

# *Business Law*



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## **About the Tutorial**

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This tutorial presents the Business Laws within the Indian context of Companies Act, Company Law Board, Ministry of Corporate Affairs, National Company Law Tribunal, and the Registrar of Companies, India, which will give you a concise yet exact idea on the workings of Business Law in India.

## **Audience**

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This tutorial is specially designed for the students of Management, Business Law, Company executives, Legal executives. It is also intended for anyone who desires to get acquainted with the legal aspects of running a business.

## **Prerequisites**

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To understand this tutorial, it is advisable to have a foundation level knowledge of business and management studies. However, general students who wish to get a brief overview of the various laws and acts in business may also find it quite useful.

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## Table of Contents

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About the Tutorial .....	i
Audience.....	i
Prerequisites .....	i
Disclaimer & Copyright .....	i
Table of Contents .....	ii
<b>1. BL — COMPANY LAW.....</b>	<b>1</b>
What is a Company? .....	1
Meaning and Nature of Company.....	1
Classification of Companies.....	4
<b>2. BL — PRINCIPLE OF SEPARATE LEGAL EXISTENCE .....</b>	<b>7</b>
Functions of Separate Legal Existence .....	7
<b>3. BL — THE CORPORATE VEIL .....</b>	<b>9</b>
Duties of Separate Legal Existence .....	9
Conversion from a Private Company to a Close Company .....	9
<b>4. BL — LIABILITIES &amp; RIGHTS OF PROMOTERS .....</b>	<b>13</b>
Formation of a Company .....	13
Private Company and Public Company .....	13
<b>5. BL — MEMORANDUM OF ASSOCIATION CONCEPTS.....</b>	<b>16</b>
Meaning of Memorandum of Association .....	16
Clauses of Memorandums .....	16
Contents of the Memorandum of Association .....	18
<b>6. BL — ARTICLES OF ASSOCIATION .....</b>	<b>20</b>
Articles of Association .....	20

**Business Law**

Meaning of Association ..... 21

Definitions used in Articles ..... 22

7. BL — SHARES ..... 24

    Types of Preference Shares ..... 25

    Equity Shares ..... 26

    Transfer & Transmission of Shares ..... 27

    Buy-back of Shares ..... 28

8. BL — DIRECTORS..... 30

    Powers of Directors ..... 30

    Duties of Directors..... 31

    General Duties of a Director..... 32

    Liabilities of Directors..... 32

    Liabilities under the Companies Act..... 33

    Appointment and Removal of Directors..... 34

    Qualifications of Directors ..... 35

    Removal of Directors ..... 36

9. BL — WINDING UP OF A COMPANY ..... 38

    Steps of Winding Up ..... 38

    Powers of a Liquidator..... 39

    Compulsory Winding Up ..... 40

    Consequences of Winding Up..... 40

    Circumstances in which a Company May Be Wound Up..... 41

    Winding Up of the Company by the Tribunal ..... 42

    Procedure for Winding Up of a Company..... 43

    Voluntary Winding Up ..... 43

    Creditors' Voluntary Winding Up..... 47

**Business Law**

10. BL — COMPANY MEETINGS .....49

    Statutory Meeting ..... 49

    Annual General Meeting..... 51

    Extraordinary General Meeting ..... 53

    Meeting of BoD ..... 55

11. BL — VARIOUS LAWS AND ACTS .....57

12. BL — LAW OF CONTRACT ACT.....58

    Essential Elements of a Valid Contract ..... 58

    Contract of Indemnity and Guarantee ..... 60

13. BL — LAW OF SALE OF GOODS.....61

    Important Sections ..... 61

14. BL — LAW OF ARBITRATION .....63

    The Arbitration Act, 1940..... 63

    The Arbitration and Conciliation Act, 1996..... 63

15. BL — LAW OF CARRIAGE OF GOODS .....65

    Carriage of Goods by Land ..... 65

    Carriage of Goods by Rail ..... 66

16. BL — CONSUMER PROTECTION ACT .....67

17. BL — INDUSTRIAL DISPUTES ACT .....69

    Industrial Disputes Act..... 69

18. BL — FACTORIES ACT .....71

    Factories Act ..... 71

# 1. BL — Company Law

## What is a Company?

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Organizations require huge investments. As the investments are big, the risks involved are also very high. While undertaking a big business, the two important limitations of partnerships are limited resources and unlimited liabilities of partners. The company form of partnerships has become popular to overcome the problems of partnership business. Various multinational companies have their investors and costumers spread throughout the world.

In order to maximize and utilize the organizational and managerial abilities effectively, it is necessary for a limited liability company to be supported not only by its own organs but also by clear and precise regulations. It is necessary to have a brief overview of the business organization from the framework of company law.

Commercial sector recognizes three principal categories of business organizations:

- Sole proprietorship (Generally used for informal purposes)
- Partnership (General or limited)
- Company

There are three types of partnerships:

- Persecution per data (governed by the civil code)
- Persecution firms (governed by the civil code as well as the commercial code)
- Persecution (governed by the civil code as well as the commercial code)

It is difficult to determine the absolute equivalents between these partnerships and partnerships under common law tradition.

## Meaning and Nature of Company

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According to the Companies Act, 1956, "A company is a person, artificial, invisible, intangible, and existing only in the contemplation of the law. Being a mere creature of the law, it possesses only those properties which the character of its creation confers upon it either expressly or as incidental to its very existence."

**It can clearly be defined that:**

- A company is defined as a group of people that contributes money or the worth of money to a common stock to employ it in some trade or business. The people in this group share the profit or loss (as the case may be) arising as a result.
- The common stock is usually denoted in terms of money and is the capital of the company.

## Business Law

- The persons who contribute to the common stock are the members.
- The proportion of the capital entitled to each member is called the member's share.
- Shares are always transferrable subject to the restrictions and liabilities offered by the rights to transfer shares.

The main characteristics of a company are discussed below.

### Incorporated Association

- A company can be created only under the registration of the Company Act.
- It comes into existence from the date when the certificate of incorporation is issued.
- At least seven persons are required to form a public company.
- At least two persons are required to form a private company.
- These persons will subscribe to the memorandum of associations and also comply with the other legal requirements of the Company Act in respect of registration to form and incorporate the company, with or without liability.

### Artificial Legal Person

A company can be considered as an artificial person (a person who cannot act on his own will). It has to act through a board of shareholders elected or selected by the members of the company.

- The board of directors works as the only brain of the company.
- It has the rights to acquire and dispose the properties, to enter into contract with third parties in its own name, and can sue and can be sued in its own name.
- However, it cannot be considered as a citizen as it cannot enjoy the rights of a citizen.

### Separate Legal Entity

A company is perceived to be a distinct legal entity and one that does not depend on its members. The money credited by the creditors of the company can be recovered only from the company and the properties owned by the company.

- Individual members cannot be sued.
- Similarly, the company in any way is not liable for the individual debts of the members.
- The properties of the company can only be used for the development, betterment, maintenance, and welfare of the company and cannot be used for personal benefits of the shareholders.

## **Business Law**

- A member cannot claim any ownership rights over the company either single-handedly or jointly.
- The members of the company can enter into contracts with the company in the same manner as any other individual can.
- The Income Tax Act also recognizes company as a separate legal entity.
- The company has to pay income tax as it earns profits and when dividends are paid to the shareholders, the shareholders also have to pay income tax based on the dividends earned. This highlights the fact that the shareholders and the company are two separate individual entities.

### **Perpetual Existence**

- A company is said to be a stable form of business organization.
- A company's life does not depend upon the death, insolvency or retirement of any or all of its shareholders or directors.
- It is created by law and can only be dissolved by law.
- Members can join or leave the company but the company can continue forever.

### **Common Seal**

- A company cannot sign documents by itself.
- It acts through natural persons who are called its directors.
- A common seal is used with the name of the company engraved on it as a substitute of its signature.
- To be legally binding on the company, a document has to carry the company seal on it.

### **Limited Liability**

- A company may be limited by shares or by guarantee.
- In a company limited by shares, the liability of members is limited to the unpaid value of the shares.
- In a company limited by guarantee, the liability of members is limited to such an amount as the members may undertake to contribute to the asset of the company in the events of it being wound up.

### **Transferrable Shares**

- The shares can be freely transferred in case of a public company.



## **Business Law**

- The right to transfer shares is a statutory right and it cannot be taken away by any provision.
- However, the manner in which such transfer of shares is to be made should be provided and it may also contain bona fide and reasonable restrictions on the rights of members for transfer of their shares.
- However, in case of private companies, the article shall restrict the rights of the members to transfer their shares in companies with its statutory description.
- If a company refuses to register the transfer of shares, a shareholder may apply to the Central Government in order to make the right to transfer shares legal.

### **Delegated Management**

- Any company can be considered as an autonomous, self-governing and self-controlling organization.
- Due to the presence of a large number of members, all members cannot take part in the management of different affairs of the company.
- Control and management is therefore delegated to the elected representatives called directors, who are elected by the shareholders.
- The directors supervise the day-to-day work and progress of the company.

### **Classification of Companies**

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All the companies must be registered under the Companies Act. A certificate of incorporation must be issued by the registrar of the company after registration. Different jurisdictions can form different companies. Some of the most common types of companies are as follows:

#### **Private Company**

- A company is said to be a private company if it does not allow its shareholders to transfer shares.
- If any transfer of shares is allowed, the company limits the number of its members to 50 and does not entertain any invitations to the public for subscribing any shares of the company.
- These types of companies offer limited liabilities to their shareholders but also place some restrictions on their ownership.
- A private company can have a minimum of 2 members and a maximum of 50 members, excluding the employees and the shareholders.
- A private company is desirable in those cases where it is intended to take the advantage of corporate life, has limited liability and the control of the business is in the hands of few persons.

## Business Law

- In private sector, an individual can gain control of the entire business firm.

### Public Company

- At least seven members are needed to form a public company.
- The maximum number of members remains unrestricted in the case of public companies.
- A Prospectus is issued by the public companies to invite people to buy the shares of the company.
- The liability of the members is limited by the value of the shares they purchase.
- The shares of a public company are sold and bought freely without any obstruction in the stock market.

### Companies Limited by Guarantee

- Every member of these companies promises to pay a fixed amount of money in the event of liquidation of the company.
- This amount is denoted as guarantee.
- There is no liability to pay anything more than the value of the share and the guarantee. Some of the substantial resultants of companies limited by guarantee are charities, community projects, clubs, societies, etc.
- Most of these companies are not into any profit-making.
- These types of companies can be considered as private companies offering limited liabilities to their members.
- A guarantee company substitutes share capitals with guarantors willing to pay a guarantee amount upon the liquidation of the company.

### Companies Limited by Share

In the case of companies limited by shares, the shareholders pay a nominal value of money contributing to the share capital. The payments can be done either at a time or by installments.

- The members do not have to pay anything more than the fixed value of the share. Companies limited by shares are the most popular among the registered companies.
- These types of companies are required to have the suffix 'Limited' at the end of their names so that the people know that the liability of its members is limited.

### Unlimited Company

- Unlimited companies are the companies where the liabilities of the shareholders are unlimited as in the case of partnership firms.

## **Business Law**

- Such companies are permitted under the Companies Act but are not known.
- These types of companies are incorporated either with or without a share capital.
- The shareholders are liable to donate whatever sums are required to pay the outstanding debts of the company, should it go into formal liquidation and if there is any need to meet the insufficiency of assets to pay the debts and liabilities and the fixed cost of liquidation.
- The members or shareholders have no direct liability to the creditors or security holders of an unlimited company.

## 2. BL — Principle of Separate Legal Existence

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Principle of Separate Legal Existence is a fundamental principle in the field of company law. According to this principle, the company is treated as an entity separate from its members.

### Functions of Separate Legal Existence

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- In order to create a company, the promoters of the company must produce certain documents to the registrar of companies.
- The registrar presides over the government agency known as the Companies House.
- After checking the documents, the registrar will issue a certificate of incorporation and the company starts to exist as a corporate body.

### Separate Legal Entity

The most important consequence of incorporation is that a company is regarded as a person. It has its own rights and the rights are different from the rights of its owners.

### Limited Liability

- When Shareholders buy shares from a certain Company and pay a certain percentage amount of the shares rather than paying the full amount, and when the company is dissolved, then the shareholders are liable to pay the rest of the amount.
- If a shareholder has paid the full amount, he/she is not liable to pay any amount upon dissolution of the company.
- Therefore, shareholders have a limited liability.

### Perpetual Succession

This refers to the existence of any organization despite the death, bankruptcy, insanity, change in membership of any member from the business. In such instances, the shares are passed on to the next generation.

### Ownership of Property

Certain properties can be owned by a company. These properties continue to be owned by the companies regardless of their shareholders and members.

- These properties are used when a company needs to borrow money as a security.
- These properties may be the present or future assets.

### **Contractual Capacity**

- A company has the ability to make contracts.
- The company can sue or be sued on the basis of these contracts.
- The power to make contracts is delegated to human agents working for the company.
- The contracts are carried out by the directors and other agents of the company.
- The company, as a person itself, is subjected to the rights and liabilities imposed by the contract.

### **Criminal Liability**

- For someone to be found guilty of committing a crime, the individual's actions and mindset must fit the crime.
- It is generally perceived that companies cannot commit any crime as they do not have minds of their own.
- However, the courts assume the controllers of the company to be the minds of the company.

## 3. BL — The Corporate Veil

It is seen that a

company, as a person, has a legal identity of its own. An obvious consequence is that the company in question may become liable for the actions of the company.

- Usually, the owners of the company are free from any liability.
- It is assumed that the owners of the company are protected from liabilities by the company under a 'veil of incorporation'.
- However, there are certain circumstances when the court of law removes the veil so that the members of the corporation are not protected anymore by the veil.
- However, there is no specific list of circumstances when the court of law is supposed to remove the veil.
- However, the veil has been removed in the past under the following circumstances:
  - Where the formation of the company was intended for a fraudulent purpose.
  - Where the company was considered as an enemy at the time of war.
  - Where several groups of companies were regarded as one.
  - Where a company was treated as a partnership with an intent to wind up.

### **Duties of Separate Legal Existence**

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A company, after being incorporated, is considered as a separate person in the eyes of the law and the court of justice. Hence, the company is considered separate from its shareholders and the owners.

- It has the right to sue and the company can be sued just as a natural person.
- The liabilities of the owners and shareholders of the corporation are only limited to the value of shares invested in the specific company.

### **Conversion from a Private Company to a Close Company**

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Various difficulties may arise for a buyer when he tries to obtain a mortgage bond for paying the purchase price. According to section 38 of the Companies Act, no company is allowed to offer any financial help for the purpose of acquisition of shares of a company.

This justifies that if a company owns a particular property, the buyer cannot raise money based on this property to pay the purchase price.

- For avoiding this limitation, a company has to be converted into a close corporation.

## Business Law

- No such limitation is invoked in the Close Companies Act.
- For a company to become a close corporation, the number of shareholders of the company must be limited to 10.
- The shareholders must also qualify the terms, conditions and set of qualifications as aforesaid by the Close Companies Act.
- A registration number will be allotted to the company by the registrar upon such conversion.
- According to the Companies Act, in the context of such a conversion, the existing shareholders become the only existing members of the company and no more shareholders are allowed after the conversion is performed.
- The new found close corporation hence adopts the name of the private company from which it is derived.
- A certificate on the basis of the foundation of the close corporation is issued.
- A CCI (Close Corporation founding Statement) is also registered.
- In case the members desire to change the name of the close corporation during the conversion, the registrar's consent is required.

### Close Corporation

A close corporation can be considered analogous to a 'younger brother' of the company. It is way simpler and quicker to manage and maintain.

- Annual income tax returns are required.
- However, no audited financial statement is required by the law.
- A close corporation can have the number of members limited to 10.
- A close corporation also has a separate legal identity, i.e., it is also considered as a person in the views of the law irrespective of its members.
- In many cases, a close corporation is intended for its owners to sell the properties owned by the close corporation.
- Usually, any member of the close corporation may come into a contract on behalf of the close corporation.
- However, restrictions may be imposed by an association agreement and the consent of a member holding a member's interest of at least 75% or the consent of the members holding that percentage of member's interest collectively.

### Partnership

## Business Law

A partnership is considered to be a formal relationship between a minimum of two and a maximum of twenty members based on an agreement intended to share profits through various business ventures, where each member contributes something (either money or skills) to the business.

- A partnership firm has no separate persona from the partners.
- Nonetheless, it is treated as a separate entity for transaction and registrations.
- An agreement bound by the partnership can be concluded by any of the partners.
- The partnership will not be binding if a partner concludes a contract outside the scope of the partnership.

### Trusts

A trust appears to be a complicated concept, not easily understood as a close corporation or a company. A trust does not have a separate legal identity. The law usually looks through the entity to what is behind it.

- The rate of income tax imposed on a trust is similar to the rate of income tax imposed on a natural person and not a flat rate as imposed in the case of a closed corporation or a company.
- A person does not own a trust.
- A trust can neither have shareholders nor members.
- A trust comes into existence when the founder of the trust hands over the ownership of an asset to a trustee who administers and manages the asset for the benefit of a beneficiary third person.
- Usually, trusts are created for charitable purposes.
- A trustee acts in his official capacity rather than his private capacity.
- The ownership of a trust does not belong to any individual.
- The ownership is divided between the trustees of the trust who work for the profit of a beneficiary.
- The beneficiary does not have any control over the assets of the trust.

### A Sole Proprietorship

A sole proprietorship can be considered as a single person business. It Small scale enterprises are generally owned and operated on the basis of sole proprietorship. Enterprises based on this do not require any registration. An informal trader or estate agent are probably the best examples of sole proprietors.



## **Business Law**

- A sole proprietor is considered to be an independent legal entity.
- There is no legal protection against claims of a sole proprietor.
- The personal properties or assets of a sole proprietor will be at stake in case he is sued.
- As the proprietor of the business, the owner carries the full risk of his assets and losses.
- The owner may also be subjected to sequestration.
- In the context of sequestration, if the proprietor is married in a community of property, the ownership of the estate owned by his spouse may also be held by a natural person, a trust or any other separate legal entity.
- In case of any uncertainties whether to hold a property in a person's personal name, legal consultants must be consulted before signing any legal agreement.

## 4. BL — Liabilities & Rights of Promoters

A

promoter of a company cannot be considered as an agent of the company as the company is not in existence during promotion. A promoter is not a trustee of the company. A promoter cannot make any secret profit.

### Formation of a Company

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The following things are required for the formation of a company.

- Promoters are required.
- Objectives of the promoters must be laid down.
- The names of the promoters must be subscribed to the memorandum of the company.
- The promoters must comply with the Company Act, 1956.

Private companies and public companies having a share capital can immediately start business after the certificate of registration is issued by the registrar. The incorporation of a company takes approximately 35 days in India. Public companies can offer their shares for sale to the public. The minimum share capital for a public company to be incorporated must be INR 50,000. A private company places certain restrictions on ownership.

For the formation of a company, a company passes through the following three stages:

- Promotional stage
- Incorporation stage
- Commencement of business

### Private Company and Public Company

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- The director of a private company may not be specifically qualified. A private company may have only one director who can also be the only shareholder.
- A public company must have at least 2 directors and 2 shareholders.
- A private limited company can use its resources to purchase the shares of the company when someone wishes to leave the company.
- A private company cannot offer any securities of the company to the public.
- Public companies are able to sell their shares to the public.

## **Business Law**

To differentiate public companies and private companies, the following factors are taken into consideration:

### **Minimum Number of Members**

A minimum number of 7 members and a minimum number of 2 members are required for a public company and a private company respectively.

### **Maximum Number of Members**

A private company can have 50 members at maximum whereas there is no limit for public companies.

### **Commencement of Business**

A public company needs a Certificate of Commencement for commencement of business whereas, a private company can commence business after the certificate of registration is issued.

### **Invitation to the Public**

A public company can invite the public to buy shares whereas a private company cannot sell its shares to the public.

### **Transferability of Shares**

There is no restriction on a shareholder of a public company to transfer shares. Shareholders of private companies are restricted from transferring shares.

### **Number of Directors**

A private company can have at least 1 director but a public company must have at least 2 directors.

### **Statutory Meeting**

A public company must hold a statutory meeting and file a statutory report with the registrar. There is no such obligation for a private company.

### **Restrictions on the Appointment of Directors**

A director of a public company should file his consent with the registrar. He cannot vote or participate in any discussion on a contract on which he is interested.

### **Managerial Remuneration**

For a public company, the remuneration payable to a manager cannot exceed 11% of net profits. A minimum of INR 50,000 can be paid at the time of inadequacy of profit. Private companies do not face these restrictions.

### **Further Issue of Capital**

A public company must offer further issue of shares to its existing members. A private company on the other hand is free to allot new issue to outsiders.

## Business Law

### Name

Private companies are required to have the suffix 'Private Limited' at the end of their names. A public company is required to have the suffix 'Limited' at the end of its name.

## 5. BL — Memorandum of Association Concepts

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memorandum of association of a company is a document that governs the relationship of a company with the outside world. It is one of the most important documents needed for the incorporation of a company.

### Meaning of Memorandum of Association

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The Memorandum of Association is considered as the constitution of a company. It provides the foundation to the structure or the building of the company. The memorandum of association is defined as a company's charter. It defines the limitations of a company's powers.

- Particular parts of the memorandum can be altered by the company whenever and however required.
- The memorandum of association enables shareholders, creditors and investors to know the permitting range of the company.
- It regulates the company's external affairs.

### Importance of Memorandum

The memorandum of association comes with its own importance:

- It defines the limitations of the company.
- The whole structure of the company is built on the basis of the memorandum.
- It defines the scope of activities of the company.
- It sets out a company's written goals.

### Clauses of Memorandums

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The memorandum of association contains the following clauses:

#### The Name Clause

- A company (being a separate legal entity) must have a name.
- The name of a company should be unique and should not resemble the name of any other company.
- It should not contain words like king, queen, emperor or names of any government bodies.
- A public company is required to have the suffix 'Limited' at the end of its name .
- Private companies are required to have the suffix 'Private Limited' at the end of their names.

## Business Law

- The name of the company must be painted outside every place where business of the company is to be carried out.

### Registered Office Clause

- Every company must have a registered office.
- The location of the office can be intimated to the registrar within 30 days of incorporation.
- With intimation to the registrar, a company can change its place in the same town.
- However, for changing the place of the office in a different town in the same state, a special resolution must be passed.
- To change the location of the office from one state to another, various reforms are needed to be performed on the memorandum.

### Object Clause

- It determines the rights, powers and sphere of the activities of a company.
- It should be defined carefully as it is difficult for the clauses to be altered later on.
- The company cannot incorporate any activity, which is not present in the object clause.
- The subscribers to the memorandum choose the object clause.
- Shareholders are protected by the object clause as it ensures that the funds raised for the undertaking will not be used by any other undertaking.

### Liability Clause

- It states that the liabilities of the shareholders are limited to the value of the shares owned by them.
- The shareholders are liable to pay the unpaid balance of their shares.
- The liabilities of the members may be limited by guarantee.
- It also contains the amount that every member of the company undertakes to contribute to the assets of the company in the event of winding up.

### Capital Clause

- It states the total capital of the proposed company.
- The total number of shares of each category should be present in the capital clause.
- The exact nature of any special rights and privileges enjoyed by any shareholders must be mentioned in the capital clause.

### Association clause

- The names and signatures to the memorandum of association is contained in this clause.

- At least 7 persons should sign the memorandum in case of public companies.
- At least 2 persons should sign the memorandum in case of a private company.

## **Contents of the Memorandum of Association**

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The contents of the Memorandum of Association are detailed out below.

### **Purpose of Memorandum**

- Shareholders must know the field of business in which their money is going to be used and the risks involved in the investment.
- Outside allies of the company must also know the objects of the company.

### **Printing and Signing of Memorandum**

- The memorandum of association should be divided into paragraphs and should be numbered consecutively before printing
- At least one witness should be present while a subscriber signs the association.

### **Form of Memorandum**

- The Memorandum of Association should be in the form B, C, D, or E tabular form in accordance with the Companies Act, 1956.

### **Contents of Memorandum**

The following clauses should be included in the Memorandum of association of each and every company.

- The word "limited" or the word "private limited" are required to be added as suffixes at the end of the name of a public company or a private company respectively.
- The main objectives of the company
- The objectives auxiliary to the main objectives of the company.

### **Shares capital**

In case of a company having its capital in shares,

- Each subscriber shall take at least one share and shall write his name opposite to the number of shares he takes.
- A company limited by guarantee should ensure that each member contributes a certain sum to the assets of the company.

### **Doctrine of Ultra Vires**

- A company can invoke all its powers as allowed by the Companies Act, 1956.
- Everything else is Ultra Vires ("Ultra" means beyond and "Vires" means power).

## **Business Law**

- A company acting Ultra Vires means it is acting illegal in the eyes of the law.

### **Ultra Vires by the Directors**

- If a transaction is made by a Director beyond the power of a Director but within the power of the company, the shareholders can rectify it in a general meeting.
- Any irregularities can be cured by the consent of the shareholders, if the act is within the reach of the company.



## 6. BL — Articles of Association

Articles of Association is a document, which is mandatory for every company to prepare. It contains the following details:

- The powers and privileges enjoyed by the directors, shareholders and officers while voting
- The type of business to be carried out by the company
- The type of changes, which can be made in the internal regulations of the company
- The rights, duties, powers and privileges of the company and its members

### **Articles of Association**

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Articles of Association can be considered as a contract between the members and the company. These articles bind the present as well as the future members of the company. The company and its members are bound by the articles as soon as the document is signed.

- Members have various rights and duties towards the company.
- The articles together with the memorandum of association make the constitution of the company.

#### **The Articles of association may cover the following topics:**

- The issuing and different classes of shares
- Valuation of intellectual rights
- The appointment of directors
- The directors' meetings
- Management decisions
- Transferability of Shares
- The dividend policy
- Winding up
- Confidentiality of know-how and the founders' agreement and penalties for disclosure

The company is essentially run by the shareholders but for convenience, it is run by a board of directors. The shareholders elect a board of directors and the directors are elected

at the Annual General Meeting. The directors may or may not be employees of the company. Shareholders may also elect independent directors.

- Once elected, the board of directors manages the company.
- The shareholders play no part till the next Annual General Meeting.
- The shareholders and the Memorandum of Association determine the objectives and the goals of the company in advance.
- The auditors of the Annual General Meetings are elected by the shareholders.
- The auditors may be internal auditors (employees) or external auditors.
- The Board meets several times in an year.
- An agenda is prepared before each meeting.
- The board meetings are presided over by a chairperson.
- In the absence of the chairperson, the vice chairperson presides over the meetings.

## **Meaning of Association**

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### **Purpose of an Article**

The article of association contains the following details:

- The voting powers of officers, directors and shareholders.
- The form of business that the company carries out.
- The form of freedom to change the company's internal regulations.
- The rights, duties and powers of the company and its members.

### **Articles of Association of a Company**

- The articles of association records clearly the duties and purpose of the company and its members.
- It is filed with the registrar of companies.

### **Registration of the Articles**

- Every private company, whether a company limited by guarantee or an unlimited company, should be registered with the registrar of companies along with the memorandum according to section 26 of the Companies Act, 1956.
- For a company limited by shares, it is not mandatory to have its own articles.
- A company limited by shares may partly or totally adopt the table A of the Schedule of the Companies Act, 1956.

## Business Law

- If a company limited by shares does not have any articles of association, then the table A of the schedule of the Companies Act will be applied by default, until and unless it is modified.
- There are 3 ways for a company limited by shares:
  - It may totally adopt table A.
  - It may totally exclude table A and form its own articles of association.
  - It may adopt just a part of table A and create its own articles of association.
- It is not needed to register the articles of association of a company if it totally adopts table A.
- For a company adopting table A, it should be mentioned in the memorandum of association that the company has adopted table A as its articles of association.

### The articles of a private limited company should contain the following:

- The company must have a specific amount of share capital with which the company is to be registered.
- The number of members included to register the company.

For a company limited by guarantee, the articles must state the total number of members, involving whom, the company is to be registered according to Section 27(2) of the Companies Act, 1956.

- As per Section 30 of the Companies Act, 1956, the Articles of Association must be signed by each subscriber of the memorandum of association in the presence of at least 1 witness.
- The witness must attest the articles with his signature, designation and address.

### Definitions used in Articles

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“Act of incorporation” refers to an act for the incorporation of International Air Transport Association.

- “Air service” refers to public transport of passengers, drafts or cargos via aircraft.
- “Airline” refers to an entity operating on air service.
- “Applicant Airline” refers to an airline that makes an application for IATA membership pursuant to article 5 of these articles.
- “Articles” refers to the articles of association.
- “Board” means the board of governors.
- “Committee of the Board” refers to any committee of the Board formed according to the rules and regulations of the Board of governors.

## **Business Law**

- "Dues" refers to a specific amount of money to be paid by members to maintain membership.
- "Fees" refers to a specific amount to be paid by an Applicant Airline to acquire membership.
- "General meeting" refers to Annual General meeting or any special general meeting.
- "IATA Conference" refers to conferences organized by general meeting pursuant to Article XII (3) (e) of these articles.
- "Industry Committees" refers to Committees formed by the general director with the approval of Board pursuant to Article XV (4) of these articles.
- "Limitation" refers to loss of all rights and privileges of membership.
- "Members" refers to a member Airline of IATA.
- "Membership office" refers to IATA department designated by the general director.
- "Presiding officer" refers to the individual presiding over a general meeting.

## 7. BL — Shares

Through the course of time, Business Law has evolved in the field of the division and flexibility in transferability of the ownership of a company. Each shareholder is considered an owner of the company. The degree of ownership depends on the number of shares each individual buys.

Any kind of shares can be issued in accordance with the company's articles of association. The articles of association are a set of guidelines, which provide the rules for buying, selling and transferring different types of shares. The articles of association also mention the types of shares, which could be transacted by the company. Ordinary shares constitute the biggest amount of shares, but special types of shares like the alphabet shares also exist.

- Share capital is considered as the total amount of money a company owns plus the total valuation of its assets in terms of money.
- Share capital is divided into shares.
- Shares are valued in terms of money.
- In other words, the amount of money collected by the company from its consumers to contribute to its capital is collectively known as share capital and individually known as shares.
- A share contains bundles of rights and obligations contained in the articles of association.
- A share can be considered as an interest measured by a sum of money.
- A person who invests in the shares of a company contributes to partial ownership of the company.
- The degree of ownership of the company of a shareholder is directly proportionate to the number of shares the individual buys.

### Types of Shares

According to the section 85 of the Companies Act, 1956, the share capital of a company consists of two kinds of shares:

- Preference shares
- Equity shares

### Preference Shares

As per section 85(1) of the Companies Act, 1956, a share is considered as a preference share if it carries the following preference rights:

- Before paying dividends to equity shareholders, the payment of dividend should be at fixed rate.

- Before the payment to the equity shareholder, the capital must be returned at the time of winding up of the company.

No voting rights are given to the shareholders for the internal affairs of the company. However, the shareholders can enjoy voting rights in the following situations:

- If dividend is outstanding for more than two years in case of cumulative preference shares
- If dividend is outstanding for more than three years in case of non-cumulative preference of shares
- On resolution of winding-up
- On resolution of capital reduction

## **Types of Preference Shares**

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The important types of preference shares are as follows:

### **Cumulative Preference Shares**

If dividend is not paid at the end of any year due to loss or inadequate profit, the dividend will accumulate and will be paid in the forthcoming years.

### **Non-Cumulative Preference Shares**

Dividends cannot accumulate in the case of non-cumulative preference shares.

### **Participating Preference Shares**

In addition to basic preferential rights, these shares may carry one or more of the following participation rights:

- Receiving dividends out of surplus profits left after paying dividends to equity shareholders.
- Having shares in surplus assets, which remain after the winding-up of the company.

### **Non-Participating Preference Shares**

In addition to basic preferential rights, these shares do not carry any of the following participation rights:

- Receiving dividends out of surplus profits left after paying dividends to equity shareholders.
- Having shares in surplus assets which remains after winding up of the company.

### **Convertible Preference Shares**

These shares can be converted into equity shares on or after specific dates as mentioned in the prospectus.

### **Non-Convertible Preference Shares**

These shares cannot be converted into equity shares.

### **Redeemable Preference Shares**

These shares can be redeemed by the company on or after a certain date after giving the prescribed notice.

### **Irredeemable Preference Shares**

These types of shares cannot be redeemed by the company. The shares are redeemed only on the occasion of winding up.

## **Equity Shares**

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As per section 85(2) of the Companies Act, 1956, equity shares are defined as the shares, which do not have the following preferential rights:

- Preference of dividend over others
- Preference of repayment of capital over others at the time of repayment of the company
- These shares are also called 'risk capitals'.
- They only claim dividends.
- The equity shareholders have the right to veto on each and every resolution passed by the company.

### **Shares Capital**

Shares capital may mean any of the following divisions in capital:

- **Authorized capital**

It is the amount stated as share capital in the Capital Clause of the memorandum of association of the company. This is the maximum limit amount, which is authorized to be raised by a company. A company cannot raise money above this amount unless the memorandum of association is amended.

- **Issued Capital**

It is a nominal part of the authorized capital, which has been

- Subscribed by the signatories of the memorandum of association,
- Allotted for cash or cash equivalents and
- Allotted as bonus shares.

## Transfer & Transmission of Shares

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Transfer of shares is a voluntary act. It is the phenomenon of transferring the ownership of one shareholder to another person.

### Free Transferability of Securities of Public Companies

- The shares of a public company are freely transferrable.
- The board of directors or any higher official does not have the authority to refuse or hold any transfer of shares.
- The transfer should be made effective immediately by the company as soon as the notice of transfer is made.

### Restrictions on Transfer of Shares

The articles of association empower the directors to reject any transfer of shares under the following grounds:

- Transfer of partly paid shares to paupers or minorities
- The transferee is of unsound mind.
- Unpaid call against the share of transfer
- The company has lien on shares because the transferee is in debt of the company.

### Procedure for Transfer of Shares

- An instrument of transfer should be executed in the form prescribed by the government.
- Before it is signed by the transferor and before making any entry, it is given to a prescribed authority who will attest it with a stamp and the authorized date.
- The transferor and the transferee must duly sign the instrument of transfer.
- The share certificate must also be attached to it.
- A letter of allotment must be attached to the transfer form if no certificate of transfer has been issued.
- The complete transfer form along with the transfer fees should be given at the head office of the company.
- The work of registration of transfer is taken up if no objection is received by the transferor or the transferee.
- The details of transfer are entered by the secretary in the register of transfers.
- The secretary presents the instrument of transfer along with the share certificates and the register of transfers to the board of directors.
- The board of directors passes a resolution and approves the transfer.



## **Buy-back of Shares**

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Buy-back of shares refers to the buying of sold shares. In case of buy-back, the company buys the shares back from the shareholders.

### **Objectives of Buy-back**

A company may buy its shares back from its shareholders for one or more of the following reasons:

- For increasing promoters holding.
- For increasing the earnings per share.
- For rationalizing the capital structure by writing off capital not represented by capital assets.
- For supporting share value.
- For paying surplus pay back not required by business.

### **Resources of Buy-back**

The shares of a company can be bought back by the company from the following resources:

- Free reserves
- Securities premium account
- Proceeds of any shares or any specified securities.

### **Conditions of Buy-back**

The authorization of the buy-back is done by the articles of association of the company. For authorization of buy-back, a special resolution has to be passed at the general meeting.

- The shares involved in the buyback must be free from non-transferability.
- The buy-back must be less than twenty-five percent of the total paid-up capital.
- The ratio of debts taken by the company should not exceed twice the capital and its free reserves.

### **Procedure for Buy-back**

When a company decides to buy-back its shares, it should publish an announcement notice about the decision in at least one English, one Hindi and one regional language daily newspapers in the place where the registered office of the company is located. The notice of announcement must include a specific date for determining the names of the shareholders to whom the letter of offer is to be sent.

- A public notice containing the disclosures as specified in accordance with the SEBI regulations must be given.

## **Business Law**

- A draft containing the offer letter shall be filed with SEBI through a merchant banker. This offer letter shall be dispatched to the members of the company.
- A copy of board resolution should authorize the buy-back and should be filed with the SEBI and stock exchanges.
- The opening date of the offer letter should neither be earlier than seven days nor be later than thirty days of the specified date.
- The offer shall remain open for at least fifteen days and thirty days at the most.
- An escrow account should be opened by a company opting for buy-back through public offer or tender offer.

### **Penalty**

If a company is found to be a defaulter, the company or any of its officers who is found guilty may be punished in accordance with Section 621A of the Companies Act, 1956.

The punishment may include imprisonment of up to two years and/or fine up to fifty thousand rupees.

## 8. BL — Directors

Directors, as the word suggests, are a special group of people who direct the company. The directors give certain direction to all the other members of the company to achieve certain goals.

There may be one director or a board of directors of a company depending on the company. All the important decisions of the company are made by the board of directors of the company. Many general and special board meetings are conducted by the company for the directors to make crucial decisions pertaining to the company. All the important future planning is also done by the board of directors. The board of directors plays the most vital role in the rise and fall of a company.

In other words, the board of directors actually is the leading body of the company. All the other members of the company have to comply with the decisions made by the board of directors.

### **Powers of Directors**

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The powers of the directors are normally written in the articles of association of the company. The shareholders cannot meddle with the affairs undertaken by the board of directors till the board makes the decisions within their specified power. The general powers of the board of directors are specified in section 291 of the Companies Act, 1956.

- The director must not exhibit any power or do any act, which is not in accordance with the memorandum of association of the company or which violates the Companies Act, 1956.
- No powers are given to the directors individually.
- Directors have their powers only when they are with the board of directors.
- Directors are considered to be the first shareholders of the company.
- Any decision is made if majority of directors from the board of directors agree to the decision.
- Resolutions must be passed at the meetings held by the board of directors for the directors to enjoy any special powers.

Some of the powers exhibited by the directors are as follows:

- The power to call shareholders on the context of any unpaid money
- The power to announce buy-back of shares
- The power of issuance of debentures
- The power to borrow any amount of money in case of debentures
- The power of investing funds of the company on various commercial ventures

- The power of making loans

The board of directors is entitled to do all such acts and exhibit such powers as authorized by the memorandum of association and articles of association of the company and as prescribed by the Companies Act, 1956. However, when an authorization is required by a law to be invoked, the directors can do such an act only when they are authorized to do so.

- However, whenever a delegation is required, the board of directors can delegate their powers to their lower ranking officers.
- The delegation is done by passing a resolution in the presence of a committee comprising of the directors, the managing director, the managers and other high ranking officers of the company.
- Delegation is defined as the transfer of powers of a higher officer to a lower ranking officer with the consent of the officer whose power is to be delegated, the officer to whom the power is being delegated and other important officers of the company as and when required.
- Usually delegation is done in case of the absence of the higher officers.

## **Duties of Directors**

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Directors are held responsible for the company's compliance with the law. These duties are normally delegated to a company secretary, a director or a trusted employee of the company. It must be ensured that these responsibilities are being carried out.

- Abbreviated accounts of the responsibilities can be submitted by small to medium-sized companies in most of the cases.
- It is not mandatory for small-scale with a maximum turnover of INR 6.5 million and asset value of INR 3.26 million to audit their accounts and recruit auditors for their companies.
- It is no longer a matter of obligation to most of the private companies to conduct an Annual General Meeting every year.
- However, it is compulsory to hold an Annual General Meeting for a company if any director or at least five percent of the members of the company request to hold one.
- The section of the Amendment Act, 1996, states that it is forbidden for a company to issue irredeemable preference shares or preference shares redeemable beyond 20 years.
- Directors found responsible for any such issues are termed responsible for default and a fine of up to INR 10,000 may be imposed as a penalty.
- In case of a proposed contract, the required disclosure should be made at the board meeting.
- The decision of whether to enter the contract has to be taken in the board meetings.

## Business Law

- A director, who fails to comply with the requirements as to the disclosure of the contract, will be punishable with a fine, which may extend up to INR 50,000.
- For disclosure of receipt of a transfer of property, any money received by the directors from the transferee in the context of the transfer of the property inside the company, the property of undertaking must be disclosed.
- If the loss of office of a director of a company results due to transfer of any or all shares of a company, the director does not receive any compensation unless it is foresaid in a general meeting.
- A number of powers and duties can be exercised by the board of directors in board meetings.
- It is the duty of a director to attend board meetings.
- Board meetings should be held from time to time.
- If a director is unable to attend three consecutive board meetings or all the meetings for three months without the consent of the other board members, his office will fall vacant.

### General Duties of a Director

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A director must fulfill the following general duties:

#### Duty of Good Faith

The directors should act in the best interests of the company. The foundation of the company, i.e., the interest of the company, defined as the interest of the present and future members of the company, would be continued as going concern.

#### Duty of Care

A director must show care and dedication towards the work he has been assigned although he should not be too much obsessive towards his work. Any provision in agreement with the articles that excludes the liability of the directors for default, negligence, breach of duty, breach of trust, or misfeasance is considered to be void. The directors cannot be even indemnified by the company against such liabilities.

#### Duty Not to Delegate

A director who has become an acting director as a result of delegation offered by a director of higher order cannot delegate any further. The functions of a director must be performed by the director personally, avoiding delegation as best as possible. However, a director may delegate his powers under certain circumstances.

### Liabilities of Directors

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The liability of directors to the company arises under few circumstances.

### **Breach of Fiduciary Duty**

A director will be liable for the breach of fiduciary duty when he acts dishonestly to the interest of the company. The powers of the directors must be invoked keeping in mind the advantage and interest of the company and not in the interest of the directors or any member of the company.

### **Ultra-verse Acts**

Directors are needed to exercise their powers within the limits provided by the Companies Act, 1956, the memorandum of association and the articles of association of the company.

The articles of association of a company may invoke further specific restrictions on the powers of the board of directors of the company. Being ultra-verse, the directors will be held liable personally, if they act beyond the powers limited by the articles of association of the company.

### **Negligence**

Reasonable skill and care is expected from the directors of a company as long as they hold their designation. The directors may be deemed for acting negligently in discharge of their duties and they will be both responsible and liable, if any loss or liability is faced by the company due to their negligence.

### **Mala Fide Acts**

The directors are considered to be the trustees of the money and the property of the company handled by them. If the directors of a company perform their duties dishonestly or in a mala fide manner, they will be liable to the company in the context of mala fide and they will personally provide any compensation for any loss taken by the company as a result of their dishonest performance.

- This will be considered as a breach in trust.
- They are also accountable for any secret profits they have earned in past ventures on the behalf of the company.
- Directors also face certain liabilities on the context of misconduct and misuse of their powers.

## **Liabilities under the Companies Act**

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The following duties and liabilities have been imposed on the directors of companies under the Companies Act:

### **Prospectus**

## Business Law

Any misstatement in the prospectus of a company or failure to state any particulars in the prospectus of a company, according to the prerequisites of the section 56 and schedule II of the Companies Act, 1956, will result in liability of the directors.

- The directors will be personally liable for the above mentioned defaults and will compensate for any damage or loss taken by the third party.
- According to section 62 of the Companies Act, 1956, if any loss is faced by a shareholder due to untrue or misleading statements in the prospectus of a company, then the directors will be held liable and will have to compensate for the loss.

### With Regard to Allotment

- The directors of a company are also considered liable if they conduct irregular allotments. Irregular allotment may be either allotment before minimum subscription is received or filing a copy of the statement in the prospectus of the company.
- A director may be held liable to the company and compensate for any loss faced by the company if he fully authorizes the contravention of any of the provisions of section 69 or 70 of the Companies Act, 1956, with respect to all allotment.

### Failure to Repay Application Money when Minimum Subscription Having Not Been Received within 120 Days of the Opening of the Issue

According to section 69 (5) of the Companies Act, 1956, and in compliance with SEBI guidelines, if the application money is not repaid within 130 days, the directors will be held severally liable and will have to pay the money with six percent annual interest on and after the completion of the 130<sup>th</sup> day. However, a director can be saved from being liable if he can prove that the default in repayment is not a result of his misconduct or negligence.

### Failure to Repay Application Money when Application for Listing of Securities Is Not Made or Is Refused

If the permission for lifting of shares has not been granted, the company shall repay all the money received from all the applicants pursued by the prospectus without any interest.

The company and its directors may be held liable if the money is not paid back within eight days. On completion of the eighth day, the company and its directors have to pay the money back with four percent to eight percent interest to the applicants. The rate of interest will be directly proportional to the delay in time.

## Appointment and Removal of Directors

The appointment and recruitment of directors is a crucial procedural requirement of a company. In accordance with the Companies Act, 1956, only an individual can be appointed as a director of a company.

- An association, a firm, a corporation or any other body with artificial legal identity cannot be appointed as a director.
- For a public company or a private company, which is a subsidiary of a public company, two-thirds of the total number of directors are appointed by the

## Business Law

shareholders. The remaining one-third of the directors are selected in accordance with the manner prescribed in the articles of association of the company, failing which, the remaining one-third is also appointed by the shareholders.

- The articles of a company may provide the conditions for retirement of the directors at every annual general meeting.
- If the articles remain silent, all the directors are appointed by the shareholders.
- Formal, considered and transparent elections can be conducted for election of directors.
- Evaluation of skills and abilities of the board is done from time to time to ensure smooth progress and need for succession in the board.
- Re-elections and re-appointments of the directors are conducted from time to time.
- In case of oppression and mismanagement, third parties or the government may propose for the appointment of nominee directors.
- A statement comprising the name of the first director of the company must be sent to the Registrar of Companies.
- The appointment of the subsequent directors is governed by the articles of association of the company.

### Qualifications of Directors

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The Companies Act does not provide any qualifications for the directors. However, specific qualifications can be stipulated in the articles of association of a company for the appointment of various directors. The specified share qualification of the directors is however limited by the Companies Act, which can be prescribed by a company to be five thousand rupees.

In some cases, the articles of association of the company impose some shareholding qualifications, which must be complied with to become eligible for the nomination as a director.

Directors having special expertise and experience in various fields constitute to form the board of directors. The main objective here is a balanced management and smooth functioning of the board of directors.

#### **The board of directors has the following two primary objectives:**

- To provide support for the management with good corporate governance.
- To formulate business strategies to achieve various business goals.

### General Qualifications

A director having a professional and ethical mind should have knowledge and experience in specific fields. With a commitment to create long term values and commitment to the shareholders, a director should fully understand his obligations and practices.



## Business Law

- Enough time should be given to the director to perform his duties effectively.
- A director should be able to judge himself and inform the board if he faces any hindrances or obstructions in the course of his work.

### Specific Qualifications

The chairman of the board of directors, beyond the duties mentioned above, must fulfill the following responsibilities:

- To act as the chairman of the board in the board of directors' meetings.
- To exercise a casting vote in case of tie in the directors' meeting.
- To call for the meetings of the board of directors.
- To preside over the shareholders' meetings.

**The qualifications of the chairman are slightly different from the qualifications of directors as follows:**

- The chairman must not be an executive director.
- The chairman must not be involved in day to day management.
- The chairman must not be an auditor.
- The chairman must not be a legal consultant.
- The chairman must not be an employee of the company.
- The chairman must not be a staff of the company.
- The chairman must not be an advisor of the company.
- The chairman must not be a person controlling power of the company.
- The chairman must not be a person controlling power of the associated company.
- The chairman must not be a person controlling power of the auditing company.
- The chairman must not be a person who may have conflict of interest.

### Removal of Directors

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The removal of a director before the expiry of his term in the office can be done by passing an ordinary resolution in the general meeting of a company after the issuance of a special notice. However, the above process is not applicable for promotional directors or directors appointed by the government.

- A director may be removed from his office by other directors before the expiry of his term in case of any conduct of offence and in case the director is no longer found to be qualified to hold his designation and does not resign from his post voluntarily.

## Business Law

- The resulting vacancy may be fulfilled by the appointment of another director.
- Voluntary resignation and rotations are the most common ways for the removal of directors.
- The company must issue a special notice to all the directors of the company in case of the removal of any director/s.
- A written representation from the director who is subjected to be removed concerning circumstances of his proposed removal must be issued to the company.
- However, the written representation may not be read if the company is able to convince a federal high court judge that the written representation of the director intends to create adverse publicity and/ or is defamatory in nature.
- Therefore, an abuse of the statutory rights is conferred on the director according to the Companies and Allied Matters Act.
- The removal of a director is considered to be null by the constituted court of law if a copy of the notice of removal has not been delivered to all the directors.
- By passing an ordinary resolution by a simple majority, the members of a company may remove a specific director or any number of directors.
- A person appointed as a director throughout his life can be removed by making various changes in the articles and the memorandum of association.
- A removed director cannot be deprived of compensation or damages to which he is entitled under a contract of employment.
- 'Corporate democracy' is a practice, according to which, a director holds substantial number of shares in a company or represents a group of shareholders.
- Considerable litigation follows a decision to remove a director from the board.
- The litigation concerned with the removal of a director becomes too much complicated to deal with if the director subjected to the removal or the group of people he represents are extremely resistant to the act of the removal of the specific director.
- Usually the issue of removal of a director is agitated in the high court or the Company Law board under section 397/398 of the Companies Act, 1956.
- Generally, many conflicts and controversies arise in the general meetings amongst groups of shareholders during the process of the removal of a director.
- A removed director may seek justice from the court of law if he perceives his removal to be on illegal grounds.

## 9. BL — Winding Up of a company

Winding up of a company is defined as the condition when the life of the company is brought to an end. The properties of the company are administered for the profit of its members and its creditors.

### Steps of Winding Up

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The following steps are followed in the case of a company winding up:

- An administrator, usually denoted as a liquidator, is appointed in the context of liquefaction or winding up of a company.
- The liquidator takes control over the company, assembles its assets, pays debts of the company and finally distributes any surplus amongst the members according to their rights and liabilities.
- The company has no assets or liabilities at the end of liquefaction or winding up.
- The dissolution of a company takes place when the assets and liabilities of a company are completely wound up.
- On the context of winding up, the name of the company is struck off from the list of companies and its identity as a separate legal person is lost.
- If a company is unable to pay its debts or the debts taken by the company is worth more than the assets it owns and no agreements have been made with the creditors, then the company is considered insolvent and is subjected to compulsory liquidation or compulsory winding up.
- If an insolvent owes money to a natural person, he may ask the court of law to make a compulsory winding up order against the company.
- On the issuance of the order, the order is informed by the court to the official receiver, who eventually becomes the liquidator.
- The official receiver informs the creditors and conducts interviews with the directors of the company on the context of the winding up.
- If it is believed by the official receiver that the company has enough assets to pay its creditors, then the official receiver will seek for the appointment of an insolvency practitioner as the liquidator.
- The appointment of the liquidator is done either by calling a creditors' meeting for the creditors to elect a liquidator by vote or by requesting the Secretary of the State to appoint one.
- If there are no assets left, then the official receiver will become the liquidator.
- A person must be owed a minimum amount of INR 750 without dispute before he can ask for a winding up.

## Business Law

- Other business corporations or individuals can request the order of winding up of a company.
- Insolvency Service, an agent of the government, is an investigating agency, which investigates the winding up of a company.
- The Insolvency Service investigates financial failure and misconduct of individuals and companies.
- The official receiver works for the Insolvency Service.
- The official receiver finds out when and why an individual became bankrupt and finds out the primary cause behind the liquidation of a company.
- The procedure of winding up differs according to the registration status of the company, i.e., if the company is registered or if it is an unregistered company.
- If the winding up of a company is processed in the court of law, the liquidator is termed as official liquidator.
- The official liquidator acts through a recognized reporting system under the supervision of the court.

### **Powers of a Liquidator**

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An administrator, usually denoted as a liquidator, is appointed in the context of liquefaction or winding up of a company. The liquidator takes control over the company, assembles its assets, pays debts of the company and finally distributes any surplus amongst the members according to their rights and liabilities.

#### **The following are the general powers of a liquidator:**

- Illustrating or defending any action, suit, prosecution or any legal proceedings on behalf of the company
- Carrying out the business of the company as far as it is beneficial for the company
- Paying the creditors
- Making any compromise or arrangements with the creditors
- Compromising all the calls, debts and liabilities, which may result in further debts on the company
- Selling all the mobile and immobile assets of the company by conducting public auctions or by private contracts, with power to transfer the assets to a single person or to various persons in parcels
- Performing all the acts and deeds needed for the winding up with receipts and documents using the company's seal and name
- Drawing, accepting, making and endorsing any bill of exchange or promissory note in the name and on behalf of the company

- Raising the security of the properties and money of the company

## **Compulsory Winding Up**

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Compulsory winding up takes place when a creditor of an insolvent company asks the court for a wind up. If the company goes into liquidation, the court of law appoints a liquidator for the liquidation.

- The primary objective of the liquidator is to raise as much funds as needed to pay the creditors.
- The company will then be dissolved and its name will be struck off from the list of companies in the registrar's office.
- Any surplus money left will be distributed amongst the shareholders of the company.
- This legal process ends with the company's name struck off from the list of companies in the registrar's office.
- After the name is struck off, the company ceases to exist anymore.

### **Winding up involves the following:**

- Every contract of the company, including individual contracts are completed, transferred or ended. The company is no more able to do business.
- Any outstanding legal disputes are settled.
- All the assets of the company are sold.
- Money owed to the company, if any, is collected.
- Funds raised are distributed to the creditors.
- Surplus funds left after all the transactions are distributed amongst shareholders.

## **Consequences of Winding Up**

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The most important consequences of the winding up of a company are as follows:

### **As Regards the Company Itself**

- Winding up doesn't take away the existence of the company completely.
- The company continues to exist as a corporate entity till its dissolution.
- All the ongoing business of the company is administered by the liquidator during the phase of liquidation.

### **As Regards the Shareholders**

- Contributors — a new statutory liability comes into existence.
- Every transaction of share during the liquefaction done without the approval of the liquidator is termed void.

#### **As Regards the Creditors**

- The creditors cannot file a case against the company except with the consent of the court.
- If the creditors already have decrees, they cannot proceed with the execution.
- They must explain their claims and justify their claims to the liquidator.

#### **As Regards the Management**

- With the appointment of the liquidator, all the powers of the directors, chief executives and other officers tend to cease.
- Only the powers to give notice of resolution and the power of appointment of the liquidator upon winding up of the company are given to the members.

#### **As Regards the Disposition of the Company's Property**

All the dispositions of the company's properties are void if the dispositions are not approved by the court or the liquidator.

### **Circumstances in which a Company May Be Wound Up**

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A company may be wound up by a tribunal where the petition has been filed under the following circumstances:

- A special resolution is passed by the company that the company shall be wound up by the tribunal.
- Failure of the company in reporting a statutory report at the registrar's office
- Non-commencement of the company in business within one year of incorporation
- Number of members has reduced below 7 for a public company or 2 for a private company respectively.
- The debts of the company are unpayable by the company.
- The tribunal is just equitable to wound up the company.
- The company is unable to file its balance sheet or annual return for five financial years consecutively.
- The company has acted against the sovereignty and integrity of the country.

#### **Application of Winding Up**

An application of winding up must be filed with the petition of winding up by the following entities:

- The company
- Any creditor or creditors of the company
- Any of the contributory company
- Any person authorized by the central government
- The state government or the central government

According to the procedures mentioned in section 439-481 of the Companies Act, the tribunal will move on upon the receipt of the petition.

## **Winding Up of the Company by the Tribunal**

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When a resolution for the winding up of a company is passed inside the company, the court may make an order for the voluntary winding up to continue.

- However, the court remains in supervision of the winding up.
- The freedom and liberty of the creditors, contributors or others to apply to the court at such times is limited by the court.
- A petition for the winding up must be filed at the court for the supervision of the court over the winding up.
- The winding up of a company by the order of the court is also regarded as a compulsory wind up.

Section 305 of the ordinances justifies the following circumstances where the court may wind up the company based upon a petition submitted to a court.

- If the company decides by a special resolution that the company should be wound up by the court.
  - If the company is found to be a defaulter in delivering statutory reports at the registrar's office or holding statutory meetings or holding two annual general meetings for two consecutive years.
  - If the company does not start its business for one year of incorporation or its business is suspended for one year.
  - If the number of members is reduced below 2, 3 and 7 for private, public and listed company respectively.
  - If the company is found no more able to pay its debts.
- 
- If the company is:

## Business Law

- Carrying out or complying unlawful and fraudulent activities
  - Carrying out business activities not authorized by its memorandum of association
  - Carrying out business in an oppressive manner towards its members concerned with the promotion of the company
  - Running and is managed by the hands of persons who are in a default in maintaining proper accounts or are involved in fraudulent and dishonest activities
  - Managed by persons who fail to work in sync with the memorandum of association of the company or fail to comply with the registrar and the court of law.
- If the company, being a listed company, does not stand out to act like one.
  - If the court's opinion is to wind up the company or
    - Complete deadlock in the management of the company
    - Failure of company's main objective
    - Recurring losses
    - Oppressive or aggressive policies of the majority of shareholders
    - Incorporation of a company with intent to fraudulent or illegal purpose
    - Public interest
  - If the company ceases to have a member.

### Procedure for Winding Up of a Company

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- A special resolution must be passed in the company in the context of winding up and the consent of 3/4<sup>th</sup> of its members is required for the winding up to be carried out by the court.
- A list of the total assets must be prepared in order to confirm that the company is no more able to pay its debts.
- A list of the creditors must be prepared.
- In the context of any defaults in payments, the creditors of a company are required to make a decision for filing a petition in the court of law.
- Advocates must be engaged to prepare and file the petition.

### Voluntary Winding Up

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A company may be wound up voluntarily under the following circumstances:



## Business Law

- An ordinary resolution is passed in the general meeting of the company on the context of winding up:
  - If the period pre-fixed by the articles of association of the company has been expired.
  - In case of an event according to the articles of association of the company, under which the company needs to be dissolved.
- If a special resolution is passed by the members of the company for the voluntary liquidation of the company.
- A minimum notice of 21 clear days must be given in order to convene a general meeting.
- However, with the consent of the members, a general meeting can be convened with a shorter notice.
- A voluntary winding up is commenced just after the above mentioned resolution has been passed.
- The notice for the beginning of the winding up of a company must be made in an official gazette, i.e., by applying to the registrar of companies within 14 days of commencement of the liquidation.
- Again, the notice of the winding up of the company must be published in a newspaper in the place where the registered office of the company is situated.
- The company becomes unable to conduct any commercial business activities after the commencement of the winding up.
- However, business can be conducted for the benefit of the company's winding up process, i.e., paying debts to the company's creditors, etc.
- The corporate state and its corporate power continue to remain in existence until the company is finally dissolved.
- Further, there two kinds of voluntary winding up:
  - Members voluntary winding up
  - Creditors voluntary winding up
- The rules for both kinds of winding up are the same.
- The Companies Act however provides some specific criteria for these two types of winding up.

### Members' Voluntary Winding Up

This type of winding up is carried out when the company is solvent and is able to pay its liabilities totally. The important aspects of members' voluntary winding up are as follows:

### **Declaration of Solvency**

- For the winding up of a company, it is needed for the directors to conduct a meeting, where the majority of the directors make a declaration approved by an affidavit that they have made a full assessment of the company and the company is able to pay all its debts within three years of the winding up of the company.
- It is necessary for such a declaration to be made at least 5 weeks before the resolution to become effective.
- It should be necessarily delivered to the registrar's office.

### **Appointment and Remuneration of Liquidators**

The company, in a general meeting, must exercise the following things:

- Appointment of liquidators for the purpose of winding up of the company as and when the company is about to be wound up and for the distribution of the assets of the company
- Fixing an adequate remuneration to be paid to the liquidators. This fixed remuneration cannot be changed in any circumstances. The liquidator does not take charge of his office unless the remuneration is fixed.

### **Board's Power to Cease**

- During the course of liquidation, all the powers of the directors and managers are ceased.
- However, the power to give notices and the power to make appointments to the registrar is not ceased.
- However, the powers of the directors may continue to exist upon the sanction of their powers by the shareholders or the liquidator.

### **Notice of Appointment of the Liquidator Is Given to the Registrar**

#### **Power of Liquidator to Accept Shares as Consideration as Sale of Property of the Company:**

- The liquidator can accept shares, policies or take interests to consider the sale of the company's belongings to another company.
- He may do so with an aim to distribute the same amount of members of the transferor company, provided:
  - A special resolution is passed in the company for this act to be effective.
  - He buys the interest of any dissenting member at a price to be determined by an agreement or arbitrarily.

#### **Duty of Liquidator to Call Creditors' Meeting in Case of Insolvency**

If the liquidator, for any reason, realizes that the company is on the verge of insolvency, i.e., thinks that the company will be unable to pay its debts and liabilities within the limited

time as specified by the declaration of insolvency, he must summon a meeting of the creditors where the statement of all the assets and liabilities is laid before them.

#### **Duty of the Liquidator to Inform the Income Tax Officer**

- Upon the appointment of a liquidator, the income tax office must be informed of the appointment of the liquidator.
- This must be done within 30 days of the appointment of the liquidator.
- The tax assessment of the company is to be carried out.

#### **Duty of the Liquidator to Call General Meeting at the End of Each Year**

- In case the process of winding up takes more than one year, the liquidator must call for general meetings at the end of each year.
- The meetings should be held within three months from the end of each year or as specified by the central government of India.
- The liquidator must present a brief account of his actions and the matters he is dealing with and the progress of the winding up at the general meeting before all the other members of the company.

#### **Final Meeting and Dissolution**

When the affairs of the company are fully finished, the liquidator must do the following things:

- Make a report on how the process of winding up progressed, ensuring all the property of the company has been disposed.
- Conduct a general meeting of the company for laying the report before the company and provide justification of the steps he has taken for the successful winding up of the company.
- Send a copy of the report to the registrar's office and meet the registrar to return the report within one week and make a report to the tribunal about the conduct of the winding up to ensure that the liquidation went as per the members of the company's interest.

#### **Dissolution of the Company**

- Bringing an end to the life of a company is termed as dissolution.
- No property can be held by a dissolved company.
- The company cannot be sued by the court after liquidation.
- If any property of the company still remains after the dissolution of the company, the property will be taken over by the government immediately.

## Creditors' Voluntary Winding Up

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Creditors' voluntary liquidation is a procedure in which the company's directors choose to voluntarily bring the business to an end by appointing a liquidator (who must be a licensed insolvency practitioner) to liquidate all its assets. The important provisions of the creditors' voluntary winding up are as follows:

### Meeting of the Creditors

- A creditors' meeting must be called up within two days of the day when the resolution for winding up of the company, as proposed by the creditors, is passed.
- A notice of the creditors' meeting along with the notice of the general meeting of the company must be delivered to all the creditors of the company.
- A full-fledged report on the company's affairs, the list of the creditors of the company and the estimated amount of claims made by the creditors should be presented by the directors before the creditors of the company.

### Notice of Resolution to Be Given to the Registrar:

When a resolution of winding up of a company, as proposed by the creditors, is passed, a notice of the resolution must be delivered at the registrar's office within 10 days from the day when the resolution is passed.

### Appointment of the Liquidator

- A liquidator for the purpose of the winding up of the company may be nominated by the creditors of a company at the creditors' meeting.
- However, if there are different persons nominated at the general meetings of the company and the creditors meeting of the company, then the person nominated by the creditors is appointed as the liquidator of the company.

### Appointment of the Inspection Committee

If the creditors wish, they may appoint an inspection committee for watching over the entire process of winding up of the company.

### Remuneration of the Liquidator

- The creditors fix the remuneration of the liquidator.
- If the creditors fail to fix the remuneration of the liquidator, the remuneration shall be fixed by the tribunal.
- No liquidator shall join unless a respectable remuneration is fixed.
- Once fixed, the remuneration cannot be changed.

### Power of the Liquidator

- The liquidator enjoys all the powers as vested on a director.
- Further the liquidator enjoys all the powers as vested on a liquidator in case of members' voluntary winding up according to section 494 of the Companies Act, 1956.

### Duty of the Liquidator to Call General Meeting at the End of Each Year

- In case the process of winding up takes more than a year, the liquidator must call for general meetings and creditors' meetings at the end of each year.
- The meetings should be held within three months from the end of each year or as specified by the Central Government of India.
- The liquidator must present a brief account of his actions and the matters he is dealing with and the progress of the winding up at the general meeting before all the other members of the company.

### Final Meeting and Dissolution

When the affairs of the company are fully finished, the liquidator must do the following things:

- Make a report on how the process of winding up went, ensuring all the property of the company has been disposed.
- Conduct a general meeting of the company for laying the report before the company and give certain explanation about the justification of the steps he has taken for the successful winding up of the company.
- Send a copy of the report to the registrar's office and meet the registrar to make a return of the report within one week and make a report to the tribunal about the conduct of the winding up to ensure that the liquidation went as per the members of the company's interest.

Commented [H1]: Means what?

### Dissolution of the Company

- Bringing an end to the life of a company is termed as dissolution.
- No property can be held by a dissolved company.
- The company cannot be sued by the court after liquidation.
- If any property of the company still remains after the dissolution of the company, the property will be taken over by the government immediately.

## 10. BL — Company Meetings

A company is considered as a legal entity separate from its members in the eyes of law. All the affairs of the company are practically carried out by the board of directors. The board of directors of a company carries out these affairs within the limitations of their powers, as invoked by the articles of association of the company. The directors also exercise certain powers of their own with the consent of other members of the company.

The consent of the other members is ensured at the general meetings held by the company. Any mistakes committed by the board are rectified by the shareholders (who are also considered as owners of the company) at the meetings of the company.

- The shareholders' meetings are conducted for the shareholders to give their verdict on the decisions and steps taken by the board of directors.
- Meetings are a crucial part of the management of a company as mentioned in the Companies Act, 1956.
- Meetings enable the shareholders to know the ongoing proceedings of the company and allow the shareholders to deliberate on certain issues.
- There are various types of meetings held by a company.
- Various criteria must be fulfilled for the calling, convening and conduct of the meetings.

### Statutory Meeting

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A statutory meeting is held once during the life of a company. Generally, it is held just after a company is incorporated. Every public company, limited either by shares or by guarantee, must positively hold a statutory meeting as soon as the company is incorporated.

- A statutory meeting should be held between a minimum period of one month and a maximum period of six months after the commencement of business of the company.
- A meeting before a period of one month cannot be considered as a statutory meeting of the company.
- The notice for a statutory meeting should mention that a statutory meeting is going to be held on a specific date.
- Private companies and government companies are not bound to hold any statutory meetings.
- Only public limited companies are bound to hold statutory meetings within the specified period of time.

### **Procedure of the Statutory Meeting**

The board of directors must forward a statutory report to every member of the company. This report must be sent at least 21 days before the meeting. Members attending the meeting may discuss topics regarding the formation of the company or topics related to the statutory report.

- No resolutions can be taken in the statutory meeting of the company.
- The main objective of the statutory meeting is to make the members familiar with the matters regarding the promotion and formation of the company.
- The shareholders receive particulars related to shares taken up, moneys received, contracts entered into, preliminary expenses incurred, etc.
- The shareholders also get a chance to discuss business ideas and methods and the future prospects of the company.
- An adjourned meeting is called if the statutory meeting does not meet a conclusion.
- According to section 433 of the Companies Act, 1956, a company may be subjected to winding up if it fails to submit a statutory report or fails to conduct a statutory meeting within the aforementioned period.
- However, the court may order the company to submit the statutory report and to conduct the statutory meeting and impose a fine on the persons responsible for the default instead of directly winding up the company.

### **Adjournment of Statutory Meeting**

According to section 165(8) of the Companies Act, a statutory meeting may be adjourned from time to time. Any resolution on which notice has been given according to the provision of the Companies Act may be passed whether the resolution was taken up before or after the last meeting.

- The adjourning meeting has the same power as the original statutory meeting.
- The power to adjourn depends on the decision of the meeting.
- The meeting cannot be adjourned by the chairman without the consent of the members of the meeting.
- The chairman is expected to adjourn the meeting if the members wish to do so, without invoking any discriminatory powers given to the chairman by the articles of association of the company.
- Usually, the chairman is not bound to adjourn a meeting even if majority of the members wish for the adjournment.
- The statutory meeting provides an exception in the rule that only unfinished business at the original meeting must be carried out at the adjourned meeting.
- Members have the right to initiate new topics of discussion in the adjourned meeting.

- The advantage of adjourned meetings over statutory meetings is that a resolution can be passed in an adjourned meeting, which is not possible in the case of the latter.
- If any resolution is needed to be passed based on the topics discussed in the statutory meeting, it must be passed at an adjourning meeting to go in accordance with the law.

### **Default**

In case of any default made in filing the statutory report or in conduct of the statutory meeting, the members responsible will be liable to fine according to section 165(9) of the Companies Act. The fine may extend to INR 5000.

The court can also order compulsory winding up of the company in accordance to section 433(b) of the Companies Act if the statutory meeting is not held within the prescribed time.

### **Statutory Report**

The board of directors must forward a statutory report to every member of the company. This report must be sent at least 21 days before the meeting.

#### **The particulars to be mentioned in the report are as follows:**

- The total number of allotted shares with the account of fully paid and partly paid shares and the reasons for considerations and extension of the partly paid shares
- The net amount of cash collected after the allotment of shares
- A brief insight, i.e., an abstract of receipts and payments made within 7 days of the date of the report, balance remaining in the hands of the company and an estimation of the preliminary expenses of the company
- The names, addresses, and designations of the directors, managers, secretaries, and auditors along with the change log in case of any replacements made from the date of incorporation of the company
- The details of any modifications or contracts to be submitted in the meeting for approval
- The limit of non-carrying out of any underwriting contract along with justified reasons for the non-carrying out of the aforementioned contracts
- The arrears due on the calls of every manager and director
- Details on the context of commission or brokerage paid to any director or any manager for the issue of sale of shares or debentures

## **Annual General Meeting**

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An Annual General Meeting, as the name suggests, is a general meeting, which is held on a yearly basis. According to section 166 of the Companies Act, all companies must hold Annual General Meetings at stipulated time intervals. The notice for an Annual General



## Business Law

Meeting must contain all the particulars of the meeting. However, the time to hold the first Annual General Meeting for a company is relaxed to 18 months from the date of incorporation.

- As per section 166(1) of the Companies Act, a company is not bound to hold any general meetings till the first Annual General Meeting is held.
- This relaxation is intended for the company to set up its final reports on the basis of a longer period of time.
- One more relaxation provided by section 166(1) of the Companies Act is that with the registrar's consent, the date of an Annual General Meeting can be postponed.
- This date can be postponed to a maximum time period of three months.
- However, this relaxation is not applicable for the first Annual General Meeting.
- A company may not hold an Annual General Meeting in a year if the extension of the date of the meeting is made under the consent of the registrar.
- However, the reasons for the extension of the meeting should be genuine and should be properly justified.

### Interval between Two Annual General Meetings

As per section 166(1) of the Companies Act, the time gap between two Annual General Meetings must not exceed fifteen months. According to section 210 of the Companies Act, a company must present a report containing the accounts of all the profits and losses. In case the company is not trading for profit, an income and expenditure account report must be made.

- The account shall state all the profits and losses earned and endured by the company from the day of its incorporation.
- The account shall be updated for at least 9 months from the date of the last annual general meeting.
- A balance sheet is also required to be attached along with the account.

### The Annual General Meeting is subjected to three rules:

- The meeting must be held every year.
- A maximum gap of 15 months is allowed between two Annual General Meetings.
- The meeting must be held within six months from the preparation of the balance sheet.

Failure to comply with the above rules will be considered as an offence to the Companies Act by the law and will be treated as a default unless the registrar grants extension of time for holding a meeting.

### Date, Time and Place

An Annual General Meeting can be held at any time during business hours. The day of the Annual General Meeting must not be a public holiday. The meeting can be held either at

## Business Law

the registered office of the company or any preselected venue within the area of jurisdiction of the place where the registered office of the company is situated.

- A public company or a private company, which acts as a subsidiary of a public company, may fix the time of the meeting according to the articles of association of the company.
- A resolution may also be passed at a general meeting for the selection of time of the subsequent general meetings.
- However, for a private company, the time and venue of the meetings is fixed by passing a resolution in any of the meeting.
- The venue for the meeting of the private company may not be situated within the area of jurisdiction of the place where the registered office of the company is situated.
- The section 25 of the Negotiable Instruments Act, 1881, defines a public holiday to be a Sunday or any other day as declared by the Central Government to be a public holiday. A day may be declared as a public holiday after the notice for a meeting has been issued. For avoiding difficulties that may be caused in the above mentioned scenario, section 2(38) of the Companies Act says that, "no day declared by the Central government to be a public holiday shall be a holiday in relation to such a meeting, unless the notice of declaration was issued before the declaration of the meeting."

### Default in Holding Annual General Meeting

Not holding an annual general meeting according to section 166 of the Companies Act is considered to be a serious offence in the eyes of the law. Every member of the company who is in default and the company will be rendered as defaulters.

- A fine of up to INR 50,000 may be imposed on the defaulters.
- According to section 168 of the Companies Act, if the default is found to be continuing, then a fine of INR 2,500 will be imposed on the defaulters on a daily basis till the default continues.

### Extraordinary General Meeting

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Any general meeting of a company is considered to be an extraordinary general meeting, except the statutory meeting, an Annual General Meeting or any adjournment meeting. Such types of meetings can be fixed by the directors at any time that seems appropriate to the directors. However, the meetings must be held in accordance with the guidelines mentioned in the articles of association of the company.

These meetings are held generally for the transaction of the business of a special character. Various administrative affairs of a company, which can be transacted only by resolutions passed in general meetings, are carried out in these meetings.

It is not possible for the members of the company to wait for the next Annual General Meeting for clearance of such issues. The articles of association of a company, therefore, provides freedom to conduct extraordinary general meetings to sort out such issues.

**An extraordinary general meeting can be convened:**

- By the board of directors or on the requisitions of members.
- By the requisitionists themselves on the failure of the board to call for a meeting.
- By the Company Law board.

### **By the Board of Directors**

If some business of special importance requires an approval of the members of the company, the board of directors may call for an extraordinary general meeting of the company. Going in accordance with the articles of association of the company, the board of directors of a company may call for an extraordinary general meeting whenever they feel appropriate.

The power of a director to convene an extraordinary general meeting must be exercised at a board of directors' meeting as in the case of all the powers exercised by the director.

According to the provision of the articles, if a resolution is signed by all the members of the board and is as effective as a passed resolution, a general meeting may be convened on the context of the resolution. The articles also provide the facility that there may not be sufficient number of directors to call for a general meeting.

Thus in case of insufficient number of directors, any director or any two members of the company can call for the general meeting in the same way as called by the board of directors.

### **On Requisition of Members**

The members of the company may also request for an extraordinary general meeting to be conducted. A request for holding an extraordinary general meeting can be made by the members:

- Holding at least 10% of the company's paid up share capital and having the right to vote on the context of the matter to be discussed at the meeting.
- Holding 10% of voting powers of the members in case the company has no capital.
- Preference shareholders can also call for a general meeting if the proposed resolution is going to affect their interest.
- If a member ceases to withdraw after the requisition is made, the withdrawal will not invalidate the requisition.
- The appointment of shares does not affect the rights of a member to make requisitions or vote at a meeting.

### **By the Requisitionists Themselves**

In case the directors fail to call for the meeting within 21 days of a requisition for a meeting to be held within 45 days after the submission of the requisition, the following consequences may be called:

## Business Law

- In context of a company having a share capital, by the requisitionists who represent either a major value of the paid up share capital or not less than one tenth of the company's total share capital.
- For a company not having a share capital, by the requisitionists holding at least one-tenth of the total voting power
- This kind of meetings must be called within three months from the date when the requisition is filed.
- These kinds of meetings should be held similar to board meetings.
- It is not necessary for the requisitionists to disclose the reasons for the resolution to be proposed at the meeting.

### By the Company Law Board

If it is practically impossible to call a meeting other than an Annual General Meeting for any arbitrary reasons, the Company Law Board, under section 186, may order a meeting to be called, either of its own accord or by an application of any director of the company to the Company Law Board.

A petition needs to be filed under section 186 of the Companies Act for the Company Law Board to call for a meeting.

## Meeting of BoD

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The meeting held by the Board of Directors is an important aspect for the smooth functioning and working of a company. For ensuring that the actions approved by the board are in the interest of the company, the Companies Act, 1956, incorporates several statutory prescriptions.

### Periodicity of the Board Meetings

According to section 285 of the Companies Act, the board meetings should be held every three months. The board of directors can meet any day between the 1<sup>st</sup> January and the 31<sup>st</sup> of March. Accordingly, the next meeting should be held between 1<sup>st</sup> April and 30<sup>th</sup> June. There is no scope in the section 285 of the companies act for backward calculation.

### Notice of Board Meeting

According to section 286 of the Companies Act, appropriate notice should be given to all the directors about the meeting. The meeting can be held only after the notice is given. The notice should be delivered to every director of the board.

The notice should be delivered at least seven days before the meeting. It is not mandatory to give notice to a foreign director staying outside India. However, it is advised to deliver notices to all the directors whether inside India or outside.

### Day of Holding Meeting

Generally, board meetings are held during the day within business hours. However, board meetings can also be held on a public holiday.

### **Time of Holding Board Meeting**

The Companies Act, 1956, does not impose any restrictions on the timing of board meetings. They can be held during or outside business hours, as per the convenience of the board.

### **Place for Holding Board Meetings**

Board meetings can be held anywhere as per the convenience of the board. The board is not bound to select a venue for the meeting in the same city where the company's registered office is situated as in the case of general and statutory meetings. Board meetings can also be held abroad.

### **Quorum of the Board Meeting**

According to the provisions given by the Companies Act, at least one-third of the directors or two directors (whichever is higher) must be present to conduct a board meeting. If a fraction arises during the counting of one-third, the fraction is counted as one. These rules also apply to a private company. According to section 287(2) of the Companies Act, the company can raise the number of quorum through its articles of association.

## 11. BL — Various Laws and Acts

Laws can be defined as a set of guidelines and rules, which must be followed by every business entity to carry out smooth, just and legal business. Any violation in the law is treated as an offence to the Indian constitution. A huge number of laws and Acts were passed in the Indian history in the field of business. Still new laws are being made according to the market scenarios. Many laws have also been removed as and when required.

- The law also provides certain rights and privileges to certain groups or ranks of people.
- Since the creation of the constitution, various Acts were made.
- These acts may contain hundreds of sections.
- The sections are again subdivided into various parts or articles.
- Although the laws are considered to be rigid and strict, corrections, termed as amendments, can be made to rectify a certain law for a specific amount of time.
- Any default or offence committed against the laws may be punishable by the Court of Law.
- Depending on the intensity of the offence, the punishment may vary from a penalty of few thousand Rupees to imprisonment for several months.
- All the companies must respect and maintain the integrity of the law.

## 12. BL — Law of Contract Act

The Indian Contract Act was passed by British India in 1872. This law is applicable throughout the country, except the states of Jammu and Kashmir. This act deals mostly with the guidelines and principles related to contracts.

### **This law can be subdivided into two parts:**

- Sections 1 to 75 are related to general principles of contracts.
- Sections 124 to 238 are related to special kinds of contracts such as indemnity and guarantee, bailment, pledge and agency.
  - According to the Contract Act, a contract can be defined as an agreement which can be enforced by law. When two parties mean the same thing in the similar sense at the same time and work for the same purpose, they are termed to be at a point of agreement.
  - Section 2(e) of the Contract Act defines an agreement to be a set of promises, which form the considerations of both the parties. Obligation can be defined as an action or a duty to which a person is committed morally as well as legally.
  - Both agreement and obligation constitute to form a contract. Any agreement related to social matters cannot be considered as a contract. A legal relationship must be created between the two parties to constitute a contract.

### **Essential Elements of a Valid Contract**

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The following are the essential elements for a valid contract:

- An offer proposed by one party should be accepted by the other party which results in a point of agreement.
- Both the parties should be in consent of creating a legal relation and stay prepared for legal consequences.
- The agreement should be in the consent of the law.
- The contracting parties must be legally eligible for the contract.
- The consent of both the parties must be genuine.
- The aims and objective of the contract should be legally acclaimed and should not oppose any policy of the public.
- There should be precise and clear terms and conditions in the contract.
- The agreement should be practically possible to be enacted.

### **Proposal or Offer**

Making an offer is one of the initial steps in creating a contract. An offer or a proposal must be made by the first party, which initiates the contract to the second party. The first party is often termed as the offeror and the second party is often termed as the offeree. If the offeree accepts the entire offer without any negotiations or changes, the contract comes into existence.

### **Rules Administrating Offers**

The following rules must be followed for the validation of an offer:

- It is mandatory for an offer to be clear, complete, definite and final.
- For an offer to be effective, it must be conveyed to the offeree so that the offeree gets the choice to accept or reject the offer.
- The offer can be conveyed orally or in a written document or may be implied by the conduct.
- An offer may be made to the general public or to a specific person or to a specific group of people.

### **Acceptance**

It is only upon the acceptance of an offer that a contract comes into existence. Acceptance of an offer can be defined as the point when the offeree agrees with the terms & conditions and interest of the offer and gives his consent in compliance of the offer. A proposal becomes a promise when it is accepted.

### **Rules Administrating Acceptance**

- It is mandatory for the acceptance to be unqualified and absolute.
- The acceptance must comply with all the terms and conditions of the offer.
- Acceptance can be expressed orally or in a written document or may be implied by the conduct.
- A conditional acceptance or a return offer may be considered as a rejection to the offer and may contribute to lapse of the offer.
- The offerer should be conveyed of the acceptance by the offeree. If, in any case, the offeree intends to accept the offer but does not convey the acceptance, the offer is not considered accepted.
- No communication to the offerer is required for acceptance of an offer that requires some actions to be invoked as a response or sign of acceptance.
- The offeree must accept the offer within the specified time limit of the offer.



## **Contract of Indemnity and Guarantee**

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### **Contract of Indemnity**

A contract of indemnity is defined as a special contract by virtue of which two parties' enter into a contract, if and only if, one party promises the other party to save it from any losses incurred due to the contract or any other specific reasons. The party which makes the promise is termed as indemnifier. The party which is protected by the promise is termed as indemnified. The best possible example of a contract of indemnity would be the contract of insurance.

### **Contract of Guarantee**

A contract of guarantee may be defined as a contract to carry out the promise of a third person in case of any defaults. The person who gives the guarantee is termed as surety.

- 'Debtor' is the term used for the person for whom the guarantee is given.
- The person to whom the guarantee would be given is called creditor.
- A guarantee can either be oral or written.
- A contract must qualify all the norms of a valid contract just like an indemnity.
- There is however a special consideration according to section 127 of the Contract Act, i.e., it may be a sufficient condition for the surety to give the guarantee that something is done or some promises are made for the benefit of the principal debtor.

## 13. BL — Law of Sale of Goods

Various businessmen and consumers normally have the freedom to get into whatever contract they see fit for themselves. Contracts involving sales of goods may however be liable by some statutory restrictions. Various rules and guidelines are created keeping in mind the safety and security of the consumers.

The Law of Sale of Goods provides such guidelines and liabilities for the safety and security of the consumers. Any firm or person entering into the business of selling goods to consumers should be aware of the fact that the law will impose certain terms and conditions on each transaction.

Consumers can be defined as the group of people who buy certain commodities which will not be involved in their trade, profession or business. Consumers lie at the end of the trade chain.

### Important Sections

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Most of the terms and conditions of the Law of the Sale of Goods, 1979 are found between sections 12 and 15 of the law. Some of the important aspects of the law are discussed below.

#### Section 12

- The right to sell goods must be held by the seller.
- In case the goods are found to be stolen, the seller loses the right to sell the goods.
- In such situations, the buyer might take the responsibility of returning the goods to the rightful owner and the seller must compensate for the buyer's loss.
- A commodity hired by a seller cannot be sold as the buyer has no legal rights on the commodity and the commodity is still in possession of the hiring party.
- The seller cannot claim a full refund from the buyer in case the seller did not know that the commodity he sold was stolen.

#### Section 13

- If a commodity is being sold by using its description, the commodity must correspond to the description.
- If the buyer relies at least on parts of the commodity, which he is buying according to the description, those parts of the commodity must be present in the commodity.
- This section is a strict liability and applies to both the sellers and those selling goods in the course of business.
- The information provided in the registered documents does not provide any defense.

**Section 14(2)**

This section deals with the quality of the product. This section imposes the following criteria to be fulfilled by a commodity to be considered of satisfactory quality:

- The commodity must be fit for serving all the purposes for which it is sold.
- The appearance and finish of the commodity must be acceptable.
- There should be freedom for minor defects of the product.
- The good should be safe and durable.

**Buyers cannot expect legal remedies in accordance with the following:**

- Fair wear and tear
- Misuse or accidents
- In case the item is not needed anymore

**Section 14(3)**

- Any specific purpose for which a commodity is bought by the buyer must be conveyed to the seller by the buyer and the seller must comply with the purpose.
- The purpose may be regardless of the purpose for which the commodity is commonly bought.

**Section 15**

- This section deals with the contracts of sale determined by sample.
- If the seller and the buyer come across a contract of sale by the sample, the sample of goods provided by the seller to the buyer must correspond to the whole bulk of the commodity.

## 14. BL — Law of Arbitration

With the increase in the international trade and the economic development of countries, there has also been an increase in the number of disputes related to commerce. Our country has also been the battleground of many disputes. Many Indian courts are already overburdened for justice in many serious cases, resulting in the lack of priority for commercial disputes. As a result, various alternative dispute resolution mechanisms like arbitration come into play.

One of the best examples of arbitration in India would be the panchayat system. People used to submit their disputes to the panchayats to seek justice. The Arbitration Act was passed in 1940 and hence was the law governing arbitration in India.

### **The Arbitration Act, 1940**

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Only domestic arbitration was dealt with by this act. According to this act, there were three stages of arbitration:

- Before the reference of the dispute to the arbitral tribunal
- During the proceedings before the arbitral tribunal
- After the award was passed by the arbitral tribunal

This act required all the intervention of the court in all the three stages of the arbitration process. It was needed to prove the existence of an agreement of the dispute. It was necessary for the award to become a rule of the court before the making of the award.

### **The Arbitration and Conciliation Act, 1996**

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The 1940 act was revisited in 1996. The 1940 act was revisited in order to provide an effective dispute resolution framework. The 1996 act has two important parts.

- Part I is involved in any arbitration conducted in India and enforcement of awards respectively.
  - Part II is involved in the enforcement of foreign awards.
  - Any arbitration or enforcement of award with respect to the arbitration (whether domestic or international) conducted in India is enacted by Part 1 of the 1996 Act.
  - The enforcement of any foreign award, to which the New York Convention or the Geneva Convention applies, is enacted by Part II of the 1996 Act.
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- The 1940 Act was designed for international arbitrations only, whereas the 1996 Act applies both to international as well as domestic arbitration.

## **Business Law**

- The 1996 law goes beyond the 1940 Act with respect to the area of minimizing judicial intervention.

## 15. BL — Law of Carriage of Goods

The globalization of various markets, international economic integration, removal of barriers in business & trade and increased competition has significantly increased the dependency of business on transportation. Transportation these days has become one of the crucial game changers in the field of business.

Proper transportation helps in stepping ahead in competitive positioning. Goods need to be transferred from one place to another. A contract of carriage must be entered in order to transport goods from one place to another. The association or organizations that carry out the job of transportations are termed as transporters.

Goods may be transported either by land or by water or by air transportation system. The transportation of a cargo using two or more modes of transportation is termed as multimodal transportation.

There are four modes of carriage transportation in India:

- Roadways
- Railways
- Sea
- Airlines

### Carriage of Goods by Land

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The carriage of goods by land is governed by two laws — the Carriage by Road Act, 2007 and the Railways Act, 1890. According to the Carriage by Road Act, a common carrier can either be an individual, person or an organization, which carries out the trade of transportation over the land or inland waterways for the purpose of raising money.

- A private carrier is defined as an entity which carries its own goods or the goods of selected persons.
- Private carriers are governed by the Indian Contract Act rather than the Carriage by Road Act, 2007.
- The Carriage by Road Act, 2007 was passed to revise the then obsolete Carriers Act, 1865.
- The act deals with the regulation of common carriers, limiting their liability and declaration of value of goods delivered to them to determine their liability for loss or damage to such goods due to the negligence or criminal acts carried out by themselves, their servants or agents.
- Except Jammu and Kashmir, the act applies to the whole of India.

## Carriage of Goods by Rail

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The Railways Act, 1989, governs the carriage by railways. Some of the important aspects of the act are as follows:

According to section 61 of the act, every railway administration must maintain rate books, which contain the rate authorized for the carriage of goods from one station to another and make them available for the reference of any person during all reasonable hours without making demands for any fees.

- According to section 63, if the goods are entrusted to a railway administration for the carriage, then such type of carriages shall be at railway risk rate, except where owner's risk rate is applicable in respect of such goods. The goods shall be deemed to have been entrusted at the owner's risk rate, if no rate is opted.
- According to Section 64, a forwarding note should be executed by each and every person entrusting any goods to a railway administration for carriage in the form as specified by the Central Government. The correctness of the forwarding note is assured by the cosigner of the note. He shall be held responsible and shall be subjected to compensation for losses caused due to incorrectness or incompleteness of the forwarding note.
- According to section 65, a railway receipt shall be issued by the railway administration, as specified by the Central Government, in case the goods are to be loaded by a person or on the acceptance of the goods. The weight and the number of packages should be stated in the railway receipt.
- According to section 67, dangerous and offensive carriage should not be carried by any person unless the danger involved and offensiveness of the carriage is approved by the railway administration as a response to a notice containing the risks involved in the transportation of the carriage submitted by the person who is transporting the carriage or the dangerous and offensive nature of the carriage is distinctly marked on the package of the carriage.

## 16. BL — Consumer Protection Act

The Consumer Protection Act, 1986 protects the interests of consumers in the market. This act contains the following definitions:

**Definition 1:** "Appropriate laboratory" refers to a laboratory or organization which is

- Recognized by the Central Government;
- Recognized by a State Government,
- Any laboratory or organization established under any law for the time being in force, which is maintained and financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods for defects.

**Definition 2:** "Complainant" refers to

- A consumer
- Any voluntary consumer association registered under the Companies Act, 1956
- The Central Government or any State Government
- Consumers having the same interest

**Definition 3:** "Complaint" refers to any allegation in writing made by a complainant of

- An unfair or restrictive trade practice
- The goods bought suffering from defects
- The services hired having deficiencies
- Goods sold by a trader being in excess price
- Goods hazardous to life and safety being sold by any trader

**Definition 4:** "Consumer" refers to a person who

- Buys any goods
- Hires any service

**Definition 5:** "Consumer dispute" refers to a dispute where a consumer make a complaint against a person and the person denies the allegations contained in the complaint.

- "Defect" refers to any fault in the quality or quantity of any goods.
- "Deficiency" refers to fault in the quality or quantity of any services.



## Business Law

- "District Forum" refers to a Consumer Dispute Redressed Forum.
- "Goods" refers to goods as defined in the Sale of Goods Act, 1930.
- "Manufacturer" refers to a person who
  - Makes and manufactures goods and parts
  - Assembles goods made by other manufactures and claims the end product to be manufactured by him.
  - Puts his trademark on commodities manufactured by other manufacturers and claims the commodities to be manufactured by him.
- "National Commission" refers to the National Consumer Disputes Redressal Commission.
- "Notification" refers to a notification published in the Official Gazette.
- "Prescribed" refers to prescribed rules made by the State Government or the Central government.
- "Service" refers to service of any description, which is made available to potential users.
- "State Commission" refers to a Consumer Disputes Redressal Commission established in a State.
- "Trader" refers to a person who sells or distributes any goods for sale, including the manufacturer.

## 17. BL — Industrial Disputes Act

This act was incorporated in 1947. It extends to the whole of India. The Trade Disputes Act, 1929 was replaced by this act because the Trade Dispute act imposed certain restrictions on the rights to strike and lockout in public utility services.

There was no provision in the Industrial Disputes Act for the settlement of industrial disputes. The Industrial Act was incorporated in order to compensate for the deficiencies of the Dispute Act, 1929. The objectives of the Industrial Dispute Act are to maintain industrial peace and to achieve industrial justice.

### **Industrial Disputes Act**

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The main aspects of this act are as follows:

- Any industrial dispute can be sorted out at an industrial tribunal by the mutual consent of both the parties or by the state government.
- An award shall bind on both the parties creating the dispute within one year.
- Any kind of strikes and lockouts are restricted during the period when the conciliation and the adjunction is pending, when the settlements reached in the course of conciliation are pending and when the awards of industrial tribunal declared by the government are pending.
- In case of public interest or in the time of emergency, the government has the power to declare the transport, coal, cotton textiles, food stuffs and iron and steel industries to be public commodity services for a maximum of six months.
- The employer is requested to pay compensation in case of lay-off or retrenchment of workmen.
- For industrial disputes, a number of authorities is provided irrespective of the roles they play in the industry.

#### **Arbitrator**

An arbitrator is an umpire who presides over the tribunal in case of an industrial dispute.

#### **Average pay**

The average payment of the workmen is termed as average pay.

#### **Award**

An interim of the final determination of an industrial dispute is termed as award.

#### **Banking company**

Banking company refers to a banking company as defined in the Banking Companies Act, 1949.

**Board**

A board of conciliation constituted under this act is termed as board.

**Closure**

The permanent closing down of a place of employment is termed as closure.

**Conciliation officer**

A conciliation officer appointed under the act is termed as a conciliation officer.

**Conciliation proceedings**

Any proceedings held by the conciliation officer are called conciliation proceedings.

**Court**

The court of enquiry constituted under this act is termed as court.

**Industrial dispute**

It is a dispute between the employees and the employers or between the employers and the workmen.

## 18. BL — Factories Act

The Factories act was incorporated in 1948. The main objective of the Factories Act is to regulate the conditions of work in manufacturing establishments coming within a factory. This act contains detailed provisions regarding safety, health and welfare of the employees of a factory. It also contains provisions regarding the parameters such as the working hours, the minimum and maximum age limit, etc.

### Factories Act

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The following terms are defined under the Factories Act, 1948:

#### Factory

A factory is defined as any premises where,

- Ten or more workers are working or have worked for at least twelve months.
- Twenty or more workers are working or have worked for at least twelve months.

A factory can also be defined as a place where the process of manufacturing is incorporated by a prescribed minimum number of workers.

#### Manufacturing process

Section 2 of the Factories Act defines the manufacturing process as a place that includes

- Making, altering, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or treating and adopting any article or substance to use, sale, transport, delivery or dispose.
- Pumping of oil, water, sewage or any other substance or generation, transformation or transmission of power.
- Composing types for printing, printing by letter press, lithography, photogravure or other similar processes like book binding.
- Preservation and storage of any articles in cold storage.

#### Power

Electrical energy or any form of energy used for the functioning of the manufacturing process in the factory is termed as power.

#### Prime mover

A machine, motor or engine which provides power is called prime mover.

#### Transmission machinery

Any appliance or device by which the motion of the prime mover is transmitted to or received by machinery is called transmission machinery.

**Machinery**

The prime movers, transmission machinery and all other appliances, whereby power is generated, transformed, transmitted or applied, are collectively called machinery.

**Adult**

A person who has completed eighteen years of his life is called an adult.

**Child**

A person who hasn't completed fifteen years of age is considered a child.

**Young person**

A person, who is either a child or an adolescent, is called a young person.

**Calendar year**

The period of twelve months beginning from the first of January till the thirty first of December is termed as a calendar year.

**Day**

The period of twenty-four hours beginning from the midnight is termed as a day.

**Week**

The period of seven days beginning from the midnight of Saturday is termed as a week.

**Shift and Relay**

If two or more sets of workers are carrying out the same task in different periods of time, then the sets of workers are termed as relays and the durations of time for which each set works is termed as shifts of the relays.

**Occupier**

The person having the ultimate control over the affairs of the factory is termed as an occupier.