

# **BUSINESS LAW**

*By:*

**Dr. Sudipta Ghosh**

**Assistant Professor**

Dept. of Commerce (UG & PG)

Prabhat Kumar College, Contai

West Bengal, India

# **INDIAN CONTRACT ACT 1872**

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# FORMATION-What is a Contract

- It must have an offer and acceptance
- It must have the 3 C's.
- It must not be prohibited by law.

(note : a social agreement is not a contract because it does not have any legal intention between the parties.

# What is an Offer

- 1.It must be precise ; capable of being understood and communicated.
- 2.It must not contain a clause that does away with acceptance
- 3.Special terms must be brought to the notice of the offeree
- 4.It need not be in writing though in immoveable property contracts it must be in writing.

## Offer ... continued

5. Distinguish between an offer and an invitation to an offer.
6. Under certain circumstances an advertisement can become an offer.
7. An offer can be revoked before it is accepted though in some countries it is not so.
8. In a digital contract the offer has been communicated once it has entered the computer of the offeree.

# ACCEPTANCE

1. An acceptance must be in response to an offer.
2. It must be in the mode prescribed
3. It must be made by the person to whom the offer has been made.
4. It must be unqualified and unconditional.  
(Though in some countries minor modifications are permissible.)

## Acceptance ..contd.

5. Acceptance must be made within the time provided or reasonable time.
6. Acceptance can be revoked before it reaches the offeree.
7. In the case of cyber contracts acceptance has reached when it enters the system of the offeree.

# 3 C's of a Contract

CAPACITY

CONSIDERATION

CONSENT



# CAPACITY

- A minor and an unsound person and an insolvent person cannot enter into contracts . It is void ab – initio.
- Reason : The contract creates legally binding obligations on the parties and hence only those who have the capability (capacity) to do so should be allowed otherwise they(minor/unsound/insolvent) may harm themselves.

# MORE ON MINORS

1. Agreement with minor is void – ab – initio.
2. Even if a minor declares himself to be a major he can plead that he is a minor
3. An agreement with a minor cannot be ratified on his becoming a major.
4. Guardians of a minor are not liable on contracts with a minor

## Minor....(Contd.)

5. A minor if provided with necessaries of life then it can be reimburse from the minor's estate.
6. A minor can be a beneficiary.
7. A minor can become a partner though he would not be liable.

# C - Consideration

1. Consideration is the price of a contract.
2. A contract without consideration is void.
3. Consideration must be decided by the parties themselves. Consideration can be fulfilled by third parties.
4. Consideration must have some legal value in the eyes of law.
5. Strangers to a contract have no claims.

# C- Consent

1. Consent must be free and genuine.
2. A consent is not free and genuine when it is induced by =
  - coercion
  - undue influence
  - fraud
  - misrepresentation
  - mistake

# **The Sale of Goods Act, 1930**

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# INTRODUCTION

- Transactions in the nature of sale of goods form the subject matter of the Sale of Goods Act, 1930
- The Act came into force on 1 July, 1930
- It extends to the whole of India, except Jammu & Kashmir
- This chapter deals with the specific types of contract, i.e., sale of goods

# DEFINITION OF A CONTRACT OF SALE

Section 4 defines a contract of sale as “a contract whereby a seller transfers or agrees to transfer the property in goods to the buyer for a price”



# ESSENTIALS OF A CONTRACT OF SALE

- 1) **There must be at least two parties:** a sale has to be bilateral because the property in goods has to pass from one person to another. The seller and the buyer must be different persons
- 2) **Transfer or agreement to transfer the ownership of goods:** In a contract of sale, it is the ownership that is transferred (in the case of sale), or agreed to be transferred (in the case of agreement to sell), as against transfer of mere possession
- 3) **The subject matter of the contract must necessarily be goods:** the sale of immovable property is not covered under Sale of Goods Act.
- 4) **Price is the consideration of the contract of sale:** the consideration in a contract of sale has necessarily to be 'money', (i.e. the legal tender money).
- 5) **All other essentials of a valid contract as per the Indian Contract Act, 1872 must be present:** the parties to the contract must be competent to contract, the consent of the parties must be free, the object of the contract must be lawful and so on.

# SALE AND AGREEMENT TO SELL

- *Sale*
- Where under a contract of sale, the property (ownership) in the goods is transferred from the seller to the buyer, it is called a sale.
- Thus, sale takes place when there is a transfer of ownership in goods from the seller to the buyer.
- A sale is an executed contract
- ***Agreement to sell***
- Agreement to sell means a contract of sale under which the transfer of property in goods is to take place at a future date or subject to some conditions thereafter to be fulfilled

## Difference Between Sale & Agreement to Sell

### Sale

- A sale is an executed contract
- Since the ownership has passed to the buyer, the seller can sue the buyer for the price of the goods, if the latter makes a default in payment
- In case of loss of goods, the loss will fall on the buyer, even though the goods are in the possession of the seller. It is because the risk is associated with ownership
- In case the buyer pays the price and the seller thereafter becomes insolvent, the buyer can claim the goods from the official receiver or assignee as the case may be

### Agreement to Sell

- It is an executory contract
- In case of breach, the seller can only sue for damages, unless the price was payable at a stated date
- The loss in this case shall be borne by the seller, even though the goods are in the possession of the buyer
- In this case, the buyer cannot claim the goods, but only a rateable dividend for the money paid

## Distinction between Sale and some Other Transactions

- Sale and Hire purchase
- Sale of goods and 'work and labour'
- Sale and contract for 'labour and materials'
- Sale and barter
- Sale and bailment
- Sale and lease
- Sale and gift
- Sale and mortgage, pledge and hypothecation of goods

## Goods & their Classification

- The term goods excludes money
- Money means legal tender and not the rare coins which can be sold and purchased as goods
- Money itself cannot be subject of a sale
- The actionable claims are things which a person cannot make use of, but which can be claimed by him by means of a legal action
- Actionable Claim example
- A borrows Rs. 5000/- from B at 12% per annum interest on 1st April, 2006 and promises to pay back the amount with interest on 1st July, 2006. Till 1st July, 2006, the debt is an accruing debt and is an actionable claim.

# Documents of Title to Goods

- *Any written instrument, such as a bill of lading, a warehouse receipt, or an order for the delivery of goods, that in the usual course of business or financing is considered sufficient proof that the person who possesses it is entitled to receive, hold, and dispose of the instrument and the goods that it covers.*
- A document of title is usually either issued or addressed by a bailee—an individual who has custody of the goods of another—to a bailor—the person who has entrusted the goods to him or her. Its terms must describe the goods covered by it so that they are identifiable as well as set forth the conditions of the contractual agreement. Possession of a document of title is symbolic of ownership of the goods that are described within it.
- Documents of title are an integral part of the business world since they facilitate commercial transactions by serving as security for loans sought by their possessors and by promoting the free flow of goods without unduly burdening the channels of commerce.
- A person who possesses a document of title can legally transfer ownership of the goods covered by it by delivering or endorsing it over to another without physically moving the goods. In such a situation, a document of title is a negotiable instrument because it transfers legal rights of ownership from one person to another merely by its delivery or endorsement.

# Classification of Goods

- **Goods may be classified as:**

1. Existing
2. Future
3. Contingent

**Existing goods** are those which are owned or possessed by the seller at the time of the contract

Instances of goods possessed but not owned by the seller are sales by agents and pledgees

- **Existing goods may be either:**

- a) Specific or ascertained
- b) Generic and unascertained

*Specific goods* means goods identified and agreed upon at the time a contract of sale is made

*Ascertained goods*, though normally used as synonym for specific goods may be intended to include goods which have become ascertained subsequently to the formation of the contract.

# Classification of Goods (Contd.)

- *Generic or unascertained goods* are goods indicated by description and not specifically identified
- *Example:* Anthony, who owns a TV showroom, has 20 TV sets and agrees to sell any one of them to Bharti. The contract is for unascertained goods, since which particular TV set shall become the subject matter of sale is not individualised at the time of the contract of sale.



# Classification of Goods (Contd.)

- *Future goods* means goods to be manufactured or produced or acquired by the seller after making the contract of sale

*Example:* Kulkarni agrees to sell future crop of a particular agricultural field in the next season. This is an agreement to sell future goods

- *Contingent goods* are the goods the acquisition of which by the seller depends upon a contingency which may or may not happen. Contingent goods is a part of future goods

*Example:* Alka agrees to sell to Vivek a certain painting only if Chetan, its present owner sells it to her. This painting is classified as contingent goods

# Effect of Perishing of Goods

- Section 7 and 8 deal with the effect of perishing of goods on the rights and obligations of the parties to a contract of sale.
- Under these sections the word perishing means not only physical destruction of the goods but it also covers:
  - Damage to goods so that the goods have ceased to exist in the commercial sense, ie, their merchantable character as such has been lost, eg, where cement is spoiled by water and becomes almost stone or where sugar becomes sharbat and thus are unsaleable as cement or sugar
  - Loss of goods by theft
  - Where the goods have been lawfully requisitioned by the government.

## Effect of Perishing of Goods (Contd.)

- It may also be mentioned that it is only the perishing of specific and ascertained goods that affects a contract of sale
- Where unascertained goods form the subject matter of a contract of sale, their perishing does not affect the contract and the seller is bound to supply the goods from wherever he likes, otherwise be liable for breach of contract
- Example:
  - Where A agrees to sell to B ten bales of Egyptian cotton out of 100 bales lying in his godown and the bales in the godown are completely destroyed by fire, the contract does not become void. A must supply 10 bales of cotton after purchasing them from the market or pay damages for the breach

## Conditions & Warranties (Sec. 11-17)

- In a contract of sale, parties make certain stipulations, i.e., agree to certain terms regarding the quality of the goods, the price and the mode of its payment, the delivery of goods and its time and place
- All stipulations cannot be treated on the same footing
- Some may be intended by the parties to be of a fundamental nature, eg. Quality of the goods to be supplied, the breach of which therefore will be regarded as a breach of the contract
- Some may be intended by the parties to be binding, but of a subsidiary or inferior character, eg., time of payment, so that a breach of these terms will not put an end to the contract but will make the party committing the breach liable to damages
- The former stipulations are called 'conditions' and the latter 'warranties'

# Stipulations as to Time

Stipulations as to time in a contract of sale fall under the following two heads:

1. Stipulation relating to time of delivery of goods
2. Stipulation relating to time of payment of the price

As regards the ***time fixed for the delivery of goods***, time is usually held to be the essence of the contract'. Thus if time is fixed for delivery of the goods and the seller makes a delay, the contract is voidable at the option of the buyer. In case of late delivery, therefore, the buyer may refuse to accept the delivery and may put an end to the contract.

As regards the ***time fixed for the payment of the price***, the general rule is that 'time is not deemed to be the essence of the contract', unless a different intention appears from the terms of the contract (sec. 11). Thus even if the price is not paid as agreed, the seller cannot avoid the contract on that account. He has to deliver the goods if the buyer tenders the price within reasonable time before resale of the goods. The seller may, however, claim compensation for the loss occasioned to him by the buyer's failure to pay on the appointed day.

# Conditions & Warranties (Sec. 11-17)

- Sec. 12(2) defines a 'condition' as, 'a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated' (denied),
- Sec 12(3) defines a 'warranty' as, 'stipulation collateral to the main purpose of the contract, the breach of which gives rise to claim for damages but not to a right to reject the goods and treat the contract as repudiated' .
- The effect of a breach of a 'condition' is to give the aggrieved party a right to treat the contract repudiated, i.e., if price has been paid, the buyer can claim the refund of price plus damages for breach
- In case of breach of 'warranty', only damages can be claimed, i.e., the buyer must accept the goods and claim damages for the breach of warranty
- Whether a stipulation in a contract of sale is a 'condition' or a 'warranty' depends in each case on the construction of the contract
- A stipulation may be a condition though called a warranty in a contract [sec. 12(4)]

# Condition & Warranty Distinguished

## **1. As to value:**

A condition is a stipulation which is essential to the main purpose of the contract, whereas a warranty is a stipulation which is collateral to the main purpose of the contract.

## **2. As to breach:**

The breach of a condition gives the aggrieved party the right to repudiate the contract and also to claim damages.

## **3. As to treatment:**

A breach of condition may be treated as a breach of warranty. But a breach of warranty cannot be treated as a breach of condition.

# When breach of Condition is to be treated as breach of Warranty

- Section 13 deals with cases where a breach of condition is to be treated as a breach of warranty, as a consequence of which the buyer loses his right to rescind the contract and has to be content with a claim for damages only.
- These cases are as follows:
  1. Voluntary waiver by buyer:
    - Although on a breach of condition by the seller, the buyer has a right to treat the contract as repudiated and reject the goods, but he is not bound to do so
    - He may instead elect to waive the condition, i.e., to treat the breach of condition as a breach of warranty and accept the goods and sue the seller for damages for breach of warranty.



# Express & Implied Conditions & Warranties

## Express condition or warranty:

These may be of any kind that the parties may choose to agree upon, eg, it may be agreed that delivery of goods shall be made or taken on or before a certain date. Similarly, in a contract of sale of a car, express warranty as to its soundness may be incorporated

## Implied conditions and warranties:

They are deemed to be incorporated by law in every contract of sale of goods unless the terms of the contract show a contrary intention

## Implied Conditions

- i. Condition as to title (sec. 14)
- ii. Sale by description (sec. 15)
- iii. Condition as to quality or fitness for buyer's purpose [sec. 16(1)]
- iv. Condition as to merchantable quality [sec. 16(2)]
- v. Condition as to wholesomeness
- vi. Implied condition in the case of sale by sample (sec. 17)
- vii. Implied condition in the case of sale by sample as well as description (sec. 15)

## Transfer of Ownership

- A contract of sale is performed in two inter-related stages
- 1-Transfer of possession of goods
- 2-Transfer of ownership of goods

Followings reason-

A-Risk of Losses-

B-Only owner can sue-if third party destroyed or damaged

C-Insolvency of buyer & Seller-when seller or buyer become insolvent then liquidator can take over property

D-Suit for price-only seller can sue.

## Time when Property Passes

1-in case of unascertained goods

2-in case of ascertain goods

3-Inn case of goods sent on approval basis

## Sale by Non co –owners Exceptions

1-sale by a mercantile agent

2-sale under the implied authority

3-sale by one of the several joint owner

4-sale by seller in possession after sale

5-sale by buyer in possession after sale

# **The Companies (Amendment) Act, 2015**

## Introduction

The Companies Act 2013 got assent of the President of the country on 29th August, 2013.

The Act comprises of **29 chapters, 470 Sections** with **7 Schedules** as against 658 sections and 14 Schedules in the Companies Act, 1956.

A total of 283 sections have been notified as on date.

# Nature & Meaning

The word Company is derived from Latin word (Com = with or together; panies = bread) , and originally referred to an association of persons who took their meals together.

- **Companies Act, 2013 was passed by the Lok Sabha and Rajya Sabha on 18<sup>th</sup> Dec. 2013 respectively. (Old Act was of 1956)**
- An association of like-minded persons formed for the purpose of carrying on some business or undertaking.
- It denotes a joint stock enterprise in which the capital is contributed by a large number of people.
- A company owes its existence either to a special Act of Parliament or to Company Legislation.
- A company is a legal person separate from and capable of surviving beyond the lives of its members.



## Kinds of Companies as per Companies Act, 2013

### Section 3:-

- a) **Public Companies** – Minimum 7 Members – 3 Directors and Max. No limit for members - 15 Directors
- b) **Private Companies** - Minimum 2 Members – 2 Directors and Max. 200 members – 15 Directors
- c) **One Person Company** (to be formed as Private Limited) - **Only one person as member – One Director**

# One Person Company - OPC

- As per Section 2(62) of the companies act 2013, One Person Company means a company which has only one person as a member.
- A one person company shall have a minimum of one director. Therefore a one person company will be registered as a private company with one member and one director.

# Small Companies

Small company is a new form of private company under the companies act 2013. A classification of a private company into a small company is based on its size i.e. paid up capital and turnover.

... Paid up share capital – up to 50 Lac

... Turnover – up to 2 Cr

In other words, such companies are small sized private companies.

# Other Companies ...

- Foreign Companies
- Associate/Joint Venture Companies
- Investment Companies
- Producer Companies
- **Dormant Companies – As per section 455 (1) where a company is formed and registered under this act for future projector to holds an asset or intellectual property and has no significant accounting transactions, such a company or an inactive company...**

# Private Company

- (a) restricts the right to transfer its shares;
- (b) **limits the number of its members to 200;**
- (c) prohibits any invitation to subscribe for any shares in, or debentures of the company; and
- (d) prohibits any invitation or acceptance of deposits from public. [Sec 3(1)(iii)]
- Must necessarily have its own Articles of Association.
- **Should have at least two directors.**
- The word 'Private Limited' must be added at the end of its name.

# Public Company

- A Public Company means a company which -  
is not a Private Company;
- is a private company which is a subsidiary of a  
company which is not a private company. [S. 3  
(1) (iv)]
- It consists of not less than seven members and  
three directors.

# Holding & Subsidiary Company

- A company is deemed to be the holding company of another if, but only if, that other is its subsidiary." [Sec 4(4)]
- Where a company controls the composition of Board of Directors of another company, the latter becomes the subsidiary of the former; e.g. MSEB or
- When a company holds more than half of the equity capital of another company, the latter becomes the subsidiary company of the former; or
- Where a company is subsidiary of another company which is itself a subsidiary of the controlling company, the former becomes the subsidiary of the controlling company.

# Government Company

- A Government Company means any company in which not less than 51 per cent of the paid-up share capital is held by
  - (a) the Central Government, or
  - (b) any State Government or Governments, or
  - (c) partly by the Central Government and partly by one or more State Governments.
- A subsidiary of a Government company is also called a Government company.



# Statutory Corporations

- Formed under an Act of Parliament or State Legislature.
- Change in its structure is possible only by a legislative amendment.
- Immunity from Parliamentary scrutiny in day-to-day working.
- Freedom in regard to personnel, its employees are not civil servants.
- It is a body corporate having characteristics of a corporation.
- Independent finances- Obtains funds by borrowing and through revenue derived from sale of goods/services.
- Commercial Audit - audit is entrusted to CAG.
- Operation on business principles.

# Section 25 Companies

- The object is to promote a social cause.
- May earn profits but not allowed to distribute it as dividend to members.
- License granted by Central Government.
- Not required to use the word Ltd. or Pvt. Ltd.
- Registered without paying stamp duty on Memorandum and Articles.
- Cannot alter its object without previous approval of Central Government.

# Steps for formation of a Company

- Types of Company
- Availability of Name
- The Memorandum and Articles of Association duly signed, and stamped.
- The agreement, if any with any individual for appointment as its Managing or whole-time director.
- Consent of directors in Form 29.
- Notice of Registered address in Form 18 to be given within 30 days of the date of incorporation.
- Particulars of Directors in Form 32.

# Promoters

- According to SEBI (Substantial Acquisition and Takeover) Regulations, 1997 the term promoters means:
- the person or persons who are in control of the company ;or
- person or persons named in any offer document as promoters.
- a relative of the promoter within the meaning of Section 6 of the Companies Act.
- Should be members of HUF only;or
- Are husband or wife; or
- Related to other as indicated in [Schedule IA](#).

## **Provisions Specifically relating to Incorporation of One Person Company...**

According to the first proviso to section 3(1), the memorandum of one person company shall indicate the name of the other person, with his prior written consent in the prescribed form (INC-3), who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the one person company along with its memorandum and articles.

# Memorandum of Association

- **It contains the fundamental rules regarding the constitution of the company.**
- It lays down how the company is going to be constituted and what work it shall undertake.
- It sets out the constitution of the company.
- It is a foundation on which the structure of the company stands.
- Its purpose is to enable the shareholders, creditors, and those who deal with the company to know what is the permitted range of its enterprise.
- It defines as well as confines the power of the company.

# Contents of the Memorandum

- Name Clause
- Registered Office / Situation Clause
- Object Clause- main objects and other objects
- Liability Clause- limited by share or guarantee
- Capital Clause.
- Association Clause

# Name Clause

- A company not to be registered under a name which is undesirable, identical or too nearly resembles another company. [Section 20]
- It must not be misleading or intended to deceive with reference to its object.
- A mere similarity of name does not give right to injunction, there should be likelihood of deception or confusion.
- The name and address must be printed or affixed outside every office in English and local language.
- Inadvertent mistake in name can be changed by passing an ordinary resolution and by obtaining written approval of Central Government.



## Situation Clause

- Only the state in which the Registered Office is situated is mentioned.
- Exact address can be filled with RoC separately in Form 18 within 30 days of incorporation.

# Object Clause

- Must divide object clause into two sub-clauses  
- Main Objects and Other Objects.
- It determines the purpose and capacity of the company hence carry great importance.
- Acts beyond this ambit are ultra vires and hence void. Even the entire body of shareholders cannot ratify such acts.
- Subscribers enjoy unrestricted freedom to choose the objects.

# Doctrine of Ultra Vires

- An act or transaction, which may not be illegal, is **beyond** company's **power** by not being within the object of the Memorandum.
- An act ultra vires the company is incapable of ratification.
- Act which is intra vires the company but outside the authority of directors may be ratified by the company in proper form.
- The shareholders can ratify an act ultra vires the directors.

# Effect of Ultra Vires Transaction

- Injunction to restrain the company from doing an ultra vires act.
- Personally liability of the directors.
- Ultra vires contract are void ab initio.
- An ultra vires borrowing does not create a relationship of a debtor and creditor.

# Liability Clause

- The Memorandum of a company limited by shares or by guarantee shall state that the liability of its members is limited.
- Where the liability is limited by shares, a member can be called upon to pay only the unpaid balance on his shares.
- In case the company is limited by guarantee the members are liable up to the maximum amount which they have guaranteed.
- Where the company is limited by both share and guarantee the liability of members is dual.

# Capital Clause

- Shares must be of fixed value.
- Nominal, authorised or registered capital.
- Not authorised to issue capital beyond its authorised capital unless the Memorandum is altered.
- In case of unlimited company having share capital, the liability is unlimited as against creditors only in case of winding up.
- In case of going concern, liability is limited to shares subscribed.

# Association Clause

- Must be signed by each subscriber in presence of one witness.
- Each subscriber must take at least one share.
- A subscriber cannot, after registration of company, repudiate his liability even on the ground that he was induced to sign by misrepresentation.

# Articles of Association

- Articles are by-laws or rules and regulations for the govern the management of its internal affairs and conduct of business.
- It also includes regulation contained in Table A of Schedule I.
- Deals with the rights of the members inter se.
- Articles are subordinate to and controlled by Memorandum.
- Subject to the provisions of the Act and Memorandum, a company, by special resolution alter the Articles. [Section 31]
- The alteration binds members in the same way as original Articles.
- A company cannot in any manner deprive itself of the powers to alter its Articles.



# Limitation on Alteration

- Must not exceed the power in the Memorandum.
- Must not be inconsistent with the provisions of the Act.
- Must not include anything illegal or opposed to public policy.
- Must be bona fide for the benefit of the company.
- Must not constitute fraud on minority.
- Cannot be altered so as to have retrospective effects.
- In case of listed companies approval of Stock Exchange is required.

# Prospectus

- "Any document described or issued as a prospectus and includes
- any notice,
- circular,
- advertisement, or
- other document
- inviting deposits from the public or
- for the subscription or purchase of any shares in, or debenture of a body corporate."  
[(Section 2(36))]

# What constitute a Prospectus?

- An invitation to public.
- Invitation be by or on behalf of the company.
- Invitation must be to subscribe or purchase.
- Must relate to shares / debentures or other instrument.
- Judicial Pronouncements

# Statement in lieu of Prospectus

- Promoters are required to prepare a draft prospectus known as statement in Lieu of Prospectus.
- A copy of it must be filed with the RoC at least three days before any allotment of shares is made.
- It contains similar particulars as are required for a prospectus.
- No minimum subscription is required to be stated.

# Shelf Prospectus

- Concept introduced by Amendment Act 2000 by the insertion of Section 60A.
- A prospectus issued by any financial institution or bank for one or more issues of securities.
- Public Financial Institutes, public sector banks or scheduled banks whose main object is financing shall file a shelf prospectus.
- Not required to file prospectus afresh at every stage of offer by it within the period of validity of such prospectus.

## Information Memorandum (Sec 60B)

- "Information Memorandum means
- a process undertaken prior to the filling of a prospectus
- by which a demand for the securities proposed to be issued is elicited and
- the price and terms of issue is assessed
- by means of a notice, circular, advertisement or document."

# Abridged Prospectus

- Every application form to contain a prospectus.
- The Central Govt. has prescribed that there should be one Abridged Prospectus with every two application forms,
- attached by way of a perforated lines containing the information under the following points:

## Share Capital

- In relation to a company limited by share it means share capital - in terms of rupees divided into specified number of shares of a fixed amount each.
- The memorandum must state the amount of capital and its various division.
- (a) Nominal, Authorised or Registered Capital
- (b) Issued Capital
- (c) Subscribed Capital
- (d) Called-up Capital
- (e) Un-called Capital
- (f) Paid-up Capital



# Kinds of Shares

## **Preference Shares** [Sec 85(1)]

- Preference shares capital is that part of share capital which fulfills following two conditions:
- (i) carries preferential right with respect to dividend- fixed amount or at fixed rate; and
- (ii) carries preferential right with respect to repayment of capital on winding up.

# Sweat Equity Shares

[Sec 79A, 1999)

- Sweat Equity Shares means equity shares issued to employees or directors
- at a discount for consideration other than cash
- for providing know-how or making available rights in the nature of intellectual property or
- value addition by whatever name called.
- Issue must be authorised by a special resolution.
- Resolution to specify number, current market price and consideration of shares, and the class or classes of directors or employees.

## Sweat Equity Shares (Contd.)

- One year has, at the date of the issue, elapsed since the company was entitled to commence business.
- If shares are listed, the issue must be in accordance with SEBI regulations.
- All limitations, restrictions and provisions of equity shares are applicable.

# Debenture

- In corporate finance, a debenture is a medium to long-term debt instrument used by large companies to borrow money, at a fixed rate of interest. The legal term "debenture" originally referred to a document that either creates a debt or acknowledges it, but in some countries the term is now used interchangeably with bond, loan stock or note.
- A debenture is thus like a certificate of loan or a loan bond evidencing the fact that the company is liable to pay a specified amount with interest and although the money raised by the debentures becomes a part of the company's capital structure, it does not become share capital. Senior debentures get paid before subordinate debentures, and there are varying rates of risk and payoff for these categories.
- Debentures are generally freely transferable by the debenture holder. Debenture holders have no rights to vote in the company's general meetings of shareholders, but they may have separate meetings or votes e.g. on changes to the rights attached to the debentures. The interest paid to them is a charge against profit in the company's [financial statements](#).

# Book Building

- A process by which demand for proposed securities is build up and a fair price and quantum of the issue is determined.
- The Book Runner Lead Manager (BRLM) maintains a book wherein bids by individual and institutional investors (through syndicate member-merchant banker) are recorded.
- Syndicate member have an underwriting agreement with BRLM and BRLM in turn enter into an underwriting agreement with the company.

# Book Building (Contd.)

- Two scheme of book building process - 75% Scheme (i.e. 75% of the issue size is offered by book building process and the balance 25% by fixed price method) and 100% Scheme (i.e. the entire issue size is offered by way of book building process).
- SEBI has allowed all companies to make issue through Book Building (earlier upwards of Rs 25 crores issue).
- 60% of issue size through Book Building Process be issued to QIBs failing this, the company is required to make maximum public offering of 25%.

# Bonus Issue

- When company accumulates large distributable profits it convert it into capital.
- Divide the capital among the existing shareholders in proportion to their entitlement.
- Members do not have to pay for such shares.
- Bonus issue is a machinery for capitalizing distributable profits.
- Bonus shares is not income and hence not taxable.
- Paid-up capital increases.
- Conversion of free reserves, like general reserve, capital redemption reserve, development rebate reserve, securities premium account, etc.
- Must be authorised by the Articles.
- Must be sanctioned in the AGM on the recommendation of the board.
- Authorised capital must be increased wherever necessary.

# Employee Stock Option Scheme

- "Employee Stock Option means
- the option given to the whole-time directors, officers or employees of a company,
- which gives such directors, officers or employees the benefit or right to purchase or subscribe
- at a future date,
- the securities offered by the company at a pre-determined price." [Section 2(15A)]
- The offer is subject to approval of shareholders by a special resolution.
- Minimum one year period is prescribed between the grant of offer and its vesting.
- After the lapse of one year the period would be determined by the company.
- ESOP Scheme to be under the superintendence and direction of Compensation Committee of the board.



# Prohibition on Buy Back

- A company cannot buy its own shares as it amounts to reduction of share capital without court's consent. [Section 77(1)]
- A company may not get another person to buy its share on its behalf, indirectly.
- A public company or its subsidiary must not finance the purchase, directly or indirectly, of its own shares or of its holding company.

# Exceptions

- Company may redeem redeemable preference shares u/s 80.
- A banking company may lend money in the ordinary course of business to buy shares.
- Financial assistance for purchase of fully paid shares by trustee of or for share held for the benefit of employees of the company.
- Loan may be advanced to the bona fide employee other than directors, or managers to purchase fully paid shares for amount not exceeding six months' salary / wages.
- Company may buy its share from a member under a Court order under Section 402.

# Buy Back of Own Share u/s 77A

- Subject to provision of Sub section (2) of Section 77A & 77B a company may purchase its own shares or other specified securities, out of:
- Its free reserve, securities premium account, or proceeds of any shares or specified securities.
- Buy back may be in one of the following modes:
- From existing security holder on proportionate basis (tender method).
- From the open market (through Stock Exchanges).
- From odd lot holders.
- From employees securities issued under ESOP or Sweat Equity.
- All shareholders must have same right of participating in the buy-back.

# Conditions of Buy-back

- Must be authorised by the Articles.
- Special resolution is AGM authorizing Buy-back.
- Buy-back is, or less than, 25% of paid-up capital or free reserves in that financial year.
- Debts owned by company is not more than twice its capital and free reserves after such buy-back. (Central Govt. may relax the ratio)
- Buy-back should complete within 12 months from passing of special resolution.

# Conditions of Buy-back (Contd.)

- Declaration of solvency (Form 4A) signed by the MD and one director must be filled with the RoC and SEBI.
- After buy-back is complete the securities must be physically destroyed within 7 days.
- Company shall not make a further issue of shares / securities for 6 months, except by way of bonus shares.
- Prescribed return in Form 4C to be filled with RoC and SEBI within 30 days.

## Conditions of Buy-back (Contd.)

- The company must maintain a register of buy-back mentioning the consideration paid, date of cancellation / destruction of securities.
- Contravention of Section 77A would make the company or officer punishable with fine up to Rs 50,000 and /or imprisonment up to 2 years.
- If buy-back is out of free reserve, a sum equal to the nominal value of shares be transferred to securities premium account and disclose in the balance sheet.

# Prohibition for Buy-back [Sec 77B]

- No company shall directly or indirectly purchase its own securities:
- Through any subsidiary including its own subsidiary or,
- Through any investment company.
- If any default in repayment of deposit, interest thereon, redemption of debenture / preference shares, payment of dividend, repayment of any term loan is subsisting.
- If company has not complied with provisions of Sections [159, 207 and 211](#) of the Act.

# Types of Directors

- **Professional Directors**
- Specialist in different fields of management.
- Income derives principally from sitting fees.
- **Nominee Directors**
- Appointed by FIs, or Banks
- Powerful tool of project supervision, monitoring and control.
- **Executive Directors**
- Is a full time employee of the company.
- May not be members of the board, as such not a director in strict sense.



# Types of Directors (Contd.)

- **Independent Directors**
- Do not have any material pecuniary relationship or transaction with the company.
- Entitled to receive director's remuneration.
- **Government Directors (Section 408)**
- Appointed by the Central Government on the recommendation of the CLB.
- To safeguard the interest of the company or its shareholder or in public interest.
- When the operations of the company are conducted in such a manner as to oppress any member of the company or in a manner prejudicial to the company.

## Types of Directors (Contd.)

- There are mainly two types of company directors - Executive Directors or Whole-Time Directors (MD, Technical Directors) and, Non-executive or part-time Directors who are professionals and serve on the board of many companies.
- Executive directors have employment stake in the company. They wield substantial power, enjoy maximum remuneration, perquisites, fees, commission and allowances.
- Part-time directors get only sitting fees for the board meetings attended by them and wield little or no powers.

# Managing Director

- A director who, by virtue of an agreement, or of a resolution passed in the general meeting or board meeting or by virtue of the Memorandum or Articles, is entrusted with substantial power of management and includes a director occupying the position of MD, by whatever name called. [Section 2(26)]
- Powers exercised subject to the superintendence, control, and direction of the company's board of directors.
- A person who is not a director of the company must be first appointed as an additional director in accordance with Section 260 to be appointed as MD.

# Managing Director (Contd.)

- He must sign and file his consent to act as a director pursuant to the provisions of Section 264 and obtain qualification shares u/s 270.
- He may have dual capacity that of an employee and agent.
- It obligatory for public companies having paid up capital of Rs 5 crore or more to appoint a MD or whole-time director.
- Appointment of MD or whole-time director in a public company only with the prior approval of the central govt.

# Legal Position of Directors

- Public companies must have at least three directors. [Section 252]
- The Act does not lay down any qualification, but it lays down disqualifications.
- Directors are the agent of the company.
- A single director has no authority to bind the company unless such powers are delegated to him by the board.
- To some extent directors are also trustee of the company's properties.

# Legal Position of Directors (Contd.)

- Barring directors in the whole time employment, directors are not in the employment of the company and are not entitled to any remuneration beyond what is allowed by the Act, i.e. sitting fees.
- They are not also required to hold any shares in the company on whose board they serve.
- A director can hold an office or place of profit in the company in addition to his usual directorship.  
[Section 314]

# Qualification of Directors

- According to Sec 274 a person shall not be capable of being appointed as director if:
- found to be of unsound mind;
- an un-discharged insolvent;
- applied to be adjudicated as an insolvent;
- convicted of any offence involving moral turpitude and sentenced for not less than six months and a period of 5 years has not elapsed;
- has not paid any call in respect of shares and six months have elapsed;
- an order u/s 203 is passed by a court disqualifying him;
- is already a director of a public company which -
- has not filled annual returns for three years, or
- has failed to repay the deposits or interest thereon or redeemed its debentures.
- Only individuals can be a director. [Sec 253]

# Managerial Remuneration

- In addition, the managerial personnel shall also be eligible for:
- Contribution to PF, Superannuation Fund or annuity fund to the extent not taxable under Income Tax Act, 1961;
- Gratuity @ not exceeding half a month's salary for each completed year;
- Encashment of leave at the end of tenure.
- In case of an expatriate managerial person:
- Children education allowance - maximum Rs 5000 per month per child;
- Holiday passage for children, spouse and members of family; and
- Leave travel concession.
- All remuneration payable aforesaid shall be subject to approval by a resolution in AGM.



# Company Meetings

- A company being an artificial person expresses its will or takes its decision through resolutions passed at regularly convened meeting of the general body of the shareholders, and the directors.
- The companies Act provide the shareholders a forum of self-protection, which is general meeting of shareholders.
- The shareholders can use the forum to appoint directors as well as auditors of their own choice who may safeguard them from the possible manipulation.
- The business of the meeting is conducted in the form of resolutions proposed and passed.

# Types of Company Meetings

- Shareholders Meetings:
  - Statutory Meeting under Section 165;
  - Annual General Meetings under Section 166;
  - Extraordinary General Meetings:
    - Convened by directors suo moto between two AGMs.
    - Convened by directors on requisition under Sec 169.
- Meetings of the Board of Directors.
- Meetings of the Board Committee.
- Class Meetings of Shareholders.
- Meetings of the Debenture holders.
- Meetings of the Creditors.
- Meetings of the Contributories in winding up.

# Statutory Meetings [Section 165]

- Companies limited by guarantee and share shall, within one month and not more than six months from the date of commencement of business, hold a general meeting of the members to be called the Statutory Meeting.
- Failure to hold Statutory Meeting renders the company liable to be wound up u/s 433(b).
- This provision is not applicable to a private company. [Section 165(10)]
- The board shall, at least 21 days before the day on which the meeting is held, forward a report to every member of the company called Statutory Report.

# Annual General Meeting [Section 166]

- Every company must, in each calendar year, hold an annual general meeting so specified in the notice calling it, provided that not more than 15 months shall elapse between two AGMs.
- First AGM may be held within 18 months from the date its incorporation.
- Subsequent AGM should be held on the earliest of the following: [Sec 166 & 210]
- 15 months from the last AGM;
- The last day of the calendar year; or
- 6 months from the close of the financial year.
- In case of difficulty in holding meeting the Registrar may extend time by not more than 3 months.
- Application for extension of time should be made before the due date of holding AGM.
- Any delay including extension by RoC, shall make the officer in default punishable with fine extending up to Rs 50,000 and Rs 2,500 for every day of the default.
- Delay in completion of audit or annual accounts do not constitute a special reason justifying extension of time for holding of AGM.

## Business Transacted at an AGM [Section 173]

- Ordinary business relating to:
- Consideration of accounts, Balance Sheet and report of board and auditor;
- Declaration of dividend;
- Appointment of director in place of those retiring; and
- Appointment and fixing of remuneration of the auditors.
- Every other business is a special business.

# EGM [Sec 169]

- Every general meeting of company with exception to Statutory Meeting and AGM is called an EGM.
- Every business at an EGM is a special business, which arises between two AGMs being urgent, and cannot be deferred to the next AGM.
- Usually the Articles contain provisions empowering the board for calling an EGM.
- If there are not within India directors capable who are not sufficient in number to form a quorum any director or two members may call an EGM.

# Calling of EGM on Requisition

- The board shall on requisition of members holding 1/10th of the paid up capital or voting right, forthwith call an EGM.
- The requisition shall set the matters for consideration, duly signed and deposited at the registered office of the company.
- If the EGM is not called within 21 days of the requisition the meeting may be called on a day not later than 45 days from the date of deposit of requisition:
  - By requisitionists themselves; or
  - By 1/10th of the shareholders or members holding 1/10th of voting right.

# Calling of EGM by CLB [Sec186]

- If, for any reason it is impracticable to call an EGM, the CLB may, either of its own or on an application of any director or member:
  - order a meeting of the company;
  - and give such ancillary or consequential directions as the CLB thinks expedient.
- A meeting so called shall be deemed to be a meeting of the company duly called, held and conducted.
- The CLB will interfere very sparingly, and only when the application of a meeting is made bona fide in the larger interest of the company.



# Board of Directors

- The Board of Directors of a company is a nucleus selected according to the procedure prescribed in the Act and the Articles of Association, out of the entire mass of shareholders and even non-shareholders.
- Acting collectively as a Board of Director, they can exercise all the powers of the company except those, which are prescribed by the Act to be specifically exercised by the company in the general meeting.
- Directors, as a body, frame the general policy of the company, direct its affairs, appoints the company officers, ensures that they carry out their duties and recommend to the share holders regarding distribution of dividend.

## Board of Directors (Contd.)

- There are mainly two types of company directors - Executive Directors or Whole-Time Directors (MD, Technical Directors) and, Non-executive or part-time Directors who are professionals and serve on the board of many companies.
- Executive directors have employment stake in the company. They wield substantial power, enjoy maximum remuneration, perquisites, fees, commission and allowances.
- Part-time directors get only sitting fees for the board meetings attended by them and wield little or no powers.

## Board of Directors (Contd.)

- "A director includes any person occupying the position of director by whatever name called." [Section 2(13)]
- Only individual, and not a body corporate, association or firm, shall be appointed as director. [Section 253]
- "An individual who direct, control, manage, superintend the affairs of the company in the form of the board of directors."

# Meeting of Board of Directors

- A meeting of the Board of directors shall be held at least once in every three months and at least four such meetings shall be held in one year.
- As long as four meetings are held in a calendar year, the interval between two meetings may be more than three months.
- Listed companies are required to hold at least four board meetings in a year with a maximum time gap of four months between two meetings. (LA - Clause 49)
- Notice of every meeting of the board shall be given in writing to every director for the time being in India, and at his usual address in India to every director.

## Meeting of Board of Directors (Contd.)

- Failure would make the officer in default punishable with a fine extending up to Rs 1000.
- The notice should contain the time date and place of meeting.
- There is no provision for minimum days for giving notice. It is generally prescribed by the Articles.
- If the notice of the meeting is not given to even one director the meeting and any resolution passed thereat would be invalid.
- Notice of the adjourned meeting should be given to the directors who did not attend the original meeting.
- Failure would make the officer in default punishable with a fine extending up to Rs 1000.
- The notice should contain the time date and place of meeting.
- There is no provision for minimum days for giving notice. It is generally prescribed by the Articles.
- If the notice of the meeting is not given to even one director the meeting and any resolution passed thereat would be invalid.
- Notice of the adjourned meeting should be given to the directors who did not attend the original meeting.

## Meeting of Board of Directors(Contd.)

- For sine die adjournment and to transact new business a fresh notice would be required.
- The meeting of the director may be held at any time and place convenient to directors, outside the business hours and even on public holiday unless Articles provides otherwise.
- Good practice demands that the agenda containing business to be transacted is circulated preferably along with the notice at least a week before the date of meeting.