writing prospectus**

Any sort of written, electronic, or graphic statement that describes an offer in terms of its issuer or securities. It includes a legend stating that the investor can have a copy of the prospectus at the website of relevant securities commission. Typically, the issuer must file this prospectus with the securities commission no later than the first date it is obtained. In the case of inexperienced issuers, the securities commission may require that a preliminary prospectus is filed before the filing of a free-writing prospectus.

- **Abridged prospectus**

Abridged Prospectus is the actual *summary* of a prospectus. It contains all the salient features of a prospectus. The original prospectus that a company files to the exchange regulator is too large. The abridged prospectus contains the summary of the same prospectus.

Reading the entire prospectus may be too much time consuming for an investor. Instead, they go through the abridged prospectus, which gives them the basic idea about the company.

The abridged prospectus contains all the important and materialistic information. No company will issue the share buying form without the abridged prospectus attached to it so that investors can take a well-informed decision.

- **Reconfirmation prospectus**

A prospectus that a shell company must prepare and submit for the approval of relevant securities and exchange authorities (the SEC) prior to considering a reverse merger. This prospectus contains detailed information about the private company merging into the shell. It is handed over to purchasers in the shell's initial public offering (IPO) who must reconfirm their investment after perusing the prospectus before the merger can be finalized. At least 80 percent of purchasers must reconfirm so that the merger transaction can be effected. Purchasers who do not confirm will receive their investment back (of course, less expenses).

- **Other types:**

i) Shelf prospectus

Shelf means '*life*' or '*validity*' of a prospectus. Only selected companies bring their shelf prospectus. All companies are not eligible for designing a shelf prospectus. Normally finance-based companies are eligible for bringing out their shelf prospectus.

Shelf prospectus has validity with a maximum of one year. There are various companies which frequently raise funds (ex. banks) for issuing loans.

If any company submits their Shelf prospectus, they don't have to file the prospectus again and again while raising funds for that particular year.

ii) Deemed prospectus

A prospectus that is deemed to have been made by the issuer, though it is actually offered to the public by a third party or the issue house. The issuer saves the underwriting expenses in selling its securities.

CONTENTS OF PROSPECTUS

The revised format is effective from 1st November 1991.

Part 1 of schedule II**I. General Information**

- a) Name and address of registered office of the company
- b) Date of opening of the issue
- c) Name and address of auditors and lead managers

II. Capital Structure of the Company

- a) Authorised capital
- b) Issued capital
- c) Subscribed capital
- d) Paid up capital

III. Terms of the present issue

- a) Right of the instrument holders
- b) How to apply, availability of forms, prospectus and mode of payment
- c) Any special tax benefits for company and its shareholders

IV. Particulars of the issue

- a) Objects
- b) Project cost

V. Company, Management and Project

- a) History and main objects and present business of the company
- b) Subsidiary of the company if any
- c) Promoter and their background
- d) Infrastructure facilities for raw materials and utilities like water, electricity etc.
- e) Nature of products
- f) Approach to marketing
- g) Export possibilities and export obligations if any
- h) Future prospects – expected capacity utilization during the first three years from the date of commencement of production and the expected year when the company would be able to earn cash profits and net profits.

Part II of schedule II

1. General Information

- a) Consent of the directors, auditors, managers to issue, registrar to issue, bankers to the company, bankers to the issue and experts
- b) Expert opinion if any
- c) Procedure and time schedule for allotment and issue of certificate

II. Financial information

- a) A report by the auditors of the company with respect to-
 - Profits and losses and assets and liabilities in accordance with sub-clause(2) (3) of this clause as the clause as the case may require and
 - The rates of dividend if any paid by the company in respect of each class of shares in the company for each of the five financial years immediately preceding the issue of the prospectus

III. Statutory and other information

- a) Minimum Subscription
- b) Expenses of the issue giving separately fee payable to: advisers, registrars to the issue, managers to the issue, trustee for the debenture holders
- c) Underwriting commission and brokerage
- d) Previous public or right issue if any, date of allotment, date of refunds, date of listing on the stock exchange, closing date
- e) Commission or brokerage on previous issue
- f) Details of purchase of property

Part III of schedule II

1. Any report by part II of this schedule shall either
 - a) Indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary
 - b) Making those adjustments and indicate that adjustments have been made
2. Any report by accountants required by part II of this schedule
 - a) Shall be made by accountants qualified under this act for appointment as auditors of the company

Statement in Lieu of Prospectus

When the prospectus is not issued by the company a statement in lieu of prospectus, must be filed with the Registrar at least three days before the allotment of shares. The contents of the statement in lieu of prospectus are very much similar to the prospectus. The statement must be signed by all the directors or their agents authorized in writing. These provisions do not apply to a private company.

Certificate of Incorporation

Registered firm's 'birth certificate' showing its legal name and date of incorporation. A certificate of incorporation is a legal document relating to the formation of a company or corporation. It is a license to form a corporation issued by state government. It is also called as 'Certificate of registration'.

Filing of documents to get Certificate of Incorporation

For registration an application has to be filed with the registrar of the companies along with the following documents:

- Memorandum of association properly stamped and signed by the signatories
- Articles of association properly stamped and signed by the signatories.
- Notice of the address of the registered office of the company.
- Copy of the letter received from the department of company law and administration of the Government, giving intimation about the availability of the proposed names of the company.

- Statutory declaration stating that all the requirements of the companies act have been complied with
- Statement of nominal capital of the company
- Details of persons(name, addresses, occupation etc.) who have accepted to act as the first directors of the company
- The written consent of the directors to act so
- An undertaking by the directors to take up and pay for the qualification shares
- Particulars of managing directors, manager, secretary, etc., if any.

Certificate of Commencement of business

The certificate of commencement of business was a mandatory step under **Companies Act, 2013**. It was mandatory for public companies with share capital to obtain certificate of commencement of business. The certificate is issued by the registrar of joint stock companies.

Procedure for Obtaining Certificate of Commencement Of Business

In order to obtain COB, a public company shall file the following documents with the Registrar of Companies as desired by section 149 of 1956 Act:—

(1) A prospectus/statement in lieu of prospectus as the case may be along with following documents:—
(a) List of the members of the company with their shareholdings;
(b) confirmation for paid up share capital to the extent of Rs. 5,00,000 and proof thereof, viz copy of bank statement etc.

(c) List of Directors, Manager, Secretary, Auditors and changes among them, if any;

(d) Consent of the Auditors to include their name in the Prospectus/Statement in lieu of Prospectus;

(e) Copy of the agreements for appointment of Managing Director, Underwriters, contracts entered into by the promoters before incorporation of the company, etc. if any;

(f) Printed and certified copy of the Memorandum and Articles of Association of the company;

(g) Details of the preliminary expenses incurred by the company;

(h) Power of attorney to make corrections in the Prospectus/Statement in lieu of prospectus and to obtain certificate for **commencement of business** from the Registrar of Companies;

(i) Certified copy of the resolution passed by the Board for approval of prospectus /statement in lieu of prospectus for filing with the Registrar.

(2) A duly verified declaration on stamp paper that provisions of section 149 of the Act have been complied with, by one of the directors or secretary or, where there is no secretary, by a secretary in whole time practice, in e-Form 19/20 as the case may be.

E-filing

Web-based applications that will allow users to view, modify, and submit filings on-line. The process of using a computer program to transmit information electronically to another party. This allows the user to complete and submit the information in a timely fashion.

Registrar of companies

According to Companies Act 2013 Sec 2 (75) “Registrar” means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this act.

Advantages of Joint Stock Company:

(1) Huge resources:

A company can raise large amount of resources from the general public by issuing shares. Since, there is no maximum limit of the number of shareholders in case of public company, fresh shares can be issued to meet the financial requirement. Capital can also be obtained by issuing debentures and accepting public deposits.

(2) Limited liability:

The liability of the shareholders is limited to the extent of the face value of the shares held by them or guarantee given by them. The shareholders are not liable personally for the payment of debt of the company. Thus, limited liability encourages the investors to put their money in the shares of the company.

(3) Transferability of shares:

The shares of the public company are transferable without any restriction. A shareholder can sell his shares at any time to anybody in the stock exchange. Therefore, the conservative and cautious investors are also attracted to invest in the shares of public company. This brings liquidity to the investors.

(4) Stability of existence:

A joint stock company enjoys perpetual succession. It continues for a long period of time because it is unaffected by the death, insolvency of the shareholders or directors. Change of ownership and management also does not affect the continuity of the business.

(5) Efficient management:

A company can hire the services of professional manager for its functional areas because of its financial strength. The directors who look after the management of the company are generally experienced and persons of business acumen. Therefore, the management of a company is sure to be efficient.

(6) Scope for expansion:

A company can generate huge financial resources by issuing shares and debentures to finance new projects. Companies also transfer a portion of their profit to reserve which can be utilised for future expansion. The managerial capabilities and the disposal of a company helps it for planning the future expansion and growth.

(7) Economies of large scale production:

The company is in a position to undertake large scale operation because of its huge financial resources. When the scale of operations is large, the economies in buying, selling, production etc. are enjoyed by the undertaking. The economies of large scale enable the company to produce goods at lower cost and supply the same to the consumers at cheaper prices.

(8) Public confidence:

A company submits required information to the Government and other authorities at regular intervals. The accounts of the company are audited by chartered accountants and also published for the information of the stakeholders and others. This enables a company to enjoy the trust and confidence of the public.

(9) Social benefits:

A joint stock company provides a number of benefits to the society. 1 creates employment opportunity, investment opportunity, utilises the unutilised natural resource of the nation, supplies quality products and services at cheaper rate and generates revenue for the Government and also undertakes many infrastructural developmental programmes in the country.

(9) Diffused risk:

The entire business risk of a company is distributed over a large number of shareholders. Thus, the risk is reduced for each shareholder. No shareholder is burdened with more than what he has paid as the price of shares hold. No personal property will be attached for the same.

(10) Tax benefits:

As a separate entity, companies pay income tax at a flat rate. Because of this, the company's tax burden on higher income is less in comparison to other forms of business organisation. Companies also avail tax exemptions deductions and concessions for undertaking their operations in specific areas, dealing with nature of goods and services and others.

Disadvantages of Joint Stock Company

Despite the above advantages, the company form of organization also suffers from certain demerits. The following are some of the important demerits of a company which every entrepreneurs should know while going for selection of type of business.

(1) Difficulty in formation:

The formation of a joint stock company is very difficult, time taking and expensive as compared to any other form of organization. Conceiving the very idea and getting it implemented is very difficult process. Preparation of the basic documents like memorandum of Association and Articles of Association, fulfilling legal formalities as per the Act and getting the business registered needs lot of time, money and expertise.

(2) Oligarchic management:

The management of company is democratic in theory but oligarchic in practice. It is controlled by a small group of Board of Directors who hardly protect the interest of other shareholders. They may manipulate the things with an intention to be re-elected as directors. That is why it is said that shareholders do nothing, know nothing and get nothing.

(2) Delay in decision-making:

The Board of Directors of the company decides about the policies and strategies of the company. Certain decisions are taken by the shareholders. The meeting of the directors or the shareholders cannot be held at any time as and when required. Thus, the decision making process is usually delayed. The delay in decision-making may result in losing some business opportunities.

(3) Separation of ownership and management:

The company is not managed by the shareholders but by the directors who are the elected representatives of the shareholders. The directors and managers may lack the personal initiative and motivation to manage the company efficiently as the shareholders (owners) themselves would.

(4) Lack of secrecy:

Each and every business strategy is discussed in the meeting of the Board of Directors. The annual accounts are published and compliance to Government, Tax authorities etc. are made at regular intervals. Therefore, it is very difficult to maintain business secrecy in a company form of organization in comparison to sole proprietorship and partnership.

(5) Speculation in shares:

When profit is earned by manipulating the prices of shares without actually holding the shares, it is considered as speculation. A company provides scope for speculation and the directors and managers may derive personal benefit out of this. It is harmful to the innocent small shareholders who invest their hard earned money with a view to get higher rate of return.

(6) Fraudulent management:

The possibility of starting a bogus company, collecting huge sums of money and subsequently bringing liquidation of the company is not ruled out. The promoters with an intention to defraud may indulge in such practices. The directors and managers may function for their personal gain overlooking the interest of the company.

(7) Concentration of economic power:

The company form of business gives scope for concentration of economic power in the hands of a few through multiple directorship and creation of subsidiary companies. Some persons are elected as directors in a number of companies. These directors formulate policies of the company which will safeguard and promote their own interest. Majority shares of other companies are purchased to create subsidiary companies.

(8) Excessive Government regulations:

A company functions under too much of regulations of the Government. Reports are to be filed and compliance are made at regular intervals to appropriate authorities failing which penalty is imposed. A considerable time and money of the company is involved in the process of regular compliance.

(9) Evils of Factory system:

Due to large scale operation, the company may give rise to insanitation, pollution, congestion and some social evils like migration from villages to towns, shifting from agriculture to industry etc. They cause instances in the society.