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Unit - II

Procedure for Incorporation of Company

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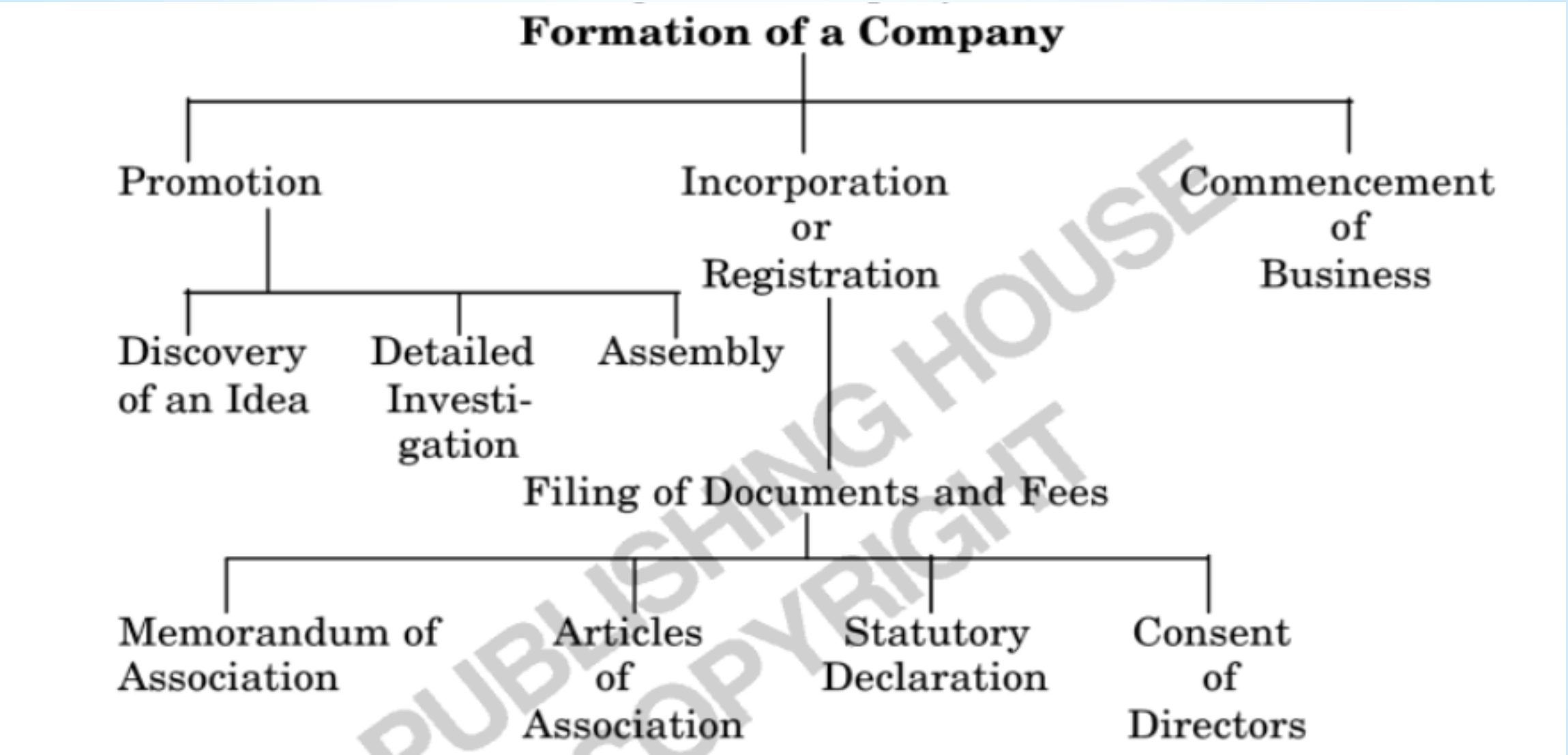
Formation of Company

The formation of a company is a lengthy process. Broadly it may be divided into three principal stages:

1. Promotion.
2. Incorporation.
3. Commencement of Business.

The following chart clearly shows the promotion, incorporation and commencement of business stages of a company :



Promotion of Company

Promotion of a company is the starting point in the process of formation of a company. Promotion begins when someone discovers an idea on which the business of the proposed company is to be based. This idea is investigated and verified. If the investigation shows that the idea can be commercially exploited, steps are taken to assemble and coordinate the various business elements. This whole process by which this business idea is discovered and carried into practice. is known as promotion.

Definition

The promotion has been defined as,

“The discovery of business opportunities and the subsequent organisation of funds, property for making profits therefrom."

There are three stages in promotion:

1. **Discovery of an idea.**

An individual or a group of persons may discover an idea of starting a new business or expanding an existing business. For example, one may discover an idea to start a Cinema Hall in a particular area. There may not be a Cinema Hall or the idea may be to break the monopoly of an existing Cinema Hall in that area.

2. Investigation.

Discovered business opportunities have to be investigated thoroughly before any money can be invested to exploit them. The person discovering the idea may be very optimistic. His optimism may be because of his over-enthusiasm or other reasons. Continuing our previous illustration of a Cinema Hall, an investigation will be done to ascertain:

(i) Whether necessary size of plot of land for the cinema is available.

(ii) Whether necessary permission to run the Cinema Hall will be available. from the local authorities, i.e., Delhi Development Authority, Delhi Municipal Corporation etc. if the hall is to be constructed in Delhi.

(iii) How much capital would be required?

(iv) How much income would be generated?

(v) Whether the capital invested would give a reasonable rate of return and so on.

3. Assembly

Having discovered and investigated the viability and profitability of a business proposition, steps will be taken to put the idea into practice. This will involve the acquisition of land and buildings, plant and machinery, patent rights, etc. At this stage promoters associate with other persons who also act as first directors of the proposed company later on. The promoters enter into pre-incorporation contracts for the assembly of the necessary assets and properties to run the company.

Promoters

The persons who bring the company into existence are known as promoters.

"The term promoter is a term, not of law but of business, usually, summing up in a single word a number of business operations familiar to the commercial world by which a company is generally brought into existence."

A promoter is the person who discovers the business opportunities, investigates them, and sees the concern going.

Liabilities of Promoters

1. Liability of full disclosure of all material facts.

A promoter stands in a fiduciary relation to the company he promotes. As such he is duty-bound to disclose fully all material facts relating to the formation of the company and also. any profit made directly or indirectly.

It should be noted that the disclosure made to be effective must be real and express, constructive disclosure is not enough. In case the promoters fail to do so, the company may rescind the contract and sue the promoters to return the money paid.

2. Liability to return secret profit.

As a corollary of the duty of full disclosure of material facts a promoter is duty bound not to make any secret profit directly or indirectly. In case he makes any secret profit he is liable to return the same to the company.

3. Liability for preliminary contracts.

A promoter remains personally liable for preliminary contracts made by him because such contracts are not legally binding on the company even after incorporation. Since the company was not in existence when such contracts were made, the company cannot ratify them. The promoters may not be liable if such contracts are either adopted by the company or specifically enforced by the Court under the Specific Relief Act, 1963.

4. Liability for mis-statement in prospectus (Sec. 35).

A promoter will be liable for any omission of any material facts or mis-statement made in the prospectus if he was a party to the issue of the prospectus. In case the promoter is guilty of omission or mis-statement of facts in the prospectus, he shall without prejudice to any punishment under section 36, be liable to pay compensation to every person who has sustained such loss or damage. The promoter may also become liable to criminal liability **(Secs. 34 and 447).**

5. Liability in course of winding-up (Sec. 300).

If during the winding- up proceedings an application is made by the Official Liquidator, the Tribunal may make a promoter liable for misfeasance or breach of trust committed by him in the promotion or formation of the company. If the Official Liquidator has made a report to the Tribunal alleging fraud, the Tribunal may order public examination of the promoter. Further the Tribunal having jurisdiction to wind up a company is empowered to suspend him for a period extending upto 5 years from becoming a director or taking part in the promotion, formation or management of a company, if he is found guilty of fraudulent conduct in the course of winding-up of the company.

Remuneration of Promoters

A promoter is not entitled to any remuneration for promoting the company unless the company agrees to make such payment after incorporation. In the absence of such an agreement, a promoter cannot sue the company for the recovery of the preliminary expenses and his remuneration. However, it is usual to reimburse reasonable expenses and pay remuneration to the promoters. A promoter may be paid in any of the following ways:

(i) He may sell his property at a profit for cash or fully paid-up shares and make a proper disclosure about it.

(ii) He may be paid a lump sum by the company.

(iii) He may be given an option to buy a certain number of shares at par.

(iv) He may be given commission on the shares sold.

It should be noted that whatever method of remuneration is followed, remuneration paid to the promoters must be disclosed in the prospectus if paid within 2 years preceding the date of the prospectus.

Position of Promoters

A promoter is neither a trustee nor an agent of the company which he promotes. However, law imposes certain fiduciary duties upon him. He, therefore, stands in a fiduciary position towards the company he promotes. He must not make a secret profit. He should make full disclosure of all material facts including any profit made by him. The law does not prohibit a promoter from making profit. The only thing is that he should disclose this fact to an independent Board of Directors of the company or to the shareholders as a body.

Function of Promoters

1. To conceive an idea of starting a business and explore its possibilities.
2. To negotiate for the purchase of a business in case it is intended to purchase an existing business.
3. To collect the requisite number of persons i.e. two in the case of Private company and seven in the case of Public company, who can sign the Memorandom and Article of the company.
4. Decide the following:
    a. The name of the company.
    b. The location of the registered office.
    c. The amount and form of its capital
    d. The underwriter or broker for capital issue if necessary.

e. The banker

f. The auditor

g. The legal advisor

5. To get the Memorandum of Association and Article of Association drafted and printed

6. To enter into preliminary contracts with vendor, underwriter etc.

7. To arrange for the preparation of the prospectus, its filing, advertisement and issue of capital.

8. To pay preliminary expenses.

9. To arrange for loans and other type of financial assistance from the various financial institutions.

Pre-Incorporation or Preliminary Contracts

A company may be promoted to acquire an old business or to start a new business. In either case promoters have to enter into contracts on behalf of the company with the vendors in the first case, and, with the suppliers of land, finance and other assets in the latter. Such contracts are called, 'Pre- Incorporation' or 'Preliminary Contracts'. Such contracts are not binding upon the company. A person cannot act as an agent or a trustee for a company which has not yet come into existence. "Two consenting parties are necessary to a contract, whereas the company, before incorporation, is a non-entity."

According to law of agency a person cannot act as an agent for another who is not in existence. Thus, a company is not bound by a pre-incorporation contract. A solicitor was engaged to prepare the necessary documents and to obtain the registration certificate of a company. He paid the registration fee and incurred the necessary expenses. After registration, the company refused to pay for the services and expenses.

The Court held that "the company could not be sued in law for those expenses, in as much as it was not in existence at the time when the expenses were incurred.“

Again, a company cannot, by ratification, take benefit of such a contract. For a valid ratification a company must be in existence and capable of entering into the contract.

Thus, it is clear that a company is neither bound by, nor can take the benefit of, a pre-incorporation contract. On the other hand, the person who makes the contract on behalf of the company may be liable to the vendor on that contract. Whether the agent shall be personally liable to the vendor or not, is a question to be decided on the construction of the contract, i.e., whether the agent intended to make it on behalf of the non-existing company or on his own behalf.

To overcome the above difficulty it is very common to introduce conditions in the contract which protect both the agent as well as the vendor. It is usual to stipulate that the agent shall not be liable if the company enters into a fresh contract on the lines of the old one. If, on the other hand, the company does not adopt the contract within a limited time, both the parties shall be at liberty to put an end to the contract.

Thus, there is no objection if a company enters into a fresh contract on the basis of the old one after incorporation.

Incorporation of the Company

After the promotion of a company is complete, steps are taken to incorporate the company or to register it with the Registrar of Companies.

The Promoters have to take the following steps to incorporate a company:

(1) Ascertaining the availability of the company's proposed name.

An application has to be made on the prescribed form along with the prescribed fees to the Registrar.

Application for reservation of name.

A person may make an application, in such form and manner and accompanied by such fee, as may be prescribed, to the Registrar for the reservation of a name set out in the application as :

a) the name of the proposed company; or

b) the name to which the company proposes to change its name.

Reservation of name.

(i) Upon receipt of an application the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of twenty days from the date of the application or such other period as may be prescribed.

Consequences of furnishing incorrect information.

(ii) Where after reservation of name it is found that name was applied by furnishing wrong or incorrect information, then :

(a) if the company has not been incorporated, the reserved name shall be cancelled and the person making the application shall be liable to a penalty which may extend to one lakh rupees;

(b) if the company has been incorporated, the Registrar may, after giving the company an opportunity of being heard :

(i) either direct the company to change its name within a period of three months, after passing an ordinary resolution;

(ii) take action for striking off the name of the company from the register of companies; or

(iii) make a petition for winding up of the company.

The Registrar shall not allot the approved name to any other company for a period of 60 days from the date of intimation.

(2) Filing documents with the Registrar (Sec. 7).

In order to register the company following documents together with the necessary fees must be filed with the Registrar of Companies of the State in which the registered office of the company is to be situated.

(a) Memorandum and Articles.

The memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;

(b) Declaration in prescribed form.

A declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with;

(c) A declaration from the Subscribers.

A declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

(d) Address for Correspondence.

The address for correspondence till its registered office is established;

(e) Particulars of Names.

The particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along-with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed;

(f) Particulars of first directors.

The particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity as may be prescribed;

(g) Particulars of interests of first directors.

The particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along-with their consent to act as directors of the company in such form and manner as may be prescribed.

(3) Registrar to issue Certificate of Incorporation.

The Registrar on the basis of documents and information filed under sub-section (1) shall register all the documents and information referred to in that sub-section in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.

(4) Allotment of Corporate Identity Member.

On and from the date mentioned in the certificate of incorporation issued under sub-section (2), the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate.

(5) Preservation of documents etc.

The company shall maintain and preserve at its registered office copies of all documents and information as originally filed under sub-section (1) till its dissolution under this Act.

(6) Penalty.

If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action under section 447.

(7) Liability under Sec. 447.

Without prejudice to the provisions of sub- section (5) where, at any time after the incorporation of a company, it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action, the promoters, the persons named as the first directors of the company and the persons making declaration under clause (b) of sub-section (1) shall each be liable for action under section 447.

(8) Tribunal's power to pass order and give directions.

Without prejudice to the provisions of sub-section (6), where a company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants:

(a) pass such orders, as it may think fit, for regulation of the management. of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors;

(b) direct that liability of the members shall be unlimited;

(c) direct removal of the name of the company from the register of companies;

(d) pass an order for the winding up of the company;

(e) pass such other orders as it may deem fit:

Provided that before making any order under this sub-section:

(i) the company shall be given a reasonable opportunity of being heard in the matter; a

(ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

CONCLUSIVENESS OF CERTIFICATE OF INCORPORATION

This certificate is a conclusive evidence of the fact that all legal formalities in connection with the formation have been duly complied with by the company. The company thereafter becomes a separate entity distinct from its members. Once a certificate of incorporation is granted its validity cannot be questioned even if it is discovered later on that the signatories to the Memorandum were all infants or their signatures were forged.

Stages of Commencement of Business Stage

After the capital subscription stage a public company has to apply to the Registrar of the company for getting a certificate of the commencement of business. A public company can start its business only after getting this certificate.

The following are the duties of a secretary at the commencement of business stage.

a) Compliance of Condition

to see that the conditions regarding commencement of business are strictly complied with the company.

b) Filing of declaration with the Registrar

To see that a declaration signed by the director or secretary himself is filed with the Registrar along with the prescribed fees stating that the conditions which are required to be fulfilled under the Company Act.

c) Collecting the Certificate

To collect the certificate of commencement from the Registrar when it is ready.

Form 1

The Specimen Certificate of Incorporation

Corporate Identity Number: U95700MH2023PCT159 2024-25

I hereby certify that ABC Company Private Limited in this day incorporated under the Company Act 2013 and that the company is limited

Given under my hand at Mumbai this 4th day of February 2024

Fees and Deed stamp – Rs.

Stamp duty of capital – Rs.

signature

Seal

Registrar of Companies

The Specimen Certificate of Commencement of Business

Corporate Identity Number: U95700MH2023PCT159 2024-25

I hereby certify that the ---------- Company Limited which was incorporated under the Companies Act 2013 on the Tenth day of Feb 2024, and which has this day filed or duly verified declaration has complied with and is with and entitled to commerce, and business.

Given under my hand at Mumbai this Twenty-Second day of July, Two Thousand Twenty-Four

signature

Registrar of Companies

Maharashtra, Mumbai

Seal

Company

Registrar

Advantages of Incorporation of Company

1. Creates a Separate Legal Entity:

This states that a company is independent and separate from its members, and the members cannot be held liable for the acts of the company, even when a particular member owns a majority of shares.

2. Company has Perpetual Succession:

The term perpetual succession means continuous existence, which means that a company never dies, even if the members cease to exist. The membership of a company changes from time to time, but that does not affect the existence of the company. The company only comes to an end, when it is wound up according to law, as per the provisions of the Companies Act, 2013.

3. Can own Separate Property:

Since a company is termed as a separate legal entity in the eyes of law, it can hold property in its own name and the members cannot claim to be the owner of the companies property(s).

4. Capacity to sue and be sued:

The company has the capacity of suing a person or being sued by another person in its own name. A company, though can be sued or sue in its own name,

5. Easier access to Capital:

Raising capital is easier for a corporation, since a corporation can issue shares of stock. This may make it easier for your business to grow and develop. If the in the market for a bank loan, that’s another reason to incorporate, since in most cases, banks prefer and easily lend money to incorporated business ventures.

Disadvantages of Incorporation of Company

1. **Cost –**
   The initial cost of incorporation includes the fee required to file your articles of incorporation, potential attorney or accountant fees, or the cost of using an incorporation service to assist you with the completion and filing of the paperwork. There are also ongoing fees for maintaining a corporation.

2. **Double Taxation –**
   Some types of corporations such as Corporations, have the potential to result in "double taxation." Double taxation occurs when a company is taxed once on profits, and again on the dividends paid to shareholders.

3. **Loss of Personal "Ownership" –**
   If a corporation is a stock corporation, one person doesn't retain complete control of the entity. The corporation is governed by a board of directors who are elected by shareholders.

4. Required Structure –

When you form a corporation, you are required to follow all of the rules outlined by the state in which you filed. This includes the management of the corporation, operational requirements and the corporation's accounting practices.

5. Ongoing Paperwork –

Most corporations are required to file annual reports on the financial status of the company. The ongoing paperwork also includes tax returns, accounting records, meeting minutes and any required licenses and permits for conducting business.

6. Difficulty Dissolving –

While perpetual existence is a benefit of incorporating, it can also be a disadvantage because it can require significant time and money to complete the necessary procedures for dissolution.

Lifting of Corporate Veil –

From the juristic point of view, a company is a legal person distinct from its members. This principle may be referred to as the ‘Veil of incorporation’. The courts, in general, consider themselves bound by this principle. The effect of this Principle is that there is a fictional veil between the company and its members. That is, the company has a corporate personality that is distinct from its members. But, in several circumstances, the Court will pierce the corporate veil or will ignore the corporate veil to reach the person behind the veil or to reveal the true form and character of the concerned company.

Memorandum of Association

Preparation of “Memorandum of Association” is an important step in the formation of a company. It is a document of great importance. According to the Companies Act, 2013,

Memorandum means "Memorandum of Association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act."

This definition hardly gives the meaning or the role which it plays in the affairs of a company.

The Memorandum of Association of a company is its charter and defines the limitation of the powers of a company

A Memorandum of Association is a very important document. It has been described as a charter or constitution upon which the company's foundation is based. It defines its relation with the outside world and the scope of its activities. Every person dealing with the company is presumed by law to have read and understood its provisions. Any act done outside the powers given by the Memorandum of Association is ultra vires and cannot be ratified even by the whole body of shareholders.

The memorandum of a company shall be in respective forms specified in Tables A, B, C, D and E in Schedule I as may be applicable to such company.

Memorandum of Association contains the following

1. Name clause,
2. Registered Office clause,
3. Object clause,
4. Liability clause,
5. Capital clause,
6. In the case of One Person Company, the name of the person who in the event of death of the subscriber, shall become the member of the company.

Association or Subscription clause,

The last clause though not numbered in the Act, is generally given in every Memorandum of Association.

1. Name clause.

This is the first clause of the Memorandum. It gives the name of the company with 'Limited' or 'Private Limited' (for a public and private company respectively) as the last word of its name. A company has a separate legal entity and is recognised by its name. A company is free to adopt or choose any name it likes.

The name stated in the memorandum shall not:

(a) be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law; or

(b) be such that its use by the company:

(i) will constitute an offence under any law for the time being force; or

(ii) is undesirable in the opinion of the Central Government.

(c) Without prejudice to the above provisions a company shall not be registered with a name which contains:

(i) any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the Central Government, any State Government, or any local authority, corporation or body constituted by the Central Government or any State Government under any law for the time being in force; or

(ii) Such word or expression, as may be prescribed, unless the previous approval of the Central Government has been obtained for the use of any such word or expression.

The name of every company must end with the word Limited (Ltd.) or Private Limited (Pvt. Ltd.).

Every company shall:

(a) paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and if the characters employed therefore are not those of the language or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages;

(b) have its name engraved in legible characters on its seal, if any.

(c) get its name, address of its registered office and the Corporate Identity Number alongwith telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, bill heads, letter papers and in all other official publications; and

(d) have its name printed on hundies, promissory notes, bills of exchange and such other documents as may be prescribed :

2. Registered Office clause (Sec. 12).

The second clause of the Memorandum mentions the name of the State in which the registered office of the company is to be situated. This fixes the domicile of the company. It is sufficient to mention the name of the State in which the registered office of the company is to be situated. Actual address is not mentioned in the Memorandum.

(1) A company shall, within thirty days of its incorporation and at all times. thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

(2) The company shall furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation in such manner as may be prescribed.

3. Object clause.

Object clause is the most important clause of the Memorandum, as it defines, as well as confines, the powers of the company. The purpose of the object clause is to determine the powers of the company and to restrict the company's powers to those actually conferred by it.

Purpose of Object clause

The purpose of object clause in the Memorandum is two-fold:

Firstly, it protects the investors who learn from it the purpose to which their money can be applied. It ensures that their money will not be risked in any business which is not authorised by the Memorandum.

Secondly, it protects the creditors and other persons who deal with the company as they can infer (know) from it the extent of the company's powers.

Any act done beyond the powers conferred by the Memorandum will be ultra vires. A company is free to choose its objects but the objects should not be illegal, unlawful, against public policy or against the Companies Act, e.g., to trade with enemy etc. Object clause of a company to be registered should state- the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.

4. Liability clause.

This clause states the nature of liability of the members of the company i.e. the liability of members of the company, whether limited or unlimited, and also state:

(i) in the case of a company limited by shares, that liability of its members is limited to the amount unpaid, if any, on the shares held by them;

(ii) in the case of a company limited by guarantee, the amount upto which each member undertakes to contribute:

(A) to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be;

(B) to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves;

5. Capital clause.

This clause states in the case of a company having a share capital:

(i) the amount of share capital with which the company is to be registered. and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share;

(ii) the number of shares each subscriber to the memorandum intends to take, indicated opposite his name;

(iii) in the case of One Person Company, the name of the person who, in the event of death of the subscriber, shall become the member of the company.

6. Association or Subscription clause.

This is the last clause given at the end of the Memorandum. This clause reads like this "we the several persons, whose names, addresses are subscribed, are desirous of being formed into a company in pursuance of this Memorandum of Association, and we respectively

Alteration of Memorandum of Association (MoA)

If there are any changes in the clauses of the MoA, the MoA must be altered or amended to include the changes. The following changes will lead to the alteration of the MoA:

- Change in the company name
- Change in location of the registered office
- Change in company objects
- Change in the nature of liability of company members
- Change in the maximum limit of authorised capital of the company or division of authorised capital

The process of alteration of the MoA is as follows:

Hold board meeting:

The company must hold a board meeting to approve the alterations to the MOA.

Hold a general meeting:

A general meeting should be conducted to obtain the approval of the shareholders for the alterations to the MOA.

Filing of a special resolution:

A special resolution to alter the MoA should be filed with the ROC within 30 days of the passing of the resolution.

Approval of ROC:

The ROC will scrutinise the special resolution and approve the MoA alteration.

Ultra Vires and Doctrine of Ultra Vires

The term **'Ultra'** means **'beyond'** and the term **'Vires'** means the **'powers'.** Thus, ultra vires a company means **'beyond the powers of a company'.** You have learnt that the objects clause of the Memorandum states the objects of the company, therefore, any act which is beyond the stated purposes is ultra vires the company and, therefore, null and void. The company shall not be bound by such acts which are ultra vires the company.

The purpose of the doctrine of ultra vires is to protect the interest of members, outsiders and creditors. They are:

i) The members of the company know the purposes for which their money can be used by the company.

ii) The third parties dealing with the company know the purposes for which the company has been brought into existence and, therefore, restrict their transactions with the company to those purposes only.

Company cannot do anything beyond the objects clause and if it does, it will be considered ultra vires (beyond capacity) and void ab-initio.

Ultra vires acts can be divided into the following three categories:

1) Ultra vires the Companies Act,
2) Ultra vires the Memorandum of Association, and
3) Ultra vires the Articles of Association.

1) Ultra vires the Companies Act:

Any act done contrary to or in excess of the scope of Companies Act will be ultra vires the Act. Such an act shall be void and cannot be ratified even by a unanimous resolution of all the shareholders.

A few examples of such acts are as follows:

a) Payment of dividend out of capital (Sec. 123);
b) Issue of bonus shares in lieu of dividend (Sec. 63);
c) Issuance of unauthorized capital (Sec. 62);
d) Reducing the share capital without complying with legal formalities (Sec. 66).

2) Ultra vires the Memorandum of Association:

The Memorandum defines and confines the powers of company. The object of the company is determined by the Memorandum. A company cannot do anything which is beyond the purview of the objects clause. Any act done in contravention of the object clause shall be ultra vires the Memorandum and shall be void and it cannot be ratified even by an unanimous resolution of all the shareholders.

3) Ultra vires the Articles of Association:

Acts which are ultra vires the articles of associations but are within the powers of the company are termed as ultra vires the articles. For example, payment of interest on ‘advance calls’ at a rate higher than allowed by the articles. Such act shall also be void, but the company in General Meeting may alter the articles by a special resolution and ratify unauthorised acts.

Effect of Ultra Vires Transaction

1) Void ab-initio:

An act which is ultra vires the company shall be null and void and it cannot be enforced against the company.

2) No ratification :

An ultra vires the company transaction cannot be ratified even by the whole body of shareholders.

3) Not Enforceable :

Not only outsiders can enforce ultra vires transactions against the company, the company can also not enforce such transactions against third parties.

4) Injunction :

Whenever an ultra vires act has been or its about to be done, any member of the company can approach the Court and get an injunction restraining the company from proceeding with the ultra vires acts.

5) Personal liability of Directors:

The directors of the company can be held personally liable for any loss caused by an ultra vires transaction.

From the above it should be clear to you that if an act is ultra vires the company, then such act shall be null and void. Thus, if a company borrows money beyond its limit, it is ultra vires and the lender has no right in respect of the loan against the company.

Article of Association

Article of Association is a subsidiary document which is consisting of the various rules and regulations for internal management. The basic purpose of Article of Association is to facilitate day-to-day routine working. It contained rules and regulations regarding share holders, directors their power, rights etc.

Articles of Association containers the different rules and regulations for internal management. Therefore, the outsiders like debtors, creditors, bankers etc. cannot exploit advantage of these rules and regulations. However the powers of board of directors are restricted by Articles of Association. It is because of the board of directors are not allowed to go against the provisions of Articles of Association.

There is no precise definition of Articles of Association. It is an important document which contains the bye-laws of a company. Therefore, Article of Association helps for share holders to know about internal working of a company. At the same time directors can know their powers and limits.

Definition

Section 2 of the Indian companies Act defines as.

"Articles means the articles of Association of a company as originally formed or as altered from time to time in pursuance of any previous companies law of this Act."

Justice Charles Worth Defines

"Articles of Association as a document regulating the rights of members of the company among themselves and the manners in which the business of the company shall be conducted."

Purpose of Articles of Association

Memorandum is important to the outsiders and articles are important to the shareholders of the company. It constitute a contract between the company and its shareholders.

Hence, the basic purpose of Article is to enable the shareholders about their rights, duties and liabilities. Articles are binding on the company and its members. Hence, through Articles of Association members come to know about.

1) Rules and regulations regarding the internal management of the company.
2) Procedure of general meeting
3) Voting by members.
4) Power, duties, qualification remuneration of directors, managing directors etc.

Form of Articles of Association

Schedule 1 of companies act provides five forms of Articles of Association. These are stated as Table A,B,C,D and E. the basic advantage to adoption of these tables has that its provision are legal. Therefore, these provisions can not be challenged in the court of law. However, any company can adopt its own separate Articles of Association instead of adopting these tables. These tables can be applied as follows.

Table A : - It is applied for all types of companies. However any company can adopt this table either as it is or even with some exceptions or additions of some rules.

Table B : - It is applied for company limited by shares

Table C : - it is applied for company limited by guarantee but without an share capital

Table D : - It is applied for company limited by guarantee but having own share capital

Table E : - It is applied for private unlimited company.

Contents of Articles of Association

1. Applicability of 'Table A'
2. Alteration of share capital
3. Accounts and audit
4. Appointment of directors
5. Appointment of auditors
6. Borrowing power
7. Calls on shares
8. Conversion of shares into stock
9. Capitalization of profit
10. Common seal of company
11. Different classes of shares
12. Issue of share certificate
13. Issue of share warrant
14. Lien on shares
15. Procedure of allotment
16. Procedure of surrender of shares
17. Rights of share holders
18. Rules of transfer of shares.
19. Rules for transmission of shares
20. Rules for forfeiture of shares
21. Rules for reissue of shares
22. Rules for general meeting
23. Rules for board meeting.
24. Reduction of share capital
25. Rules for dividend
26. Rules for reserve
27. Rules for winding up
28. Rules for loan
29. Remuneration for directors.
30. Remuneration for auditors
31. Rules for proxies
32. Rules for retirement of directors
33. Subdivision of shares
34. Total number of directors
35. voting rights

Alteration of Articles of Association

1. A secretary shall provide intimation for change in articles of association along with intimation of meeting for it.
2. Special resolution (2/3 majority) should be passed for that alteration
3. A secretary shall be fixed the separate copy for special resolution in ‘Form No. 23’
4. Alteration should be filed to the registrar of companies within 30 days from passing that resolution
5. Necessary changes should be made in prospectus issued thereafter.

The above discussion shows that alteration in articles of association. But at the same time certain precaution should be taken at the time of alteration in Article of Association.

Importance or Advantages of Articles of Association

1. Attainment of Objectives

Articles of association provides some specific rules and regulations on which a company is working. Therefore, the directors has to work for the attainment of these objectives. Thus, articles of association helps for the attainment of various aims and objectives.

2. Administration

Articles of association helps to carry out day-to-day administrative work of a company.

3. Appointment

Articles of association helps to make appointment of auditor, directors, legal advisor etc. it is also helpful for fixation of salary, remuneration, allowances etc.

4. Directors Powers

The various powers of directors are provided as per stated in article of association. Therefore, it helps to avoid misuse of powers.

5. Fulfilling objectives

The various rules and regulations are provided in articles of association. These rules are helpful in providing objectives. These objectives are quality improvement, cost reduction, supply as per demand etc.

6. Guidance

Articles of association helps in providing guidance to the board of directors share holders, debentures holders, creditors, bankers and other concerning persons in connection with different matters. Thus all types of doubts can be made clear.

7. Reduce doubts

Articles of association helps in providing all the internal rules and regulations clearly. As a result the scope for all types of doubts can be reduced.

8. Reduce disputes

In case of disputes, the various rules and regulations are provided in Articles of Association. These are helpful for clarification of doubts arises during the process of disputes.

9. Smooth running

The various rules and regulations provided in Articles of Association are drafted in such a manner that it can be proved helpful for smooth running of a company.

10. Share call

Articles of Association is drafted in such a manner that it provide rules and regulations for share call. As a result, it becomes possible to make share call at proper time. Thus the capital requirement of a company can be fulfilled easily.

11. Transfer

Articles of Association contains the various rules and regulations for the transfer of shares and debenture. Therefore, it helps to transfer to sale his holding.

Difference Between Memorandum Of Association And Articles Of Association

Memorandum of Association	Articles of Association
1. MOA is a basic document which contain name, place, object, liability, capital and subscription clause.	1. AOA is a subsidiary document which contain rules and regulation for internal management.
2. MOA is appeared in different paragraphs.	2. AOA is appeared in different serial number.
3. MOA cannot be altered easily. It means procedure of alteration in MOA is complicated.	3. AOA can be altered very easily by only special resolution.
4. MOA contains the different clauses as constitution of company	4. AOA contain the rules for fulfillment of purpose of company

5. MOA is important document. In absence of it a company can not be registered.	5. AOA is secondary document. A company can be established even in absence of it.
6. It is constitution of a company	6. it is bye-law of a company
7. MOA contains external matters	7. AOA contains internal matters.
8. The basic purpose of MOA is to make registration of a company.	8. The basic purpose of AOA is to facilitate day to day working of a company.
9. MOA possess very important place in all documents.	9. AOA is not as important as memorandum of association. Even table A can be accepted as it is by a company.
10. Acts done by a company beyond the scope of memorandum cannot be rectified (correct) by the registrar of company.	10. Acts done by company beyond it's articles can be rectified by the share holders.

Doctrine of Constructive Notice

The Memorandum and Articles when registered with the Registrar because public documents. Every person intending to deal with the company can inspect these documents at the Registrar's office by paying a nominal fee. Therefore, a person dealing with the company is presented by law to have the notice or acknowledge of their consents. This rule of law is known as **"Doctrine of Constructive Notice".** Accoesingly, if a person enters into a contract which is beyond the powers of the company, he will not acquire any right under the contract against the company.

Doctrine of Indoor Management

This doctrine is an exception to the doctrine of constructive notice. No doubts a person dealing with the company is presumed to have the knowledge of these documents and their contents but he is not bound to do anything more. If his contract is within the powers as conferred by the Memorandum irregularity in the internal management of the company will not affect his right under the contract.

However, there are certain exception to the above doctrine. These are bound on equity and natural justice. Accordingly a person cannot claim protection under the doctrine in the following cases.

1) **Knowledge of Irregularity**

A person who claim protection should come with clean had. If he has actual or constructive notice of the irregularity he cannot claim protection under this rule.

2) Negligence on the part of the person dealing with the company.

If the circumstances are such that necesitiates a further enquiry into the matter the person dealing with company should make proper enquires. Otherwise, he will be negliget as further enqiry would have disclosed the irregularities. Where a person accepted a transfer of company's property under the signature of the accountant, the tranfer was held void. There were circumstance to suggest that ordinarily an accountant has no power to transfer property .

3) Forgery

Forgery is a Nullity and void ab initio. It does not confer any right whatsoever. For example, the secretary, on a share certificate, forged the signature of two directors required under the Articles. The certificate was held to be a nullity. A company can never be held bound by forgeries committed by its officers.

4) No knowledge of Articles

A person should have knowledge of the Article if he wants protection under the rule of ‘Indoor Management’. The rule is based on the principle of estopped and a person can be protected if he has relied on the Articles. As such if a person while entering tnto contract with a companyhas no knowledge of the company’s Articles of Association.

Prospectus

A public limited company had to collect capital and loan in very large quantities from public. It is called public subscription. Therefore, they had to issue shares and debentures to public. Therefore, the concerning company has to provide necessary information to the public stating a request of purchase of shares and debentures. This information is provided through a specific document called prospectus.

Prospectus is a written documents issued to the public for inviting them to subscribe in shares of debentures. Private companies are dis-allowed to issue shares and debentures to public. Therefore, they need not be issued prospectus. They need some document for it called prospectus. A prospectus may play the role of a silent salesman to convince the public to subscribe for shares.

Definition of Prospectus

According to section 70 of the companies Act 2013. “Prospectus means any document described or issued as a prospectus and includes any notice, circular, advertisement or other documents inviting offers from the public for the subscription or purchase of any shares or debentures of a corporate.”

An application form for share and debenture can not be issued until and unless it is accompanied by prospectus. Thus an information about issue of shares of debentures in newspaper is illegal. It is because of newspaper advertisement is without prospectus. The basic purpose of issuing prospectus is that the investors should knows the various rules and regulations of company which are provided in prospects and then they had to take decision about shares and debentures should be purchased or not. Therefore prospectus should contain all those things which are helpful to the investors for investment decision.

Prospectus is a sort of a circular which gives the details of the history, various schemes of the company, line of manufacturing, marketability, types of shares, details of the directors, etc. and the future prospectus of the company. Thus it is an open invitation to the public to finance the company by way of purchasing the shares and debentures.

The prospectus is required to be prepared vary carefully by the directors. It must contain only the through and correct information about the company. In case of wrong information or suppression of facts, the company and the directors shall face serious consequences. The prospectors cannot be issued to the pubic till a copy is filed with the registrar. It must be signed and dated by all directors.

Features of Prospectus

1. It should be in writing
2. It should be issued by or on behalf of body corporate
3. It should be issued to public
4. It should contain invitation to public for making deposits or for subscription of shares debentures of a body corporate.

Purpose or Objects of the Prospectus

1. To inform the public about that formation of new company
2. To invite the pubic to subscribe shares and debentures of the company
3. To create confidence in public about company
4. To give information about conditions of issue of shares and debentures
5. To give information regarding future plan and policy of the company
6. To induce people to buy shares and debentures.

Contents of the Prospectus

1. Name of the company and the address of its registered office.
2. The main objects of the company
3. Area of the operation of the company and its branches
4. Kinds of shares, face value, issue price, application and allotment money
5. Rights, privileges and restrictions attached to shares.
6. Amount of minimum subscription
7. Assets and liabilities of the company
8. Preliminary contracts entered into by the promoters of the company
9. Details of preliminary expenses.
10. Information about promoters, directors, auditors, bankers, brokers, solicitors etc. of the company

11. Information about underwriting contracts, and commission
12. Date of opening of subscription of shares.
13. Date of closing of receipt of application of shares
14. Amount to be received with application
15. Period since when the company is operating the business if any
16. Description of the dividend declared by the company
17. The place, where the final accounts and balance sheet of the company can be inspected by the investors
18. Copy of application for shares
19. Qualification shares of the directors, if any
20. Financial information with Auditors report.

Legal provision regarding prospectus

1. It must contain all statutory particulars of companies
2. A copy of prospectus must be filed with the registrar of companies
3. It must be issued to the public with 90 days from the date of its registration
4. If the prospectus is issued without filing a copy of it to the registrar of companies, then officers accountable for it shall be punishable with a fine of Rs 50 000
5. It must be duly dated and signed by all the directors
6. It is not issued by a private company.
7. If the prospectus is not issued by the public company, then a statement in lieu (instead of) of prospective must be filed with the Registrar of companies.
8. Every application form for share must be attached with every copy of prospectus.
9. A prospectus is to be issued after the incorporation of the company.

Types of Prospectus

1. Abridged Prospectus

No application form for shares or debentures should be issued until and unless it is accompanied by prospectus. But the basic difficulty for issue of prospectus is that it is very bulky document. Thus, it involves very large expenditure to supply application form. It is because of issue of shares and debentures without prospectus is illegal.

To reduce heavy expenditure involved in application form, it can be issued along with abridged prospectus. This prospectus should be issued as per **'Form No 2A'.** it means memorandum containing silent features of prospectus. It should be numbered. Moreover the abridged prospectus and the share application form both should bear the same number at the time of issue. At the time of submitting application form an applicant can be turn off application form to be separated from abridged prospectus. He can keep it with himself for the future reference.

2. Deemed Prospectus

The expenses involved in issue of application forms are very higher. It is because of issue of prospectus. Moreover, issue of prospectus need large number of formalities and at the same time procedure involved in it is more complicated. Therefore in order to avoid issue of prospectus all the shares are issued to issuing authorities like issue house, trust, commission agent etc. they carried out necessary steps for the issue of shares like advertisement, guidance etc. the advertisement made by issue house is called **deemed prospectus**.

3. Shelf Prospectus

A prospectus issued by any financial institution or bank is called shelf prospectus. An financial institution or bank like IDBI, ICICI etc. has to make public issue several times in a year. For each time they have to issue prospectus which is not only needless but costly affairs. Therefore, the term shelf prospectus come forward. The financial institutions has to file a shelf prospectus with the registrar of companies. The validity period of shelf prospectus is only one year. Therefore they need not be filed another prospectus during the span of one year through the subscription is made even several times in the same period.

4. Red herring Prospectus

When a prospectus does not contain particular of price and quantity of shares called red herring prospectus. It contains all the information of prospectus only excluding price and quantity. All the other terms and conditions or red-herring prospectus are as like ordinary prospectus with the exception of only these two (i.e. price and quantity)

Red herring prospectus should be filed with the registrar of companies at least 3 days before opening of offer. When company is not confirmed with exact requirement of capital at that time it issues red-herring prospectus.

How much shares and debentures should be issued and what price should be charged for it, is to be determined as per situation. Red herring prospectus is preferably issued by those private financial institutions which need of finance is fluctuating from time to time. However red-herring prospectus can be solved this problem by reducing or increasing number of issues as per situation.

Statement lieu (instead) in prospectus

One of the basic advantages of public company is that it can collect large capital. For that purposes it is inviting for public subscription. A public company cannot be issued share without prospectus. But sometimes directors are not interested in issue of prospectus or they want to save large amount needed for the issue of prospectus. Therefore, they can be issued a small statement instead of longer sized prospectus. It is called **statement in lieu of prospectus**.

Sometimes the promoters may confident about obtaining capital through private contracts. It means, there is no need of public subscription. In such cases prospectus need not be issued to the public. But only issue of statement in lieu of prospectus is enough. In case of unlisted company statement in lieu of prospectus is more convenient as compared with prospectus. The issuing authority like promoters or directors has to prepare a draft of statement containing summery of prospectus called **statement in lieu of prospectus**. There are several rules applied for issue of statement containing summery of prospectus called statement in lieu of prospectus. There are several rules applied for issue of statement in lieu of prospectus.

Rules for Statement of Lieu of Prospectus

1. Auto subscription

Sometimes shares of public company are issued without any attempt. It is called auto subscription. At that time issue of statement in lieu of prospectus is necessary.

2. Conversion

If private company is to be converted into public company at that time statement in lieu of prospectus is necessary.

3. Delay in Allotment

If allotment is not made within 3 months from the issue of prospectus then statement in lieu of prospectus should be issued.

4. Filing copy

A copy of statement in lieu of prospectus should be filed with the registrar of companies at least 3 days before allotment.

5. Issue

Statement in lieu of prospectus should be issued strictly as per schedule III of company act

6. Liability

Statement in lieu of prospectus should reflect true and reliable information only. If mis-representation is made in it then liability of issuing party is the same as applied in case of mis-representation in prospectus.

7. Minimum subscription

If minimum subscription is not made within 3 months even after issue of prospectus at that time statement is lieu of prospectus can be issued for the second time.

8. New company

If any public company is not issued prospectus during the process of incorporation of establishment then it should be issued statement in lieu of prospectus

9. Saving in expenses

When directors want to curtail huge expenditure involved in issue of prospectus at that time statement in lieu of prospectus is necessary.

10. Un-issued prospectus

If prospectus is not issued even at the time of requirement at that time statement in lieu of prospectus is necessary

Difference between prospectus and statement in lieu of prospectus

Prospectus	Statement in lieu of prospectus
1. Prospectus is a descriptive written document issued to the public for inviting to subscribe in share and debenture.	1. A small statement like summery issued as a substitute for prospectus is called statement in lieu of prospectus.
2. prospectus should contain memorandum of association, articles of association and all the other related information	2. statement in lieu of prospectus short summary of prospectus.
3. Large amount of capital can be attracted by issue of prospectus.	3. comparatively less capital can be attracted by issue of statement of lieu of prospectus.

4. Prospectus is issued in normal conditions only.	4. Statement in lieu of prospectus is issued in specific condition only.
5. Expenses involved in issue of prospectus are higher.	5. statement in lieu of prospectus can be issued at lesser cost.
6. All types of information can be provided by prospectus.	6. statement in lieu of prospectus provides only limited information.
7. The basic purpose of issue of prospectus is to induce people for subscription	7. The basic purpose of statement of lieu of prospectus is to collect capital from private sources.
8. Prospectus is of longer size. It is in the form of book	8. Statement in lieu of prospectus is of small size. It is in the form of folded single page printed on both sides.

9. Prospectus is made for public subscription.	9. Statement in lieu of prospectus is made for private investment or at the time of auto investment.

10. Prospectus is issued by listed companies	10. Unlisted companies are mostly issued statement in lieu of prospectus.

Mis-representation

Prospectus is issued to guide the investors. These investors invest in share and debentures based on information supplied through the prospectus. Therefore, the prospectus should reflect only true and reliable information of the company. If there is any false or unreliable information, omission, material alteration, fraud etc. it is called misrepresentation in prospectus. In such circumstances, all the concerned parties are responsible for misrepresentation. A prospectus

According to the company Act the following persons are responsible for it.

1. In the case of the new company all the Promoters.
2. In the case of an existing company all the members of the board of directors.
3. Chairman of a company
4. Other persons like secretary, legal adviser, trustee, etc. Company

Exception for Mis-representation

1. Expert's report

If the statement in the prospectus is made based on an expert's report and afterwards it is found that these statements are not applied as it is then the directors are not responsible for this statement. It is because these statements are made based on the expert's report afterward

2. Original records

If the statements are taken from the books of original records then the board of directors or secretary is not responsible for it on the ground that these are misrepresentation.

3. Public notice

If any member of board of directors realized mis representation in prospectus and he with-drawl his consent before allotment of shares or debentures and provided the public notice for the same then he is not responsible for it

4. Refusal for Directorship

When any director refuses to accept directorship before issuing of prospectus then such director is not responsible for misrepresentation in the prospectus.

5. True statement

If board of directors succeeds in proving that the statement being true till the issue of the prospectus then they are not responsible for such misrepresentation.

6. Without consent

If the prospectus is issued without the consent of the director and after realization of the fact if intimation is provided in the newspaper then he is not responsible for misrepresentation.

Liability for misrepresentation in Prospectus

1) Civil Liability

A person who has subscribed for shares on the faith of the misleading prospectus has remedies (legal reparation) against:

a) The company

b) The Directors, promoters, Experts.

A) Remedies against the company

A person who has been induced to subscribe for shares may

a) Rescind the contract to take the shares

b) Claim damages.

a) Rescission of the contract

The first remedy against the company is to rescind (cancel the agreement) the contract. When a person has purchased the share of a company on the faith of the prospectus which contained an untrue or misleading statement can seek rescission (agreement) of contract. He must however, apply for the rescission within a reasonable time and before the company goes in liquidation. But he will have to surrender to the company the shares allotted to him. His name is them removed from the register of members and he gets back the money paid by him to the company along with interest.

b) Damage for Deceit (lawful action)

The second remedy against the company is to sue for damage for deceit. In cases where misrepresentation in the prospectus amounts to fraud, an injured party is also entitled to sue the company for damages provided he has rescinded his contract in time. The remedy is available even after the company has gone into liquidation. He cannot both retain the shares and get damages against the company. He must show that he has repudiated the shares and has not acted as a shareholder after discovering the fraud or misrepresentation.

B) Remedies against the Directors, promoters and experts

Any person who has purchased shares or debentures on the faith of the prospectus containing the untrue statement may sue.

1. Every directors
2. Every person whose name appeared in the prospectus as a proposed director
3. Every promoter
4. Every person who authorized the issue of the prospectus.

The Aggrieved person may claim

1. Compensation

Every director, promoter and every person who authorizes the issue of the prospectus is liable to pay compensation to the aggrieved,

2. Liability for damages for non compliance (action) **with sec 56**

Section 56 of the companies Act requires every prospectus to state therein the matters. If there is an omission from the prospectus of any matter required to be included by Section 56 any subscriber for shares who has suffered loss due to the omission can bring action for damages, even if such omission does not make the prospectus false or misleading. However, a directors or other person responsible for the omission will not be liable, if

a) He had no knowledge of the omission
b) He prove that the non compliance arose from an honest mistake of fact
c) The non compliance was not material and the court thinks that he may be excused.

3. Liability under the general law

Under the general law, a shareholder can hold persons responsible for the issue of a prospectus (directors, promoters etc.) liable for damages for any fraudulent mis representation in the prospectus, if he was deceived by reason of acting on the faith of such prospectus. But the directors, promoters, etc. will not be held liable for such misrepresentation, if they honestly believed what they said in the prospectus to be true.

2) Criminal liability

Knowingly including an untrue statement in the prospectus or fraudulently inducing a person to invest money in shares, gives rise to criminal liability.

If a prospectus contains any untrue statement, every person who has authorized the issue of the prospectus is punishable with imprisonment for a term which may extend to two years, or with fine which may extend to Rs 5000 or with both. A person can escape such liability only if he can prove that the statement was immaterial or that he had reasonable ground to believe and did believe up to the time of issue of the prospectus that the statement was true.

The act has also laid down that if a person knowingly makes any statement, which is false or misleading, or dishonestly conceals material facts, and hereby induces or attempts to induce another person to subscribe to the shares of a company, he shall be punishable with imprisonment for a term which may extend to 5 years, or with fine which may extend to Rs 100000 or with both.

Golden Rule for Framing of Prospectus

The **‘Golden Rule’** for framing of a prospectus was laid down by Justice Kindersely in New Brunswick & Canada Rly. & Land Co. v. Muggeridge (1860). Briefly,

the rule is: Those who issue a prospectus hold out to the public great advantages that will accrue to the persons who will take shares in the proposed undertaking. The public is invited to share their faith in the representations contained in the prospectus. The public is at the mercy of company promoters. Everything must, therefore, be stated with strict and scrupulous accuracy, nothing should be stated as fact which is not so, and no fact should be omitted the existence of which might in any degree affect the nature of quality of the principles and advantages which the prospectus holds out as inducement to take shares. In a word, the true nature of the company’s venture should be disclosed.