



S.Y.B.COM.
SEMESTER - III (CBCS)

**COMPANY SECRETARIAL
PRACTICE**

SUBJECT CODE : UBCOMFSIII 5.7

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**S.Y. B.Com.
Semester - III (CBCS)
Company Secretarial Practice**

Course Objective:

- To provide the learners an insight about Company Secretarial Practices.
- To make the learners understand the role of Company Secretary towards Company's statutory provisions, rules and regulations.
- To make the learners understand the various aspects of Company Management, meetings and reports.

SECTION I

Sr. No.	Modules
1	Introduction to Company
2	Company Secretary Practices
3	Company Documentation and Formation
4	Secretarial Correspondence

Sr. No.	Modules /
1	Introduction to Company <ul style="list-style-type: none"> • Introduction to Company – Features, Types -As per Company's Act, 2013. • Company Secretary – Qualities, Qualifications, Appointment procedure, Resignation & Removal. • Role of Company Secretary–Rights, Responsibilities, Liabilities of Company Secretary, Career options of Company Secretary.
2	Company Secretary Practices <ul style="list-style-type: none"> • Advisory Services – Role of Company Secretary as an advisor to Chairman, Secretary as an liaison officer between the (a) Company and Stock Exchange (b) Company and Depository Participants (c) Company and Register of Companies (ROC). • Representation Services of Company Secretary at different forums- Company Law Board, Consumer Forum, SEBI, Arbitration & conciliation services, Cyber Law compliance, Secretarial Standards – Advantages, Secretarial Standards by ICSI, Secretarial Standards -1- 10.

II

	<ul style="list-style-type: none"> • Secretarial Audit – Procedure and Stages, Need and Importance, Scope.
3	Company Documentation and Formation <ul style="list-style-type: none"> • Memorandum of Association (MOA) - Clauses, Alteration of MOA, Ultra Vires. Articles of Association (AOA) – Contents, Prospectus – Statement in Lieu of Prospectus, Contents, Misleading Prospectus. • Company Formation –Stages, Secretarial Duties at each stage in public company and private company. • Conversion & Reconversion of Private and Public Company – Secretarial Procedure.
4	Secretarial Correspondence <ul style="list-style-type: none"> • Correspondence– Shareholders, Debenture Holders, Registrar of Companies, Stock Exchange & penalties thereon • Correspondence with SEBI, Company Law Board and penalties thereon, Role of technology in Secretarial Correspondence • Specimens– Letter to shareholders - Rights Issue, Bonus Issue, Letter to ROC-Alteration of MOA/ AOA, Letter to Stock Exchange –Listing of shares, Letters to Government- Reconversion/Conversion, Letter to Bank – Overdraft Facility

Readings:

1. M. C.Bhandari : Guide to Company Law Procedure; Wadhwa& Company, Agra&Nagpur
2. K. V.Shanbhogue : Company Law Practice; BharatLaw House, New Delhi – 34
3. M. L.Sharma : Company Procedures and Register of Companies , Tax Publishers, Delhi
4. A. M.Chakborti, : Company Notices, Meetings and B. P.Bhargava Resolutions, Taxmann, New Delhi
5. A.Ramaiya : Guide to the Companies Act, Wadhwa& Company, Nagpur
6. R.Suryanarayanan : Company Notices, Meetings and Resolutions, Kamal Law House, Kolkatta
7. D. K. Jain : E- Filling of Forms & returns
8. Taxmann : E-Company forms
9. V.K.Gaba : Depository Participants (Law & Practice)

III

10. ICSI Publications : Meetings
11. B. K. Sengupta : Company Law
12. D. K. Jain : Company Law Procedures

References:

1. M. C. Bhandari : Guide to Memorandum, Articles and R. D. Makheeja Incorporation of Companies; Wadhwa & Company, Agra & Nagpur
2. Taxman : Company Law, Digest

Journals:

1. Chartered Secretary : ICSI Publication
2. Student Company Secretary : ICSI Publication
3. Company Law Journal : L.M. Sharma, Post Box No. 2693, New Delhi – 110005.



PAPER PATTERN

COMPANY SECRETARIAL PRACTICE

SECTION I

- | | |
|---|----|
| 1. Define the terms (Any five) | 10 |
| 2. Answer Any Three Out of six questions | 30 |
| 3. Write notes on Any two out of four | 10 |



INTRODUCTION TO COMPANY

Unit Structure:

- 1.0 Objectives
- 1.1 Introduction
- 1.2 Joint Stock Company
- 1.3 Company Secretary
- 1.4 Appointment Procedure, Resignation and Removal of Company Secretary
- 1.5 Career Options
- 1.6 Rights, Responsibilities and Liabilities of Company Secretary
- 1.7 Exercise
- 1.8 References

1.0 OBJECTIVES

After studying the unit students will be able to:

- Understand Features and Types of Company
- Explain Qualities and Qualifications of Company Secretary
- Know Appointment procedure, Resignation and Removal of Company Secretary
- Discuss Rights and Responsibilities of Company Secretary
- Describe Liabilities of Company Secretary
- Know the Career Options of Company Secretary

1.1 INTRODUCTION

The word company refers to association of people coming together to achieve some common purpose. A Joint Stock Company is a voluntary association of people incorporated under Indian Companies Act, the capital of which is divided into small number of units which is known as 'shares'. A person who purchases shares of company is called 'Shareholder'. Shareholders are the owners of company because they contribute the capital of company and this capital remains in the business for the life time of the company. Shareholders get 'dividend' as return on their investment in the company. Shareholders are not in a position to look after day to day administration of the Company so they appoint their representatives

known as 'Directors'. Directors collectively are known as "Board". Board of Directors is the representatives of shareholders and manages day to day administration of company.

1.2 JOINT STOCK COMPANY

1.2.1 Definition

According to **Chief justice Marshall** "A corporation is an artificial being, invisible, intangible and existing only in contemplation of the law. Being a mere creation of law, it possesses only the properties which the charter of its creation confers upon it either expressly or as incidental to its very existence."

According to **Sec. 2(20) of Companies Act, 2013**, "Company means a company incorporated under this Act or under any previous company law."

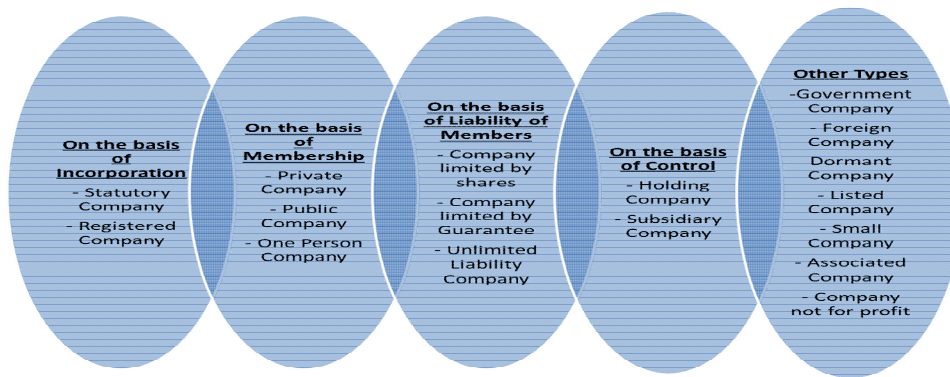
1.2.2 Features of Joint Stock Company

- 1) **Voluntary Association:** A Joint Stock Company is a voluntary association of people. Any person irrespective of his/her caste, creed, religion, region etc. can become member. A person can be a member at his wish and leave membership as and when he/she wants subject to provision in Articles of Association of the company.
- 2) **Incorporated Association:** A Joint Stock Company is an incorporated association as it is registered under Indian Companies Act, 2013. The registration is compulsory in India for every Joint Stock Company irrespective of its size and nature of business.
- 3) **Artificial Person:** A Joint Stock Company is an artificial person created by law. Just like a natural person, a Joint Stock Company can sign (common seal) documents, appoint employees, purchase or sale assets and property and enter into contracts.
- 4) **Independent Legal Entity:** A Joint Stock Company can enjoy separate legal status. Existence of Joint Stock Company is different from its shareholders and directors.
- 5) **Perpetual Succession:** A Joint Stock Company has perpetual succession. The death, insolvency and insanity of any shareholder or director does not affect continuity of company. There is no death of company. However, it can be closed by following legal procedure stated in the Companies Act.
- 6) **Common Seal:** A Company cannot sign physically so common seal can be affixed on all the documents of company along with

signature of Board of Directors. Common seal is treated as signature of company. It remains in the custody of Board of Directors of company.

- 7) **Limited Liability:** The liability of shareholders of company is limited upto unpaid value of shares. Once the unpaid value of shares is paid by shareholders, they are not liable to pay any debts of company out of their personal property.
- 8) **Separation of Ownership and Management:** In Joint Stock Company the ownership and management are different. Shareholders are the owners of company and Board of Directors are the Managers of company. The shareholders are large in number and spread over wide area. It is not feasible for them to participate in management of company. So they appoint Board of Directors as their representatives to look after day to day routine of company.
- 9) **Huge Membership:** The membership of Joint Stock Company is huge. A private limited company must have minimum 2 members and maximum 200 members. A public limited company must have minimum 7 members and maximum no limit on membership.
- 10) **Huge Capital:** Joint Stock Company can collect huge capital due to huge membership. They can collect capital by issue of shares (owner's fund) or debentures and bonds (debt fund). They also accept public deposits. It obtains loans from banks and financial institutions.
- 11) **Transferability of Shares:** Though the shares of Private Limited Company are not freely transferable, the shares of Public Limited Company are freely transferable in open market. Anyone who wishes to sell share can do so anytime.
- 12) **Government Control:** Functioning of Joint Stock Company is controlled by Government. The purpose is to protect interest of investors. It also helps to control frauds taking place in companies and maintain good governance in the functioning of company.

1.2.3 Types of Companies



I) ON THE BASIS OF INCORPORATION

- 1) Statutory Company:** These companies are incorporated under special Act passed by the central or state legislative. This company functions as per provision of special law. Eg. Reserve Bank of India (RBI), State Bank of India (SBI), Life Insurance Corporation (LIC), Unit Trust of India (UTI).
- 2) Registered Company:** These companies are incorporated under the Companies Act, 2013 or any previous company law. These companies function as per provisions of Companies Act, 2013.

II) ON THE BASIS OF MEMBERSHIP

- 1) Private Company:** The private company has following features:
 - Minimum paid up capital as prescribed by its Articles
 - Prohibits issue prospectus to public for inviting for subscription of shares
 - Minimum 2 members and maximum 200 members are required.
 - Restrict transferability of shares.
- 2) Public Company:** The private company has following features:
 - Minimum paid up capital as prescribed by its Articles
 - Issue prospectus to public for inviting for subscription of shares
 - Minimum 7 members and maximum no limit on membership.
 - Freely transferability of shares.
- 3) One Person Company:** The concept of One Person Company was introduced through the Companies Act, 2013. It is operated by single promoter who has limited liability. Due to limited liability, this business considered to be better than Sole Trading Concern. This company can have more than one director and need not to hold AGM. It is a private limited company and it has to ful-

fill and comply with all the formalities of private company unless otherwise specified in the Act.

III) ON THE BASIS OF LIABILITY OF MEMBERS

- 1) **Company Limited by Shares:** These companies have share capital and liability of its members is limited upto unpaid value of shares. At the time of winding up of company members are liable to pay only unpaid value on their shares. Most of the companies in India are limited by shares.
- 2) **Company Limited by Guarantee:** Such companies may or may not have share capital. At the time of winding up of company each member is liable to pay fixed sum of money specified in Memorandum of Association of company to pay the debts and liabilities of company.
- 3) **Unlimited Liability Company:** In this type of company, liability of members is unlimited. In case company is having debts and liabilities, the members have to sell their personal property along with business property to repay debts and liabilities of companies. Such companies are not very popular among investors.

IV) ON THE BASIS OF CONTROL

- 1) **Holding Company:** It is company which holds more than 50% of shareholding in another company (Subsidiary Company). This company controls the management of subsidiary company. There are 2 types of holding company:
 - **By Share Holding:** Controls more than 50% of total share capital either at its own or together with one or more of its subsidiary companies.
 - **By Management:** Controls the composition of Board of Directors
- 2) **Subsidiary Company:** This Company is just opposite to holding company. More than 50% of its shares are purchased by holding company. This company is controlled by holding company. Eg. Company 'B' is having total 10,000 shares out of which Company 'A' holds 6000 shares. So Company 'A' is Holding Company and Company 'B' is Subsidiary Company.

V) OTHER TYPES

- 1) **Government Company:** Government company is the one in which not less than 51% of paid up share capital is held by:

- The Central Government
- State Government
- Partly by Central Government and Partly by State Government
- Subsidiary Company of a Government Company

Government Company may be a private company or public company. It is registered under India Companies Act, 2013. Eg. Oil and Natural Gas Corporation Ltd. (ONGC), Steel Authority of India Ltd. (SAIL), Bharat Heavy Electrical Limited (BHEL), Hindustan Machine Tools Ltd., Coal India Limited etc.

2) Foreign Company: It is a company incorporated outside India but having a place of business in India whether:

- By itself or through an agent, physically or through electronic mode and
- Conducts any business activity in India in any other manner. Eg. Nestle India Ltd., Bata India Ltd., Whirlpool Corporation etc.

3) Dormant Company: The Companies Act, 2013 has introduced concept of dormant company which would have adhere to fewer compliance requirement. It means:

- The company has not made any significant accounting transactions in last two years or
- It has not filed financial statements or annual returns in last two years.

The ROC may issue notice to such company and enter their name in register of dormant companies.

4) Listed Companies: It is a company which has any of its securities listed on any recognized stock exchange. Its securities are traded on stock exchange. Such companies have to follow SEBI guidelines and provisions of the Companies Act.

5) Small Company: A small company is other than a public company which has:

- Paid up share capital does not exceed Rs. 50 lakh or such higher amount as may be prescribed or
- Turnover of which its last profit and loss account does not exceed Rs. 2 crores or such higher amount as may be prescribed.

6) Associate Company: It is a company over which another company exercises a significant degree of control which is less than the degree of control exercised over a subsidiary company.

7) Company not for profit (Section 8): Such companies must obtain license from the Central Government before they are incor-

porated. The liability of their member is limited. They need not to use word 'limited' or 'private' with their name.

Check your Progress :

- Define/explain the following terms
- 1) Joint Stock Company
- 2) Private Company
- 3) Holding Company
- 4) Listed Company
- 5) Company Limited by Shares

1.3 COMPANY SECRETARY

1.3.1 Meaning and Definition

The company secretary looks after various functions related to correspondence, meetings and administration which ensures smooth functioning of the organization. He/she is an important officer of the company.

Company secretary is appointed by the Board of Directors of company as per provisions of Companies act. He/she acts as a link between Board of Directors and Shareholders, Employees and outsiders etc. He/she is closely connected with day to day activities of company, so his/her views are considered for decision making in an organization.

Definition of Company Secretary

According to **Companies Act 2013 Section 2 (24)** "Company Secretary or Secretary means a Company Secretary as defined in Clause (c) of Sub-section (i) of Section 2 of the Company Secretaries Act 1980 who is appointed by a company to perform the function of a Company Secretary under this Act."

The **Oxford Dictionary** defines secretary as "A person whose work is to write for others, especially one who is employed to conduct correspondence, keep records and to transact various other businesses for another person or for society, corporation or public body."

The **Company Secretaries Act, 1980** defines Company Secretary as – “a person who is a member of Institute of Company Secretaries of India.”

1.3.2 Features of Company Secretary

- 1) **An Individual:** Only an individual can be appointed as secretary of a company. A firm, Corporate Body, an institution etc. cannot be appointed as secretary.
- 2) **An Employee:** A secretary is a paid employee in the company. But he/she holds an important position in the organization.
- 3) **Qualification:** The secretary of a Joint Stock Company must be a member of Institute of Company Secretaries of India (ICSI). This is essential qualification required to have by Company Secretary. Other qualification required by Company Secretary is command over language as well as knowledge of office management, correspondence, Account and Finance, Technology and so on.
- 4) **Qualities:** Along with educational qualifications, a secretary need to have certain qualities such as accuracy, promptness, tact, courtesy, leadership, loyalty, punctuality, sound judgement etc. This enables him/her to discharge his/her duties efficiently.
- 5) **Duties:** A company secretary needs to perform various duties which include correspondence, administration, convening meetings, statutory functions, assist in formulating policies, financial functions, providing information etc.
- 6) **Appointment:** The first secretary is appointed by company promoters. Thereafter, company secretary is appointed by the Board of Directors of a company by passing resolution in Board Meeting.

1.3.3 Qualities of Company Secretary

- 1) **Accuracy:** Accuracy means correctness. A company secretary must be accurate in his/her duties which include drafting letters, recording minutes, filing documents with government department and so on. Concentration is required for accuracy in work.
- 2) **Adaptability:** Adaptability means adjusting in changing situation. There is frequent change in government policies, management policies and so on. The secretary should adjust himself/herself with such changes.
- 3) **Courtesy:** It implies politeness and kindness. Since secretary has to deal with many people day in and day out, he/she should be courteous with them. This helps to create positive impression about organization.

- 4) **Leadership:** In order to get work done from subordinates, a secretary should have leadership quality. Secretary should have the ability to guide, advise, inspire and motivate the subordinate.
- 5) **Loyalty:** Secretary is custodian of secret information. He/she should be loyal towards the organization. He/she should not disclose confidential information to anyone.
- 6) **Punctuality:** This quality is related with time management and refers to doing things at appropriate time. Delay in work can create bad impression about the organization.
- 7) **Cooperation:** The secretary should be able to cooperate and assist his subordinates in their work. This will enable to achieve objectives of the organization.
- 8) **Orderliness:** It means doing the work in a systematic manner. Secretary should sort out more important and least important work. He/she should give importance to important work followed by least important work.
- 9) **Personality:** A secretary should have pleasing, impressive and winning personality. His personality can create cordial and friendly atmosphere in the organization. Pleasing personality enables the secretary to get respect from others.

1.3.4 Qualifications of Company Secretary

- 1) **Educational Qualification:** A company secretary must be the member of the Institute of Company Secretaries of India (ICSI). This is the basic essential qualification required to be a company secretary. In addition, he may have membership of the Institute of Chartered Accounts of India (ICAI) or Membership of the Institute of Cost and Works Accounts of India (ICWA).
- 2) **Other Educational Qualification:** Along with basic educational qualifications a secretary should also possess other educational qualification to discharge his/her function and duties efficiently. Other educational qualifications are as follows:
 - **General Education:** Secretary should have Masters' Degree in Economics, Commerce or Law.
 - **Legal Knowledge:** A secretary should be well versed with provisions of various acts such as Income Tax, Sales Tax, Stamp Duty, Minimum Wages Act, Contract Act, Sale of Goods Act, Negotiable Instruments Act etc.
 - **Command over Language:** The secretary has to communicate with members, government officers, visitors, press reporters etc. So he/she should have command over English and other regional language both in oral and written form.

- **Knowledge of Accounting and Finance:** The secretary should have knowledge of Balance sheet and Profit and Loss account. He/she should also have knowledge of financial planning and financial management of his/her company.
- **Knowledge of Office Management:** Secretary should have complete knowledge about office management which is useful for planning, organizing, coordinating, directing, staffing, controlling etc. He/she should also know drafting, filing, record keeping, assigning work and so on.
- **Knowledge of Human Relations:** Secretary has to deal with the directors, shareholders and the outsiders. He/she must know how to deal with them. In short, he/she need to have knowledge of human psychology.
- **Knowledge of Technology Application:** These days IT is used extensively for varied purpose in an organization. The company secretary should have knowledge of technology to brings accuracy, speed and decency in the office work.

1.4 APPOINTMENT PROCEDURE, RESIGNATION AND REMOVAL OF COMPANY SECRETARY

1.4.1 Procedure of Appointment

Following is the procedure of Appointment of Company Secretary :

- 1) **Board Meeting:** A Board meeting is convened and details of short listed candidates for the post of Company secretary is placed before Board meeting. After considering all applications, a suitable candidate is selected and Board Resolution for Appointment of Company Secretary is passed. Formal appointment letter is issued to the person finally selected.
- 2) **Filing Return of Appointment of Company Secretary:** In this stage, a return of appointment of company secretary is filed with Registrar of Companies (ROC) in Form DIR-12 within 30 days from the appointment. Form MGT-14 is also required to be filed along with fees. This form includes details such as particulars of company secretary, PAN No., membership number, address, date of appointment and so on.
- 3) **Making entry in the Register of Key Managerial Personnel (KMP):** Details of Company Secretary must be recorded in the register of Key Managerial Personnel (KMP).
- 4) **Intimation to Stock Exchange:** If such company is listed then it should give intimation to all the Stock Exchange where the company's securities are listed.

1.4.2 Resignation and Removal of Company Secretary

The company secretary can resign by giving notice as per terms and conditions of service agreement. The secretary can resign due to personal reasons or unfavourable working conditions. The Board of Directors may also remove the secretary by serving notice to him/her by following a procedure.

The procedure for Removal / Resignation of Company Secretary

- 1) **Board Meeting:** Board meeting is convened for final decision on resignation / removal of company secretary. A resolution is passed by the Board.
- 2) **Filing of Form DIR-12:** Form DIR-12 in electronic mode is filed within 30 days with Registrar of Companies along with fees.
- 3) **Intimation to Stock Exchange:** The stock exchange where share of the company are listed, is required to be informed about resignation / removal of secretary.
- 4) **Entries in the Register:** Entry is made in the Register maintained for recording the particulars of Company Secretary under Section 170 of Companies Act.
- 5) **Issue of General Notice:** The Company may issue general public notice informing regarding removal / resignation of secretary.
- 6) **Filing of Vacancy:** A Board meeting is convened to filing of vacancy of secretary within 6 months from the date of such vacancy.

1.5 RIGHTS, RESPONSIBILITIES AND LIABILITIES OF COMPANY SECRETARY

1.5.1 Rights of Company Secretary

Company Secretary is a senior level officer. He enjoys the rights as per the agreement signed by him with the Company. Some rights areas follows:

- 1) As a senior level officer Company Secretary can supervise, control and direct subordinate officers and employee.
- 2) A Company Secretary can sign any contract /agreement on behalf of the company as a principle officer of a company, subject to the delegation of power by the board of the company.
- 3) Company Secretary can issue guidelines for the employees on behalf of the company.
- 4) Company Secretary can attend meeting of shareholders and the meeting of board of directors.

- 5) During Winding up he can claim his legal dues as a preferential creditor of a company.
- 6) He can sign and authenticate the proceeding of meetings (Board, Annual general or extra ordinary general meeting) and other documents on behalf of the company where common seal is not required.
- 7) Company Secretary is a Compliance Officer and he has a right to blow whistle whenever he finds the conduct of the officers or of the directors of the company are detrimental to the interest of the company.

1.5.2 Responsibilities of Company Secretary

1) According to Company Act:

- To sign documents and proceedings requiring authentication by the company.
- To deliver return of allotment the Registrar.
- To give notice to registrar for increase in the share capital.
- To deliver share certificate of allotment within 2 months after transfer.
- To make entry for register of members of the share warrant.
- To send annual return
- To send notice of general meeting to every member of the company.
- To make statutory books
- To sign every balance sheet and P/L accounts in case of a non-banking financial company.
- To prepare minutes of every General Meeting and Board Meeting within 30 days
- To file a resolution with the registrar.

2) According to IT Act:

- To ensure proper income tax is deducted at source from the salary of employees
- To see that the certificate of TDS is issued.
- To ensure that the tax deducted is deposited to government treasury
- To submit and verify various forms and returns

3) Under Indian Stamp Act:

- To see that the documents like letter of allotment and share certificate etc. are properly stamped.

4) Under other Act:

- To comply with other acts such as FEMA, Minimum Wages Act, Industrial Dispute, Employee State Insurance Act etc.

5) General Responsibilities:

- To comply with internal regulations and legislation
- Duty to exercise due care and diligence
- To draft director report
- Maintaining the statutory registers of the company
- Ensuring Board decisions are properly communicated
- Registration of share transfers and issuance of related share certificates
- Communicating with company shareholders
- Safe custody of common seal
- Certifying documents such as Certificate of Incorporation, Memorandum and Articles of Association
- Giving legal advice to Directors
- To act as an information link

1.5.3 Liabilities of Company Secretary

- **Statutory Liabilities**

- 1) Filing the return of allotment
- 2) Delivering share certificate / Debenture certificate on time
- 3) Filing annual return
- 4) Holding Annual General Meeting (AGM)
- 5) Recording minutes of the meeting
- 6) Providing the P/L account and Balance sheet at AGM
- 7) Provide notice about Board Meeting
- 8) Maintain the register of members

- **Contractual Liabilities**

- 1) He/she is liable for any negligence on part of his duty. He/she may be dismissed.
- 2) He/she must not do anything beyond his authority, if he/she does he will be personally liable for loss.
- 3) He/she is under the obligation to not disclose any secret information about the company to outsiders.

- 4) He/she is liable for any secret profits made by him/her on account of his position
- 5) If the company secretary commits any fraud, he/she must indemnify to the company for any loss occurred.

1.6 CAREER OPTIONS

A career as a Company Secretary is financially rewarding and prestigious. The Institute of Company Secretary of India (ICSI) is the only recognized professional body in India to develop and regulate the profession of Company Secretary. If a person has good judgemental quality, legal aptitude, interest in current affairs and good administrative policy, then company secretary is an ideal career for such person.

1. Opportunities in Employment

A qualified company secretary can find good positions in the private sector as well as in public sector, banks and financial institutions. There is also opportunity in stock exchanges, the Department of Company Affairs, Company Law Board and various government departments. There is a statutory requirement for appointment of company secretaries in listed companies.

Membership of ICSI is recognized for appointment to superior posts and services under Central Government. It is also recognized for recruitment from Grade I and Grade IV in the Accounts branch of the Indian Company Law Service. Almost every kind of organization whose affairs are conducted by Board, Councils or other association, federation, authority, commission etc. appoint Company Secretary in a Key Administrative Position.

2. Role in the Company

The company secretary is an in-house legal expert and a compliance officer of the Company. He/she is an expert in corporate laws, securities laws and capital market and corporate governance. He is the chief advisor to the Board of Director on best practices in corporate governance and is responsible for all regulatory compliances of company. He/she is known as a corporate planner and strategic manager. He has direct access to the top management and the board room.

They have to manage all aspects of corporate meeting be it Board Meeting, Annual General Meeting, interaction with important clients and vendors, meetings with government and private delegations. They may also have to take up the responsibility to manage corporate events and manage clients.

As an additional responsibility, company secretary also have to keep a discerning eye on the expansion opportunities of the company. Further, they have to take care of collaborations, joint-ventures, mergers, takeovers within the country and outside.

Under the newly passed Companies Act, 2013, the Company Secretary has been aptly bracketed in the Company's 'Key Managerial Personnel'.

3. Option of going into practice

After obtaining a 'Certificate of Practice from the Institute, Members of the Institute can opt for independent practice. Right from the incorporation of a company till the time it is wound-up, a company will require the services of a practicing company secretary at some stage or the other.

Pursuant to Clause 49 of the Listing Agreement of stock exchanges, Practicing Company secretary has also been authorized to issue certificate regarding compliance of conditions of Corporate Governance as stipulated in the Clause.

Practitioners have also been recognized to appear before various tribunals such as Company Law Board, the Securities Appellate Tribunal, Consumer Forum, Tax Tribunals etc. The Reserve Bank of India has also recognized the Practicing Company Secretaries to undertake Diligence Report for Banks.

A practicing company secretary is an independent professional and is recognized to issue certificates and attend documents inter alia under the Companies Act, the SEBI Act, Securities Contracts and Regulation Act (SCRA), and Regulations made there under, the Depositories Act, the EXIM Policy etc.

4. Opportunities abroad for CS

Many company Secretaries are already working in various countries like the US, Canada, UK, Singapore, Malaysia, Thailand, Australia, New Zealand, Middle-East, Africa etc. With their research and legal bent of mind, their employers have recognized their professional skill sets. They also possess managerial capabilities and analytical skills.

After the globalization of services through WTO and GATS, the field is opening in various countries for practicing company secretaries as well. India is entering into bilateral Agreements with countries like Singapore, Malaysia, Thailand and Mauritius etc. These agreements recognize Company Secretary for free movement of professional across borders.

ICSI has entered into a MoU with the Institute of Chartered Secretaries and Administrators, UK. This MoU recognizes Company Secretaries of both the countries on certain conditions. The process of globalization and the process of comprehensive economic cooperation that India is initiating has also set in motion mutual recognition agreements between the ICSI and Institutes governing the profession in various other countries. This is opening up the world to Company Secretaries.

1.7 EXERCISE

FILL IN THE BLANKS

- 1) Joint Stock Company is a _____ (Voluntary Association, Incorporated Association, Both)
- 2) Shareholders are _____ of Joint Stock Company. (Creditors, Debtors, Owners)
- 3) _____ are appointed by shareholders to look after day to day administration of the company. (Promoters, Directors, Secretary)
- 4) _____ Company is incorporated outside India but having a place of business in India. (Foreign, Government, Dormant)
- 5) The Secretary is a _____ in a company. (Paid Employee, Owner, None of these)
- 6) A Company Secretary must be the member of the _____ (ICSI, WTO, EU)
- 7) A secretary requires to have _____ quality. (Accuracy and Orderliness, Leadership and Cooperation, Both)
- 8) _____ is a right of Company Secretary. (Supervise and Direct subordinates, Default in filing the return of allotment, Failure to maintain register of members.)

ANSWER IN BRIEF

- 1) Define Joint Stock Company. Explain its features.
- 2) What are the different types of Companies as per Companies Act, 2013?
- 3) Discuss qualities required by a company secretary.
- 4) Explain qualification required by a company secretary.
- 5) Briefly explain appointment procedure of company secretary.
- 6) Write note on Resignation and Removal of Company Secretary.
- 7) What are the rights of Company secretary?
- 8) Highlight responsibilities of company secretary.

- 9) Discuss the liabilities of Company Secretary.
10) Write note on Career options of Company Secretary.

1.8 REFERENCES

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Maharashtra State Board – Secretarial Practice – Std. XI textbook



COMPANY SECRETARY PRACTICES

Unit structure:

- 2.0 Objectives
- 2.1 Introduction to Advisory Services of Company Secretary
- 2.2 Secretaries as a Liaison Officer between Company and Stock Exchange
- 2.3 Representation Services of Company Secretary at Different Forums
- 2.4 Cyber Law Compliance
- 2.5 Secretarial Standards by ICSI, Secretarial Standards -1- 10
- 2.6 Secretarial Audit – Procedure and Stages, Need and Importance, Scope
- 2.7 Summary
- 2.8 Exercise

2.0 OBJECTIVES:

After studying the unit the students will be able:

- To explain the role of Company Secretary as an liaison officer
- To explain about Representation Services of Secretary at different forums
- To explain the Secretarial Standards by ICSI, Secretarial Standards -1- 10.
- To explain Secretarial Audit–Procedure and Stages, Importance and scope

2.1 INTRODUCTION TO ADVISORY SERVICES OF COMPANY SECRETARY:

Company secretary is regarded as a liaison officer. Company secretary is mainly responsible for looking after the secretarial works. He generally maintains liaison with the board of directors, employees, shareholders, and other outside parties. Now a days, company secretary is one of the most important persons who perform some specified duties in the company form of business.

The educational background, knowledge, training and exposure that a Company Secretary acquires makes him a versatile professional capable of rendering a wide range of services to

companies of all sizes, other commercial and industrial organizations, small scale units, firms etc.



Role of Company Secretary



A Company Secretary being multi-disciplinary professional renders services in the following areas:

Corporate Governance and Secretarial Services

- Corporate Governance Services
- Corporate Secretarial Services
- Secretarial / Compliance Audit and Certification Services

Services rendered by Practising Company Secretary are as follows :

Promotion, formation and incorporation of companies, and matters related therewith including choice of type of company, availability of name, drafting of Memorandum and Articles of Association and other documents, their stamping and registration with the Registrar of Companies.

2.2 SECRETARIES AS A LIAISON OFFICER BETWEEN COMPANY AND STOCK EXCHANGE:

2.2.1 Secretaries as a Liaison Officer between Company and Stock Exchange

Services under the Securities Exchange Board of India Act, 1992 are as follows -

1. Complete support, certifications and assistance in the implementation and compliance of Listing Agreement.
2. Complete support and advisory services for Listing and delisting of Shares from the Indian and Foreign Stock Exchanges.
3. Complete support, advisory & transaction services to companies in implementing Regulations, notifications, circulars and orders of SEBI issued under SEBI Act 1992.
4. Complete support in drafting replies to Show Cause notices issued by SEBI and making representation before the Adjudicating Officer of SEBI.

5. Filing Appeal against the orders of SEBI in Securities Appellate Tribunal and allied services.

2.2.2 Secretaries as a Liaison Officer between Company and Depository Participants

Depository is an institution or a kind of organization which holds securities with it in DeMat form, in which trading is done among shares, debentures, mutual funds, derivatives, F&O and commodities. The intermediaries perform their actions in variety of securities at Depository on behalf of their clients. These intermediaries are known as Depositories Participants (DPs).

DEPOSITORY IN INDIA

- **National Securities Depository Ltd. – NSDL**



Having 95 lakh Demat A/c - 300 DPs in Ind...

- **Central Depository Services Ltd. - CDSL –**



Having 65 lakh Demat A/c - 500 DPs in India

Fundamentally, There are two sorts of depositories in India. One is the National Securities Depository Limited (NSDL) and the other is the Central Depository Service (India) Limited (CDSL). Every Depository Participant (DP) needs to be registered under this Depository before it begins its operation or trade in the market. Depository provides its services to investors through its agents called depository participants (DPs). These agents are appointed by the depository with the approval of SEBI. According to SEBI regulations, among others, three categories of entities i.e. Banks, Financial Institutions and Members of Stock Exchanges registered with SEBI can become DPs. Depository Participant is described as an Agent of the depository. They are the intermediaries between the depository and the investors. The relationship between the DPs and the depository is governed by an agreement made between the two under the Depositories Act. In a strictly legal sense, a DP is an entity who is registered as such with SEBI under the sub section 1A of Section 12 of the SEBI Act.

Company Secretary acts as Compliance Officer and ensures compliance with SEBI (Prohibition of insider Trading) Regulations, 1992 including maintenance of various documents., Securities Compliance and Certification Services, Compliance with rules and regulations in the securities market particularly, Internal Audit of Depository Participants , Certification under SEBI (DIP) Guidelines, Audit in relation to Reconciliation of shares, Certificate in respect of compliance of Private Limited and Unlisted Public Company .

2.2.3 Secretaries as a Liaison Officer between Company and Registrar of Company:

The Registrar of Companies (ROCs) is an office under the Indian Ministry of Corporate Affairs that deals with administration of the Companies Act 1956 and Companies Act 2013. These officers are from Indian Corporate Law Service cadre. There are currently 22 Registrars of Companies operating from offices in all major states of India. Some states, such as Maharashtra and Tamil Nadu, have two Registrars of Companies each. Section 609 of the Companies Act, 1956 tasks the ROCs with the primary duty of registering companies.

The office of the ROC maintains a registry of records related to companies registered with them, and permits the general public to access this data on payment of a fee. The Registrar of Company takes care of company registration (also known as incorporation) in India, completes reporting and regulation of companies and their directors and shareholders, and also oversees government reporting of various matters including the annual filling of various documents.



Role of company secretary has a great importance in every stage of company formation. A secretary plays a vital role for company before incorporation and after incorporation. Secretary submits necessary forms and documents to the registrar of Joint Stock Company for getting certificate of incorporation. He prepares Memorandum and Articles of Association. He collects certificate of commencement from the registrar of Joint Stock Company and arrange statutory meeting. He prepares statutory report and files the copy of such report with the registrar of the company. Preparation, validation and filing of resolutions, agreements, documents, notices and various returns with the company Registrar are some of the important work done by Company Secretary an liaison officer between Company and Registrar of Companies.

2.3 REPRESENTATION SERVICES OF COMPANY SECRETARY AT DIFFERENT FORUMS:

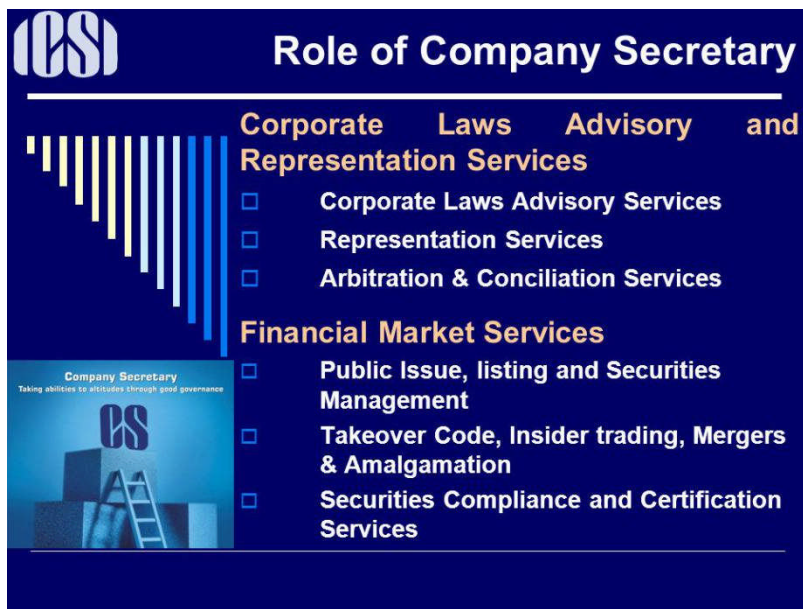
Company Secretary is a vital link between the company and its Board of Directors, shareholders, government and regulatory authorities. He ensures that Board procedures are both followed and regularly reviewed and provides guidance to Chairman and the Directors on their responsibilities under various laws. He commands high position in the value chain and acts as conscience seeker of the company. He represents on company's behalf on various forums.

1. Corporate Laws Advisory Services :

Advising companies on Compliance of legal and procedural aspects, particularly under SEBI Act, SCRA and rules and regulations made there under Foreign Exchange Management Act, Consumer Protection Act, Depositories Act , Environment and Pollution Control Laws ,Labour and Industrial Laws , Co-operative Societies Act , Mergers and Amalgamations and Strategic Alliances , Foreign Collaborations and Joint Ventures ,Setting up subsidiaries abroad, Competition Policy and Anti Competitive Practices, IPR Protection, Management, Valuation and Audit , Drafting of Legal documents etc.

2. Representation Services:

Company Secretary's representation services include Corporate Laws Advisory and Representation Services. It also includes Financial Market Services .



3. Financial Market Services :

Public Issue, Listing and Securities Management, Adviser /consultant in issue of shares and other securities, Preparation of Projects Reports and Feasibility Studies, Syndication of Loans from banks & financial institutions, Loan Documentation, Listing of securities/ delisting of securities with recognized stock exchange, Ensuring compliance of the Takeover Regulations and any other laws or rules as may be applicable in this regard etc.

4. Finance and Accounting Services :

Internal Audit, Secretary to Audit Committee, Working capital and liquidity management, Determination of an appropriate capital structure, Analysis of capital investment proposals, Budgetary controls, Accounting and compilation of financial statements etc.

5. Taxation Services :

Advisory services to companies on tax management and tax planning under Income Tax, Excise and Customs Laws , Preparing/reviewing various returns and reports required for compliance with a the tax laws and regulations etc.

6. International Trade and WTO Services :

Advising on all matters related to IPRs and TRIPs Agreement of WTO, International Commercial Arbitration, Advising on and issuing certificates on EXIM Policy and Procedures, Advising on Intellectual Property, licensing and drafting of Agreement, Acting as registered Trade Mark Agent etc.

7. Management Services:

Advising on Legal Structure of the organization, Acting as management representative to obtain ISO Certification ,Corporate Communications and Public Relations ,Communication with stakeholders, Advisory services for Brand equity and image building, Manpower planning and development, Performance appraisal, Motivation and remuneration strategies ,Industrial relations ,work studies and performance standards, Advising on industrial and labour laws , Information Technology, Compliance with cyber laws, Conducting Board Meetings through video-conferencing and teleconferencing, Advising on software copyright and licensing , Development of management reports and controls, Maintenance of statutory records in electronic form ,Sending notices to shareholders by electronic mode ,Filing of forms/documents in electronic form with Registrar of Companies and other statutory authorities etc.

8. Company Law Board, Consumer Forum, SEBI, Arbitration & Conciliation Services:

Company Secretary represents on behalf of a company before Company Law Board, National Company Law Tribunal, Competition Commission of India, Securities Appellate Tribunal , Registrar of

Companies, Consumer Forums, Tax Authorities ,Other quasi-judicial bodies and Tribunals etc. He also plays important role in arbitration and Conciliation.

2.4 CYBER LAW COMPLIANCE:

As we know that open-source license is a type of license for computer software and other products that allows the source code, blueprint or design to be used, modified and/or shared under defined terms and conditions. Usage of open source content in a sensitized manner is critical for any business and needs utmost care to handle it in right way. Software audit is the need of the hour. It includes :

1. Software Licensing Agreements (Drafting & review)
2. Information Security & Cyber security Policy
3. Software (High-Level/Design) Audit
4. Compliance to IT Act,
5. User Data Privacy Compliance,
6. Data Transfer Compliance,
7. GDPR Compliance,
8. Black-box (manual) testing from Legal Perspective.
9. Websites Audit
10. Litigation pertaining to IT Act

The company secretary is responsible for the efficient administration of a company, particularly with regard to ensuring compliance with Cyber Law, statutory and regulatory requirements and for ensuring that decisions of the board of directors are not against the present Cyber Law. To ensure this Software audit must be done periodically.

2.5 SECRETARIAL STANDARDS BY ICSI, SECRETARIAL STANDARDS -1- 10:

In order to have uniformity in the practices adopted by different companies, the Institute of Company Secretaries of India (ICSI) has released 10 secretarial standards including standard on board meeting, dividend and transmission of shares. Company Secretary should excel in new areas like corporate restructuring, insolvencies, mergers, amalgamations, international tax planning, GST etc. Here's a list of Secretarial Standards:

- SS-1 : Secretarial Standards on Meeting of Board of Directors.
 SS-2 : Secretarial Standards on General meetings.
 SS-3 : Secretarial Standards on Dividend.

SS-4 : Secretarial Standards on Registers and Records.

SS-5 : Secretarial Standards on Minutes.

SS-6 : Secretarial Standards on Transmission of Shares and Debentures.

SS-7 : Secretarial Standards on Passing Resolutions by Circulation.

SS-8 : Secretarial Standards on Affixing of common seal.

SS-9 : Secretarial Standards on Forfeiture of Shares.

SS-10 : Secretarial Standards on Board's Report.

Out of the above mentioned Secretarial Standards, only 3 are effective as on till date, they are:-

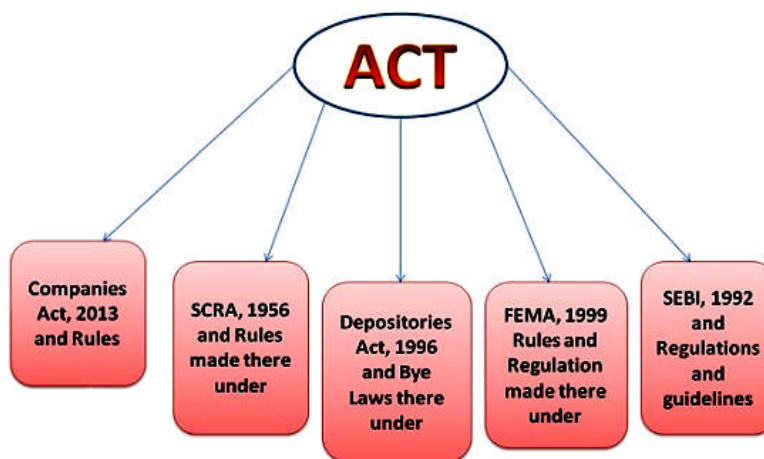
SS-1 Secretarial Standard on Meetings of the Board of Directors.

SS-2 Secretarial Standard on General Meetings.

SS-3 Secretarial Standard on Dividend .

2.6 SECRETARIAL AUDIT – PROCEDURE AND STAGES, NEED AND IMPORTANCE, SCOPE:

Secretarial Audit is a compliance audit. It is a part of total compliance management in an organization. It helps to detect noncompliance and to take corrective measures. Secretarial Audit is a process .It is done to check compliance with the provisions of various laws and rules/ regulations/procedures, maintenance of books, records etc., by an independent professional. It is done to make sure that the legal and procedural requirements are complied with the legal and procedural requirements and also followed due processes.



It is essentially a mechanism to monitor compliance with the requirements of stated laws.

2.6.1 Secretarial Audit Report:

The Secretarial Auditor expresses an opinion as to whether there exist adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with applicable laws, rules, regulations and guidelines. Secretarial Audit helps to detect the instances of non-compliance and facilitates taking corrective measures. It thus provides necessary comfort to the management, regulators and the stakeholders, as to the statutory compliance, good governance and the existence of proper and adequate systems and processes.

2.6.2 Scope of Secretarial Audit:

Secretarial Audit is to be on the principle of “Prevention is better than cure” rather than post-mortem exercise and to find faults. It acts as an effective compliance risk management tool or a governance tool. The benefits of Secretarial Audits are available to all stakeholders including promoters, executive directors, officers of the company, regulators, government authorities, investors, financial institutions, banks, creditors etc.

Reporting on the compliance of five laws as mentioned:

- a) Companies Act, 2013 and the rules made there under;
- b) Securities Contracts (Regulation) Act, 1956 ('SCRA'), and the rules made there under;
- c) Depositories Act, 1996, and the rules made there under;
- d) Foreign Exchange Management Act, 1999 and the rules and regulations made there under to the extent of Foreign Direct Investment, Overseas Direct Investment, and External Commercial Borrowings;
- e) Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act').

2.6.3 Reporting on the compliance of secretarial standards issued by the Institute of Company Secretaries of India:

1. Reporting on Compliance with the Listing Agreement;
2. Reporting on compliance of 'Other laws as may be applicable specifically to the company which shall include all the laws which are applicable to specific industry for example for Banks- all laws applicable to Banking Industry; for insurance company-all laws applicable to insurance industry etc.
3. Examines and reports regarding the adequacy and efficiency of the systems and processes with other laws.
4. Monitors and ensures compliance with general laws like labor laws, competition law, environmental laws.
5. Examines and reports on the specific observations or qualification, reservation or adverse remarks in respect of the

Board Structures/system and processes relating to the Audit period.

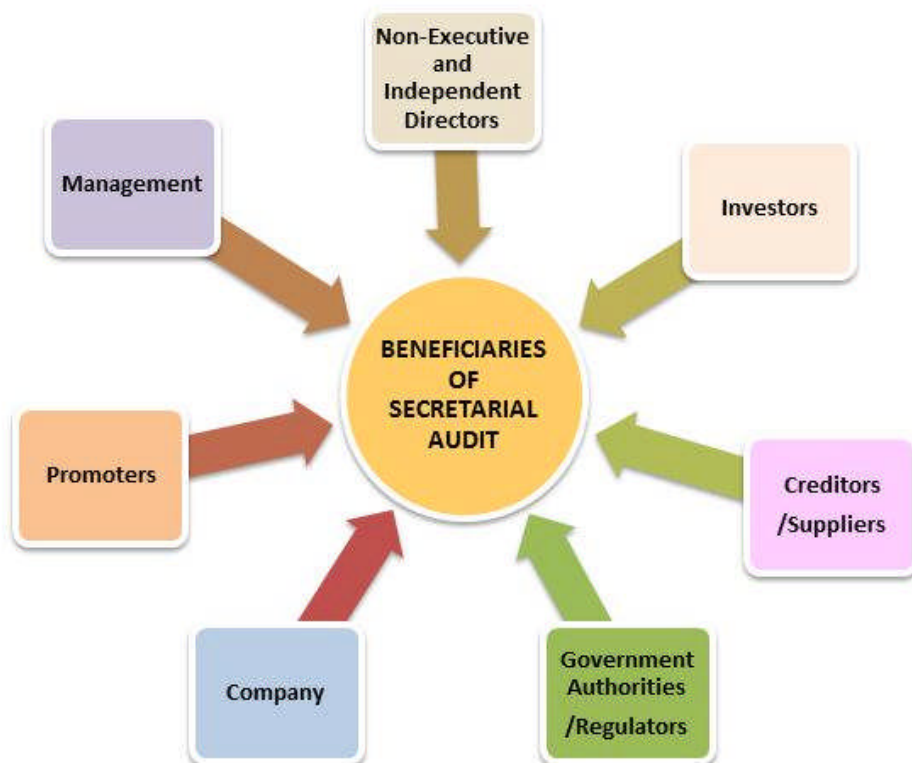
6. Secretarial Auditor may rely on reports given by statutory auditors or other designated professionals to check compliance with other laws like Income Tax, Customs, GST etc.

2.6.4 Process of Secretarial Audit :

Secretarial Auditor or the firm of Secretarial Auditors shall provide the checklist for carrying out the secretarial audit of the company depending upon the nature of business activities carried on by the Company.

2.6.5 Objectives of Secretarial Audit:-

1. To verify and report on compliances of applicable laws and Secretarial Standards
2. To point out non-compliances and inadequate compliances;
3. To protect the interest of various stakeholders i.e. the customers, employees etc;
4. To avoid any unwarranted legal actions/penalties by law enforcing agencies and other persons as well.



2.6.5 Benefits of Secretarial Audit:

Benefits are manifold and its beneficiaries are many. Secretarial audit enables Legal Compliance Management .Ever increasing complexities of Laws and responsibilities of Directors make it imperative .Secretarial Audit helps to detect the instances of non-compliance and facilitates taking corrective measures. It audits the adherence of good corporate practices by the company. Following are the points which indicates the benefits of Secretarial Audit.

1. Secretarial Audit assures the promoters of a company that those in- charge of its management are conducting its affairs in accordance with the requirements of laws and the owners' stake is not being exposed to unintended risk.
2. It helps the companies to build their corporate image.
3. Secretarial Audit provides comfort to the Non-executive/ Independent Directors that appropriate mechanisms and processes are in place to ensure compliance with laws applicable to the company, thus mitigating any risk from a regulatory or governance perspective.
4. Secretarial Audit helps the investors in taking informed investment decision, as it evaluates the company in terms of compliance and governance norms being followed by the company.
5. The Secretarial Audit provides an in-built mechanism for enhancing corporate compliance generally and help restore the confidence of investors in the capital market through greater transparency in corporate functioning.

2.6.6 The need for Secretarial Audit:

1. It is an effective mechanism to make sure of the compliance with the legal and procedural requirements.
2. It provides a level of confidence to the directors and Key Managerial Personnel etc.
3. Secretarial Audit ensures legal and procedural requirements. So directors can concentrate on important business matters.
4. It strengthens the goodwill of a company for their regulators and stakeholders.
5. Secretarial Audit is an effective governance and compliance risk management tool.
6. It helps the investor in analyzing the compliance level of companies, thereby increases the reputation.

2.6.7 Conclusion:

Secretarial Audit is an independent, objective assurance intended to add value and improve an organization's operations. It

helps to accomplish the organization's objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.

2.7 SUMMARY:

Company secretary is regarded as a liaison officer. He generally maintains liaison with the board of directors, employees, shareholders, and other outside parties. Now a days, company secretary is one of the most important persons who perform some specified duties in the company form of business. Company Secretary acts as Compliance Officer and ensures compliance with SEBI (Prohibition of insider Trading) Regulations, 1992 including maintenance of various documents, Securities Compliance and Certification Services etc. In order to have uniformity in the practices adopted by different companies, the Institute of Company Secretaries of India (ICSI) has released 10 secretarial standards including standard on board meeting, dividend and transmission of shares. Secretarial Audit is to be on the principle of "Prevention is better than cure" rather than post-mortem exercise and to find faults. It acts as an effective compliance risk management tool or a governance tool.

2.8 EXERCISE

1. Discuss the Advisory Services of Company Secretary.
2. Explain the role of Secretary as an liaison officer between Company and Stock Exchange.
3. Explain the role of Secretary as a liaison officer between Co. and Depository Participants.
4. Explain the representation Services of Company Secretary at different forums.
5. Discuss the Secretarial Standards by ICSI.
6. What do mean by Secretarial Audit.Explain the importance of Secretarial Audit?



COMPANY DOCUMENTATION AND FORMATION I

Unit Structure

- 3.0 Objectives
- 3.1 Introduction
- 3.2 Memorandum of Association (MOA)
- 3.3 Articles of Association (AOA)
- 3.4 Distinction between Memorandum and Articles of Association
- 3.5 Prospectus
- 3.6 Statement in Lieu of Prospectus
- 3.7 Misleading Prospectus
- 3.8 Distinction between Prospectus and Statement in Lieu of Prospectus
- 3.9 Company Formation – Stages and Secretarial Duties
- 3.10 Conversion of Companies
- 3.11 Summary
- 3.12 Exercise
- 3.13 References

3.0 OBJECTIVES

After studying the unit students will be able to:

- Understand and discuss Concept of Memorandum of Association, its clauses and alteration
- Understand and discuss Concept of Articles of Association and its content
- Understand and discuss Concept of Prospectus and Statement in Lieu of Prospectus
- Explain stages and secretarial duties in company formation
- Know Secretarial Procedure involved in conversion and reconversion of public and private company

3.1 INTRODUCTION

A Joint Stock Company is an artificial entity created by Law by registering under Companies Act. Formation of Joint Stock Company requires preparation of certain documents and submits to

the Registrar of Companies as per the provisions of Companies Act, 2013. The process of formation gets completed once these documents are approved by the Registrar. Important company documents are **Memorandum of Association (MOA), Articles of Association (AOA) and Prospectus / Statement in Lieu of Prospectus**. Company promoters play an important role in preparation of these documents and formation of company.

3.2 MEMORANDUM OF ASSOCIATION (MOA)

3.2.1 Meaning and Definition

MOA is the charter of the company. It is treated as the constitution of the company. It defines the scope of its activities. It contains the rights, privileges and powers of the company. MOA establishes the relationship of the company with the members. The whole business of the company is built up according to Memorandum of Association. A company cannot undertake any business or activity not stated in the Memorandum. It can exercise only those powers which are clearly stated in the Memorandum. Preparation of MOA is the first step in formation of a company. It is prepared by promoters and submitted to the Registrar for the incorporation of a company.

Lord Cairns defines “Memorandum of Association is the fundamental document of the company. It is foundation on which structure of company stands. It lays down limitations of its activities.”

As per **Section 2 (56) of the Companies Act, 2013** states Memorandum means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law of this Act.

3.2.2 Clauses of Memorandum of Association

1. **Name Clause:** It is the first clause of MOA. A company is free to select any name it likes. But the name should not be identical or similar to that of a company already registered. It should not also use words like King, Queen, Emperor, Government Bodies and names of World Bodies like U.N.O., W.H.O., World Bank etc. A company name should end with the word ‘limited’ in case of a public limited enterprise, and ‘private limited’ in the case of a private limited enterprise. Eg. ‘**ABC Private Limited**’ in case of the private company, and ‘**ABC Ltd**’ for a public company.
2. **Domicile Clause:** The memorandum must mention the state in which registered office of the company is situated. The domicile clause will not exactly contain the address of the registered office, but the state or union territory in which the registered office

of the company is located. The registered office of a company can be shifted from one place to another within the town with a simple intimation to the Registrar. Whereas, to shift the registered office to other state, Memorandum should be altered accordingly.

3. **The Object Clause:** This is the most important clause. It states the objects of the company for which the company is proposed to be incorporated. The company is not legally entitled to do any business other than specified in object clause. This clause enables general public to know the purpose for which capital is raised by company. It enables to know the extent of powers of company. The objects are divided into three subcategories:
 - **Main Objective:** It states the main business of the company.
 - **Incidental or Ancillary:** These objects are ancillary to the attainment of the main objects of the company
 - **Other objectives:** Any other objects which the company may pursue and are not covered in above (a) and (b)
4. **Liability Clause:** The liability clause declares the liability of members of the company to be either limited or unlimited. The MOA of the **company limited by shares** must declare that the liability of the members of the company is limited. The MOA of a **company limited by guarantee** must state the amount of contribution that every member agrees to contribute to the assets of the company in the event of the company being wound up. However, in case of a **unlimited company**, the liability of directors or managers of a company may be unlimited, if specified in the memorandum.
5. **Capital clause:** This is valid only for companies having share capital. These companies must specify the amount of Authorized capital divided into shares of fixed amounts. Further, it must state the names of each member and the number of shares against their names. It is usually expressed as *“the share capital of company is Rs. 100 crores, divided into 100 lakh equity shares of Rs. 100/- each”*. The company should decide its authorized capital after considering its long term financial needs. The company can issue different types of shares to raise the capital from market.
6. **Subscription (Association) Clause:** This clause contains declaration by the subscribers to the MOA that they are desirous of forming themselves into a company. The subscribers to the Memorandum must take at least one share (qualification shares). The minimum number of members is two in case of a private company and seven in case of a public company. Signatures shall be attested by witnesses. Each subscriber must put his signature along with his name and address.

3.2.3 Format of Memorandum of Association

MEMORANDUM OF ASSOCIATION

Section 14 Table B

1. **Name Clause** : The name of company is 'J.P. CEMENT LIMITED'
2. **Domicile Clause** : The registered office of the company will be situated in Maharashtra
3. **Object Clause** : **Main Object:** The main object for which the company is established is 'Manufacturing of Cement'. **Incidental Object:** The object incidentals of above main objects are acquisition and setting up of machinery, marketing of finished products etc. **Other Object:** The other object for which company is established are manufacturing of steel and steel related products.
4. **Liability Clause** : The liability of members is limited
5. **Capital Clause** : The share capital of company is Rs. 100 crores, divided into 100 lakh equity shares of Rs. 100/- each.
6. **Subscription Clause** : We, the several persons, whose names and address are subscribed are desirous of being formed into a company in pursuance of this Memorandum of Association, we respectively agree to take the number of shares in the capital of company set opposite our respective names.

Name and Address of Subscribers	Number of Shares taken by each and their Signature	Witness to the Signature
1. Mr. Shridhar Joshi, Mumbai	1200	Mr. A. S. Rane
2. Mr. Ajay Rao, Pune	1000	
3. Mr. Sunil Jain, Thane	1500	
4. Mr. Bharat Soni, Mumbai	1800	
	5500	

Dated at _____ (Place) _____ the _____ (Day) _____ day of _____ (Date & Month) 2019.

Common
Seal

Have a look on format of MOA of 'Godrej Consumer Products Ltd.' at

<http://www.godrejcp.com/Resources/uploads/codes-and-policies/MemorandumandArticlesofAssociation.pdf>

3.2.4 Alteration in Memorandum of Association

Any Company which intends to make any change to the Memorandum of Association (MOA) of its company, will have to comply with the provisions of Section- 13 of Companies Act, 2013 and any other applicable provisions of the Act and applicable rules. Company can alter its Memorandum by way of alteration in following clause of Memorandum of Association:

1. **Alteration in Name Clause:** Section 13 of the Company Act, 2013 deals with change in name which says that:
 - a) The name of the company can be changed by a special resolution and the name approved by the Ministry of Corporate Affairs (MCA) on prescribed application.
 - b) By obtaining the approval of Central Government. Approval of Central Government is not required if the change relates to the addition/deletion of the words “private” to the name.

The power of change in name of company has now been delegated to Registrar of Companies. The company secretary has to follow the procedure for changing name of company which includes Board meeting, special resolution in meeting of members, application in Form INC to the ROC and so on.

After submission of necessary documents to ROC, fresh certificate of incorporation is issued by ROC. The company needs to give notice of the same in newspaper. Changes need to be made everywhere such as common seal, letter head, registers and other records of company.

2. **Alteration in Domicile Clause:** The procedure for making changes in domicile clause of company is as follows:
 - a) In case a company changes registered office from one place to another, in the same state, a special resolution is need to be passed in general meeting.
 - b) In case a company shifts its office from one state to another then a special resolution is to be passed in the general meeting. In addition to this, a confirmation order from Central Government is to be obtained.
3. **Alteration in Object Clause:** A company may change its objects as enshrined in its MOA in accordance with the provisions of Section 13 of the Act. Now alteration of object clause requires passing of a special resolution in the general meeting. A copy of special resolution is filed with the Registrar within 30 days of its passing. The details, as may be prescribed, in respect of such resolution shall also be published in the newspaper (one in English and one in vernacular language)

4. **Alteration in Liability Clause:** The liability clause may be altered so as to make liability of director unlimited, if authorized by 'Articles of Association'. The director has to give consent in writing to this effect. For this purpose a special resolution is passed and copy of it is to be filed with the Registrar within 30 days of passing the resolution.
5. **Alteration in Capital Clause:** A company can alter its share capital, if authorized by 'Articles of Association'. The company can alter share capital in the following ways :
 - a) Increase in share capital by issue of new shares
 - b) Reduction in share capital
 - c) Reorganization of capital structure
 - d) Conversion of share into stock

In order to increase the share capital, a company has to pass only ordinary resolution. In order to reduce or reorganize the share capital a company has to pass special resolution and obtain court sanction.

6. **Alteration in Subscription Clause:** A Company in its life span can't alter the 'Subscription Clause' or can't alter the 'Subscriber Sheet'. Subscriber Sheet used at the time of Incorporation of Company shall be used for the life span of the Company.

3.2.5 Ultra Vires

It is derived from Latin words meaning "ultra" which means 'beyond' and "vires" meaning 'power or authority'. So it can be said that anything which is beyond the authority or power is called ultra-vires. In the context of the company, it refers to anything which is done by the company or its directors which are beyond their legal authority or which was outside the scope of the object of the company is ultra-vires.

- **Significance of Ultra Vires Doctrine**

The doctrine of ultra vires applies to the Memorandum of Association (MOA) of a company. The MOA contains scope of activities to be done by company in its objects clause and a company cannot undertake any activity which is not defined MOA. Any activity done beyond scope of MOA is considered as an ultra vires activity. Such activities are null or void and all ultra vires transactions can never be subsequently ratified or validated, not even by the consent of the shareholders. This is meant to protect the interests of the shareholders and creditors of the company.

- **Effects of Ultra Vires**

The directors entering into ultra vires contracts may be liable to the third party for breach of warranty of authority. The directors

can be held personally liable by the company for acts done by them ultra vires to MOA.

If the directors of the company divert company's capital, for purpose alien to the company's MOA, they will be personally liable to replace it.

Similarly, if a director makes an ultra vires payment to an outside party, he can be compelled to make good the funds used. The director who refunded the money could also get indemnity as against the person who received the payment knowing fully well that the payment is given to him was ultra vires.

Similarly, ultra vires borrowing does not create the relation of creditor and debtor.

A contract which is ultra vires the company will have no legal effect. Such contract are void and are not binding upon the company and the company can neither sue nor be sued.

3.3 ARTICLES OF ASSOCIATION (AOA)

3.3.1 Meaning and Definition:

AOA is a document which prescribes the rules and bye-laws for the general management within the company and for the attainment of its object as given in the memorandum of association of the company.

The AOA are a subordinate to the Memorandum of Association of the company. Memorandum states the objects and purposes for which the company is formed, whereas Articles define how the business of company should be carried on. They define the rights, duties, powers of the management of a company as between themselves and the company at large.

Lord Justice Bowen defines "The articles of association are internal regulations of company and are for the benefits of shareholders."

As per **Section 2 (5)** of the Companies Act, 2013 "articles" means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act.

3.3.2 Contents of Articles of Association

Section 5(1) and section 5(2) of the Companies Act, 2013 provide for the contents of the articles of association which is as follows:

1. Share capital including division of shares into different classes, rights of various shareholders, share certificates etc.
2. Lien on shares, call on shares, forfeiture of shares, buy back of shares, surrender of shares.
3. Procedure for issues of shares, allotment of shares, transfer of shares, transmission of shares, conversion of shares into stock
4. Alteration and reduction in share capital
5. Procedure for convening, holding and conducting different meetings of members, directors and creditors. Provisions relating to notice, quorum, voting etc.
6. Appointment, powers, duties, qualifications, remunerations, etc. of directors. Borrowing power of directors
7. Declaration and payment of dividend and creation of reserves
8. Appointment and remuneration of auditors. Audit of company's account
9. Capitalization of profits / reserves
10. Use of company's common seal
11. Procedure for issue of share certificate and share warrant
12. Alteration in the Articles of Association
13. Payment of commission on shares and debentures to underwriters
14. Provisions relating to winding up of company. Appointment of liquidator
15. Dematerialization of shares

Have a look on format of AOA of 'TATA Communication Ltd.' at
<https://www.sec.gov/Archives/edgar/data/1116134/000119312509208566/dex15.htm>

3.4 DISTINCTION BETWEEN MEMORANDUM AND ARTICLES OF ASSOCIATION

Points	Memorandum of Association	Articles of Association
1) Meaning	MOA is the charter of the company. It is treated as the constitution of the company. It defines the scope of its activities.	AOA is a document which prescribes the rules and bye-laws for the general management within the company.
2) Type of Information Contained	It contains power and objects of the company	It contains rules and regulations of the company

3) Status	It is primary and supreme document of company. It is subordinate to the Companies Act	It is secondary document. It is subordinate to Memorandum of Association.
4) Major Content	It contains six clauses 1) Name Clause 2) Domicile Clause 3) Object Clause 4) Liability Clause 5) Capital Clause 6) Subscription Clause	It can be drafted as per requirement of company.
5) Obligatory	It is obligatory to prepare for all companies.	It is not obligatory to prepare for all companies. A public company limited by shares can adopt 'Table A' in place of Articles.
6) Alteration	Alteration can be done, after passing Special Resolution in Annual General Meeting (AGM) and previous approval of Central Government or Company Law Board is required.	Alteration can be done in the Articles by passing Special Resolution at Annual General Meeting (AGM)
7) Relations	Defines the relation between company and outsiders such as creditors, debtors etc.	Regulates the relationship between company and its members
8) Act done beyond the scope	The act done beyond the scope is absolutely void	The act done beyond the scope can be rectified by shareholders

3.5 PROSPECTUS

3.5.1 Meaning and Definition:

A prospectus is a document issued by the company inviting the public and investors for the subscription of its securities. It is required to be issued only after the incorporation of the company.

These documents describe stocks, bonds and other types of securities offered by the company. A prospectus is always accompanied by performance history and financial information of the company. The reason for accompanying such information along with the prospectus is to make sure that, the investors are well aware of the company's background and overall performance and the investors do not fall into the prey of investing in a bad company. Prospectus is a kind of advertisement for attracting people for subscribing shares of company. It is expected to provide correct and reliable information about company to the investors. Company Act has made various provisions regarding preparing and issue of prospectus. There is provision in Company Act regarding penalties and punishment for providing misleading information in prospectus. Every prospectus issued to the public must be printed, divided into paragraphs, dated, sealed and signed by all the directors. A copy of it must be filed with the Registrar and issued to the public within 90 days of filing with Registrar.

Section 2 (70) of Companies Act defines prospectus as, "A prospectus means any document described or issued as a prospectus and any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate."

3.5.2 Content of Prospectus

- 1) The names and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed;
- 2) The dates of opening and closing of the issue;
- 3) A declaration made by the Board or the Committee authorized by the Board in the prospectus that the allotment letters shall be issued or application money shall be refunded within fifteen days from the closure of the issue or such lesser time as may be specified by SEBI;
- 4) A statement by the Board of Directors of separate bank account;
- 5) The details of the underwriters and the amount underwritten by them;
- 6) The consent of trustees, advocates, merchant bankers, registrar, lenders, and experts;
- 7) The authority for the issue and the details of the resolution passed, therefore;
- 8) The capital structure of the company in the prescribed manner;

- 9) Procedure and time schedule for allotment and issue of securities;
- 10) Main objects of the issue, the purpose for requirements of funds, funding plan, the summary of the project appraisal report and such other particulars as may be prescribed;
- 11) Minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash;
- 12) The details of any litigation or legal action pending or taken by any Ministry or Department of the Government or a statutory authority against any promoter of the issuer company during the last five years immediately preceding the year of the issue of the prospectus;
- 13) The details of default and non-payment of statutory dues;
- 14) The details of directors including their appointment and remuneration, and particulars of the nature and extent of their interest in the company;
- 15) The disclosure for sources of promoters' contribution;
- 16) A statement about declaration of compliance of the provisions of act and a statement to the effect that nothing in the prospectus is contrary to the provisions of the Act. It must also contain a declaration that nothing in the prospectus is contrary to the provision of the SEBI Act, 1992 and the rules and regulation made there under.

If a prospectus is issued in contravention of the provisions of 26 (1) of the Act, the company shall be punishable with fine which shall not be less than Rs. 50,000/- and which can be extended upto Rs. 3 lakhs and every person who is in default shall be punishable with imprisonment for a term which may be extend to 3 years or with fine which shall not be less than Rs.50,000/-

Have a look on format of Prospectus of 'Infosys Ltd.' at
<https://www.infosys.com/newsroom/press-releases/Documents/2013/prospectus-filed-AMF.pdf>

3.6 STATEMENT IN LIEU OF PROSPECTUS

3.6.1 Meaning and Definition:

The company issues prospectus in order to collect share capital from public. However, sometimes a company collects capital from private placement which includes its promoters, directors, their friends and relatives, and not from general public, in such situation 'Statement in Lieu of Prospectus' must be filed with the Registrar of Companies.

A statement in lieu of prospectus gives practically the same information as a prospectus and is signed by all the directors or proposed directors. A copy of it must be filed with the Registrar at least 3 days before actual allotment of shares. If these provisions are not complied with, then company and its directors are held responsible. They are punishable with fine which may extend upto Rs. 1,000/-. Liability for misrepresentation in the Statement in lieu of prospectus is same as in the case of prospectus.

A statement in lieu of prospectus is defined as “a public document prepared in the second schedule of companies ordinance by every such public company which does not issue a prospectus on its formation by filing with the registrar before allotment or shares of debentures, and signed by every person who is named therein”.

3.6.2 Contents of a Statement in Lieu of Prospectus:

1. Name of company
2. Statement of capital
3. Description of the business
4. Names, addresses and occupations of directors
5. Estimated initial expenses
6. Names of vendors and details of property
7. Material contracts
8. Director's interests
9. Minimum subscription

3.7 MISLEADING PROSPECTUS

The prospectus must provide fact and reliable information to the investors. The investors decide to invest in particular company based on the information supplied through prospectus.

A prospectus is said to be misleading or untrue in two of following cases :

- A statement included in a prospectus shall be deemed to be untrue, if the statement is misleading in the form of and context in which it is included.
- Omission, from prospectus, of any matter that misleads the investors.

Contravention of Section 26 of the Companies Act, 2013

- If a prospectus is issued in contravention of the provisions of this section, then the company shall be punishable with a fine, not less than Rs.50,000/- which may extend to Rs. 3 Lakhs, and

- Every person who is party to the issue of the prospectus shall be punishable with imprisonment for a term which may extend to 3 years or with a fine, not less than Rs.50,000/- which may extend to Rs. 3 Lakhs, or with both.

Criminal Liability for Misstatement in the prospectus

Where a prospectus is issued which includes any statement which is untrue or misleading in form or context or any matter is likely to mislead the investor, then every person who authorizes the issue of prospectus shall be punishable with imprisonment for a term which may not be less than 6 months, but which may extend to 10 years; or a fine not less than the amount involved in fraud but it may extend to three times the amount of fraud; or with both.

Civil Liability for Misstatement in the prospectus

If there is any inclusion or omission of any matter in the prospectus issued, which is misleading and the person who has subscribed the securities has sustained any loss or damage, then the company and every person who is a director, promoter and expert at the time of issue of prospectus, shall be responsible and be liable for punishment under section 36 of the act, and shall be liable to pay compensation to every person who has sustained such loss or damage.

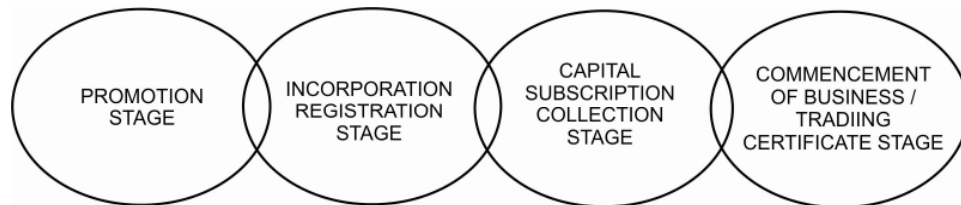
3.8 DISTINCTION BETWEEN PROSPECTUS AND STATEMENT IN LIEU OF PROSPECTUS

Points	Prospectus	Statement in Lieu of Prospectus
1) Meaning	A prospectus is a document issued by the company inviting the public and investors for the subscription of its securities.	When a company collects capital from among its promoters, directors, their friends and relatives, and not from general public, in such situation 'Statement in Lieu of Prospectus' must be filed with the Registrar of Companies.
2) Purpose	It is used for publicity for subscription of securities as well as filing with the Registrar.	It is used only for the filing with the Registrar.
3) Suitability	Large public limited companies issue prospectus to collect huge capital.	Small public companies can raise capital privately.
4) Filing with Registrar	It is filed with Registrar, 90 days prior to issue to public	It is filed with Registrar, 3 days prior to allotment of shares.

3.9 COMPANY FORMATION – STAGES AND SECRETARIAL DUTIES

Formation of Joint Stock Company is lengthy and time consuming procedure. It involves many formalities also preparation and submission of various documents. Company promoters play vital role in the procedure of formation of company. They develop idea of new business, undertake incorporation formalities and obtain incorporation certificate, collect required capital and finally secure trading / commencement certificate.

3.9.1 Various stages in Company Formation



1. **Promotion Stage:** This is the first stage in the formation of company. Here, all the preliminary work of company formation is completed. This includes discovering business opportunity and organizing resources. At this stage promoter plays an important role to implement the business idea and bring it into action. The promoter is the person who is concerned with the promotion of business enterprise. For example, Dhirubhai Ambani is the promoter of Reliance Industries.
2. **Incorporation / Registration Stage:** Incorporation /Registration brings company into existence. A company is formed only when it is registered under the Companies Act. Here, necessary documents such as Memorandum of Association and Articles of Association of company, List of directors, written consent of directors, notice of the address of registered office of company and statutory declaration are submitted and required stamp duty is paid. The registrar scrutinizes documents and if he is satisfied, the name of company is entered in the register. On completion of these formalities, the Registrar issues 'Certificate of Incorporation'.

Certificate of Incorporation

No 2893 OF 1938-1939

I hereby Certify that **TATA CHEMICALS LIMITED** is this day incorporated under the Indian Companies' Act VII of 1913, and that the Company is Limited.

Given under my hand at Bombay this Twenty- third day of January One Thousand Nine Hundred and Thirty – nine.



(Sd.) BEHRAMJI M. MODI,
The Registrar of Companies

Source: www.tatachemicals.com

3. **Capital Subscription / Collection Stage:** A private company can commence its business as soon as it receives 'Certificate of Incorporation'. A public company can commence its business only after receiving the 'Certificate of Commencement / Trading Certificate'. After getting 'Certificate of Incorporation', a public company issues a prospectus to invite public to subscribe its shares. Public company fixes the minimum subscription. A company must collect this amount within 60 days from the date of issue of prospectus. If the minimum subscription is not collected by the company, it does not get 'Certificate of Commencement / Trading Certificate' and it has to refund the amount of the applicant within 8 days. To avoid such situation, the company appoints underwriter who give guarantee of minimum subscription of shares of company.
4. **Commencement of Business / Trading Certificate Stage:** This is the last stage of company formation. After completing the sale of the required number of shares, a promoter approaches to Registrar and submit various documents and necessary filing fees is paid. The Registrar then scrutinizes the documents. If he is satisfied he issues a certificate known as 'Certificate of Commencement of Business'. After receiving 'Certificate of Commencement / Trading Certificate' a public company can start its business activities.

Certificate for Commencement of Business

(Pursuant to section 103 (2) of the Indian Companies Act, 1913)

I hereby certify that the **Tata Chemicals Limited** which was incorporated under the Indian Companies Act, 1913, on the Twenty-third day of January 1939, and which has this day filed a duly verified declaration in the prescribed form that the conditions of section 103(1) (a) to (d) of the said Act have been complied with, is entitled to commence business.

Given under my hand at Bombay this Twenty-seventh day of April one thousand nine hundred and Thirty-nine.



(Sd.) BEHRAMJI M. MODI,
The Registrar of Companies

Source: www.tatachemicals.com

3.9.2 Secretarial Duties at Various Stages of Company Formation

The company secretary plays a very important role in the Promotion and Incorporation of a company. He acts as the adviser to the promoters and helps them in preparatory work to be performed and legal formalities to be observed in this connection.

- **Secretarial Duties at the Promotion Stage**

1. To arrange the meetings of the promoters for promotion of company.
2. To attend the meetings of the promoters, supply necessary information to promoters, record the proceedings and maintain the minutes of these meetings.
3. To ascertain from the Registrar of Companies if the proposed name of the company is available for registration.
4. To help the promoters in the finalization of the various preliminary contracts with vendors, underwriters, bankers, brokers, solicitors, auditors, managerial personnel etc.
5. To get Memorandum, and Articles of Association prepared and printed

6. To see that all other prescribed documents for the registration of the company are ready for delivery to Registrar. The documents includes:
 - a) a written consent of the Directors to act in that capacity and to purchase qualification shares,
 - b) the notice of address of the Registered office of the company, and
 - c) a statutory declaration stating that all the legal requirements of the Act precedent to incorporation have been complied with

- **Secretarial Duties at the Incorporation / Registration Stage**

1. The promoter selects three names of company and the secretary files an application for the availability of name of the company along with required fees to the ROC.
2. The secretary submits various documents to ROC for registration of company to obtain the Certificate of Incorporation from the Registrar. The documents include:
 - a) Memorandum of Association
 - b) Articles of Association
 - c) List of Directors
 - d) a written consent of the Directors to act in that capacity and to purchase qualification shares,
 - e) the notice of address of the Registered office of the company, and
 - f) a statutory declaration stating that all the legal requirements of the Act precedent to incorporation have been complied with
 - g) Payment of prescribed filing and registration fees and stamp duty

- **Secretarial Duties at the Capital Subscription / Collection Stage**

1. The first meeting of Board of Directors will be convened to deal with:
 - a) Appointment of secretary
 - b) Appointment of Managing Director and other responsible officers
 - c) Appointment of banker, broker, solicitors and auditor
 - d) Approve design of common seal of company
 - e) Underwriting agreement with underwriter to secure minimum subscription

- f) Decide minimum subscription amount
 - g) Approve draft of prospectus
 - h) Listing of shares on a stock exchange
2. Get common seal prepared as per designed approved and open the Bank Account
 3. Prepare underwriting agreement with underwriter
 4. Obtain consent letter from bankers, solicitors, auditors, underwriters, brokers etc. for incorporating their names in prospectus
 5. Get prospectus and share application form printed. Get printed copy of the prospectus signed by directors of company
 6. Submitting application stock exchange for getting shares listed on stock exchange
 7. File a copy of prospectus with ROC. Then it is issued to public within 90 days from filing with ROC which includes share application form.
 8. Make arrangement with banker to receive application money received from investors.
 9. Convey Board meeting to pass resolution for allotment of shares.
 10. The secretary issues 'Letter of Allotment' to those whom shares are allotted. Secretary issues 'Letter of Regret' to whom shares are not allotted (in case of over subscription) along with refund order
 11. File return of allotment to ROC within 30 days of allotment of shares
 12. Issue share certificate to every shareholder within 3 months from date of allotment of shares
 13. Maintain register of members which includes name of shareholders and other share related details.
- **Secretarial Duties at the Commencement of Business / Trading Certificate Stage**
1. File following declarations with ROC:
 - a) A statement of declaration that a copy of prospectus or statement in lieu of prospectus is filed with the Registrar.
 - b) A statement of declaration that minimum subscription amount has been collected
 - c) A declaration that directors have purchased and paid for qualification shares

- d) A statutory declaration that all the legal requirements have been complied with
- 2. Along with above documents, necessary filing fees is paid
- 3. Collect the 'Certificate of Commencement / Trading Certificate' from ROC.

3.10 CONVERSION OF COMPANIES

Conversion of companies means changing legal status of company i.e. from private to public and public to private. It can be done by completing the necessary legal procedures and formalities.

As per Section 18 of Companies Act, 2013 a company registered under one class can convert into another class by alteration of MOA and AOA of company. However, consent of shareholders is required for such decision.

3.10.1 Conversion of Private Company into a Public Company

Section 14 of Companies Act, 2013 (Section 31 of erstwhile Companies Act 1956) plays an important role during conversion of a Private company into a Public company. It involves alteration of article of association of Private Company under section 14 which cannot be done without passing special resolution of Shareholders in the General Meeting. Secretarial procedure for Conversion of a Private Limited Company into a Public Limited is as following:

- 1) **Convening Board Meeting:** The secretary convenes a board meeting in accordance with the provisions of section 173(3) of the Companies Act, 2013. The agenda of this meeting is:
 - a) Pass a board resolution to get approval of Directors for conversion of a Private company into a public company by altering the AOA.
 - b) Fix date, time and place for holding Extra-ordinary General meeting (EGM) to get approval of shareholders, by way of Special Resolution, for conversion of a Private company into a Public company.
 - c) To approve notice of EGM along with Agenda and Explanatory Statement to be annexed to the notice of General Meeting as per section 102(1) of the Companies Act, 2013;
 - d) To authorize the Director or Company Secretary to issue Notice of the Extra-ordinary General meeting (EGM) as approved by the board under clause 1(c) mentioned above.
- 2) **Issue of EGM Notice:** The secretary makes arrangement to issue Notice of the Extra-ordinary General meeting (EGM) to all Members, Directors and the Auditors of the company in accor-

dance with the provisions of Section 101 of the Companies Act, 2013;

3) Convening Extra Ordinary General Meeting: The Extraordinary General meeting (EGM) is held and the Special Resolution is passed, to get shareholders' approval for Conversion of Private Company into a Public company along with alteration in articles of association under section 14 for such conversion.

4) Filing Documents with ROC: For alteration in Article of Association for conversion of Private Company into a Public company under section 14, few E-forms will be filed with concerned Registrar of Companies at different stages as following:

a) E-form MGT.14: This form is for filing special resolution with ROC, passed for conversion of Private Company into a Public company. Attachments of E-form MGT.14 includes:

- Notice of EGM along with copy of explanatory statement under section 102;
- Certified True copy of Special Resolution;
- Altered memorandum of association;
- Altered Articles of association
- Certified True copy of Board Resolution may be attached as an optional attachment.

b) E-form INC.27: This form is for Application for conversion of a private company into a public company. Attachments of E-form INC.27:

- It is mandatory to attach Minutes of the member's meeting where approval was given for conversion and altered articles of association.
- Altered Articles of Association;
- Certified True copy of Board Resolution may be attached as an optional attachment.
- Other information if any can be provided as an optional attachment(s)

As per Section 18, after receiving the documents for conversion of a Private Company into a Public Company, ROC shall satisfy itself that the Company has complied with the requisite provisions for registration of company. If so satisfied, ROC shall close the former registration and issue fresh certificate of incorporation, after registering the documents submitted for change in class of company.

3.10.2 Conversion of Public Company into a Private Company

- 1) **Convening Board Meeting:** A meeting of Board of Director is convened by company secretary by sending them notice of meeting. At the Board Meeting, the resolution approving conversion from a public company to a private company has to be passed. Secondly, a resolution to call an extraordinary general meeting must be passed.
- 2) **Convening an Extra-ordinary General Meeting (EGM):** Notice is sent to all the members regarding EGM. An **explanatory statement** specifying the business to be transacted at the meeting has to be annexed to the notice. An extraordinary general meeting is vital to get the approval of the members of the company before proceeding with the conversion. At the extraordinary general meeting, a special resolution approving the alterations to the Memorandum of Association and Articles of Association needs to be passed.
- 3) **Filing Documents with ROC:** The company has to intimate the Registrar of Companies within 30 days of passing the resolution to convert from a public company to a private company. Following documents are required to be submitted to the ROC:
 - a) **Form MGT-14 (Filing of Resolutions and agreements with the Registrar):** The Company has to intimate the Registrar of Companies within 30 days of passing the resolution to convert from a public company to a private company. Resolutions are filed with the Registrar in Form MGT-14 along with the prescribed fees as prescribed in the Companies (Registration offices and fees) Rules, 2014. The following documents have to be attached with the form:
 - Copy of the resolution(s)
 - Copy of the explanatory statement
 - Altered Memorandum of Association
 - Altered Articles of Association
 - Copy of the agreement
 - Any other optional documents
 - b) **File form INC-27 (Conversion of public company into private company or private company into public company):** Pursuant to Section 14 of the Companies Act, 2013, any alteration to the articles of association has to be intimated to the Registrar vide Form INC-27 to enable the conversion. The form has to be filed with the Registrar of com-

panies, along with the application fees. The following documents have to be submitted along with the form-

- Minutes of the members' meeting
- Altered articles of association
- Order of competent authority (Central Government)

4) Intimation about Conversion: The secretary needs to do publicity regarding conversion introduced for the information of shareholders and outsiders. Intimation of change will be communicated to the stock exchange where company shares are listed.

5) Fresh Certificate of Incorporation: The company secretary has to surrender existing certificate of incorporation to the ROC with a request to issue fresh certificate of incorporation with necessary changes into it.

3.10.3 Reconversion of Public Company into a Private Company

1) Convening an Extra-ordinary General Meeting: After the Board of Director take decision for the reconversion of public company into private company, suitable arrangements will be made for convening EGM for taking final decision about reconversion by the members. In EGM, special resolutions for making relevant changes in the Memorandum and Articles of Association will be passed.

2) Submission of application to the Central Government: After passing resolution, the company will have to submit application to the Central Government in the prescribed form for securing the approval to the reconversion. After securing such approval, the ROC will be informed accordingly.

3) Securing approval of the Central Government: On the receipt of such application, the Central Government will make the scrutiny of the application and if satisfied, it will give sanction for the conversion. The company becomes private company with the effect from the date of approval of the Central Government. The changes in the name will be effective from the date of issue of fresh Certificate of Incorporation by the ROC. All documents, relating to conversion will be filed with the Registrar, along with a printed copy of the altered articles.

3.11 SUMMARY

MOA is the charter of the company. It is treated as the constitution of the company. It defines the scope of its activities. It

contains the rights, privileges and powers of the company. MOA establishes the relationship of the company with the members. There are six Clauses of MOA namely Name clause, Domicile clause, Object clause, Liability clause, Capital clause, and Subscription clause. Different authorities need to be approached for making alternation in clauses of MOA and undertake necessary formalities.

Ultra-vires refers to anything which is done by the company or its directors which is beyond their legal authority or which was outside the scope of the object of the company. This is meant to protect the interests of the shareholders and creditors of the company.

AOA is a document which prescribes the rules and bye-laws for the general management within the company and for the attainment of its object as given in the memorandum of association of the company. It includes details about internal management of company.

A prospectus is a document issued by the company inviting the public and investors for the subscription of its securities. It is required to be issued only after the incorporation of the company. It includes details about securities issued in the market which enables investors to take decision about investing in company.

Sometimes a company collects capital from private placement which includes its promoters, directors, their friends and relatives, and not from general public, in such situation 'Statement in Lieu of Prospectus' must be filed with the Registrar of Companies.

Misleading prospectus refers to a statement included in a prospectus is to be untrue. Omission, from prospectus, of any matter misleads the investors.

The formation of company includes 4 stages namely Promotion stage, Incorporation / Registration Stage, Capital subscription / collection stage and finally Commencement of business / Trading Certificate stage. The secretary needs to perform various activities during all these stages.

Conversion of companies means changing legal status of company i.e. from private to public and public to private. It can be done by completing the necessary legal procedures and formalities.

As per Section 18 of Companies Act, 2013 a company registered under one class can convert into another class by alteration of MOA and AOA of company. However, consent of

shareholders is required for such decision. The secretary needs to perform various activities during conversion of company.

3.12 EXERCISE

FILL IN THE BLANKS

- 1) _____ is a fundamental document of a company (MOA, AOA, None of these)
- 2) _____ clause in memorandum of association contains the state in which registered address of the company is situated. (Name, Domicile, Subscription)
- 3) _____ refers to anything which is done by the company / a director which is beyond their legal authority or which was outside the scope of the object of the company. (Ultra Vires, Ultra Virus)
- 4) _____ is internal regulations of company. (Prospectus, Statement in lieu of prospectus, Articles of Association)
- 5) _____ is first stage in company formation. (Promotion stage, Incorporation stage, Capital subscription stage)
- 6) _____ Company can commence its business as soon as it receives Certificate of Incorporation. (Private, Public, Both Not)

DEFINE/EXPLAIN THE FOLLOWING TERMS

- 1) Memorandum of Association
- 2) Articles of Association
- 3) Ultra Vires
- 4) Prospectus
- 5) Statement in Lieu of Prospectus
- 6) Misleading Prospectus
- 7) Formation stage of Company formation
- 8) Incorporation stage of Company formation
- 9) Capital stage of Company formation
- 10) Commence of Business stage of Company formation
- 11) Conversion of Company

ANSWER IN BRIEF

- 1) Define Memorandum of Association. Explain its various clauses.
- 2) What is Articles of Association? Describe its content.
- 3) Write a note on Ultra Vires.

- 4) Distinguish between Prospectus and Statement in Lieu of Prospectus.
- 5) Write a note on Misleading Prospectus.
- 6) Describe various stages involved in company formation.
- 7) Explain secretarial duties involved at Promotion stage of company formation.
- 8) What are the secretarial duties involved at Incorporation stage of company formation?
- 9) Briefly describe secretarial duties involved at Capital subscription stage of company formation.
- 10) Elaborate secretarial duties involved at Commencement of Business stage of company formation.
- 11) Write a note on Conversion of Companies.
- 12) Briefly explain reconversion of public company into private company.

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Information to be stated in the Prospectus of a Company By prathik sharavi May 22, 2018

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<https://www.commercepk.com/statement-in-lieu-of-prospectus/>

<https://accountlearning.com/important-stages-in-the-formation-of-a-company/>

<https://taxguru.in/company-law/convert-private-company-public-company.html>



SECRETARIAL CORRESPONDENCE

Unit Structure :

- 4.0 Objectives
- 4.1 Introduction
- 4.2 Correspondence
- 4.3 Role of Technology in Secretarial Correspondence
- 4.4 Specimens
- 4.5 Summary
- 4.6 Exercise
- 4.7 References

4.0 OBJECTIVES

After studying the unit students will be able to:

- Know circumstances requiring secretarial correspondence with the Shareholders, Debenture Holders, Registrar of Companies, Stock Exchange and penalties thereon
- Know circumstances requiring secretarial correspondence with the SEBI, Company Law Board and penalties thereon
- Discuss role of technology in Secretarial Correspondence
- Write Specimen of Letter to Shareholders, ROC, Stock Exchange, Government, Bank

4.2 INTRODUCTION

Correspondence refers to communication in writing. It is an exchange of ideas, information, views and opinions in a respect of certain matters in a written form. The secretary receives letter from various concerned parties such as shareholders, directors, stock exchange, bankers', creditors and others. So the secretary has to reply to them promptly. He/She is also responsible for submission of annual reports, returns and so on. Accurate, timely and careful correspondence creates better image of company among outsider.

4.2 CORRESPONDENCE

4.2.1 Correspondence with Share Holders

Shareholders are the owners of the business since they contribute to the capital of the company. They are large in numbers and scattered over large area. So they cannot contribute to the routine activities of the business also they may not have required skills to handle business activities. In such case they appoint elected representatives who are called as directors.

The circumstances under which secretarial correspondence takes place with the members of company as are follows:

1) Company Meeting

- Notice and Agenda of AGM
- Circulars
- Annual report and audit report

2) Issue of shares

- Letter of allotment in reply to application of shares
- Regret letter for inability to allot any share
- Issue of share certificate
- Issue of bonus shares and right issue

3) Call on shares

- Letter for demanding call money on shares
- Letter of reminder for call money
- Warning letter for forfeiture of shares due to non-payment of call money
- Notice of forfeiture of shares

4) Transfer and Transmission of Shares

- Notice of lodgement of transfer to the transferor and transferee
- Letter informing approval of the transfer of shares to the transferor and transferee
- Letter informing non-approval of the transfer of shares to the transferor and transferee
- Letter informing approval of the transmission of shares to legal heir of deceased shareholder

5) Payment of Dividend

- Notice of dividend payment and dividend warrant
- Notice of dividend mandate

6) Termination of Membership

- Notice of termination of membership due to forfeiture of shares
- Letter for informing of surrender of shares
- Letter for informing of conversion of shares into share warrant

7) Others

- Notice of loss of share certificate
- Issue of duplicate share certificate
- Reply to complaint and queries raised by shareholders

4.2.2 Correspondence with Debenture Holders

Debenture refers to the debt (loan) instrument issued by company under its common seal. As company issues share for raising capital from market, in the same way debentures are also issued. Share capital is own capital of the company but debenture capital is a loan of the company which has to be repaid after certain period of time. They are creditors of the company. Interest is paid to debenture holders as return over their investment made into company. Debenture holders are not concerned with the management of company. They are only concerned about their repayment of capital and payment of interest. They get priority over shareholders for repayment of capital and payment of interest.

• **The circumstances under which secretarial correspondence takes place with the debenture holders of company as are follows:**

- 1) Letter informing allotment of debentures
- 2) Letter informing issue of debenture certificate
- 3) Letter informing payment of interest on debentures
- 4) Letter informing conversion of convertible debentures into equity shares
- 5) Letter informing redemption of debentures

4.2.3 Correspondence with Registrar of Companies (RoC)

The Registrar of Companies (ROC) is appointed by the Central Government to register and supervise matters relating to registration of companies under Company Act. They also control affairs of the company. Every company has to submit certain documents like Memorandum and Articles of Association to ROC in order to receive Certificate of Incorporation and Commencement Certificate.

• **The circumstances under which secretarial correspondence takes place with the ROC as are follows:**

- 1) Filing statutory report after Statutory meeting
- 2) Submission of Return of Allotment of share after allotment of shares is done
- 3) Filing annual return after completion of financial year and approval in AGM
- 4) Extension time for holding AGM in unavoidable situations
- 5) Filing special resolutions
- 6) Alterations in MOA and AOA
- 7) Conversion and reconversion of company

4.2.4 Correspondence with the Stock Exchange

Stock exchange is a market place where buying and selling of securities is done which is already issued by company. So it is called secondary market. A company has to list (register) its securities with one or more stock exchanges in order to trading take place in their securities. The secretary has to undertake correspondence with the stock exchange to inform about happenings in the company. This correspondence is obligatory on the part of company otherwise it attracts penalty.

• **The circumstances under which secretarial correspondence takes place with the Stock Exchange are as follows:**

- 1) Listing of securities with the stock exchange
- 2) Informing about alteration in Memorandum of Association
- 3) Information about Board Meeting and AGM, change in Board of Directors, Rate of dividend declared
- 4) Information about issue of Bonus Shares and Right issue
- 5) Submission of compliance report on corporate governance within 15 days from the end of quarter
- 6) Submission of Annual Report within 21 days of its approval in AGM
- 7) Any other information required by stock exchange

4.2.5 Correspondence with the Securities and Exchange Board of India (SEBI)

Securities and Exchange Board of India (SEBI) is a regulatory body of the Government of India. It controls the securities market. It was established on April 12, 1992 under the SEBI Act, 1992. It is headquartered at the Bandra Kurla Complex in Mumbai, India. It has regional offices in major cities of India such as New Delhi, Kolkata, Chennai and Ahmedabad.

The Preamble of the Securities and Exchange Board of India describes the basic functions of SEBI as the protection of investors interests in securities and to be a platform to promote, develop and regulate the securities market in India as well as the relating matters that are connected with it.

The SEBI is permitted to approve rules and laws pertaining to the stock exchanges. It also implies that SEBI should enforce the laws for stock exchanges to follow. SEBI examines books of accounts of financial mediators and recognized stock exchanges. Another role of SEBI is to urge respective companies to list their shares in stock exchanges and manage the registration of distributors/brokers.

• **The circumstances under which secretarial correspondence takes place with the SEBI are as follows:**

- 1) SEBI receives large number of complaints from Shareholders and Investors related to payment of dividend, repayment of capital, transfer of shares, and so on. SEBI solves these complaints in cooperation with concerned company. The secretary has to give prompt attention to correspondence with SEBI and solve these complaints in time.
- 2) Company receives letters and notices from SEBI. Secretary has to give prompt reply to it.
- 3) Any other information required by SEBI.

4.2.6 Correspondence with the Company Law Board

The Central Government in terms of Section 10 (E) of the Companies Act, 1956 constituted an independent Company Law Board (CLB) vide Notification No. 364 dated the 31st May, 1991. The CLB is a quasi-judicial body, exercising equitable jurisdiction, which was earlier being exercised by the High Court or the Central Government. The Board has powers to regulate its own procedures. The Company Law Board has framed Company Law Board Regulations 1991 prescribing the procedure for filing the applications/petitions before it. The Central Government has also prescribed the fees for making applications/petitions before the Company Law Board, under the Company Law Board, (Fees on applications and Petitions) Rules 1991. The Board has its Principal Bench at New Delhi, and four Regional Benches located at New Delhi, Mumbai, Kolkata and Chennai.

• **The circumstances under which secretarial correspondence takes place with the Company Law Board are as follows:**

- 1) Conversion or reconversion of company
- 2) Alteration to Memorandum and Articles of Association
- 3) Petition filed by any investor and shareholders on oppression and mismanagement of the company.

4.3 ROLE OF TECHNOLOGY IN SECRETARIAL CORRESPONDENCE

Fast changes have been taking place in all facets of life including the business organization. This is as a result of technological advancement. Every business organization today requires facts and accurate information for quick decision-making and high productivity. The employees including the secretary expects certain supports which can be technological (machines and equipments) and human.

In the past, manager used to dictate memo and letters, while the secretary used to type them. Today's secretaries are exposed to office technology/automation including the Internet that makes work easier and knowledge more accessible. It is now easier to send messages by telex, electronic mails (e-mails) fax and telephones. This is the era of computers and information technology, which has become an enabler of greater convenience to the secretary. **The role of technology in secretarial correspondence is as follows:**

- 1) Increase in speed and accuracy in correspondence with various people and authorities
- 2) Reduce wastage of resources
- 3) Reduces cost paper, printing and other stationery requirement
- 4) Increases efficiency of secretary
- 5) Enables storage of data for future reference

4.4 SPECIMENS

4.4.1 LETTER TO SHAREHOLDERS

- Letter for issue of Bonus Shares

<p align="center">GALAXY STEEL INDUSTRIES LIMITED 140/A, MIDC, Andheri (E), Mumbai – 400093. www.gbs.com Tel: 022-2222 5588</p>			
Ref.: BS/01/2018-19		16 th January, 2019	
<p>Mr. Sandeep Baga Laxmi Villa, Gogate Wadi, Goregaon (W), Mumbai-400063</p>			
<p align="center">Sub: Bonus Issue of Equity Shares</p>			
<p>Dear Sir,</p> <p>I am directed by the Board of Directors to inform you that at the Extraordinary General Meeting held on 29th December, 2018 shareholders have unanimously approved the recommendation of Board of Directors to issue bonus shares in the ratio of 1:1 (i.e., one bonus share for each fully paid equity share held by the shareholder).</p>			
<p>Details of bonus shares issued to you are as follows :</p>			
D.P. ID No.	Client ID No.	Shares held as on record date	Bonus Shares allotted
M-354/2	10032758	100	100
<p>For further queries (if any), in respect of the above, kindly do write to our Registrar and Share Transfer Agent at the address given below: GALAXY STEEL INDUSTRIES LIMITED 140/A, MIDC, Andheri (E), Mumbai – 400093. Tel: 022-2222 5588 Email: galaxysi@gmail.com</p>			
<p>Thanking you.</p>			
<p align="right">Yours faithfully, For Galaxy Steel Industries Ltd</p>			
<p align="right">Sd/- Secretary</p>			

- Letter for issue of Right Issue

GALAXY STEEL INDUSTRIES LIMITED
140/A, MIDC, Andheri (E), Mumbai – 400093.
www.gbs.com Tel: 022-2222 5588

Ref.: BS/01/2018-19
28th May, 2019

Mr. Sandeep Baga
Laxmi Villa, Gogate Wadi,
Goregaon (W), Mumbai-400063

**Sub: Offer letter for Right Issue of 1,00,00,000 equity shares of
Rs. 10 each at par**

Dear Sir,

This is to inform you that in pursuant to the Board meeting held on 25th May, 2019, a resolution is passed to issue 1,00,00,000 equity shares of Rs. 10 each at par aggregating Rs. 10,00,00,000/- to the equity shareholders on right basis in the ratio of 1:1 equity shares for every 1 equity shares held on 25th May, 2019.

You are hereby informed that the Board of Directors have decided to increase the subscribed and paid up capital of the Company by issue of 1,00,00,000 equity shares of Rs. 10 each by right offer to equity share holders as on 25th May, 2019 on proportionate basis and conditions as laid down, in application form and in Board resolution.

As a shareholder on the afore mentioned date, being fixed as offer date, we are pleased to inform you that you are entitled to for the “rights shares offer” in reference to details as mentioned in the enclosed application form.

Thanking you.

Yours faithfully,
For Galaxy Steel Industries Ltd
Sd/-
Secretary

4.4.2 LETTER TO REGISTRAR OF COMPANIES

- Letter to Registrar of Companies for filing alteration in the Memorandum of Association of Company

GALAXY STEEL INDUSTRIES LIMITED

140/A, MIDC, Andheri (E), Mumbai – 400093.

www gbs.com Tel: 022-2222 5588

Ref.: MOA/01/2018-19

16th January, 2019

The Registrar of Companies,
Maharashtra State,
Marine Lines,
Mumbai-400020

Sub: Alteration in Memorandum of Association in Name Clause

Sir,

This is to inform you that the Extra Ordinary General Meeting of the Company was held on 13th January, 2019 at Registered Office of the Company. All members unanimously passed the Resolution No. 0223 to change name of company from '**Galaxy Steel Industries Limited**' to '**Galaxy Steel India Limited**'.

Following documents are enclosed for your reference and registration:

- 1) Form INC – 22 along with certified copy of Board Resolution
- 2) Certificates to be sent along with Form INC-22for registration.

Kindly acknowledge the receipt of documents.

Thanking you,

Yours faithfully,
For Galaxy Steel Industries Ltd.
Sd/-
Secretary

Encl : As above

- **Letter to Registrar of Companies for filing alteration in the Articles of Association of Company**

GALAXY STEEL INDUSTRIES LIMITED

140/A, MIDC, Andheri (E), Mumbai – 400093.

www gbs.com Tel: 022-2222 5588

Ref.: AOA/01/2018-19

16th January, 2019

The Registrar of Companies,

Maharashtra State,

Marine Lines,

Mumbai-400020

Sub: Alteration in Articles of Association

Sir,

This is to inform you that the Extra Ordinary General Meeting of the Company was held on 13th January, 2019 At Registered Office of the Company. All members passed the Special Resolution No. 0224 altering 22nd clause of Articles of Association regarding qualification shares of directors.

The original article was that directors shall hold at least 5 equity shares (qualification shares) of Rs. 100/- each. The same has now been altered as the director should hold at least 10 equity shares (qualification shares) of Rs.100/- each in the company.

Following documents are enclosed for your reference and registration:

- 1) Duly filled Form No. MGT-14
- 2) Copy of Special Resolution
- 3) Explanatory Statement annexed to the notice of the General Meeting at which the special resolution was passed
- 4) Copy of new Articles of Association
- 5) Filing fees cheque

Kindly acknowledge the receipt of documents.

Thanking you,

Yours faithfully,
For Galaxy Steel Industries Ltd.
Sd/-
Secretary

Encl : As above

- Encl : 1) Form INC – 22 along with certified copy of Board Resolution
2) Certificates to be sent along with Form INC-22

4.4.3 LETTER TO STOCK EXCHANGE

- **Letter to Stock Exchange for Listing of Shares**

GALAXY STEEL INDUSTRIES LIMITED

140/A, MIDC, Andheri (E), Mumbai – 400093.

www.gbs.com Tel: 022-2222 5588

Ref.: SE/01/2018-19

16th January, 2019

The Secretary,

The Bombay Stock Exchange Ltd.

Mumbai-400020

Sub: Application for Listing of Shares

Sir,

This is to inform you that the Board Meeting was held and resolution no. 0656 dated 10th January 2019 is passed, for making application for listing of shares with your stock exchange for issue size of Rs. 50 crore.

Following documents are enclosed for your reference and registration:

- 1) Duly filled Application Form
- 2) Copy of Memorandum and Articles of Association
- 3) Certified copy of the Certificate of Incorporation

We shall complete the listing procedure as per guidelines of Bombay Stock Exchange.

Thanking you,

Yours faithfully,
For Galaxy Steel Industries Ltd.

Sd/-
Secretary

Encl : As above

4.4.4 LETTER TO GOVERNMENT FOR CONVERSION / RECONVERSION OF COMPANY

GALAXY STEEL INDUSTRIES LIMITED

140/A, MIDC, Andheri (E), Mumbai – 400093.

www.gbs.com Tel: 022-2222 5588

Ref.: Gov/01/2018-19

16th January, 2019**The Secretary,**The Ministry of Corporate Affairs,
Government of India,
New Delhi-1**Sub: Conversion of private company to public company**

Sir,

This is to inform you that an Extra-ordinary general meeting of the company was held on 4th January 2019. The members unanimously passed special resolution for conversion of private company into public company.

We have submitted require documents to Registrar of Companies, Mumbai, Maharashtra and requested to issue new Certificate of Incorporation.

We request you to consider our application for the proposed conversion and do the needful.

Thanking you,

Yours faithfully,
For Galaxy Steel Industries Ltd.Sd/-
SecretaryEncl : 1) Copy of Special Resolution
2) New set of Articles of Association

4.4.5 LETTER TO BANK FOR OVERDRAFT FACILITY**GALAXY STEEL INDUSTRIES LIMITED**

140/A, MIDC, Andheri (E), Mumbai – 400093.

www.gbs.com Tel: 022-2222 5588

Ref.: bank/01/2018-19

16th January, 2019**The Manager,**

State Bank of India

Malad (E) Branch,

Mumbai - 400097

Ref. No. : Current A/c No. 1234567890**Sub: Request to grant overdraft facility**

Sir,

This is to request you that kindly consider granting us overdraft facility of Rs. 50,000/- (**Rupees Fifty Thousand**) for the period of 1st February 2019 to 30th April 2019 to meet our working capital requirement.

We would like to offer our assets as security against the overdraft facility. We will remain committed in honouring the payments in due time. We are willing to bear the interest rates on the overdraft that may be levied from time to time.

We expect that you will find above mentioned security adequate and agree to provide us overdraft facility. We shall complete other formalities after hearing from you.

Your early favourable reply will be very much appreciated.

Thanking you,

Yours faithfully,
For Galaxy Steel Industries Ltd.

Sd/-
Secretary

Encl : As above

4.5 SUMMARY

Correspondence refers to communication in writing. It is an exchange of ideas, information, views and opinions in a respect of certain matters in a written form. The secretary receives letter from various concerned parties such as shareholders, directors, stock exchange, bankers', creditors and others. So the secretary has to reply to them promptly.

Shareholders are the owners of the business since they contribute to the capital of the company. The circumstances under which secretarial correspondence takes place with the members of company are for company meeting, issue of shares, call on shares, transfer and transmission of shares, payment of dividend, termination of membership and so on.

Debenture refers to the debt (loan) instrument issued by company under its common seal. Debenture holders are creditors of the company. The circumstances under which secretarial correspondence takes place with the debenture holders of company are allotment of debentures, issue of debenture certificate, payment of interest on debentures, conversion of convertible debentures into equity shares, redemption of debentures and so on.

The Registrar of Companies (ROC) is appointed by the Central Government to register and supervise matters relating to registration of companies under Company Act. They also control affairs of the company. The circumstances under which secretarial correspondence takes place with the ROC as are Filing statutory report, Submission of Return of Allotment of share, Filing annual return, Extension time for holding AGM, Filing special resolutions, Alterations in MOA and AOA, Conversion and reconversion of company and so on.

Stock Exchange is a market place where buying and selling of securities is done which is already issued by company. The circumstances under which secretarial correspondence takes place with the Stock Exchange are Listing of securities, Informing about alteration in Memorandum of Association, Information about Board Meeting and AGM, Information about issue of Bonus Shares and Right issue, Submission of Annual Report and so on.

Securities and Exchange Board of India (SEBI) is a regulatory body of the Government of India. It controls the securities market. The circumstances under which secretarial correspondence takes place with the SEBI are complaints related to investors and shareholders, reply to notice and circulars received from SEBI and other information required by SEBI.

The Company Law Board has framed Company Law Board Regulations 1991 prescribing the procedure for filing the applications/petitions before it by any investor and shareholders on oppression and mismanagement of the company. The circumstances under which secretarial correspondence takes place with the Company Law Board are Conversion or reconversion of company, Alteration to Memorandum and Articles of Association, Petition filed by any investor and shareholders and so on.

In the past, manager used to dictate memo and letters, while the secretary used to type them. Today's secretaries are exposed to office technology/automation including the Internet that makes work easier, fast, accurate and reduced the cost and wastage of resources.

4.6 EXERCISE

FILL IN THE BLANKS

- 1) The secretary undertake correspondence regarding call on shares with _____ (Debenture holders, Stock Exchange, Shareholders)
- 2) The secretary undertakes correspondence regarding payment of interest with _____. (Debenture holders, , Shareholders, Both)
- 3) _____ is appointed by Central Government to register and supervise matters relating to registration of companies under Company Act. (Registrar of Companies, Stock Exchange, Company Law Board)
- 4) A company has to list (register) its securities with _____ in order to trading take place in their securities. (Registrar of Companies, Stock Exchange, Company Law Board)
- 5) _____ controls the securities market. (SEBI, Shareholders, Board of Directors)
- 6) Investor and shareholders can file the applications/petitions before _____ on oppression and mismanagement of the company. (Board of Directors, Promoters, Company Law Board)
- 7) Technology _____ the secretarial correspondence. (Slows, Mistakes, Speeds)

DEFINE/EXPLAIN THE FOLLOWING TERMS

- 1) Correspondence
- 2) SEBI
- 3) Stock Exchange
- 4) Company Law Board
- 5) Registrar of Companies

ANSWER IN BRIEF

- 1) Explain the various circumstances under which company secretary needs to undertake correspondence with shareholders.
- 2) Discuss the various circumstances under which company secretary needs to undertake correspondence with debenture holders.
- 3) Describe the various circumstances under which company secretary needs to undertake correspondence with Registrar of Companies.
- 4) Elaborate the various circumstances under which company secretary needs to undertake correspondence with Stock Exchange.
- 5) Explain the various circumstances under which company secretary needs to undertake correspondence with SEBI.
- 6) Discuss the various circumstances under which company secretary needs to undertake correspondence with Company Law Board.
- 7) Write a note on Role of technology in secretarial correspondence.
- 8) Write a letter to shareholders informing about right issue.
- 9) Write a letter to shareholders informing about bonus issue.
- 10) Write a letter to ROC relating to Alteration in MOA.
- 11) Write a letter to ROC relating to Alteration in AOA.
- 12) Write a letter to Stock Exchange informing about listing of shares
- 13) Write a letter to Government relating to conversion of company.
- 14) Write a letter to Bank for availing overdraft facility.

4.7 REFERENCES

<https://cleartax.in/s/sebi>

<http://clb.gov.in/Oraganisation.htm>

<https://www.caclubindia.com/forum/draft-letter-of-offer-for-right-issue-381056.asp>

